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Crowdfunding Schemes in Europe

by David Röthler and Karsten Wenzlaff

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The EENC was set up in 2010 at the initiative of Directorate-General for Education and Culture of the European Commission (DG EAC), with the aim of contributing to the improvement of policy development in Europe. It provides advice and support to DG EAC in the analysis of cultural policies and their implications at national, regional and European levels. The EENC involves 17 independent experts and is coordinated by Interarts and Culture Action Europe.

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1. Introduction

Crowdfunding is a rather new method to fund projects by individuals using the social web. After its successful implementation in the field of nonprofit cultural and social projects in recent years it is now innovating the domain of start-up financing.

In terms of rewards in the cultural and social sector, some platforms just thank their donors but most crowdfunding platforms give in kind rewards to contributors in the form of e.g. CDs, t-shirts, and access to artists.

Being part of a community and a communication process with the project initiators is often an important impetus for crowdfunders to support a project. Only in the field of commercial start-up financing crowdfunders are considered as investors and therefore expecting financial return. Nevertheless there is a growing number of crowdfunding platforms in the creative sector especially in the field of music production where donors are promised financial rewards.

Social media play an important role for the development of crowdfunding. Facebook, Twitter, and blogs are important tools to communicate information about crowdfunding projects to potential contributors and possibly convert social capital into financial capital. The interactive web empowers users to create content and to distribute and discuss it. The social web enables bypassing the intermediaries of a traditional supply chain.

This 'disintermediation' can be observed as well in the area of crowdfunding. Money seekers can now bypass banks, venture capitalists, business angels or public financing regimes thus making funding processes more transparent and democratic. These traditional mediators see the rise of crowdfunding as competition or even a threat for their business models.

There is however, a potential benefit for the traditional mediators as well - they can use crowdfunding to find innovative ideas and use the "wisdom of the crowd" to estimate the success of a start-up or a project in the creative industries.

The nature of the social web is quite informal. Crowdfunding is successful because it transfers models of informal co-operation to the world of financing and leads to democratisation and transparency in financing. Crowdfunding is an interesting example of how social capital can be transferred into real cash. More money seekers can start a venture and more people can support projects or even become investors with a small amount of money and with little risk.

1.1. Background

On 13 July 2011, the Directorate General for Education and Culture of the European Commission (DG EAC) submitted a request for an expert contribution on behalf of the EENC (European Experts Network on Culture) on the issue of crowdfunding schemes in Europe, with a particular focus on the legal issues in this field.

The request relates to the European Commission's European Agenda for Culture in a Globalizing World, and particularly, its aim to help develop innovative sources of funding in the creative sector. The immediate objective of the research is to enable internal discussions within DG EAC as regards the political and regulatory implications of crowdfunding at both EU and member state level.

In this context, the EENC has been asked to produce a short analytical report presenting a synthesis on the practices of crowdfunding schemes in the cultural and creative sector in Europe, an analysis of issues which potentially affect EU competences and/or regulatory frameworks and a set of recommendations in the field of EU and national regulation.

1.2. Objectives

This report will

- a) provide a synthesis of the use/recurrence/practices of crowdfunding or similar schemes which are established to fund cultural and creative industries projects/companies/undertakings in Europe, including elements of definitions, typology, statistical data, analysis of the varying practices, etc.;
- b) identify the issues arising from the use of crowdfunding within the EU which are potentially of EU competences and/or involve regulatory frameworks, including the relevance of existing financial regulations regarding initial public offerings (IPO) and/or the existence of legal exemptions, and cross-border access to crowdfunding within the EU, as well as any other relevant legal issues that the experts may identify in the course of the study; and
- c) provide recommendations concerning the potential regulation of crowdfunding schemes at EU and national level, on the basis of the key issues identified.

1.3. Methodology

The authors conducted extensive online research and found a significant number of platforms with different approaches and targets.

The survey designed for this study was sent out to approx. 60 platforms (mainly platforms offering financial rewards, see http://bit.ly/crowdfunding_survey) and approx. 30 experts (see http://bit.ly/crowdfunding_experts) identified in this field. 10 experts and 11 platforms replied.

Questions of the survey were:

1. Which areas of financial regulation in your country were relevant in setting up the crowdfunding platform?
2. Have you been contacted by the financial supervision authority of your country to give details about your business-model?
3. Have you partnered with a financial institution e.g. a bank or a payment provider in order to fulfil certain requirements of financial regulation?
4. Do you know about any cases of prosecutions against crowdfunding schemes based on violation of financial regulations?
5. Which legal barriers exist for cross-border access of your platform, especially when it comes to create or fund a project?
6. Which recommendations for regulation and policy developments do you propose for the further evolution of crowdfunding schemes in Europe?

Furthermore some telephone/Skype and email interviews were made with selected experts.¹

Despite the holiday season - almost all the work had to be accomplished during the month of August 2011 - the authors are satisfied with the results.

1.4. Design and limitations of the report

The report aims to give a brief introduction to crowdfunding and explain the basic mechanism behind crowdfunding. Since crowdfunding is used for a variety of different activities, we try to show the ambiguity by offering various examples of crowdfunding platforms.

¹Skype interviews were made with: Kevin Lawton, author of the "Crowdfunding Revolution", Wolfgang Gumpelmaier, expert for crowdfunding and film <http://gumpelmaier.net/>

Since financial regulation varies greatly across different countries, we have tried to identify a number of recurring themes in legislation. Where necessary, we will show how legislation is applied in a few countries.

The report is limited by the given time frame for this study as a more comprehensive legal study of legislative regimes around financial investment would take much longer and would require more interviews.

2. Crowdfunding and the Creative Sector in Europe

A significant number of crowdfunding platforms have been established in many European countries. Most platforms in the creative sector provide in-kind rewards whereas a rising number of platforms in the field of music share financial revenue with investors sometimes addressed as co-producers.

The **creative industries** refer to a range of economic activities which are concerned with the generation or exploitation of knowledge and information. They may variously also be referred to as the cultural industries.

The creative economy comprises advertising, architecture, art, crafts, design, fashion, film, music, performing arts, publishing, R&D, software, toys and games, TV and radio, and video games.²

The importance of the creative industries in Europe has been steadily increasing in recent years. The employment volume of the creative industries of 6.4 million is high above that of the automobile and chemical industries (2.2 and 1.9 million respectively). Each of these industries achieves only one third of the employment volume of the creative industries Europe-wide.

1.4 million enterprises, including small-scale enterprises and freelance offices, achieved a turnover of EUR 556 billion.³

In March 2011, the Commission opened its consultation process for the Green Paper on the Economic Potential of the Creative Industries⁴. In the summary of the responses, crowdfunding was not mentioned directly, but indirectly:

When applied to cultural content and heritage, ICTs can also be useful for reaching out to new audiences and improving access to culture either as marketing and information tools (online trailers, online ticketing, online sales etc.) or – more importantly – as a dissemination tool offering inter alia new opportunities in financing content production through micropayments and donations. By way of example, several respondents pointed out that in the performing arts the digital environment now allows organisations to communicate with new audiences through the Internet, be it by streaming or downloading a pre-recorded performance. This kind of

² Howkins, John (2001), *The Creative Economy: How People Make Money From Ideas*, Penguin

³ Bernd Fesel, Michael Söndermann, The European Creative Industries in the EU of 25, http://www.unesco.de/fileadmin/medien/Dokumente/Bibliothek/culture_and_creative_industries.pdf

⁴ http://ec.europa.eu/culture/our-policy-development/doc2577_en.htm

experimentation could also find new applications in theatres with the advent of digital cinema.⁵

This shows that there is an expressed need by the creative industries to make use of crowdfunding tools when finding new forms of financing, marketing and information.

