

INCEPTION IMPACT ASSESSMENT	
TITLE OF THE INITIATIVE	Legislative proposal for an EU framework on crowd and peer to peer finance
LEAD DG – RESPONSIBLE UNIT	DG FISMA – C1
LIKELY TYPE OF INITIATIVE	
INDICATIVE PLANNING	1 st quarter 2018
ADDITIONAL INFORMATION	-
<p>This Inception Impact Assessment aims to inform stakeholders about the Commission's work in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options. The Inception Impact Assessment is provided for information purposes only and its content may change. This Inception Impact Assessment does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content.</p>	

A. Context, Problem definition and Subsidiarity Check
Context
<p>This initiative is part of the Commission's priority of establishing a Capital Market Union (CMU). Broadening access to finance for SMEs, in particular for innovative companies, start-ups and scale-ups, is at the heart of the 2015 CMU Action Plan.¹ Access to finance remains difficult for these firms, particularly when they move from the start-up into the expansion phase. This is why the CMU Action Plan places great emphasis on strengthening the different sources of alternative finance, including crowdfunding. With appropriate safeguards and investor protection measures, the scaling-up of crowdfunding across the Single Market can be facilitated so that it becomes a more important source of market-based financing in support of job creation and growth.</p> <p>The 2017 Mid-term review of the CMU Action Plan² foresees that the Commission will assess how financial technology (FinTech) can contribute to deepening and broadening EU capital markets through facilitating the development of alternative finance markets and providing new opportunities for investors. The Action Plan on Consumer Financial Services³ already seeks to harness the potential of FinTech to bring about better financial services for consumers. It foresees to explore ways of facilitating access to loans across borders whilst ensuring a high level of consumer protection.</p> <p>Crowdfunding refers to the financing of a specific project or venture by raising money from a large number of people. Crowdfunding platforms are websites that enable interaction between fund raisers and the crowd (fund providers). Growth of the European alternative finance market, which mostly consists of crowdfunding, has been slowing, although still keeping an impressive pace. Since 2014 it grew by 92% to reach a value of €5.4 billion in 2015.⁴ From a global perspective, this compares with a total online alternative finance volume for the Asia-Pacific region (mostly China) of €94.6 billion and for the Americas (mostly the US) of €33.6 billion.</p> <p>There are different forms of crowdfunding. Debt-based crowdfunding (consumer and business peer-to-peer finance on the basis of loans) accounts for the largest share of the market. Equity-based crowdfunding, where the investor receives a share in the company, is particularly significant for the funding of business start-ups. It helps fill the gap in the funding escalator when start-ups go from initial seed financing through friends and family to attracting interest from business angels and venture capital. The initiative aims to focus on business models that entail a financial return.</p> <p>The investor base of crowdfunding platforms (fund providers) is increasingly institutional (professional investors),</p>

¹ [COM\(2015\) 468 final, 30.09.2015.](#)

² [COM\(2017\) 292 final, 08.06.2017.](#)

³ [COM\(2017\) 139 final, 23.03.2017.](#)

⁴ Source: "Sustaining momentum, the 2nd European Alternative Finance Industry Report", University of Cambridge Judge Business School, September 2016 (University of Cambridge (2016))

which is reflected in the growing size of the projects financed.

Problem the initiative aims to tackle

The initiative aims to address two main problems:

1. Market fragmentation and the lack of scale

The scale of platforms remains very small as activity is confined to the national market with very little cross-border activity. A recent survey⁵ indicates that for almost half of the platforms none of the funds raised came from foreign investors; moreover, more than three-quarters of the platforms indicated that they had raised less than 10% from foreign investors. With regard to foreign "outflows", only a quarter of platforms raised funds for projects outside the national borders. Many platforms do not provide their services to non-residents and do not extend to new markets through new establishments. Although there are different types of fund raising activities and models, the value of a crowdfunding platform to its users typically grows with scale in a self-reinforcing manner, as more investors attract more companies, and vice versa. Continued low levels of cross-border flows may be partly attributed to differences in national regulation, which increases transaction costs.

