



EUROPEAN COMMISSION

Brussels, 8.3.2018
SEC(2018) 131 final

REGULATORY SCRUTINY BOARD OPINION

**Proposal for a regulation of the European Parliament and of the Council
on European Crowdfunding Service Providers (ECSP) for Business**

**Proposal for a directive of the European Parliament and of the Council
amending Directive 2014/65/EU on markets in financial instruments**

{COM(2018) 113}
{COM(2018) 99}
{SWD(2018) 56}
{SWD(2018) 57}



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Brussels,
Ares(2017)

Opinion

Title: Impact Assessment / EU framework on crowd and peer to peer finance

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Context

Crowdfunding is an internet-age alternative to borrowing money from banks. An individual or business issues an open call for funds via the Internet, and members of the public respond. These interactions take place on crowdfunding platforms, which try to match supply and demand for funds. In 2015, the EU market for crowdfunding was EUR 5.4bn, of which three quarters was in the UK. Very little crowdfunding was cross-border. For crowdfunding markets to develop, all parties reportedly need confidence in the integrity of the platforms. In addition, investors need confidence in the accuracy and completeness of the information that they use to decide whether to invest. A few Member states already have regulatory frameworks in place to ensure both. At the EU level, a number of legal acts also apply to elements of crowdfunding business models.

This impact assessment considers whether and how to set up an EU-level regulatory framework for crowdfunding. It would aim to help platforms to scale up across the Single Market. This initiative seeks to remove some of the remaining obstacles to competition in the investment fund sector. This could lead to a larger share of funds raised through crowdfunding platforms operating cross-border. It could thus result in less market fragmentation, more competition, and provide EU investors with more and better investment opportunities.

(B) Main considerations

The Board notes that the scope of the initiative is relatively modest and that the size of the crowdfunding market is small. The report describes well the problem and the objective of an EU intervention.

However, the report contains significant shortcomings that need to be addressed. As a result, the Board expresses reservations and gives a positive opinion only on the understanding that the report shall be adjusted in order to integrate the Board's recommendations on the following key aspects:

- (1) The report does not sufficiently explain the rationale and the urgency for this initiative. It does not justify why the Commission's position has evolved on the need for EU-level policy intervention in this area.**
- (2) The analysis of the preferred option is not sufficiently developed with regard to co-existence and complementarity with existing national regimes and supervisory arrangements.**
- (3) The report does not appropriately reflect the views of the stakeholders and various levels of support for the preferred option.**

(C) Further considerations and adjustment requirements

(1) Strengthen the rationale for the initiative. The report should better describe the need for EU action, and the urgency to act now. In view of the cautious approach adopted by the Commission in this area (notably in the CMU Action Plan and its recent Working Document on crowdfunding), it should point out which recent changes in market conditions warrant EU intervention (e.g. the United Kingdom's departure from the European Union). It should come out clearly that this initiative would help an infant industry, innovation and early financing through investment and lending based crowdfunding. The report should provide more evidence on cross-border obstacles to this type of crowdfunding in the EU.

(2) Clarify further the scope. The title of the initiative should be adjusted to reflect the fact that this concerns exclusively investment-based and lending-based crowdfunding. It should also sharpen the delineation of crowdfunding from other, more traditional forms of seed funding of new companies. The report should better set out how this initiative links with the Fin Tech, the Capital Market Union Action Plan and provisions regarding financial services and consumer protection.

(3) Improve the analysis of the options. The report should better explain the content of each option. It should better elaborate on their co-existence and complementarity with the existing financial legislation (e.g. MiFID) and national regimes. It should also outline which advantages would motivate platforms to switch from national regimes to the regime of the preferred option. The presentation of supervision arrangements should justify why centralised supervision would be necessary for the implementation of the preferred option. It should also indicate more clearly who would do what, when and how much would it cost. The report should better describe the risks that stem from the options, such as "gold-plating". It should also be clearer on how future-proof the options are and how do they reflect other innovations, such as Initial Coin Offerings.

(4) Better reflect the stakeholder views. The analysis should better report on different consultations undertaken to collect the stakeholder input. It should also better reflect which views were held by which stakeholders and how these have been taken into account (e.g. the majority view supporting the introduction of regulatory sandboxes). It should include a detailed presentation of the national authorities and industry views. The account should pay particular attention to stakeholder views regarding proportionality and credibility of the preferred option.

The Board takes note of the quantification of the various costs and benefits associated to the preferred option of this initiative, as assessed in the report considered by the Board and summarised in the attached quantification tables.

Some more technical comments have been transmitted directly to the author DG.

(D) RSB scrutiny process

The lead DG shall ensure that the report is adjusted in accordance with the recommendations of the Board prior to launching the interservice consultation.

The attached quantification tables may need to be adjusted to reflect any changes in the choice or the design of the preferred option in the final version of the report.

