

Country Crowdfunding Factsheet

Latvia

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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, Czech Republic.

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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Latvia

Overview

According to the 2nd European Alternative Finance Industry Report, Latvia raised EUR 15.2m through alternative financing in 2015.

A. Role of alternative finance

Market size

The amount raised through alternative financing (EUR 15.2m) in 2015, which amounts to EUR 7.68 per person, is a surprising number when considered in comparison to the GDP per capita (EUR 12.27).¹

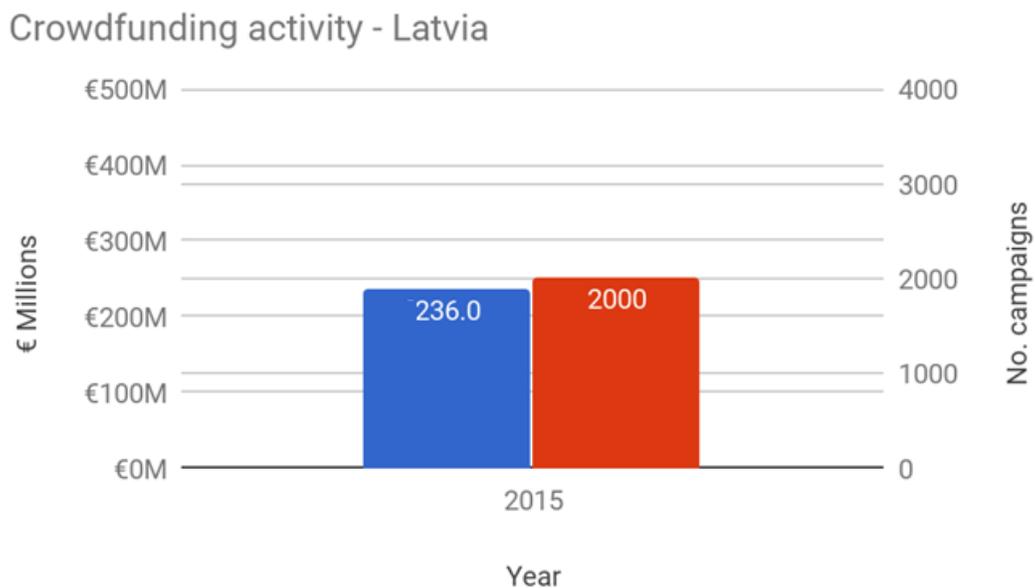


Figure: Crowdfunding activity in Latvia from 2015, Source: TAB

Trend

In central and eastern Europe, the growth rate from 2014 to 2015 was 167%.

¹ Focus economics, Country indicator ([link](#))

Total Crowdfunding Platforms

Three platforms are currently active.

Crowdfunding models

Equity-based Crowdfunding	Pursuant to the Financial Instrument Market Law (“FIML”), anyone intending to provide investment services in Latvia, commercially or on a scale which requires a commercially organised business undertaking, requires a licence from the Financial and Capital Market Commission (“FCMC”). Where an online Crowdfunding Platform facilitates the offering of financial instruments, the operator of the platform will most likely be deemed to be providing investment services within the meaning of the FIML and therefore will require a licence from the FCMC.
Lending-based Crowdfunding	The market volume for Peer-to-Peer Consumer Lending was about EUR 15m in 2015. Two lending platforms are currently active in Latvia: Twino and Mintos.
Other	Invoice Trading (EUR 3.9m in 2015). ²

² Zhang, B., et al. (2016): “Sustaining Momentum. The 2nd European Alternative Finance Industry Report”. Cambridge University ([link](#))

B. Regulatory context

Country	Latvia
Summary	
Recent developments in Crowdfunding regulation	Draft legislative amendments aimed at regulating Crowdfunding might be submitted to the Latvian Parliament in 2017.
Current/planned Crowdfunding regulation	
General regulation	<ul style="list-style-type: none"> • There is no regulatory regime specifically adapted to Crowdfunding. In principle, Latvian law allows for the implementation of Crowdfunding projects. In each situation, it is recommended to involve local counsel. • If a Crowdfunding Platform facilitates the offering of securities or other financial instruments or holds money belonging to third persons, the operator of the platform most likely provides investment or financial services. <p>→ FCMC authorisation required</p> <ul style="list-style-type: none"> • Where securities do not qualify as financial instruments, this may fall outside the scope of investment services regulation, although guidance from FCMC would be advised. • Depending on the specific structure, there are sound arguments that contributions under the Donations/Rewards Model do not constitute provision of investment or financial services. • According to the position of FCMC, assignment-based peer-to-peer lending Crowdfunding falls under the provisions of investment services. • It is most likely that an entity managing a Crowdfunding Platform which is not a credit institution cannot hold sums of money belonging to third parties. <p>→ Sums might be qualified as deposits</p> <p>→ Credit Institutions Law only permits credit institutions to advertise receipt of deposits and other repayable funds, and to receive them.</p>