2. Perceived lack of reliability of crowdfunding and peer-to-peer platforms

Concerns about the reliability of crowdfunding platforms are considered as key risks for the future growth of the industry.⁶ The biggest risks perceived are loan defaults or business failures, fraudulent activities or the collapse of platforms due to malpractice. This reflects concerns about weak governance practices, notably in areas such as risk management or the prevention of conflict or misalignment of interests. Moreover, investors appear not to have sufficient information or be misinformed about the risk-return profiles of projects or about the operation of platforms. Requirements to ensure an adequate disclosure of offers intermediated through crowdfunding platforms do not exist or vary considerably which complicates comparability. Moreover, from a financial integrity perspective, platforms remain vulnerable to issues concerning the security of client data and the use of crowdfunding for illicit activities.

Subsidiarity check (and legal basis)

The legal basis for an EU initiative to establish a framework on crowdfunding would be Article 114 of the Treaty of Functioning of the European Union (TFEU). The aim of EU action would be to improve the functioning of the internal market by enabling crowdfunding platforms to develop greater scale by taking advantage of growth opportunities across the Single Market.

The Commission maintains regular dialogue, through twice yearly meetings, with the European Supervisory Authorities, Member States, and the crowdfunding sector to promote convergence, sharing of best practice and monitoring market developments. Some Member States have put in place bespoke national frameworks to cater specifically for crowdfunding activities. These national frameworks are broadly consistent in terms of the objectives and outcomes they seek to achieve, but are tailored to local markets and domestic regulatory approaches making cross-border access to them difficult.⁷ An EU framework would help overcome the current fragmentation of national markets and foster the development of a larger cross-border market, enabling cost-efficient and safe crowdfunding.

B. Objectives and Policy options

Main policy objectives

The overall aim of this initiative is to enable crowdfunding activity to grow by making better use of the Single Market potential. This contributes to meeting the CMU's objectives, in particular as regards making it easier for start-ups, scale-ups and other SMEs to access finance.

EU action on crowdfunding will seek to deliver on the following specific objectives:

⁵ University of Cambridge (2016), see previous footnote.

⁶ University of Cambridge (2016), see previous footnote.

⁷ See Commission Staff Working Document "Crowdfunding in the EU Capital Markets Union" of 3.5.2016, SWD(2016) 154 for an overview of regulatory environment for crowdfunding.

1. **Enable platforms to scale cross-border:** creating the required conditions such as licensing regimes that can be used across the EU without requiring further authorisation in each EU country. This would facilitate the attraction of a critical mass of investors and fundraisers across the EU, and reduce the transaction costs;
2. **Provide platforms with a proportionate and effective risk management framework:** cross-border activity requires a high level of trust. The aim is to ensure that the rules for crowdfunding platforms – notably conduct of business, fit and proper, risk management, due diligence and information disclosures – are geared towards the proper management of platforms and the protection of fund providers, including through appropriate disclosure and explanation of the related risks. Trust will also be strengthened by safeguarding the integrity of the sector by developing approaches to address key risks such as data protection, illicit use and cybersecurity.

Main policy options

The impact assessment will analyse whether EU action is warranted and focus on general policy options, notably the following:

- Option 1: Baseline scenario – no EU framework
The Commission would maintain regular dialogue, through twice yearly meetings, with the European Supervisory Authorities, Member States, and the crowdfunding sector to promote convergence, sharing of best practice and keep developments under review. An increasing number of Member States are implementing bespoke crowdfunding regimes creating potentially a large variety of standards making the scaling-up of the industry very difficult and costly.
- Option 2: Building on reputational capital - a self-regulatory approach with minimum EU standards
The Commission would map best practices and local regulatory regimes with the intent to recommend a set of non-binding minimum standards and industry's best practices.
- Option 3: A comprehensive EU approach - treating crowdfunding platforms like regulated trading venues or payment institutions
The Commission would introduce an EU framework for crowdfunding into existing regulation covering financial services to include specific provisions governing the operation of crowdfunding platforms. The amendments would allow for a specific crowdfunding licence under the existing passporting framework allowing the platforms to operate across the Single Market (objective 1). Governance and transparency requirements would be calibrated in a proportionate way ensuring investor protection and sector integrity (objectives 2 and 3).
A variant of this option is to harmonise national regimes through a stand-alone legislation using enabling elements of relevant EU regulation.
- Option 4: The cross-border solution - a standalone opt-in EU framework
On the basis of enabling elements of existing financial services regulation, the Commission would create a proportionately regulated EU regime that platforms wishing to conduct cross-border activity could opt into, while leaving the rules for platforms conducting only national business unchanged. The main aim is to enable crowdfunding platforms to scale-up their activities by passporting into other EU Member States (objective 1) and ensure the necessary trust and sector integrity through organisational requirements, investor and consumer protection (objective 2 and 3). The impact assessment will identify the key enabling elements of the financial services regulation that could help the crowdfunding industry to develop.

