

Country Crowdfunding Factsheet

Austria

Date: June 2018



EUROPEAN
CROWDFUNDING
NETWORK



European Crowdfunding Network

The European Crowdfunding Network AISBL (ECN) is the professional network promoting adequate transparency, (self) regulation and governance while offering a combined voice in policy discussion and public opinion building, incorporated as an international not-for-profit organization in Brussels, Belgium.

We support our members in carrying initiatives aimed at innovating, representing, promoting and protecting the European crowdfunding industry. We aim to increase the understanding of the key roles that crowdfunding can play in supporting entrepreneurship of all types and its role in funding the creation and protection jobs, the enrichment of European society, culture and economy, and the protection of our environment.

In that capacity we help developing professional standards, providing industry research, as well as, professional networking opportunities in order to facilitate interaction between our members and key industry participants. On behalf of our members, the ECN will maintain a dialogue with public institutions and stakeholders as well as the media at European, international and national levels.



This document has been extracted from Annex II of the study " Identifying market and regulatory obstacles to crossborder development of crowdfunding in the EU", published in November 2017 and funded by the European Commission (DG FISMA).

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Overview

Austrians crowdfunding market seems to be changing from a small market niche to a more serious alternative financing system. This change can be explained by the introduction of a new legal framework, which came into effect on September 1st 2015. Since its introduction, the number of crowdfunding campaigns and crowd-based models have rapidly increased.

A. Role of alternative finance

Market size

According to the 2nd European Alternative Finance Industry Report from 2016 (link), €12M have been raised in Austria in 2015. Since 2013, when crowdfunding came up in Austria for the first time, 70 Projects have been crowdfunded (using the equity based model) with €11.14M.

Well-known crowd-investing platforms include www.conda.at , www.1000x1000.at and www.greenrocket.com. The Austrian Federal Economic Chamber (www.wko.at) coordinates and represents the interests of the Austrian business community on a national and international level. It represents more than 480,000 member companies.

Trend

Since September 2015, there has been a significant increase in the market due to the implementation of the alternative financing law.

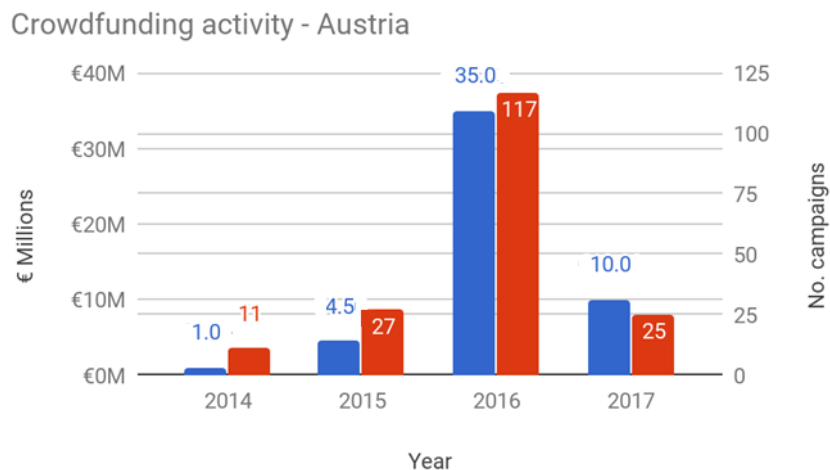


Figure 1: Crowdfunding activity in Austria from 2014 to 2017, Source TAB

Total crowdfunding platforms

In 2015, there were 16 platforms according to Austrian Federal Economic Chamber (www.wko.at).

Crowdfunding models

Equity-based Crowdfunding	For 2015, Austria had six active platforms using the equity-based model and raising €8.1M. The growth rate from 2014 to 2015 is 335%. However, the crowdfunding market in Austria is still in its very early stages, compared to overall Austrian investments or other European countries. ¹
Lending crowdfunding	Lending is the crowdfunding model that has shown most growth in Austria. There are no exact numbers, but some businesses raised millions of EUR with this model, e.g. the company "Grüne Erde" leveraged €7.7M via their customers."
Other	Balance Sheet Business Lending (€2M in 2015). Real Estate Crowdfunding (€0.1M in 2015).