2.1. Clarifying concepts

Crowdfunding is a young and dynamically evolving form of financing. Hundreds of crowdfunding platforms have been established worldwide already. Crowdfunding is not only a new source of financing but an almost philosophical approach applying the Web 2.0 paradigms of transparency and participation. Furthermore it makes use of the communicative aspects of social networks e.g. viral marketing. Most of the crowdfunded projects and crowdfunding platforms of the past especially in the cultural sector had no or little entrepreneurial ambition. Offering financial rewards and financing start-ups via crowdfunding is an even newer phenomenon.

This section presents - after a general introduction of the term - a number of different concepts related to the main topic.

2.1.1 Crowdfunding

Crowdfunding is usually understood as a subtopic of crowdsourcing. The term “crowdsourcing” was introduced by Jeff Howe in 2006.⁶ Crowdsourcing is the act of outsourcing tasks to an undefined large group of people or community (crowd) through an open call.

The term “crowdfunding” appeared as well in 2006. The concept of financing projects by a large number of supporters is not new. Mozart and Beethoven financed the publication of compositions via a priori subscriptions.

Crowdfunding can be defined as a form of financing through an open call via social media / Web 2.0. The objective of crowdfunding is to finance a specific project or enterprise. Usually contributors are promised immaterial, material or financial rewards.

A definition used in most academic papers has been established by Armin Schwienbacher:

⁵ http://ec.europa.eu/culture/our-policy-development/doc/analysis_green_paper.pdf

⁶ <http://www.wired.com/wired/archive/14.06/crowds.html>

Crowdfunding involves an open call, essentially through the Internet, for the provision of financial resources either in form of donation or in exchange for some form of reward and/or voting rights.⁷

Wikipedia defines crowdfunding as follows:

Crowdfunding (sometimes called crowd financing, crowd sourced capital, or street performer protocol) describes the collective cooperation, attention and trust by people who network and pool their money and other resources together, usually via the Internet, to support efforts initiated by other people or organizations. Crowd funding occurs for any variety of purposes, from disaster relief to citizen journalism to artists seeking support from fans, to political campaigns, to funding a startup company or small business or creating free software.⁸

In practice this means that interested users are invited to donate a certain amount for concrete projects via Internet donations. Each project has an initial target budget which should be reached within a limited time frame. If the targeted percentage of the budget is reached, the project is considered successful and can be implemented.

Most crowdfunding takes place on platforms which provide payment facilities and project management tools. They channel the funds from the donor/lender/investor to the project owner.

Many successful projects did not make use of any crowdfunding platform. Developing web based software to handle payments is not too complicated. A recent prominent example is the movie "Hotel Desire" which raised € 170.000 in 80 days at its own website <http://hotel-desire.com>⁹

2.1.1.1 Peer-to-Peer lending

Peer-to-peer lending is another form of crowdfunding, where credit takers and credit givers converge on a crowdfunding platform and negotiate interest terms. The platform acts a mediator between lender and borrower.

Peer-to-peer (p2p) lending is a good example for the disintermediation occurring in various fields because of the Internet. Peer-to-peer lending also known as person-to-person lending avoids the bank as a middleman. The bank as the traditional institution

⁷ Belleflamme, P., Lambert, T., Schwiendbacher, A. (2010): Crowdfunding,: An Industrial Organization Perspective. Preliminary paper for the Conference "Digital Business Models: Understanding Strategies" Paris, June 25-26, 2010.

⁸ http://en.wikipedia.org/wiki/Crowd_funding

⁹ <http://www.sueddeutsche.de/medien/film-crowdfunding-experiment-geglueckt-1.113300>

is replaced by p2p lending platforms, even though p2p lending platforms often cooperate with banks to facilitate the transactions.

The main advantages for borrowers are lower rates and for lenders higher returns. The first platform in this market, Zopa in the UK, started in 2005. Other successful and similar platforms are Smava in Germany and babyloan in France.

Peer-to-peer lending is sometimes termed crowd-lending (see typology below). Since many regulatory issues affect both crowdfunding and crowdlending, we discuss both in this report.

2.1.2 Types of crowdfunding

When talking about crowdfunding we can differentiate between crowdsupporting (giving money, without reward), crowdfunding (investing for benefits) and peer-to-peer lending initiatives. The differences among various crowdfunding projects include:

- the purpose of the crowdfunding project (business, creative, political, social)
- the aim of the funder (donation, non-financial reward, financial reward, return of loan)
- the underlying tax regime (for profit, non-profit)

2.1.2.1 Types of crowdfunding according to the rewards given to users

One classification of different models can be done through examining the form of reward for donors and investors. A good overview can be found in a recent report done by Joachim Hemer and his team at Fraunhofer ISI in Karlsruhe.¹⁰

a) Donations without any reward (donor pooling and patronage)

Donations usually are altruistic acts without any obligation for the recipient. Part of the culture of crowdfunding to give at least some reward as a thank-you-mail or mentioning the name of the donor at a web-site. Examples for such platforms are <http://www.betterplace.org/de/> in Germany and <http://respekt.net/> in Austria. Both platforms focus mainly on social projects. All projects on these platforms are not-for-profit.

¹⁰ Joachim Hemer, Uta Schneider, Friedrich Dornbusch, Silvio Frey (2011). Crowdfunding und andere Formen informeller Mikrofinanzierung in der Projekt- und Innovationsfinanzierung. Karlsruhe, 2011

It has to be remarked that this category cannot really be regarded as crowdfunding as it has solely online fundraising aspects.

b) Crowd Sponsoring

Most crowdfunding platforms in the cultural sector give in-kind rewards like CDs, DVDs, download options, contacts with artists etc. The most successful platform is <http://www.kickstarter.com/> (US based) with numerous European copycats.

c) Pre-selling

The reward can be the product which is being funded. E.g. a book, a movie, music downloads, software, a new gadget. The product is promised for delivery upon production. This can be compared with an advanced order. As for all purchasing acts VAT rules may apply.

d) Lending

Financial rewards can take the form of returned loans (see peer-to-peer lending above). The loans can take the form of revenue-based loans, interest-based loans or donation-based loans with only a symbolic payment back. An example for this practice is the British crowdfunding platform Buzzbnk.

e) Investments (Micro-Equity and Revenue-based Financing)

The reward for this (micro-)investment is equity, shares of the enterprise, dividends or voting rights.

The legal complexity gets higher as more substantial rewards are promised. The same is true for the classification of non-profit and for-profit projects. The more substantial the rewards offered the more likely the project is for-profit.

2.1.3 Other related concepts

a) Social Payments

Social payments are small financial donations for existing online content with the aim of contributing to costs of creation. Social payments are often used to fund editorial content at online newspapers. Examples for social payment platforms are Kachingle and Flattr.

Crowdfunding and social payments are often found together when discussing the new role of intermediaries in traditional content markets. Both allow a direct financial link between content originator and content consumer.

In the scope of this report, we will omit social payments and focus on crowdfunding as such, but it should be noted that social payments are increasingly playing a role for the funding of the creative industries.

b) Social Money

In some European regions private regional or complementary currencies are being issued as a cash substitute for the Euro. Most of these currencies follow the Austrian model of “Schwundgeld” (depreciative currency) of the early thirties of the last century which had been established at the Tyrolean city of Wörgl¹¹. The loss of value is intended to encourage money owners to spend their money quickly in order to improve local exchange of goods and services.

