

**Position Paper of the Federal Crowdfunding Association Germany on the
EU Fintech Action Plan**

On 8 March 2018, the European Commission presented proposals for crowdfunding regulation in its "Fintech Action Plan". Tamo Zwinge, member of the Board responsible for regulation, explains:

"In general, we support introducing a unified regulation throughout Europe. However, this should be compatible with the existing regulation in Germany and the high level of protection for investors in Germany. We also expect harmonized EU regulation to open up the markets in both directions. This means giving German crowdfunding platforms, start-ups and project promoters access to the EU market and vice versa".

We would see it as critical if a new regulation scheme allows foreign platforms access to the German market without opening up comparable expansion opportunities abroad for German platforms.

The Bundesverband Crowdfunding eV has repeatedly argued (for instance in its statement on the EU Prospectus Regulation), that the proposals of the EU Commission only concern the issue of securities. However, the vast majority of small and medium-sized companies are organised in the legal form of a GmbH (Company with limited liability). Under German law, GmbH shares - unlike the shares mentioned in the proposals of the EU Commission - are not securities but asset investments (Vermögensanlagen).

Nevertheless, the association considers the plan to develop a Europe-wide cross-border licence for the issue of securities via crowdfunding platforms to be the right direction. In our statement on the Law on the Protection of Small Investors (KASG), we already suggested a low-cost MiFID license for the German platforms, in order for them to also use passporting across the EU. The proposal of the European Commission goes in a similar direction.

There is still a serious weakness in the proposal. The EU Commission proposes a prospectus threshold of EUR 1 million over twelve months for issues under this cross-border regulation. The low prospectus threshold makes the proposed regulation not attractive enough as an immediate alternative to an issue of securities, at least for those countries where a higher threshold applies. The German Crowdfunding Association would like to see a prospectus threshold of 8 million euros for the cross-border license from the EU and sees itself in line with the other European crowdfunding associations.

If the current proposed threshold were maintained, the attractiveness of the proposed regime for German platforms would suffer considerably. Under existing law and the new EU Prospectus Regulation, an issue of up to EUR 1 million could always be placed on the German market without a cross-border license. However, this small cross-border licence can no longer be used for larger issues. The desired effect of a possible expansion of German platforms would not take place.

The proposal to exercise supervision by ESMA, the proposed authorisation procedures, good conduct and transparency obligations and the opt-in system (the regulation does not apply to platforms that already have a licence under MiFID or national rules and do not want to abandon them) are broadly understandable, as they serve to standardise supervisory practices.

In our view, however, the German Financial Supervision Authority BaFin is better suited to maintaining simple and efficient communication channels with the platforms in Germany. Whether such communication with ESMA is also possible cannot yet be assessed, as ESMA has no experience with crowdfunding platforms.

If a platform would provide more than 1 million euros per year and per project, it would again require a regular KWG license (MiFID license) and would thus be under the supervision of BaFin. The larger and more relevant platforms would therefore never be directly supervised by ESMA within MiFID, but the smaller platforms would in future be centrally supervised by ESMA. In our view, this is contrary to the principle of subsidiarity.

We consider the additional requirement of providing a Key Investment Information Sheet (KIIS), which may not exceed six pages, must contain detailed warnings and must be provided by the project owner (i.e. who is responsible for the content), to be a sensible proposal. In view of the experience to date with the Bafin reimbursement procedure for VIB, we believe it is right that no approval procedure by ESMA is intended. From our point of view it seems questionable whether ESMA has the capacity to process the KIIS promptly.

We consider the proposed adequacy test with regard to the investor, which the platform must carry out with each investor every two years, to be feasible. This makes more sense than the investment limits of 10,000 euros per individual investment per issuer provided for in German law.

To sum up, we believe that the European Commission is taking an important step by proposing a cross-border licence, but we call on the European Parliament to make this licence even more attractive to the platforms.

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