¹ According to desk research of European Crowdfunding Network, referencing the state of the market in 2016, <http://crowdfunding4innovation.eu/country-fiches>

B. Regulatory context²

Country	Austria
Summary	
Recent developments in Crowdfunding regulations	<ul style="list-style-type: none"> • First national Crowdfunding regulation, the Alternative Financing Act was implemented as of 1st September 2015. • Situation regarding the allowance of issuing subordinated loans (not profit-participating) to customers remains unclear as they may provide a severe disadvantage. • General situation regarding general licencing requirements of Crowdfunding became clearer by implementing the Alternative Financing Act.
Current / planned Crowdfunding regulation	
General regulation	<ul style="list-style-type: none"> • If the Crowdfunding platform provides alternative finance products, a licence as securities service provider according to the Federal Law on the Supervision of Securities is mandatory. • If providing investment products, a licence for providing the business of commercial investment consulting according to Austrian Industrial Code is necessary. • The most popular form of Crowdfunding is issuing subordinated loans, which are usually qualified as investment products.
Prospectus requirement	<ul style="list-style-type: none"> • No prospectus requirement for alternative financing products, which do not exceed a total investment amount of EUR 1.5 million. • Simplified prospectus requirement for alternative financing products with a total investment amount between EUR 1.5 million and EUR 5 million and if bonds or stocks are issued with a total amount exceeding EUR 250.000 per year. • Full prospectus requirement for all other issued securities and investment products, which are not covered by the Alternative Financing Act.

² S. Schermaier u. F. Schönberg: Austria. In: Review of Crowdfunding Regulation (2017). European Crowdfunding Network, Brussels. Page 22ff. http://eurocrowd.org/wp-content/blogs.dir/sites/85/2017/10/ECN_Review_of_Crowdfunding_Regulation_2017.pdf

AIFMD-regulation	<ul style="list-style-type: none"> • Only applicable if the project company does not carry out the on-going business of the facility; meaning outsourcing of operational activities. • Only little practical relevance for Crowdfunding as most companies try to avoid/bypass the application of the AIFMD regime because of its extensive regulations and the requirement of a licence from the Financial Market Authority.
Payment service regulation	<ul style="list-style-type: none"> • Forwarding money collected from investors to the company may constitute money remittance. • A licence from the Financial Market Authority may be required. • Unclear situation whether this service may be covered by the exception for commercial agents. • Corporation with a payment service provider/bank is therefore recommended.
Further possible requirements	<ul style="list-style-type: none"> • Consumer Credit Regulation (Verbraucherkreditgesetz – VKrG). • Consumer Protection Act (Konsumentenschutzgesetz – KSchG).
Regulatory barriers	
Inbound	<p>Foreign Crowdfunding platform addressing Austrian investors</p> <ul style="list-style-type: none"> • Most Austrian regulatory laws are applicable if Austrian investors are addressed by a public offer according to the Capital Market Act. <p><i>Crowdfunding platform</i></p> <p>Alternative finance products</p> <ul style="list-style-type: none"> • Crowdfunding platforms, which have a licence as CRR-credit institution from another EU member state do not have to apply for an additional licence. • If there is no licence from a member state, the Crowdfunding platform has to apply for a licence in Austria. <p>Investment products</p> <ul style="list-style-type: none"> • Licence for conducting the business of commercial investment

consulting in Austria is mandatory.

- If conducted only temporary and occasionally, the activity has to be indicated to the local trade authority.
- If conducted permanently, the Crowdfunding platform needs to be licenced under the freedom to provide services by submitting the respective certificates of competence to the trade authority.

Foreign company / project

Prospectus requirement according to Capital Market Act.

- General rule determines that issuing securities or investment products requires a full prospectus according to the Capital Market Act.

Alternative Financing Act

- If the product issued is covered by the Alternative Finance Act, drawing up a prospectus is not required.
- Investors needs to be provided with a standardised information sheet which contains information on the product and the company.

Foreign Crowdfunding platform addressing Austrian companies / projects

Crowdfunding platform

Alternative finance products

- Licencing as securities service provider according to the Industrial Code is not necessary since the service is not provided in Austria.

Investment products

- Business of commercial investment consulting is not conducted in Austria and therefore licencing requirements according to the Industrial Code do not apply.

Austrian company/project

- As Austrian investors should not be approached, the prospectus requirement as well as other obligations under the Alternative Financing Act do not apply.
- A disclaimer, stating that the Austrian market is excluded from the offer should be provided to ensure that Austrian regulatory laws are not applicable.