The impact assessment will also examine more specific policy options, including for the scope of the types of platforms to be covered. The aim is to ensure that an EU framework is fit-for-purpose, sufficiently forward-looking to provide sound rules for a fast-moving and dynamic industry, as well as simple and proportionate, considering the small size of the market.

C. Preliminary Assessment of Expected Impacts

Likely economic impacts

Crowdfunding fills a gap in the funding escalator between funds collected from friends & family and business angel investment: it provides better-matching investment finance for innovative companies, start-ups and other unlisted firms, including SMEs, particularly when they move from start-up into the expansion phase. This is in line with the CMU's core objectives supporting growth and investment in the EU.

In addition to providing an alternative source of financing directly, crowdfunding can offer other benefits to firms: it can give a proof of concept and idea validation to the project seeker; it can help attract other sources of funding, such as venture capital and business angels; it can give access to a large number of people providing the entrepreneur with insights and information; and it can be a marketing tool if a campaign is successful.

By providing a cross-border EU online marketplace to match investors and investees or lenders and borrowers, crowdfunding can be operated on a larger scale, bring more competition into retail and capital markets, widen investor choice and stimulate innovation.

Likely social impacts

Reducing barriers to the cross-border development of crowdfunding is expected to broaden access to finance for innovative companies, start-ups and other unlisted firms, including SMEs and will have a beneficial impact on employment. On average around 60% of start-ups survive the first three years of activity, and those that do contribute disproportionately to job creation. Young firms account for an average of only 17% of employment, but they create 42% of new jobs. Therefore, the success of these firms is crucial to the future of jobs and economic growth in Europe.

An EU framework for crowdfunding could lead to investors who engage or intend to engage with crowdfunding being better informed about crowdfunding. This in turn could lead to the public being better informed about investing in capital markets in general.

Likely environmental impacts

Crowdfunding provides access to finance to innovative companies that have little or no collateral and therefore often face difficulties in accessing traditional bank financing channels. Crowdfunding provides an opportunity for environmental-friendly firms to reach a wide audience of investors

Likely impacts on fundamental rights

There is no relevant impact on fundamental right from this initiative.

Likely impacts on simplification and/or administrative burden

This initiative aims to enable cross-border crowdfunding activity across the EU. Depending on the policy option chosen this could reduce the administrative burden for crowdfunding platforms wishing to operate cross-border by freeing businesses from compliance costs arising from multiple national regimes.

D. Data Collection and Better Regulation Instruments

Impact assessment

An impact assessment is being prepared to support the preparation of this initiative and to inform the Commission's decision.

Data collection

The Commission commissioned a number of studies to improve the general knowledge of developments in crowdfunding markets, business models and regulatory frameworks:

- A study (prepared by Crowdsurfer and EY) mapping crowdfunding markets in the EU (both platforms and projects) in the period 2013-14 and analysing selected national legislative interventions on crowdfunding, including market trends before and after those interventions⁸.
- In April 2016 the Financial Services Users Group (FSUG) published a study (prepared by Oxera) assessing (i) the level of awareness among the general population of potential (and actual) users of crowdfunding as a form of seeking a financial return; and (ii) among those who are aware of crowdfunding, the level of awareness of the associated risks⁹.

⁸ "Crowdfunding: Mapping EU markets and events study". Available at: http://ec.europa.eu/finance/general-policy/crowdfunding/index_en.htm#maincontentSec1

⁹ "Crowdfunding from an investor perspective". Available at: http://ec.europa.eu/finance/general-policy/docs/crowdfunding/160428-crowdfunding-study_en.pdf

- A study (prepared by EY, Open Evidence, Politecnico di Milano and European Crowdfunding Network) assessing whether alternative finance has the potential to help finance for innovative companies to support research and innovation¹⁰.
- A study (being prepared by European Crowdfunding Network and Osborne Clarke) "Identifying market and regulatory obstacles to the cross-border development of crowdfunding in the EU", which is expected to deliver an assessment of the potential for development of cross-border crowdfunding business and how existing EU legislation applies and interacts with existing and upcoming national regulatory frameworks in cross-border situations.

