

Position Paper on the „Regulation on European Crowdfunding Service Providers (ECSP) for Business and amending Regulation (EU)“ No 2017/1129

Dear Honorable Minister Scholz,

The Bundesverband Crowdfunding represents the interests of crowdfunding platforms in Germany. Its members disseminate approximately 80 percent of the assets and securities issued via Crowdfunding and Crowdfunding in Germany.

The Federal Government is currently negotiating with the other EU member states to find a position of the European Council with regard to the so-called European Crowdfunding Service Provider Regime. In 2018, the European Commission made a proposal to open up the cross-border emission of company shares via Crowdfunding platforms, which should improve the access to capital for SMEs. The European Parliament has now adopted its position in the first reading of the Report. We would like to comment on individual points as follows:

We can fully support the intention of the European Commission to improve the cross-border facilitation of Crowdfunding and Crowdfundings. From the German point of view, there are considerable barriers to the provision of crowdfunding services throughout Europe and to the intermediation of investments in companies. Because of the classification of equity instruments (such as silent partnerships) as asset investments in the German law, it is very difficult for companies in Germany to offer these investments throughout Europe.

The industry's criticisms of the Commission's proposal, for example the prospectus threshold being too low and ESMA's supervision of the platforms, were taken care of by the European Parliament's resolution. In this respect, we see the decision of the European Parliament as

an appropriate compromise between the positions of the Commission and those of various Member States. We would ask you to support Parliament's decision in the Trilogue.

The Council's proposal, on the other hand, in its current form could represent a considerable increase in administrative burden compared with the current German rules for crowd investment platforms that want to operate exclusively in Germany.

In our opinion, the effects of the change of system from a 29th regime to harmonisation proposed by the Romanian Presidency have not been sufficiently analysed. The idea of a 29th optional regime arose from consultation with many players in the financial market industry, consumer protectors, supervisory authorities and academics. We can understand that the Federal Ministry of Finance is sceptical about setting up a separate regime. On the other hand, this means finally implementing the dynamic in the regulation of new technological innovations demanded by members of the Federal Government. We agree with the other crowdfunding associations, Parliament and the Commission that a 29th opt-in regime is much better suited to enabling a European market for crowdfunding services and thus improving access to European risk capital for young companies in particular.

Since, as proposed by the Romanian Presidency, on the one hand a regime will be created as full harmonisation, but on the other hand the Member States will be allowed to set different threshold values (up to EUR 8 million), this will lead to increased expenditure for the platforms, which will now have to check the threshold value for all Member States in the case of transnational offers. The German Crowdfunding Association (Bundesverband Crowdfunding), like the entire crowdfunding industry in Europe, is in favour of including a binding threshold of EUR 8 million in the regulation.

In order to maintain the 29th regime ("opt-in") - as in the EP's agreed negotiating position - it would be necessary to reverse the deletion of Art. 2 (2) (c). Art. 38a para. 1 and EC 44a are to be deleted. Should (full) harmonisation nevertheless be implemented, it must be made clear that a platform which is entitled to broker crowd investment services throughout the EU in accordance with Art. 10 may at the same time have a further right under national law.

Furthermore, the Council proposal does not differentiate between different forms of crowdfunding services. A distinction between equity-based crowd investing and loan-based

Crowdlending is not made (in contrast to the parliamentary report). However, these are different asset classes and business models.

The distinction is considerable because, among other things, it leads to different approaches to investor protection and information requirements and, in this respect, sometimes requires different regulations, for example on information obligations, permitted activities and risk management. For example, information requirements - in particular the KIIS - are unsuitable for Crowdlending. A platform-related "KIIS", as provided for in the parliamentary draft, would be appropriate here.

With the restriction to "transferable securities" (cf. Art. 3 No. 1 (a) ECDVO, Art. 4 No. 44 MiFID2) and loans, the applicability of the Regulation to credit platforms which operate by Crowdlending according to the model currently practised in Germany (cooperation bank and loan claims) is also questionable. Here a clarification is necessary as to whether this model would be permissible or invalid in addition to the regulation. Furthermore, there is a need for clarification in this respect to the effect that not only the brokerage of loans, but also necessary activities such as scoring and risk classification as well as the administration of receivables/loans for investors are covered.

Another major burden for crowd investing platforms are the new capital requirements introduced in Article 9a. The ongoing monitoring of operational costs represents a high bureaucratic burden without added value for the customer. In the case of advisory liability, the own funds do not even come close to covering an adequate proportion of the lost capital. In our opinion, it would be sufficient if liability insurance for investment intermediaries in the German law were considered adequate under the European Crowdfunding Service Provider Regime.

We welcome the increase in the investment limit to Euro 10,000 per project (note in Art. 15a: Euro 8,000 in the Presidency Paper). In principle, we are in favour of raising the individual investment threshold - here the same arguments apply as already presented for the evaluation of the Asset Investment Act: the individual investment threshold of EUR 10,000 prevents business angels and wealthy individuals from investing on the same terms as the crowd investors.

It is particularly important to retain the term "sophisticated investors", which must under no circumstances be used in the same way as the term "professional clients" in the sense of MiFID II. The requirements for "professional clients" within the meaning of MiFID II are very high and cannot be met by most professional investors.

We welcome the proposal of the Council that instead of ESMA the national supervisory authority will be responsible for the supervision of Crowdfunding Platforms using the Cross-Border Regime.

If you have any further questions, please do not hesitate to contact us.

Yours sincerely

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