Full title	Proposal for a regulation of the European Parliament and of the Council on crowdfunding services in EU
Reference number	PLAN/2017/1676
Date of RSB meeting	13 December 2017

Summary of costs and benefits

<i>I. Overview of Benefits (total for all provisions) – Preferred Option</i>			
<i>Description</i>	<i>Type of entity</i>	<i>Amount</i>	<i>Comments</i>
<i>Direct benefits</i>			
Compliance cost reductions	MiFID licensed platforms	<p>EUR 50,000 – 125,000 per firm (MiFID capital requirements) This would bring about a total potential one-off cost reduction of EUR 550,000 – 1,375,000</p> <p>It is furthermore estimated that MiFID licensed platform operators could save EUR 2,500 – 5,500 on recurring compliance costs (business conduct & operational requirements). Overall, this implies a cost reduction of EUR 27,500 – 60,500 across the industry per year. In addition, MiFID firms would save authorisation fees and compliance costs when entering markets that currently have a bespoke crowdfunding regime in place. The total one-off costs under national regimes are estimated to lie in the range of 17,750 – 34,000.¹ This implies a potential cost saving (one-off) of EUR 3,354,750 – 6,426,000 across the industry (including savings from less capital requirements).</p>	<p>The estimates in relation to capital requirements and recurring compliance costs assume that all MiFID firms who hold a licence only for order transmission and placing without firm commitment (11 currently²) would apply for the ECP licence and drop out of MiFID. The costs saving estimates with regard to the national bespoke regimes assume that MiFID regulated platforms (42 in total including platforms acting as tied agents) would offer services in half of the Member States that are currently likely to require additional authorisation (9)³</p>
	Other platforms	<p>Platforms would save authorisation fees and compliance costs when entering markets that currently have a bespoke crowdfunding regime in place. The total one-off costs under national regimes are estimated to lie in the range of 17,750 – 34,000. Assuming that respective operators are regulated under one existing bespoke regime already, this would imply total potential cost savings of EUR 13,490,000 – 25,840,000.</p> <p>In addition, these platform operators would save the costs of acquiring a MiFID licence which they would currently need to hold in order to access Member States that do not have a bespoke regime in place. This would bring costs savings of: EUR 1,500,000 – 3,000,000 (capital requirements) EUR 195,000 – 240,000 (recurring cost saving annually compared to MiFID)</p>	<p>The costs saving estimate with regard to the national bespoke regimes assumes that platforms regulated outside of MiFID (190) would offer services in half of the other Member States with a bespoke regime. The costs savings in relation to MiFID only apply to investment-based platforms that currently do not hold a MiFID licence (60). It is assumed that half of these firms would decide to also hold a MiFID licence in order to access Member States applying MiFID to investment-based crowdfunding. The saving potentials do not account for other costs such as cost of establishment, legal costs or other technical assistance.</p>
Lower funding costs for SMEs	SMEs	n/a	<p>Funding costs are the result of both market (macro) interactions and bilateral contractual relationships. They are also idiosyncratic, as depending on the individual risk of the firm. As a result, it is not possible to make a total estimate of the benefits (in terms of funding costs) that will trickle down to businesses.</p>

¹ Average based on ECENTRCOLLAB survey

² Source: ESMA Crowdfunding survey

³ This will depend on the business model of the platform operator, the instruments on the platform as well as the national regulatory and supervisory approach. Given the current setup of national bespoke regimes, it is assumed that platform operators holding a MiFID licence may potentially face problems concerning recognition of their MiFID passport in 9 Member States (AT, BE, ES, FR, IT, DE, PT, FI, LT)

Indirect benefits

Portfolio diversification	Investors	A fair fraction of EUR 720 billion	Crowdfunding platforms would enable alternative finance as an alternative investment vehicle for European investors who sit on a large stock of cash that could be allocated in other ways (EUR 720 billion). ⁴
Network effects (scaling up effect)	Platforms	Between EUR 20 and 25 billion	Platforms would be able to expand within the single market and enjoy the network effects, as described in section 1.1.1.2. When using the size relative to GDP of the crowdfunding market in the US (which has a more mature crowdfunding market) as a measure of potential network effects in a Single Market, the crowdfunding cost of non-Europe can be estimated as much as EUR 29 billion (i.e. the difference between the crowdfunding market size today and what it could have been if the market was developed cross-border like the US).

⁴ This estimate suggested by the

II. Overview of costs (per entity) – Preferred option

		Consumers - Investors		Businesses				Administrations	
		One-off	Recur rent	One-off		Recurrent		One-off	Recurrent
		-	-	Investment-based	Lending-based	Investment-based	Lending-based		
Authorisation	Direct costs	-	-	EUR 5,000 – 10,000 per license ⁵ Does not apply to already MiFID authorised firms. This implies that total cost on industry would be in the range of EUR 300,000 – 600,000 ⁶ (if all platforms are assumed to opt-into the ECP regime)	EUR 5,000 – 10,000 per license fee Total costs on industry would be in the range of EUR 650,000 – 1,300,000 ⁷ (if all platforms are assumed to opt-into the ECP regime)	EUR 1,000-2,500 Estimate to account for potential updates to authorisation and/or requests from the regulator (infrequent i.e. estimated annual average)	EUR 1,000-2,500 Estimate to account for potential updates to authorisation and/or requests from the regulator (infrequent i.e. estimated annual average)	EUR 250,000 ⁸ These costs will be mainly arise from the necessary IT changes in order to set up an authorisation as well as supervisory system	EUR 78,500 – 157,000 ⁹ This assumes that ESMA would need 1-2 FTE in order to deal with authorisation requests
	Indirect costs	-	-	EUR 10,000 – 25,000 ¹⁰	EUR 10,000 – 25,000 ¹¹	N/A	N/A		

