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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Poland

Overview
The development of Crowdfunding in Poland is limited, due to capital market regulations and administrative barriers primarily having to do with public money gathering.

A. Role of alternative finance

Market size
According to the 2nd European Alternative Finance Industry Report, Poland raised EUR 10m in 2015. Poland is ranked amongst the top 15 countries in Europe for volume of alternative finance. However, capital market regulations and administrative barriers, primarily with respect to public money gathering, are limiting the development of Crowdfunding in Poland, a nation with almost 40m inhabitants.¹

Trend
The overall volume in 2014 was EUR 4m, which increased to EUR 10m in 2015.

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

¹ “The Polish Crowdfunding Society Aims At Changing Crowdfunding Landscape In Poland” [link]
Total Crowdfunding Platforms

There were 6 active platforms in the country in 2016.²

Crowdfunding models

<table>
<thead>
<tr>
<th>Equity-based Crowdfunding</th>
<th>Equity-based Crowdfunding volume amounted to EUR 0.2m in 2015.</th>
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<tbody>
<tr>
<td>Lending-based Crowdfunding</td>
<td>Peer-to-Peer Consumer Lending volume was EUR 1.9m in 2015.</td>
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<tr>
<td>Other</td>
<td>EUR 4.1m has been raised with Invoice Trading, and EUR 0.4m has been raised with Real Estate Crowdfunding.</td>
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B. Regulatory context

<table>
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<tr>
<th>Country</th>
<th>Poland</th>
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<tr>
<td>Summary</td>
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| Recent developments in Crowdfunding regulation | • Poland has not yet adopted any regulations that would specifically concern Crowdfunding in any of its models.  
• In 2014, the Polish government published its position on Crowdfunding and its potential regulation in the future:  
  → there is currently no need to introduce binding legal regulations, because the Crowdfunding market in Poland is still in its early stage of development  
• Since mid-2016, the Polish Ministry of Economic Development has been working on a new kind of company: simple joint-share company.  
  → the aim is to make this new type of a company a |

² According to desk research of the European Crowdfunding Network, referencing the state of the market in 2016 (link)
In 2017, the Polish Financial Supervision Authority initiated a joint market and government working group with a task to identify legal barriers regarding financial innovations. Among several task forces, there is one working on Crowdfunding regulations and legal barriers concerning social lending. This task force has already prepared an initial document describing and analysing legal barriers hindering the development of Crowdfunding in Poland.

### Current/planned Crowdfunding regulation

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<tr>
<th>General regulation</th>
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<td>There is no clear and explicit regulation of Crowdfunding in Poland.</td>
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<tr>
<td>- The framework for Crowdfunding transactions in Poland is still the Polish Civil Code and several other acts.</td>
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<td>- Certain types of Crowdfunding-related activities may trigger the application of financial regulations.</td>
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<tr>
<th>Investment services/prospectus requirement</th>
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<td>Under the Polish Trading in Financial Instruments Act (ustawa o obrocie instrumentami finansowymi) of 29 July 2005 (“TFIA”), investment services are regulated and require a licence.</td>
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<td>→ TFIA is essentially an implementation of the MiFID directives</td>
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<tr>
<td>- Crowdfunding Project Initiators can be obliged to prepare and publish a prospectus under the Polish Public Offering, Conditions for the Introduction of Financial Instruments to Organised Trading, and Public Companies Act:</td>
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<td>- The notion of “securities” does not include shares in a limited liability company, but it applies to shares of a joint-stock company</td>
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<tr>
<td>- Under the Act, a public offering is defined as “making available to at least 150 persons in one EU Member State or to an unspecified addressee, in any form and by any means, information about securities and conditions for the acquisition of securities that constitutes a sufficient basis for making a decision to acquire these securities.”</td>
</tr>
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</table>
| There are a number of exemptions from the prospectus requirement. The initiator does not need to prepare a prospectus if, e.g., the acquired financing is of relatively low value: up to EUR