The European Supervisory Authorities (ESAs) have also carried out work on crowdfunding, publishing an opinion and advice (ESMA) and an opinion (EBA) in their respective areas of responsibility¹¹.

The Commission published a Staff Working Document "Crowdfunding in the EU Capital Markets Union" in 2016¹². The Staff Working Document assesses national regimes, identifying best practice, and presents the results of the Commission's monitoring of the evolution of the crowdfunding sector.

Consultation strategy

Responses to the Commission's public consultations on Crowdfunding in 2013¹³, the CMU Green Paper in 2015¹⁴, the CMU Mid-Term Review in 2017¹⁵ and the FinTech consultation in 2017¹⁶ have provided qualitative evidence to support development of an impact assessment. Respondents to the CMU Green Paper consultation identified a number of barriers to the development of appropriately regulated crowdfunding platforms: regulatory barriers, poor availability and quality of information, and other barriers such as a lack of secondary markets and taxation barriers. Some respondents considered that EU intervention would facilitate cross-border transactions at lower costs. Many respondents to the CMU Mid-Term Review consultation made similar statements arguing in favour of the development of a proper legal framework for crowdfunding across the EU to ensure appropriate investor and consumer protection, so as to create a market of sufficient size. Most respondents to the FinTech consultation believed that national regulatory regimes hindered cross-border crowdfunding activity and that harmonisation at the EU level was required. Among the potential areas for harmonisation cited were platforms' disclosure requirements, registration requirements and investor protection rules.

In addition, the Commission has conducted a series of workshops consulting with Member States, trade bodies and their members. Two regulatory workshops on crowdfunding with Member States were held in December 2014 and in February 2016, in the framework of the Expert Group of the European Securities Committee (EGESC).¹⁷ Experts pointed to a number of issues that could be addressed in order to avoid legal barriers and promote crowdfunding activity in the EU, such as information sharing, data gathering, establishing a common taxonomy, supporting passporting, and more convergent information disclosure requirements for securities issues below the prospectus threshold. The Commission has also set up a European Crowdfunding Stakeholder Forum (ECSF) in 2015 as the expert group of representatives of associations of concerned stakeholder groups and national authorities. Finally, a workshop was held on cross-border crowdfunding in June 2017 on the study "Identifying market and regulatory obstacles to the cross-border development of crowdfunding in the EU".

Against the background of four public consultations on the topic over the past four years and regular dialogue with the European Supervisory Authorities, Member States, and the crowdfunding sector, no further open public consultation is envisaged, beyond further meetings with key stakeholders, including investors.

Will an Implementation plan be established?

¹⁰ "Assessing the potential for crowdfunding and other forms of alternative finance to support research and innovation". Available at: <https://publications.europa.eu/en/publication-detail/-/publication/3190dbeb-316e-11e7-9412-01aa75ed71a1>

¹¹ ESMA's Opinion and Advice are available at: https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-1378_opinion_on_investment-based_crowdfunding.pdf and https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-1560_advice_on_investment-based_crowdfunding.pdf, respectively; EBA's Opinion is available at [https://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-03+\(EBA+Opinion+on+lending+based+Crowdfunding\).pdf](https://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-03+(EBA+Opinion+on+lending+based+Crowdfunding).pdf).

¹² [CWD\(2016\) 154 final](#)

¹³ http://ec.europa.eu/finance/consultations/2013/crowdfunding/docs/consultation-document_en.pdf

¹⁴ http://ec.europa.eu/finance/consultations/2015/capital-markets-union/index_en.htm

¹⁵ https://ec.europa.eu/info/consultations/public-consultation-capital-markets-union-mid-term-review-2017_en

¹⁶ https://ec.europa.eu/info/finance-consultations-2017-fintech_en

¹⁷ Minutes of both meetings (held on 18 December 2014 and 10 February 2016, respectively) are available at: http://ec.europa.eu/finance/securities/egesc/index_en.htm.

If a legislative approach is taken to enact this initiative an implementation plan will be established.