⁵ Estimate based on average direct authorisation costs in Member States under bespoke regimes (EUR 4,900 for investment-based; EUR 5,200 for lending-based - Source: ECENTRCOLLAB survey, costs only available for AT, NL, FR, MT,NL and UK) and MiFID authorisation costs for 'moderately complex firms' (estimated in the range of EUR 5,500 - 15,000)

⁶ Based on ESMA figures on number of platforms already MiFID regulated (33 of a total 99 platforms)

⁷ Based on ESMA figures and ECN volumes we estimate that there are currently a total of 130 lending-based platforms

⁸ Estimate based on ESA Review Impact Assessment and EC assumption on lower administrative burden compared to Prospectus

⁹ Based on salary calculations for FTE in the ESA Review Impact Assessment

¹⁰ Estimate based on assumption that one person working full-time will spend 1 -3 months on the preparation of the authorisation (at EUR 75,000 annual salary) plus other additional costs such as technical and legal assistance, meeting potential national audit requirements etc.

¹¹ Same assumptions as for investment-based platforms

Organisational rules (governance & operation)	Direct costs	-	-	<p>EUR 5,000 – 25,000 Based on EC estimate. Magnitude will heavily depend on current organisational setup of the platform operator and required changes needed. The estimates cover the costs to meet requirements as regards:</p> <ul style="list-style-type: none"> - Communication channel between investor & fund seeker - Protection of personal data - Fit and properness - Record keeping - KYC due diligence <p>The costs mainly arise from changes needed to the IT systems.</p> <p>Does not apply to already MiFID compliant firms.</p>	<p>EUR 7,500 – 30,000¹² Based on EC estimate. Magnitude will heavily depend on current organisational setup of the platform operator and required changes needed. The estimates cover the costs to meet requirements as regards:</p> <ul style="list-style-type: none"> - Communication channel between investor & fund seeker - Protection of personal data - Fit and properness - Record keeping - KYC due diligence <p>The costs mainly arise from changes needed to the IT systems.</p>	<p>EUR 7,500 – 10,000¹³ These recurrent costs relate mainly to maintaining the IT systems and storage of data</p>	<p>EUR 7,500 – 10,000 These recurrent costs relate to maintaining the IT systems and storage of data</p>	<p>EUR 78,500 – 157,000¹⁴ This assumes that ESMA would 1-2 FTE in order supervise and monitor for compliance with organisational and conduct rules</p>
	Indirect costs	-	-	-	-	-	-	-

¹² Lending-based platforms are estimated to have EUR 2,500 – 5,000 higher one-off costs to account for less stringent conduct rules for lending based platforms currently in place

¹³ Based on one-off costs for meeting organisational requirements in MiFID IA, assuming that costs would be lower given more proportionate / less stringent requirements in ECP regime

¹⁴ Based on salary calculations for FTE in the ESA Review Impact Assessment

Conduct rules		-	-	EUR 1,500 – 4,000 ¹⁵ Will depend on exact requirements and current business conduct procedures of operator. Does not apply to already MiFID compliant firms	EUR 2,500 – 6,000 ¹⁶ Will depend on exact requirements and current business conduct procedures of operator.	EUR 1,000 – 2,000	EUR 1,000 – 2,000	See above	
KIIS	Direct costs	-	-	The estimated one-off administrative burden of a KIIS are ¹⁷ , given the online technology and the foreseen regulatory regime, EUR 3000 of which EUR 1000 regulatory cost.		Ongoing estimated costs of a KIIS (for updating documents) are EUR 1600 (EUR 1000 for preparation and dissemination and EUR 600 for regulatory costs).		-	EUR 235,500– 314,000 ¹⁸ This assumes that ESMA would need 3-4 FTE in order check new KIIS ¹⁹
	Indirect costs	-	-		-		-	-	-

¹⁵ Based on one-off cost estimate for previously MiFID exempt firms under Art. 3 and assuming that costs would be lower given more proportionate / less stringent requirements in ECP regime

¹⁶ Same assumptions as for investment-based but adding a further EUR 1,000 – 2,000 to account for less stringent conduct rules for lending based platforms under national regimes / consumer credit licenses (as platforms are only seen as credit intermediaries, requirements are generally less stringent)

¹⁷ The estimated cost is extrapolated from the estimated burden as stated in SWD(2012) 187 final (p95).

¹⁸ Based on salary calculations for FTE in the ESA Review Impact Assessment

¹⁹ This figure assumes that there will be approximately 12,000 projects annually with half an hour spent on each KIIS and 200 working days per year, leaving spare capacity for future increase in the number of projects