www.eurocrowd.org
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<tr>
<th><strong>AIFMD regulation</strong></th>
<th>It cannot be excluded that some Project Initiators will fall within the scope of the Polish implementation of the AIFMD and will have to comply with the regulatory requirements.</th>
</tr>
</thead>
</table>
| **Payment service regulation** | • Polish Payment Services Act dated 19 August 2011 implements PSD  
  It implies that Crowdfunding Platforms are providing a regulated payment service within the meaning of the Payment Services Act.  
  Despite the intermediation in payments performed by Crowdfunding Platform operators, in most cases they will not have to obtain permission for providing payment services.  
  • Poland will have to transpose PSD2 into its national system (the deadline is in January 2018). Revision of Payment Services Act may concern the issue of Crowdfunding Platforms. |
| **Further possible requirements** | Counteracting Money Laundering Act All activity based on intermediation in transferring monetary resources should be analysed from the point of view of the requirements imposed by the Counteracting Money Laundering and Financing of Terrorism Act dated 16 November 2000.  
  The key thing is to determine whether the Crowdfunding Platform operator will be one of the obligated institutions within the meaning of the Counteracting Money Laundering Act.  
  • Act on Rendering Electronic Services dated 18 July 2002  
  The services provided by platform operators should, in principle, be qualified as being services provided by electronic means within the meaning of the provisions of the Act on Rendering Electronic Services.  
  Crowdfunding Platform operators should hold regulations for the provision of services and adhere to the regulations concerning processing the personal data of persons using a platform  
  • Consumer Credit Act dated 12 May 2011  
  It should be determined whether agreements entered into within the framework of a Crowdfunding Platform should be treated as being consumer credit agreements within the meaning of the Consumer Credit Act.  
  The Consumer Credit Act refers only to loan agreements in which the creditor is an entrepreneur within the meaning of the Polish Civil Code.  
  It should be assumed that in the case of most models where loans are entered into directly between the financer and beneficiary, we |
will not be dealing with an entrepreneur on the financer’s side. 
Practice shows that in most cases these are consumers. In such cases, a loan agreement entered into between a financer and a beneficiary will not be qualified as being a consumer credit agreement within the meaning of the Consumer Credit Act.

- Foreign Exchange Law dated 27 July 2002

Crowdfunding Platform operators may also carry out currency exchanges in the course of their activity.

When a financing payment is provided in a currency other than a currency accepted by the beneficiary, the platform operator converts the currency at an exchange rate determined in advance.

### Regulatory barriers

#### Inbound

- Application of the Polish financial regulatory framework to a foreign Crowdfunding Platform which addresses Polish investors would mainly depend on the Crowdfunding model and structure adopted by such platform.
- Unless any specific financial regulations apply, Crowdfunding Platforms would have to comply with general regulations on conducting economic activity in Poland.
- If platforms are registered in one of the EU Member States, they can take advantage of the fundamental rules of freedom of establishment and freedom to provide services specified in the Treaty on the Functioning of the European Union (TFEU).
- They have a right to offer services and target the Polish market.
- However, should the foreign Crowdfunding Platform operate in a model that falls into the Polish financial regulatory framework (such as offering financial instruments to the public), the relevant regulations will apply.
  → if such Crowdfunding Platform has a relevant MiFID licence in another EU Member State, it can passport the licence to Poland.

#### Outbound

- In principle, the Polish regulatory law will not be applicable in this case.
  → This is because the Polish Crowdfunding Platform exclusively addresses foreign investors. Therefore, the Polish Crowdfunding Platform will have to abide by the licence requirements in the jurisdictions being addressed.
- The Polish Public Offerings, Terms and Conditions for Introducing Financial Instruments into Organised Trade, and the
Public Companies Act dated 29 July 2005 establish a prospectus requirement only in cases where the financial products are offered in Poland.

### Impact of EU regulation

<table>
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<tr>
<th>Prospectus regulations</th>
<th>The Public Offerings, Terms and Conditions for Introducing Financial Instruments into Organised Trade, and the Public Companies Act dated 29 July 2005, which transposed EU law into Polish legal system.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>AIFM Directive</strong></td>
<td>• The AIFM Directive and the implementing Investment Funds Act of 2004 (as amended in 2016) with four executive regulations implementing the AIFM Directive  &lt;br&gt;• The laws implementing the AIFM Directive also take into account Polish Financial Authority Supervision’s control over the investors and funds.  &lt;br&gt;→ on the basis of the AIFM Directive Crowdfunding Platforms (especially those offering equity model) could be registered as a fund.</td>
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<td><strong>MiFID/MiFID II</strong></td>
<td>• Some equity-based Crowdfunding Platforms follow the regulations set down under the Polish implementation of MiFID. Many Crowdfunding campaigns fall within the regulatory exceptions.  &lt;br&gt;• In the alternative model, where limited liability companies are used, MiFID does not apply (shares in LLCs are not deemed financial instruments).  &lt;br&gt;• MiFID II is in the process of implementation to the Polish legal system.</td>
</tr>
<tr>
<td><strong>PSD/PSD II</strong></td>
<td>• The Payment Services Directive was implemented by the Payment Services Act in 2009 (“PSA”).  &lt;br&gt;→ many Crowdfunding Platforms in Poland rely on either regulated Payment Services Providers or structure their business in a way to be covered by one of exemptions in the PSA, in particular the so called commercial agent exemption.  &lt;br&gt;• Due to the fact that PSD2 significantly narrows the above-mentioned exception, it might be expected that some of the Crowdfunding Platforms in Poland may be brought under the payment services regulatory regime.</td>
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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

Currently, matching funds, state aid or tax benefits for alternative finance are not available in Poland.