The theoretical assumptions of the concept of “Schwundgeld” were laid down by Silvio Gesell (1862-1930). The effectiveness of the “Schwundgeld”-idea is criticised by Gerhard Rösl (University of Applied Sciences Regensburg) arguing that it is suboptimal from a welfare-theoretical perspective and that the overall volume of regional currencies in circulation in Germany is not higher than € 200.000.¹² Recent statistics for the regional currency “Chiemgauer” in Bavaria shows, that only for this region an equivalent of € 518.000 is currently in circulation.¹³

Social money and regional currencies are often used when discussing alternative forms of payment, along with crowdfunding and social payments. In this report, social money schemes will not be covered in this report.

c) Social Banking

Social Banking is the application of Web 2.0 paradigms to banking. An example is the Fidor Bank¹⁴ in Germany. These banks establish a dialogue between customers and encourage peer-to-peer financial transactions. Transparency, authenticity and openness for dialogue are important values for this type of bank.

The “Demokratische Bank” is currently being established in Austria¹⁵. Its vision goes a step further. Everybody can become a member of the cooperative. Decisions are to be made through a democratic process. Common welfare is the aim of the bank. Attac Austria¹⁶ is one of the driving forces behind the initiative.

¹¹ <http://oesterreich.orf.at/tirol/stories/356553/>

¹² http://www.ormita.com/pdf/library/200643dkp_en.pdf

¹³ <http://www.chiemgauer.info/uploads/media/Chiemgauer-Statistik.pdf>

¹⁴ <https://www.fidor.de/>

¹⁵ http://www.demokratische-bank.at/fileadmin/media/Demokratische-Bank_Vision.pdf

¹⁶ <http://www.attac.at/>

Social Banking and crowdfunding are sometimes found together. For instance, the German crowdfunding platform startnext is orchestrating all their payments through the Social Banking company Fidor.

d) Open Money

Already in 2003 the Open Money Manifesto stated: "Money is just information, a way we measure what we trade, nothing of value in itself. And we can make it ourselves, to work as a complement to conventional money. Just a matter of design."¹⁷

Back in 1990 cryptography researcher David Chaum¹⁸ founded DigiCash, a pioneering enterprise with the aim to establish an electronic currency. DigiCash went bankrupt in 1998. There has been little debate in this field since.

Recently Bitcoin received a lot of attention. Bitcoin is an open source project to develop a decentralised, peer-to-peer network that tracks and verifies transactions. "No central authority issues new money or tracks transactions. These tasks are managed collectively by the network".¹⁹

Even if Bitcoin is an experiment that appears likely to fail, there will be new attempts to establish alternatives to the conventional currencies, now in crisis due to the debt and financial market troubles.

Bitcoin is an example of how new perceptions of money are created on the Internet. Crowdfunding shares some of these new perceptions, such as its participatory aspect.

2.2. Examples and data

2.2.1 Selected Examples of crowdfunding platforms promising financial rewards

a) Business, Start-ups

c-crowd²⁰

The Swiss crowdfunding platform intends to be an intermediary between projects and capital. The platform supports the financing of projects in three categories: company, non-commercial charity, and commercial campus projects. The platform tries to attract

¹⁷ <http://www.openmoney.org/top/omanifesto.html>

¹⁸ <http://www.chaum.com/>

¹⁹ <http://www.bitcoin.org/>

²⁰ <https://www.c-crowd.com/>

as funders: private persons, professional investors, foundations and business angels. One idea is to give people with little initial investment the possibility to participate.

Company projects need to have a prospectus (Art. 652a of the Swiss Code of Obligations). c-crowd motivates investors to contribute, knowledge and contacts as well as money in return for an “emotional reward”.

Approximately 15 projects can be found at c-crowd. Many of them are creative industries projects e.g. “SuitArt” a service for individually tailored fashion or “HUB Foundation for Contemporary Art” for international cultural exchange and related business opportunities. Typical projects are requesting amounts between 200.000 and 600.000 CHF.

Investiere.ch²¹

Investiere.ch is another Swiss platform. Already some ventures (mostly technology development) have successfully reached their funding goals with up to 260.000 CHF. “In contrast to crowdfunding companies, *investiere* is a hybrid model that combines the established practices of traditional venture capital with elements of e-finance and social media. All start-ups featured on the site go through a rigorous due diligence process and investors are able to choose the start-up that sparks their unique interest.”

The minimum investment at [investiere.ch](http://www.investiere.ch) is 4.500 €. More than 500 mini-investors are registered at the platform.

Seedlounge²²

The Germany based platform Seedlounge has a different aim. They intend to play a role before a start-up is being (crowd-)funded. Seedlounge organises public events preceded by public votings at their online platform. The last startup event in Hamburg on June 29, 2011 comprised 12 start-ups.

Seedmatch²³

The German Seedmatch is an Internet platform for the financing of young ventures. The platform intends to present pre-selected start-ups. The selection of start-ups is done by the Seedmatch team. Micro investments start with an amount of € 250. Seedmatch mediates silent partnerships. As Seedmatch has just started to be operative only two projects can be found asking for a financing of € 55.000 (online brain training) and € 80.000 (online souvenir shop). As the equity is a dormant holding investors can not influence the business management.

²¹ <http://www.investiere.ch>

²² <http://seedlounge.com/>

²³ <https://www.seedmatch.de>

Seedups²⁴

The Irish platform Seedups seems to be the most successful European crowdfunding platform for investments. Entrepreneurs can raise up to 250.000 €. “Seedups was established to help early stage entrepreneurs with great business ideas, solve the sub-€250k equity gap problem, which regularly exists when they attempt to raise smaller amounts of equity capital”.

More than 200 ventures raised already 3.25 Mio € since the launch of the platform in November 2010.

During the registration process investors must go through a self-certification process and state that they are either a High Net Worth Individual or as a Sophisticated Investor regarding the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001. The platform is restricted to investors from the UK, Ireland and the USA.

b) Music

Slicethepie²⁵

The UK-based platform Slicethepie raises money for artists to professionally record an album. It enables users to invest in, profit from, and trade in artists’ success by turning every music fan into a talent scout and investor. This is done via a two step process. The top 2% of artists are then showcased on the site and every artist that attracts sufficient support from investors and fans goes forward to raise \$30,000²⁶ to record and release an album. Investors can then trade in and out of their contracts in artists they have invested in on a fully fledged trading exchange hosted on the site. The ultimate payout on Contracts is directly proportional to the number of singles and albums sold over a 2 year period. Artists keep all of their copyright and publishing rights, paying a royalty to Slicethepie on the first two years of album sales. Slicethepie revenues are obtained from royalties from sales of albums, advertising, income based on sales of contracts and commission on the trading of contracts. Until now 32 artists have received revenues of up to \$ 32.000 per artist.

SonicAngel²⁷

SonicAngel is a music platform based in Belgium. “Funders invest in emerging talent, which enables them to release their first single or album. But it doesn’t stop here: fans are called to participate in searching for the hottest talents, but also to be part of the

²⁴ <http://www.seedups.com>

²⁵ <http://www.slicethepie.com/>

²⁶ Interestingly the currency used at the UK based platform “Slicethepie” is the US \$

²⁷ <http://www.sonicangel.com/>

entire artist experience.” SonicAngel established so called “FanShares”. Via this option funders can invest in artists up to € 1.000 and earn money in return if the recording sells well.

Sellaband²⁸

Sellaband was already founded in 2006. Its offices are located in Munich and Amsterdam. SellaBand has coordinated recording sessions for 42 artists or acts who had their albums funded by their fans. Over \$3,000,000 has been invested in independent bands via the platform. Funders at Seelaband called “believers” receive free downloads and other benefits like exclusive CDs, t-shirts, free lunches etc. In some cases, they may be able to obtain a small part of the revenues generated.

c) Film

touscoprod²⁹

touscoprod is a French site that allows investors to become “producteurs de film” (film producers). touscoprod is a participatory website that allows Internet users to support independent film productions. With a minimum contribution of 10 Euro one can consider oneself as co-producer. This status gives access to a whole range of exclusive goodies and furthermore to participate from its financial exploitation.

