

FESE Position on the Proposal for a Regulation on European Crowdfunding Service Providers (ECSP) for Business

Introduction

The Federation of European Securities Exchanges (FESE) welcomes the opportunity to provide input to the European Commission on its recently published Proposal for a Regulation on European Crowdfunding Service Providers (ECSP) for Business.

We fully support the regulators' objective of increasing the harmonisation of crowdfunding activity and reviewing potential barriers to cross-border transactions, both initiatives which could help to bolster an important source of capital for early-stage companies. Following the **funding escalator rationale**, companies need access to different types of funding at different stages of their development; e.g. crowdfunding, business angels, venture capital, private placement, IPO on Growth & Main Markets as well as secondary capital raisings.

Crowdfunding can be a positive element for enterprise funding in general and for reviving public corporate financing, especially since it can help:

- Grow the pipeline of companies preparing for an IPO;
- Build a stronger equity culture in Europe, which would eventually have a positive impact on the participation of retail investors in public equity markets, which is positively correlated with better access of SMEs to IPOs; and,
- Revive the local ecosystems necessary for IPOs of smaller companies.

Although the contribution of crowdfunding platforms to total equity financing is still relatively small and concentrated in certain EU Member States, volumes are growing rapidly. FESE Members support the Commission's intent to create pan-European standards which would ensure the proper functioning and growth of these platforms in a safe manner whilst providing a new means of source of financing for companies. This will also promote cross-border activity and safeguard investors' interests.

The challenges and concerns for crowdfunding

Notwithstanding these benefits, crowdfunding is not a substitute for IPOs. Public markets offer an easy access to companies wanting to raise capital and to all investors, retail and institutional, wishing to diversify their portfolios. However, in terms of scale, even if crowdfunding continues to grow at a very high speed, the amount of funds that can be raised individually and collectively through crowdfunding cannot be expected to meet the financing gap faced by European enterprises over the coming decades.

The capital pooled by crowdfunding platforms remains limited when compared to the capital raised on public markets. In particular, the companies that have the biggest impact on job growth are those at the high end of the funding escalator scale, which means that, even if crowdfunding growth trends continue, this may have only a modest impact on new jobs created in Europe. Furthermore, the visibility ensured by raising capital via crowdfunding is still quite limited and this reflects on the ability of companies to then be able to recruit high profile employees.

To fully meet the needs of European companies, with a focus on those that have the highest contribution to job growth, the EU needs to continue working on a comprehensive strategy on how to boost equity financing at all stages of the funding escalator.

Interaction with existing EU & national regulatory frameworks

FESE members support the development of a well-calibrated European framework for crowdfunding that is consistent with the principles of EU regulation of financial markets. In our view, the EU legislative framework governing capital raising is generally appropriate. These laws have clear objectives, with which we agree, and were conceived with a focus on the objectives of investor protection, transparency, market integrity, open competition with a level playing field, and proper regulatory oversight.

We welcomed the European Commission's proposal which offers the choice for crowdfunding services providers to seek authorisation to provide services on **a domestic basis under applicable national law** (including where a Member State chooses to apply MiFID II to crowdfunding activities) **or under an EU passport**, withdrawing the former authorisation under the applicable national rules. In its creation of uniform rules on crowdfunding at EU level, we agree with the Commission that where crowdfunding be allowed to operate with vastly different levels of regulation across the EU, there is risk of the Single Market being undermined.

FESE members have noted the Commission's efforts to ensure legal certainty, as demonstrated in their proposed Crowdfunding Directive amending MiFID II (2018/0047), **which exempts ECSPs from the obligations under MiFID II** - clarifying that ECSPs should not be authorised under MiFID II (and vice-versa) - and through the introduction of a **common threshold for each crowdfunding offer at EUR 1 000 000** within the Crowdfunding Regulation.

In regard to the threshold, we share the Commission's view that a **EUR 1 000 000** threshold is in line with the principles that guided the recent review of the EU Prospectus Framework, and the overall work of the European Commission to facilitate smaller companies' access to alternative source of financing under the Capital Markets Union initiative.

However, the European Parliament's proposal to **increase the threshold to EUR 8 000 000**, if implemented, will **introduce incoherencies** in the overall EU approach, notably between the ECSP Regulation and the Prospectus Regulation, undermining the legal clarity of the existing legislative texts.

As it stands, **if the ECSP provides crowdfunding offers that are above EUR 1 000 000, ECSPs and project owners using their platforms will be subject to the provisions included in the Prospectus Regulation.** Indeed, the definition of the 'crowdfunding offer' (Article 3, point d, of the ECSP regulation) will overlap with the definition of 'an offer of securities to the public' (Article 2, point d, of the Prospectus Regulation) thereby putting ECSPs into the scope of both regimes simultaneously. This will drastically **reduce the legal clarity for the informational requirements needed for 'crowdfunding offers' issued by ECSPs in the scope of the Crowdfunding Regulation**, notably when it is proposed that ECSPs provide lending and equity based crowdfunding services.

Furthermore, if such a change were to be agreed, **NCA's flexibility to exempt public offers from prospectus requirements would be undermined.** Currently, their flexibility relies on their respective powers to exempt public offer of securities from the obligation to publish a prospectus within their jurisdiction by providing a tailored threshold based on their local ecosystems.

Since not all Member States have opted for a maximum threshold of EUR 8 000 000, any crowdfunding 'project owners' with offers that fall above the respective NCA threshold to exempt public offers from prospectus requirements, will have the choice to either abide to the alleviated requirements within the proposed Key Investment Information Sheet (KIIS) offered by ECSPs with an EU access to its investor base, or abide to the NCA's more stringent requirements, meant to provide investment protection measures tailored to their local jurisdictions. If the former is preferred, there is **a risk of creating an unlevel playing field, at the expense of NCA's policies on investor protection.**

If the European Parliament's proposed threshold of EUR 8 000 000 is maintained, the proposed increase in threshold would still pose a risk for investor protection and undermine NCA's flexibility in that regards (which was recently granted in the Prospectus Regulation).

As such, we believe that the EUR 1 000 000 threshold proposed by the European Commission is consistent with the proposal to exempt crowdfunding platforms from the application of other sectorial legislation. However, should this threshold be increased during the negotiations, we would call on policymakers to apply the full range of EU trading rules to crowdfunding in order to maintain the principle of an equal level playing field.

Importance to safeguard investors protection

Finally, FESE members welcome the introduction in the proposal of measures to safeguard investor protection. Such moves are important to guard against the loss of public confidence in crowdfunding and capital markets in general which would result from issues arising from a lack of investor protection and appropriate regulation of crowdfunding platforms.