

Brussels, 17 December 2018

Open letter to Member States on the European Crowdfunding Services Providers Regulation (ECSPR)

The European Crowdfunding Network, on behalf of its members, fully supports the European Commission's objective of creating a pan-EU regime for crowdfunding platforms which can significantly improve the financing situation of small and medium-sized enterprises ("SMEs"). As explicitly recognised by the Commission, despite the important economic contribution of SMEs to the European economy, they continue to be underserved by banks.¹

We strongly believe that a properly framed EU wide regulation would help to:

- create a level playing field and allow European crowdfunding platforms to expand their support for SMEs across the Single Market;
- make the EU market more accessible for innovative entrepreneurs, start-ups and small- and medium-sized companies;
- give investors across the EU a wider range of choices in how they allocate their capital; and
- serve the aim of the EU's Capital Markets Union to promote non-bank financing as an alternative source of funding.

For these reasons, we support the concept of the European Crowdfunding Service Providers Regulation ("ECSPR") as originally proposed by the Commission and would very much welcome a quick adaption and implementation

To date, significant differences in Member State legislation have made crowdfunding a largely national issue. This has meant that the **vast potential for cross-border capital flows has not been tapped**, leading to substantially less funding and fewer investment opportunities across the EU than would be available under a unified regime. Lending and investment platforms need to scale in order to compete domestically and internationally and grow into sustainable businesses. It is only through a unified set of rules, as proposed by the Commission and supported by the European Parliament, that a new regime will help create a robust and thriving sector for the benefit of both investors and SMEs across the EU.

¹ Proposal for Regulation of the European Parliament and of the Council on European Crowdfunding Service Providers (ECSP) For Business, COM(2018) 113 final, page. 1.



A substantial challenge for many crowdfunding service providers, including those that operate lending-based platforms, has been the **license requirements** imposed by some Member States on project owners and investors. In some cases, national law has even required borrowers to obtain licenses for deposit-taking and lenders to obtain licenses for the provision of credit. If such license requirements were maintained, they would effectively prohibit the application of the Regulation in the Member States in which they apply.

For all the reasons mentioned above, we strongly support an approach that ensures complete consistency of rules across Member States. For the Regulation to reach its aims, **it is crucial that European crowdfunding players are not faced with the burdens and related costs of identifying and complying with 28 different regimes across the EU**. Many of these companies are relatively small businesses for whom the costs of compliance and related infrastructure would make it exceedingly difficult for them to operate on a cross-border basis. Today, only very few crowdfunding platforms operate in more than one EU Member State due to significant compliance and operational hurdles.

- We believe that the opt-in **‘29th regime’ would achieve this and is therefore a very sensible approach**. It will allow smaller platforms to avoid additional compliance and operation cost by continuing to grow under their existing license requirements - while at the same time provide clarity in those member states where bespoke requirements are not yet defined - and give opportunity to more mature platforms to invest in expanding their services across border. This will indeed allow for a smooth transitioning period, both for smaller and more mature players while providing a maximum of consumer protection and investor confidence to the market. It is also aligned with the positions of the European Commission and the European Parliament.
- We believe that replacing Member States’ national regimes with **fully harmonized EU rules** would also achieve the objectives of the ECSP proposal but add significant compliance burdens and costs on all platforms currently operating under national rules. While we would hope that full harmonization can be achieved within a short period of time, we realize that the differences in the current legal frameworks in Member States will not allow for a timely turnaround of such proposal.
- On the contrary, a **minimum standards approach** would, in our view, undermine the objectives of the Commission’s proposal and leave the EU crowdfunding market in no better shape than it is in today, highly fragmented. In such a scenario, legal and regulatory barriers between Member States would persist and lending and

investment-based platforms, would have no incentive to scale across borders under the new regime. Operational and compliance cost would remain a prohibitive hurdle for most crowdfunding platforms and, as a result, would limit access to finance for start-ups and small- and medium-sized companies, especially in smaller member states but also for those seeking to expand their footprint across the European Union.

The Commission and the Parliament's ECON Committee have made significant steps forward in proposing rules tailored to the European crowdfunding market.

We urge EU Member States not to reverse this progress by opting for a minimum harmonisation approach and to bear in mind the detriments a minimum harmonisation approach would bring.

Thank you for your consideration.

Yours faithfully,



With special thanks to the members of the ESCP Working Group



The full list of our members can be found at <https://eurocrowd.org/directory-of-members/>