Indieshares

It is assumed³⁰ that the platform IndieShares³¹ will offer some type of financial reward. This platform has not opened yet (end of August 2011).

Independent projects

The erotic movie Hotel Desire³² which got funded recently with 170.000 € offered financial rewards³³ to funders giving more than 10.000 €.

d) Books, Comics

TenPages.com³⁴

TenPages.com is a Dutch platform to crowdfund literature. Talented authors are motivated to send a manuscript which is going to be discussed online. People who

²⁸ <https://www.sellaband.com/>

²⁹ <http://www.touscoprod.com>

³⁰ Email interview (August 31) with crowdfunding expert Wolfgang Gumpelmaier, Austria

³¹ <http://www.indieshares.com/>

³² <http://hotel-desire.com/>

³³ <http://www.smava-blog.de/2011/06/22/smava-unterstutzt-crowdfunding-finanzierung-des-filmprojektes-%E2%80%9Ehotel-desire%E2%80%9C/>

³⁴ <http://www.tenpages.com>

want to support the financing of the book can buy shares 2.000 shares at 5 euro each and become “aandeelhouders”. A visitor can buy no more than 200 shares of one manuscript but publishing houses may get all the remaining shares in one go.

The platform is characterised by a blog covering new online publishing trends as follows:

*Introducing crowdfunding as a way to substantiate the publishing decision, TenPages.com has found a niche between traditional book publishing and self-publishing. In fact it helps aspiring authors to get published by traditional book publishers. Simultaneously this charming and inspiring initiative helps book publishers to better connect with their most important stakeholders: their readers and authors.*³⁵

Editions du Public³⁶

This French service is based on similar ideas as TenPages.com. Its slogan is "I invest in what I want to read". Supporters are encouraged to become “co-éditeurs” (co-publishers). They can benefit by receiving the book and furthermore participate from net profits generated from sales. Each co-editor is able to recoup "up to eight times the amount of their initial subscription" depending on sales.

Sandawe³⁷

Sandawe is a Belgian platform especially devoted to the production of comics. Sandawe considers itself as a publishing house for comics based on the principles of crowdfunding. It allows its members to become “édinautes”. If a project reaches 30.000 to 50.000 Euro the comic will be produced and the profit distributed between authors, the platform and the investors. The French trade union of authors (SNAC³⁸) is criticising the platform because of rigid copyright restrictions for authors, low share of income and long-term contracts.³⁹

2.2.2 Statistics

The volume of crowdfunding is difficult to assess because the platforms give only estimations of their financial volume. The American platform Kickstarter claims to have funneled more than 60 million US-\$ to about 24.000 projects since 2009.⁴⁰

³⁵ http://telfleur.wordpress.com/2010/10/08/tenpages_selfpublishing/

³⁶ <http://editionsdupublic.com>

³⁷ <http://www.sandawe.com/>

³⁸ <http://www.snac.fr>

³⁹ <http://www.comicforum.de/showthread.php?t=105034>

⁴⁰ <http://techcrunch.com/2011/05/25/since-2009-kickstarter-hosted-funneled-20-million-to-24000-self-funded-projects/>

In April 2011 ikosom has assessed the volume of crowdfunding for the German market, focussing on non-financial rewards.⁴¹ The results of the survey are a boost of motivation for creators of crowdfunding projects. Every second project (53%) is successful. The average sum raised by the successful projects was about 3.000 Euro, with the largest project receiving almost 27.000 Euros.

All in all, 208.000 Euros were collected through the crowdfunding platforms within one year in Germany. On average, each successful project has 33 supporters - each supporter gives 79 Euros. This amount substantially exceeds the micropayment range of 10 to 20 Euros that is often assumed to be the backbone of crowdfunding. These numbers will be updated in mid-September. Estimates show already that in the German speaking market, the financial volume has crossed the half-million threshold.

Business crowdfunding projects have already crossed that threshold within a few months. The platform [investiere.ch](http://www.investiere.ch) has already finished the funding of a number of start-ups with six digits investment volume.⁴²

Specialised crowdfunding platforms have also significantly increased in financial volume. The music crowdfunding platform Sellaband has generated a cumulative sum of 2.7 million Euros.⁴³

These numbers seem small compared to the volume of the traditional venture capital market in Europe, but show an increasing tendency to grow fast.

⁴¹ <http://www.ikosom.de/2011/06/22/crowdfunding-survey-2011/>

⁴² <http://www.investiere.ch/companies>

⁴³ <http://paidcontent.org/table/crowdfunding>

3. The Legal Implications of Crowdfunding

Crowdfunding is used for many different activities involving a group of people financing one particular project, aim or enterprise. There is no standard set of regulation which covers all different schemes of crowdfunding.

When crowdfunding is used for financing campaigns for political or civil society purposes, then no other rules than the already existing laws on donations and investments which exist in various European countries apply.

Due to different approaches of crowdfunding schemes in Europe the legal implications differ for each platform.

One can identify six regulatory areas applying in various degrees to the crowdfunding platforms:

Regulation concerning the

- 1) Provision of financial payments
- 2) Use of copyrights and the further use of immaterial goods
- 3) Taxation of the sales of material goods and services and income taxation
- 4) Protection of investments and ownership in business
- 5) Distribution of loans and credits
- 6) Protection of user data

The use of crowdfunding to finance projects in the creative industries is mostly covered by the first three areas of regulation. Only if ownership shares are transferred or when financial returns are expected, the latter two sets apply.

3.1 Crowdfunding regulation and financial payment providers

Crowdfunding involves the transfer of money from the funder to the project owner. Crowdfunding platforms facilitate this payment, often in return for a specific service, immaterial good or material good of financial reward.

Therefore crowdfunding platforms are under the provisions of regulation of payments in the European Union laid out in various directives to establish a Single European Payment Area. National regulations for electronic commerce apply as well to

crowdfunding platforms, for instance on verification of transactions and customers rights.⁴⁴

Most crowdfunding platforms cooperate in one form or another with either a payment provider, such as Paypal, or a specific bank, to comply with regulation as a financial payment service.

The specific model of crowdfunding implies a time difference between the willingness to pay, the actual payment, and the return of the service, immaterial or material good to the payer. An example might help to illustrate this time delay of the transaction: a person willing to support a band by pre-buying a CD and obtaining shares through a crowdfunding platform such as Sellaband, might face at least three to four different transactions:

- Indication of the intent to support the band (funding promise)
- Initiation of payment if the project receives enough funding promises from the crowd
- Receipt of the CD after the production process
- Return of financial rewards after the sale of the CD on the public market

Between each transaction, a time difference of several weeks or months can occur. Crowdfunding platforms have to ensure that attempts to default on any of these transactions is prohibited.

For instance, most crowdfunding platforms require the funder to pay already when the funding promise is done. In other words, prospective funders pay their share even if the crowdfunding project is still in the stage of being financed, and not when enough 'promised funds' have been registered with the crowdfunding platform.

Since most crowdfunding platforms work with a threshold principle, the platforms promise to pay back the money for investment if the project has not reached its full volume. For instance, if a CD production is set at 4000 Euros, then all funds will be returned if the project only receives promises to the value of less than 4000 Euros.

In both cases, the crowdfunding platforms act as a bank, not just as a facilitator of payments. They receive money to forward it to the project owners if the threshold is reached or return them to the funders if the threshold is not reached.

For instance, in German banking law, any institution which allows the deposit of money can potentially be regarded as bank.⁴⁵ The limits are set fairly low - it is sufficient to

⁴⁴ For instance on crossborder payments:

http://ec.europa.eu/internal_market/payments/crossborder/index_en.htm

⁴⁵ See §1 Abs. 1 Nr. 1 KWG

have 25 people depositing money or to have at least 12.500 € in total deposits in order to have to register as a bank.