Prospectus requirement	<ul style="list-style-type: none"> • Prospectus requirement for a public offer regarding transferable securities (i.e., offer is expressed to more than 150 individuals in one EU Member State). • Conditions for exemptions from Prospectus requirements: (a) offering of transferable securities does not exceed EUR 100,000 within a time period of 12 months, (b) only qualified investors are addressed, or less than 150 non-qualified investors per Member State are addressed, (c) the offering is made in respect of transferable securities with the nominal value being at least EUR 100,000, or (d) each investor acquires transferable securities with the nominal value at least EUR 100,000 and acquiring of one transferable security so that it belongs to several persons is prohibited. • Depending on the specific structure, there are no prospectus requirements for loans or contributions under the Donations/Rewards Model.
AIFMD regulation	<ul style="list-style-type: none"> • A typical start-up company generally does not constitute an AIF. • A project company might constitute an AIF. <p>→ There is extensive AIFMD regulation for an AIF and its manager.</p> <p>→ The manager (AIFM) requires FCMC authorisation.</p> <ul style="list-style-type: none"> • Depending on the specific structure, contributions under the Donations/Rewards Model should not entail an AIF. • Depending on the scope of the services it provides, a Crowdfunding Platform might qualify as an AIFM.
Payment service regulation	<ul style="list-style-type: none"> • Transfer of funds through operator may constitute money remittance service <p>→ FCMC licensing or registration with the FCMC required.</p> <ul style="list-style-type: none"> • “Commercial Agents” exemption probably not applicable to operators of Crowdfunding Platforms • Another exemption might be that the operator of a Crowdfunding Platform uses an external provider or partner for processing payments rather than acting as an intermediary him/herself
Consumer credit regulation	<p>If consumer borrowers are permitted on a platform (Lending-based Model), there are implications with regard to the licence for consumer crediting and the form and content of the lending agreements.</p>

Further possible requirements	<ul style="list-style-type: none"> • Civil Law (in Latvian – <i>Civillikums</i>) • Commercial Law (in Latvian – <i>Komerclikums</i>) • Law on the Prevention of Laundering the Proceeds from Criminal Activity (Money Laundering) and of Terrorist Financing (in Latvian – <i>Noziedzīgi iegūtu līdzekļu legalizācijas un terorisma finansēšanas novēršanas likums</i>) • Natural Persons’ Data Protection Law (in Latvian – <i>Fizisko personu datu aizsardzības likums</i>) • The Cabinet of Ministers regulations and FCMC regulations in relation to investment services and payment institutions • Consumer Rights Protection Law (in Latvian – <i>Patērētāju tiesību aizsardzības likums</i>) • Unfair Commercial Practices Prohibition Law (in Latvian – <i>Negodīgas komercprakses aizlieguma likums</i>) • Law on Advertising (in Latvian – <i>Reklāmas likums</i>) • Law on Corporate Income Tax (in Latvian – <i>Likums "Par uzņēmumu ienākuma nodokli"</i>)
Regulatory barriers	
Inbound	<p>Foreign Crowdfunding Platform addressing Latvian investors</p> <ul style="list-style-type: none"> • Crowdfunding Platforms <p>may be required to obtain a licence under FIML/Payment Services and E-Money Law/AIFM Law/Consumer Rights Protection Law/Credit Institution Law; or</p> <p>may be required to notify the FCMC of an existing licence in another EU Member State (the obligations to obtain a specific licence or to notify of an existing licence are highly uncertain and fact-specific); or</p> <p>may be subject to other requirements, such as AML/CTF, consumer crediting rules and other regulations applicable to entities holding a particular licence.</p> <p>Latvian law does not recognise the concept of “security trustee”, which allows an agent to hold and enforce security on behalf of multiple lenders.</p> <p>The assignment of claims through peer-to-peer lending platforms is not clear from the taxation perspective.</p> <ul style="list-style-type: none"> • Foreign companies or projects: Prospectus requirement and AIFMD regulation might apply, depending on the cir-

	<p>cumstances.</p> <p>Foreign Crowdfunding Platform addressing Latvian investors, companies or projects in Latvia</p> <p>No specific regulatory barriers.</p>
Outbound	<p>Latvian Crowdfunding Platform addressing foreign investors</p> <ul style="list-style-type: none"> • Crowdfunding Platforms <p>may be required to obtain a licence under FIML/Payment Services and E-Money Law/AIFM Law/Consumer Rights Protection Law/Credit Institution Law (the obligation to obtain a specific licence is highly uncertain and fact-specific);</p> <p>may be subject to other requirements, such as AML/CTF and other regulations applicable to entities holding a particular licence (the assignment of claims through peer-to-peer lending platforms is not clear from the taxation perspective).</p> <ul style="list-style-type: none"> • Foreign and domestic companies and projects: prospectus requirement and AIFMD regulation might apply. <p>Latvian Crowdfunding Platform addressing foreign companies or projects</p> <p>No specific regulatory barriers.</p>
Impact of EU regulation	
Prospectus regulations	<p>Latvian FIML generally mirrors the prospectus rules provided in the Prospectus Regulation ((EC) No. 809/2004).</p> <p>Thus, if a Crowdfunding Platform is considered an investment service provider, it is subject to prospectus rules provided in the Regulation.</p>
AIFM Directive	<p>So far, no known Crowdfunding Platforms have been subject to the Latvian rules implementing the AIFM Directive.</p>
MiFID/MiFID II	<p>Financial Instruments Market Law implements MiFID I.</p> <p>MiFID II is planned to be implemented in Latvia by the extended deadline. Thus, there has not yet been an impact on Crowdfunding Platforms by the directive.</p>
PSD/PSD II	<p>PSD II Directive is planned to be implemented in Latvia by the deadline, that is, January 2018. Thus, there has not yet been an impact on Crowdfunding Platforms by the directive.</p>

C. Disclosures & safeguards

No professional industry association exists. To foster the professional and transparent development of the local

market, it might be advisable for a national Crowdfunding association to establish a Code of Conduct with which platforms should be obliged to comply. 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 a critical mass of platforms.

Platforms themselves, to the extent that they can serve as marketplaces, have the potential to aid 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

Currently, match funding, state aid and tax benefits for alternative finance are not available in Latvia.

Market Supervision

Latvijas Republikas Finanšu Ministrija - Ministry of Finance of the Republic of Latvia.³

³ Latvijas Republikas Finanšu Ministrija ([link](#))