Outbound	<p>Austrian Crowdfunding platform addressing foreign investors</p> <p>Only foreign investors should be approached in this situation</p> <p><i>Crowdfunding platform</i></p> <p>Alternative Finance products</p> <ul style="list-style-type: none"> • Licencing as securities service provider according to the Industrial Code is not necessary since the service is not provided in Austria. <p>Investment products</p> <ul style="list-style-type: none"> • Business of Commercial Investment Consulting is not conducted in Austria and therefore licencing requirements according to the Industrial Code do not apply. <p><i>Austrian company/project</i></p> <ul style="list-style-type: none"> • As the offer is not addressed to Austrian investors, there is no public offer according to the Capital Market Act and therefore the prospectus requirement according to Capital Market Act and the Alternative Financing Act is not applicable. • To ensure that Austrian investors are excluded from the offer, a disclaimer is recommended.
	<p>Austrian Crowdfunding platform addresses foreign companies/projects</p> <p>As the offer addresses Austrian investors, Austrian regulatory requirements apply to their full extent.</p> <p><i>Crowdfunding platform</i></p> <p>Alternative finance products</p> <ul style="list-style-type: none"> • Crowdfunding platforms need a licence according to the Federal Law on the Supervision of Securities, in order to be allowed to act as a securities services provider. <p>Licence is granted by the Austrian Financial Market Authority.</p> <p>Investment products</p> <ul style="list-style-type: none"> • The business of commercial investment consulting is conducted in Austria. • Crowdfunding platforms need a licence according to the Industrial

	<p>Code.</p> <ul style="list-style-type: none"> The operator of the platform has to meet several regulatory requirements and he is obliged to prove his qualification before conducting the business. <p><i>Foreign company/project</i></p> <p>Prospectus requirements</p> <ul style="list-style-type: none"> Requirements according to Capital Market Act (if applicable) and information obligations according to the Alternative Financing Act have to be met. General rule determines that issuing securities or investment products requires a full prospectus according to the Capital Market Act. <p>Alternative Financing Act</p> <ul style="list-style-type: none"> If the product issued is covered by the Alternative Finance Act, drawing up a prospectus is not required. Investors needs to be provided with a standardised information sheet which contains information on the product and the company.
Impact of EU regulation	
Prospectus regulations	<ul style="list-style-type: none"> Most Crowdfunding platforms act under the regime of the Alternative Financing Act; no prospectus requirement applies if the total investment amount does not exceed EUR 1.5 million. Only minor practical relevance.
AIFM-Directive	<ul style="list-style-type: none"> The Alternative Investment Fund Manager Act may be applicable if project companies do not operate the facility themselves and the on-going business of the respective project is not handled by the company seeking funding. Crowdfunding platforms try to avoid application of the AIFMD. Insignificant practical relevance for Crowdfunding in Austria.
MiFID / MiFID II	<ul style="list-style-type: none"> Only applicable to transferable securities. Does not have any practical relevance for Crowdfunding in Austria.
PSD / PSD II	<ul style="list-style-type: none"> Activity of Crowdfunding platform may be qualified as remittance service and therefore a licence according to Payment Services Act is

required.

- Unclear whether Crowdfunding may be subsumed under the exception for commercial agents.
- External payment service provider should be used to elude licencing requirements.

C. Disclosures & safeguards

No professional industry association exists. To foster the professional and transparent development of the local market, the establishment of a Code of Conduct by a national crowdfunding association, with which platforms should be obliged to comply, might be advisable. Examples exist in a number of countries, such as the UK, France, Germany or the Netherlands. Alternatively, the open adoption of the European Crowdfunding Network Code of Conduct and its Charter of Crowdfunders Rights by market players could help in markets without critical mass of platforms.

Platforms themselves, to the extent that they can serve as marketplaces, have the potential of aiding regulatory developments through early self-regulation and transparency. But this will require credible and enforceable quality and transparency standards as well as level playing fields. Any such initiative should aim to cover key performance indicators for the industry, conflict of interest rules and platforms remuneration. However, regulation will always play the main role in establishing and ensuring a functioning market with an adequate level of safeguards and disclosures.

D. Support policies

Overview

Recently, more and more regions in Austria start launching Micro Funds for SMEs including services related to Crowdfunding. For instance, in April 2016, the City of Graz launched the €5.000 "Crowdfunding Cheque", which can be used by Entrepreneurs and SMEs for consultation and support (e.g. a video) related to crowdfunding.

Market Supervision

FMA - Finanzmarktaufsicht³

Crowdfunding models

Matching funds initiatives	<p>The ÖHT (Austrian Tourismbank) will start a crowdfunding platform, www.we4tourism.at, for tourism projects.</p> <p>Most probably matching fund projects funded through crowdfunding and co-funded by the tourism bank will be supported on this platform.</p>
State-aid	<p>The City of Graz launched the €5.000 "Crowdfunding Cheque" in April 2016. It can be used by Entrepreneurs and SMEs for consultation and support (e.g. a video) related to crowdfunding.</p>
Crowdfunding guidelines for entrepreneurs / investors	<ul style="list-style-type: none"> - The Chamber of Commerce has published a Guide on crowdfunding. - The Ministry for Research and Economy has published a study for the tourism industry. - Wolfgang Gumpelmaier-Mach, a crowdfunding expert, has launched an information portal.

³ <https://www.fma.gv.at>