Crowdfunding platforms often have no intention to be regarded as bank. Therefore they create escrow accounts in which the money is held, but not used for further investment.⁴⁶ The British crowdfunding platform Buzzbnk states in their FAQ:

*Buzzbnk is not a bank in a legal or financial sense – we do not hold saving deposits and act only as an agent to introduce the Backers to the Ventures.
Funds are held on behalf of the Ventures until the fundraising period is either successful and the funds are transferred or if unsuccessful, returned to the Backer.⁴⁷*

This is not the case for all crowdfunding platforms. A limited number of crowdfunding platforms do not return funds if a project has not crossed the threshold, but require funds to be spent on other projects.

Furthermore, the crowdfunding platforms often cover all expenses related to the transaction of payments, making it almost risk-free for prospective funders.

The cooperation with existing financial institutions (banks, payment providers) and the focus on the facilitation of money (and not re-investing unused money) helps to avoid facing the regulation as a financial services provider.

Crowdfunding platforms without financial rewards, but with immaterial or material rewards of any other kind, usually take few measures to ensure that rewards are being paid. They rely on the crowd to identify possible attempts to fraud.

The case is different for crowdfunding platforms with financial rewards. Some platforms, such as the British music crowdfunding platform SlicethePie force the musicians to enter into a contract with the funders to produce a funded music album.⁴⁸

Furthermore, as will be discussed in chapter 3.4, regulation concerning investment protection for business startups exist and affects the functioning of these specific crowdfunding platforms. But in general, the higher the level of financial returns, the more efforts are undertaken by the crowdfunding platform to ensure that rewards are being returned.

⁴⁶ An 'escrow account' is a deposit or fund held in trust or as a security, and which can take effect only when a specified condition has been fulfilled.

⁴⁷ <https://www.buzzbnk.org/StaticPages/FAQ.aspx>

⁴⁸ <http://www.slicethepie.com/About/Legal.aspx>

3.2 Crowdfunding regulation and copyright schemes

3.2.1 Copyright and immaterial goods

Since crowdfunding in essence involves pitching an idea to a broader base of people, copyright regimes are applicable to almost all crowdfunding platforms. Most crowdfunding projects start as ideas – maybe an idea for a movie or a theater play.

Ideas are not protected by copyright legislation in most countries. In most countries, both with case law systems and statutory law systems, a certain threshold of originality needs to be reached before a copyright can be claimed on an immaterial good. In Germany, this concept is called “Schöpfungshöhe”, but it has equivalents in almost all European copyright laws and can be found in European directives on copyright as well.

However, when pitching a project to a broader audience, the success is based mostly on how feasible a project is deemed to the funders. A movie that only exists as a broad outline has little appeal to prospective funders and therefore has little success in gaining the necessary budget on crowdfunding platforms.

In contrast, if a project owner displays too much information on the funded project, other people might imitate the project and claim commercial exploitation rights before the initial project has been fully funded. An author who wants to crowdfund a book might display an outline for a plot which might be so appealing that someone else, maybe a movie producer can use this generic idea to create an own movie outline.

This dilemma is often solved by five approaches⁴⁹:

- a) Focusing on the producer reputation, with reference to earlier produced work
- b) Using copyrighted material produced for teasers and trailers
- c) Generating project ideas which are beyond the threshold of originality
- d) Generating immaterial goods specifically for the public realm
- e) Securing copyrights or patents for the ideas

These approaches are outlined below.

3.2.2 Author reputation, usage of copyrighted material

Most crowdfunding projects rely on the specific reputation of the producer to implement the project. A music album produced by a band or a group of musicians that can be

⁴⁹ <http://www.ikosom.de/2011/04/15/crowdfunding-und-urheberrecht-sind-ideen-geistiges-eigentum/>

rarely implemented by any other set of musicians, because the fans directly fund a musician not necessarily because of the idea behind a music album, but more because of the reputation gained by the artist.

Similar principles of adherence to reputation can be found in many other parts of the creative industries: books which only have a value if written by a particular author, movies only made with a specific set of producers and actors, or theatre performances with a specific cast are examples of artist-linked crowdfunding projects.

Often earlier work which already has crossed the threshold of originality is used to bolster the reputation of the artist. For instance, attempts to crowdfund new publications based on journalism are often supported using earlier articles and publications by the author.

A majority of crowdfunding platforms require teaser videos or similar visuals to describe a project to the prospective funders. These pre-produced teaser videos are often already quite professional – early cuts of movies, digital effects or sound effects are used to give the audience an imagination of the movie. These videos pass the threshold of originality easily.

Other forms of using copyrighted material when pitching crowdfunding projects are logos, titles and designs which have been used for the specific projects. The creation of such visuals can help to substantiate a copyright claim, but cannot prevent the theft of ideas when pitching them to an audience.

Another way of preventing the theft of ideas is to establish proof of the threshold originality. Movie makers, who wish to pitch a script to production companies, already sent a sealed copy of the script by mail to themselves before in order to prove that the script existed before it was made public.

The usage of material within one's own copyright and the development of an artist's personality contribute to crowdfunding projects which as a whole have crossed the threshold of originality. Therefore, most crowdfunding projects in the creative industries have very little to fear from the theft of ideas.

The authors of this report are not aware of any instance where an unsuccessful crowdfunding project was afterwards copied by another artist. While crowdfunding platforms are used by traditional companies in the creative industry to recruit new talent, there have been no instances yet where a major corporation has stolen an idea from a crowdfunding platform.

3.2.3 Creating immaterial goods for the public domain

Crowdfunding can also be used to generate immaterial goods where idea theft plays a minor role. For instance, the German music crowdfunding platform [sellyourrights](http://www.sellyourrights.de/)⁵⁰ allow musicians to sell their distribution rights to their fans. Other platforms strive to release newspaper articles, books or movies into the public domain.

Crowdfunding projects which had the sole intention to release immaterial goods into the public domain can be found at almost all platforms. At the US based platform Kickstarter, a project was funded that aimed to record classical music and release it into the public domain.⁵¹

While creating goods for the public domain necessitates no additional legislation other than the current copyright regimes, legislative issues occur when license distribution systems clash with crowdfunding principles. The music crowdfunding platform [sellyourrights](http://www.sellyourrights.de/) was sued by the Germany performance rights institution GEMA. GEMA claimed that artists were not able to release their music into the public domain if they were members of GEMA.⁵² Similar conflicts with copyright collection societies are bound to emerge if the legislation around copyright regimes is not modernized.

3.2.4 Patents

In addition to copyright issues, patent issues arise in connection with crowdfunding. Copyrights are conferred to crowdfund projects as soon as published if the threshold of originality has been passed, while patents have to be applied for. This application process is costly and time-consuming and is only applicable to inventions and prototypes. Therefore patents are not an issue for most crowdfunding platforms.

However, crowdfunding platforms which are organised for funding business start-ups have to deal with patent issues. Many start-ups are based on patented innovations. This has led crowdfunding platforms to require project owners to have fulfilled patent applications before pitching their start-up to prospective investors.

Even for start-ups not involving patents, the requirements for launching a project aimed at investors are substantially larger. Many crowdfunding platforms require completed

⁵⁰ <http://www.sellyourrights.de/>

⁵¹ <http://www.kickstarter.com/projects/293573191/open-goldberg-variations-setting-bach-free> and

<http://www.kickstarter.com/projects/Musopen/record-and-release-free-music-without-copyrights>

⁵² <http://blog.sellyourrights.org/?p=252>

business plans. These business plans are considered to have crossed the threshold of originality as well, which give them certain protection when it comes to idea theft.

3.3 Crowdfunding regulation and taxation

Crowdfunding is a means to receive income on services and goods, therefore crowdfunding is subject to taxation in all countries of the European Union.

There are three main areas of taxation covering crowdfunding:

- sales tax or value added taxes
- income tax
- capital gains tax

3.3.1 Value added tax

In almost all European countries, various levels of sales tax (or value added tax) exist. Since crowdfunding with non-financial rewards involves the sale of services or goods to the funder, sales tax is applicable.

Most platforms make the project owners aware of the fact that they are responsible for paying the appropriate taxes. However, especially for the project owners, this fact is often not as clear. Several factors make the calculation of the appropriate tax volume difficult.

Firstly, while the initiator of a crowdfunding project is often one individual or a group of persons, the crowdfunding project benefits a large variety of entities with different tax status. Benefactors of a crowdfunding project can be a non-profit organisation which is exempted from sales tax, unless it undertakes a commercial business. Benefactors can be individuals as well who have earnings below the sales tax threshold. Benefactors can be individuals as well as companies who have to pay sales tax.

Secondly, rewards are often a mixture of services, goods, donations, sponsoring and investments. For instance, a reward for crowdfunding a book could be: a copy of the book, a thank you note on the book cover, a t-shirt and a percentage of the books sales. In some tax codes, for instance in Germany, all of these have different rates of tax sales - from 0% to 19%. Furthermore, since the rewards mix all of these items, it is difficult to assess the price for each individual item. For instance, the copy of the book would be sold at the market price of the good.⁵³

53

http://www.boersenverein.de/de/portal/6_Crowdfunding_in_der_Buchbranche_rechtliche_Fallstricke/4420
56

3.3.2 Income tax and Social Security

Crowdfunding generates an income to the project owners. This income is subject to taxation as well. Just like with sales tax, there can be different benefactors of a crowdfunding project.

If a crowdfunding project supports an individual's work, then the crowdfunding money is subject to income tax and sometimes social security payments. Most crowdfunding owners forget to calculate their budget with the expenses. They simply use the received funds to finance their projects.

For corporations with a separate tax status the issue is a little bit less difficult. Then all incoming money is subject to sales tax, and income tax only applies if the project is profitable.

Many crowdfunding projects with non-financial rewards are functioning in a grey zone of taxation. Neither income tax nor social security payments are included in the calculation. Often this is supported by the misunderstanding that the funds generated by the crowd, support particular expenses of a project, while in fact the funds are linked to a person's work.

In some countries, further issues arise for people working in the creative industries. Some countries (Germany, Austria to some extent) have special social security systems for people working in the creative industries. The unclear nature of income through crowdfunding can pose questions on the level of income, which then questions their status in these social security systems.⁵⁴

3.3.3 Capital gains taxes

The issue of Capital Gains taxes is somewhat less unclear when it comes to crowdfunding with financial rewards, such as for business start-ups. Here all funds are investments, and therefore the standard capital gain taxes apply when receiving investments and paying rewards.

3.4 Crowdfunding regulation and investors' protection

Most crowdfunding initiatives in the creative industries take place in the forms of donation-based crowdfunding coupled with non-financial rewards, such as CDs or T-

⁵⁴ <http://www.science-texts.de/news/neues-ueber-uns/andrea-kamphuis-beim-buchcamp-2011.html>

Shirts. However, crowdfunding is also used to describe various processes inviting potential investors to start-ups and early financing of businesses

For example, the German platform Seedlounge⁵⁵ has the aim to bring start-ups together with potential investors (VCs or Business Angels) by setting up events where start-ups can pitch their business case. Sometimes the term crowdfunding is also applied to these events, however they present no new challenges to legislation, because they simply facilitate the traditional investment into start-ups and take no liability for any of the business relations which originate at the event.

3.4.1 Cross-border access to business crowdfunding

In Europe the existing national legislation covers start-up funding in a number of ways. For instance, legislation in all European countries governs the requirements for setting up various types of companies, from limited liability companies to publicly-traded companies. The European Union has attempted at various times to create a single norm for these companies, the most notable being the Societas Europaea (SE) creating European stock companies.⁵⁶ The norm most applicable in the context of crowdfunding is the directive to create a European Private Company.⁵⁷

The reason for creating a European norm for the legal status of small and medium-sized companies is clear: at the moment, each European country has a different set of rules for the capital requirement, the liability distribution among the owners, the requirements for transparency, accounting and investor protection. While it is possible for a citizen of the European Union to open a private company in another jurisdiction, the different jurisdictions make cross-border access to investments a time-consuming and expensive undertaking.

Crowdfunding platforms so far have not been able to solve this problem of cross-border access to investments. In fact, some crowdfunding platforms make investments outside of their own jurisdiction impossible in order to avoid the legal hassle of dealing with non-domestic investors.

The Swiss platform investiere.ch does not actively address non-Swiss investors. They even decline website access to citizens of certain countries, e.g. the U.S. and restrict access to accredited investors in certain countries, e.g. Germany in case where there is not a prospectus for the relevant investment proposal.

⁵⁵ <http://seedlounge.com/>

⁵⁶ <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/04/235&format=HTML&aged=0&language=en&guiLanguage=en>

⁵⁷ http://ec.europa.eu/internal_market/company/epc/index_en.htm

Most platforms, such as the British crowdfunding platform crowdcube.com restrict the initialisation of crowdfunding projects to citizens of the country in which the platform is registered.

Some crowdfunding platforms are willing to attract European customers outside of their country. The British crowdfunding platform Buzzbnk stated:

*Buzzbnk is developed for primarily UK based ventures although we will accept organizations registered in other countries under certain criteria.*⁵⁸

Other crowdfunding platforms have created replicas of their original site in other legal domains. For example, the German crowdfunding platform startnext.de created startnext.at for the Austrian market.⁵⁹ Some platforms, such as Indiegogo, already attract projects from all over the world. However, these are all platforms without financial rewards - the platforms with financial rewards still have to become international.

3.4.2 Domestic access to business crowdfunding

The main focus of crowdfunding platforms for business-start-ups is to make it easier for domestic investors to find and fund start-ups. Most countries limit public access to investments, because they want to protect their citizens from fraud. In the United States, for instance, only wealthy individuals with a net income of more than 1 Million US-Dollars can invest into companies which are not listed publicly.

In the European Union, the Financial Services Action Plan provides the groundwork for the regulation of investments.⁶⁰ Following the Prospectus Directive, a prospectus⁶¹ must be created for any companies attracting investments from a certain amount of people or over a certain financial volume.⁶² There are however a number of limits to this prospectus duty.

For companies with limited liabilities, an exemption holds for a maximum 20 shares or for shares with a minimum value of 200.000 Euros per share. Another exemption holds when the offering of shares only applies to companies or entrepreneurs. A third exemption holds when the circle of investors is very closed. Crowdfunding for business platforms violates all three exemptions, because the offering is public for private people

⁵⁸ <https://www.buzzbnk.org/StaticPages/FAQ.aspx>

⁵⁹ Wenzlaff, Karsten (2011). Deutschsprachige Crowdfunding Plattformen im Überblick. Available at: <http://t3n.de/news/deutschsprachige-crowdfunding-plattformen-blick-318076/>

⁶⁰ Lee, Kwangwook, Investor Protection in European Union: Post FSAP Directives and MiFID (February 7, 2009). Available at SSRN: <http://ssrn.com/abstract=1339305>

⁶¹ A prospectus is a document that describes a financial security for potential buyers.

⁶² http://ec.europa.eu/internal_market/securities/prospectus/index_en.htm

investing considerably less than 200.000 Euros and often selling more than 20 shares.⁶³

For start-ups with tradable securities (stock companies), a prospectus is not necessary if the securities can only be obtained by qualified investors (ie institutional investors) or have a minimum price of 50.000 Euros per share.⁶⁴ Both exemptions are difficult for start-up companies.

Crowdfunding platforms have to strike a balance: on the one side, they want to allow start-ups on their platform to reach a certain financial volume, on the other hand they want to reduce the amount of paperwork that a start-up has to do submit before creating a funding project on a platform.

Therefore, the crowdfunding platforms for business-startups either limit the projects so that a prospectus is not necessary, but, then require a business-plan for the project. Or they force the start-ups to generate a prospectus. Oliver Rappold, a lawyer in Switzerland describes, the situation for the Swiss crowdfunding platforms:

In Switzerland, in connection with crowdfunding models the following laws have to be observed: the banking and securities trading law (Banken- und Effektenhandelsgesetz - BEHG), the Collective Investment Schemes Act (das Kollektivanlagengesetz - KAG), the Money Laundering Act (Geldwäschereigesetz - GWG) and the Consumer Credit Act (Konsumkreditgesetz - KKG). Without careful structuring of the platform, there is a substantial risk of a permit [...]. For example, the platform may not operate as a fund. Even the trading of shares of funded projects is prohibited.

The platform may however act as a mediator and bring together the crowd and the projects. Regardless whether shares or bonds (debt financing) are issued, a company has to strictly observe the guidelines for public offerings and issue a prospectus. This can lead, especially for start-up companies or projects, to problems.⁶⁵

The crowdfunding platforms however are required to use caution when allowing projects on their platform, as Oliver Rappold describes:

Another legal issue is the role of the platform in the selection and appraisal of projects ("due diligence"). With regard to the logic of crowd funding is to be noted that the donor

⁶³ VerkPG; <http://www.legislation.gov.uk/ukpga/2000/8/section/86>

⁶⁴ WPPG; <http://www.legislation.gov.uk/ukpga/2000/8/section/86>

⁶⁵ Rappold, Oliver (2011). Wagniskapital aus dem Internet - «Crowdfunding»-Plattformen sollen bei der Finanzierung von Jungunternehmen helfen. 20. Juli 2011, Neue Zürcher Zeitung. Available at: http://www.nzz.ch/finanzen/nachrichten/wagniskapital_aus_dem_internet_1.11511870.html

is himself responsible for the investment decision and waived in the interest of efficiency, a detailed examination on the part of the platform or third parties.⁶⁶

The crowdfunding platforms for business start-ups face a dilemma: on the one hand, they are required to examine prospective projects, on the other hand they are not allowed to give any specific advice to the prospective funders. Yet one could argue that already the pre-selection of projects is an advice to fund a company.

3.4.3 Crowdfunding platforms and investment consulting

The consultation of investors on investment objects is applicable to financial legislation. Consultation on financial investments can lead to a liability if investments deteriorate, thus in most countries, financial advisers have to register with the financial supervisory institutions.

Crowdfunding platforms for business startups can also fall into the realm of financial advisory legislation.⁶⁷ Therefore most crowdfunding platforms try to avoid giving recommendations on the pitched business platforms.

3.4.4 Crowdfunding and domestic registration

In some countries, crowdfunding activities have to be registered with public authorities. In Poland, according to a crowdfunding expert, there is a law on public collections:

[The law] orders nationwide public collections to have permission of the Minister of Internal Affairs and Administration. This act was implemented when there was no Internet and few amendments didn't change it. It means, that public collections run through Internet should have the permission mentioned earlier, which doesn't make sense in crowdfunding platforms, due to big amounts of projects. [...]

There is an investigation against all crowdfunding platforms, that is meant to verify whether non-shareholder crowdfunding mechanisms are not a public collection. It was reported to Ministry of Internal Affairs and Administration by a citizen. No results yet. On the blog (<http://crowdfunding.pl>) there is an informational campaign "battle for crowdfunding", which is meant as an open debate about crowdfunding in Poland and progress in this investigation. No crowdfunding platform was shut down until now.

While charities and non-profits have to be registered in other European countries as well, we could not identify any instance in another European country where such registration led to the prohibition of a crowdfunding platform.

⁶⁶Rappold, Oliver (2011). Wagniskapital aus dem Internet - «Crowdfunding»-Plattformen sollen bei der Finanzierung von Jungunternehmen helfen. 20. Juli 2011, Neue Zürcher Zeitung. Available at: http://www.nzz.ch/finanzen/nachrichten/wagniskapital_aus_dem_internet_1.11511870.html

⁶⁷See for instance §1(1a)Nr.1aKWG

3.5 Crowdfunding and credit regulation

Peer-to-peer lending is another form of crowdfunding. Here credit takers and credit givers converge on crowdfunding platforms such as Smava and negotiate interest terms. The platform acts a mediator between lender and borrower, much like a traditional bank.

Therefore, European legislation on cross-boarder electronic payments apply as well (Regulation (EC) No 924/2009).⁶⁸ Just like the other crowdfunding platforms for channelling investments, peer-to-peer-lending-platforms work together with banks to avoid having to register as a financial service provider.

Nevertheless, the cooperation with a bank does not relieve the Peer-2-Peer Lending Platform from its responsibility as a credit broker. The situation is quite different in many European countries. In Germany, for instance, credit brokerage under certain conditions do not fall under the legislation of credit institutions (for instance if credit brokerage stays within certain limits of financial volume and credit risks (the default of the borrower) is not taken over on behalf of another credit institutions.⁶⁹

At the moment, peer-2-peer lending systems seem to be considered legal by financial supervisors. The British peer-2-peer lending platform wrote in their FAQ

We have reviewed our business model in detail with the FSA under the guidance of our lawyers, Bates Wells & Braithwaite, and the conclusion is that there are no activities which currently need to be regulated, including our service to introduce potential lenders (Backers) to borrowers (Ventures) for unsecured loans.⁷⁰

In contrast to traditional banking, peer-to-peer lending transfers the discretionary power over the lending of money to the crowd. Rather the bank manager makes an assessment on the validity of a loan-taker, but each individual loan giver makes its own assessment.

The loan-giver takes on a number of risks⁷¹, such as the default of the loan-taker and thus the inability to return the loan. Whereas a traditional banking system pools risks and thus spreads defaults across all people having an account with the bank, peer-to-peer lending systems credit risks are not spread. The assessment on the credit risk is reflected on the different interest rates that creditors have to take.

⁶⁸ http://ec.europa.eu/internal_market/payments/crossborder/index_en.htm

⁶⁹ Kreditwesengesetz, §1.1 Nr. 2 http://www.gesetze-im-internet.de/kredwgf_2.html

⁷⁰ <https://www.buzzbnk.org/StaticPages/FAQ.aspx>

⁷¹ http://en.wikipedia.org/wiki/Financial_risk

In addition to credit risk, lenders also face market risk. Market risk occurs when the economic situation of a particular market, e.g. the European Union, deteriorates and increases the probability of credit default of individuals, who otherwise would have been able to service their risk.

Peer-to-peer lending platforms make very little effort to minimize market risk. However, they are partnering with banks to avoid market risks:

Due to German regulation smava, which is a startup founded as limited company, had to partner with a bank. While there are different views on whether under German laws a banking licence is required to run a p2p lending platform or not, Smava chose the safe route by partnering with the 'Bank für Investments und Wertpapiere AG (BiW)'. This way deposits are secured by the German Einlagensicherungsfonds (deposit insurance or guarantee scheme).⁷²

Other crowdfunding platforms such as the British Buzzbank make the lenders aware that their loans are not secured:

Buzzbnk is a platform to raise social loans which means the primary purpose for backing a venture is the social outcome they seek to achieve and any financial returns secondary. The loans are not secured. [...] We encourage ventures to do more than just take donations and build a community of backers who can participate in their success and share this success with others. Thus we create a community which can "recycle" any financial returns towards other projects.⁷³

The British Peer2Peer Lending-Platforms have recently announced that they will form an association of platforms:

The Association's Rules and Operating Principles set out the key requirements for the transparent, fair, robust and orderly operation of peer-to-peer finance platforms and cover:

- 1. Senior management systems and controls;*
- 2. Minimum capital requirements;*
- 3. Segregation of participants' funds;*
- 4. Clear rules governing use of the platform, consistent with these Operating Principles;*
- 5. Marketing and customer communications that are clear, fair and not misleading;*
- 6. Secure and reliable IT systems;*
- 7. Fair complaints handling; and*
- 8. The orderly administration of contracts in the event a platform ceases to operate.⁷⁴*

⁷² <http://www.wiseclerk.com/group-news/uncategorized-smava-starts-p2p-lending-in-germany/>

⁷³ <https://www.buzzbnk.org/StaticPages/FAQ.aspx>

⁷⁴ <http://www.wiseclerk.com/group-news/countries/uk-peer-to-peer-finance-association-founded/>

3.6 Crowdfunding and data protection

Crowdfunding requires both the funder and the project owner to provide personal data, such as names, addresses and bank details. Therefore the platforms have to adhere to legislation on data protection and privacy, such as the European Directive on Privacy and Electronic (EC 2002/58).⁷⁵ National legislation such as the British Data Protection Act of 1998 apply as well. The platforms provide privacy outlines to show their compliance with this law.

Furthermore, some platforms allow anonymous donation to crowdfunding projects. These donations are not displayed in terms of value and donor. On the other hand, anonymous lending and anonymous investing are not used on crowdfunding platforms.

⁷⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002L0058:EN:NOT>

4. Final Reflections and Recommendations

On the basis of the analysis presented in sections 2 and 3, this section will present recommendations for potential regulatory and policy developments to the EU and to member states.

4.1 General reflections on crowdfunding

Crowdfunding has the potential to become an alternative form of early-stage fundraising for businesses in the creative industry. The responses received from the crowdfunding platforms and the crowdfunding experts across Europe indicate that they would like to encourage the European Union and its member states to actively embrace crowdfunding and adapt legislation to remove obstacles to cross-border access to crowdfunding investments.

Three potential benefits of crowdfunding are seen in :

- a) democratisation of cultural patronage and establishing new revenues for the creative industries
- b) support for innovative solutions and start-ups, allowing the traditional mediators to find successful artists and creatives
- c) creating transparency and legitimacy for public funding of the creative industries

4.1.1 Cultural patronage

The democratization of cultural patronage underlines the increasing role of individuals in funding culture and creativity. Crowdfunding enables European citizens to take an active role in funding creative products and ideas, but also in participating and shaping these products and ideas.

Therefore, the crowdfunding platforms would benefit from user-friendly regulation, meaning that European citizens who want to fund or invest in crowdfunding projects should have easy access to crowdfunding projects. When analysing the impact of the creative industry in Europe, policy-makers should take into account crowdfunding - both when designing support programs and legislation.

4.1.2 New role for the mediators

Crowdfunding allows the traditional mediators in the creative industries to establish new sources of revenue. Crowdfunding should not be seen as a replacement of music

labels, publishing houses, movie production companies or venture capital firms, but as an opportunity to bridge the gap of early-stage fundraising.

Traditional mediators can use crowdfunding to find new artists which might have established an audience already, but have not found a company to develop their commercial success. Therefore any attempts by the traditional mediators to maintain or implement barriers should be opposed by European policy-makers. Crowdfunding does not pose a threat to the business model of traditional mediators.

The Bielsko-Biala declaration, to be adopted by the by the EURADA⁷⁶ conference⁷⁷ in November 2011 confirms the notion that crowdfunding can serve as a litmus test for ideas:

The main public purpose [of crowdfunding] should be to give, to all would be entrepreneurs, the possibility to demonstrate commitment, involvement and market grid, to access to later stages of investment. To allow this, the needs of other investors/stakeholders that could intervene in a second stage, must be taken into proper consideration.⁷⁸

The traditional publishing industries may benefit from crowdfunding if they can adapt to a new way of communicating directly with the audience.

4.1.3 New paradigm for public funding

For public institutions, crowdfunding could be used as a mechanism for demonstrating project relevance for the audience, thus creating a new legitimacy for funding decisions made by public institutions. For instance, in many countries, public institutions support the production of movies. The decision about which movies are funded are made by small groups of people. Crowdfunding provides an additional input to this decision-making: e.g. movies that have been successfully crowdfunded could be taken into account by the public funding bodies as well, because they clearly have attracted the attention of a certain audience. To avoid the risk of populist decisions, this should be only one of several criteria guiding public funding decisions and be weighed against other public objectives.

The key to legitimacy and transparency is the 'pledge to unfiltered co-financing' of crowdfunding projects. Public institutions could set aside a certain sum and co-finance

⁷⁶ http://www.eurada.org/site/files/agorada%20folder%20a4_19_07.pdf

⁷⁷ Bielsko-Biala's Regional Development Agency will be organizing Europe's largest event for economic developers in November 2011. The topic of AGORADA 2011+ will be "New strategy for regional development: Smart Specialization on the road to the implementation of the European Strategies 2020"

⁷⁸ <http://www.eurada.org/site/files/Bielsko-Biala%20Declaration.pdf>

crowdfunding projects through a matching grants model if the crowd also contributes a requested sum. Which projects are funded is then the decision of the crowd.

The Bielsko-Biela declaration states that:

Public authorities should be interested in seeing the development and launch of such a tool in all regions as it meets the needs of a lot of stakeholders either in the private or in the social sector. [...] Member States, regions and cities are invited to consider the wider use and promotion of crowdfunding with the objective of supporting all forms of creativity and innovation with a strong societal impact in a cost-efficient way, especially projects with small size or local interest, and reducing the asymmetry of information and matchmaking opportunities between innovators and would be entrepreneurs on the one hand and between investors, sponsors or donors on the other hand.⁷⁹

Crowdfunding could innovate the traditional public funding regime where money seekers send complicated applications to funding bodies like the European Commission or national authorities, which then decide in a top down approach.

It could be an interesting option to combine crowdfunding with traditional public funding. One could imagine a system where project initiators have to prove that they have a community behind them willing to support their project financially as well as in other ways.

Crowdfunding enables linkage of the pitched project with the target group and provides an indication for the sustainability of the project. Even the project outline could be refined through a crowdsourced process as many platforms allow or even encourage people to contribute their talent or ideas to the project. Starting a crowdfunding project means starting a communication process. Establishing communication around a project is the kickoff for the dissemination of project results at a later stage.

Steffen Hartmann from the blog www.crowdfunding-deutschland.de indicates that crowdfunding generates a change of paradigm with public funding:

Crowdfunding thus achieves a paradigm shift to a different level. It is a departure from the previous expectation towards the "public hand" as a "sprinkling system" for money. Instead of the passive role as a receiver of money and applicant, the three basic rules of crowdfunding apply: Discuss - connect - act. "We make it ourselves" is the healthy response of mature citizens. Either he takes his future in the hand, or he leaves the decisions to the arbitrariness of the decision makers.⁸⁰

⁷⁹ <http://www.eurada.org/site/files/Bielsko-Biala%20Declaration.pdf>

⁸⁰ <http://www.crowdfunding-deutschland.de/post/5865632212/crowdfunding-das-nachhaltige-business-2-0-modell>

This could work on the European level as well. Decisions about funding projects could be (partly) outsourced to the crowd⁸¹, which would then create a greater participation of European citizens in the implementation of the budget of the European Union.

Crowdfunding could be mentioned as one of the sources of co-financing required for most funding programmes of the European Union. Project applicants could demonstrate commitment by raising money through a community. The aspect of participatory financing of a project contributes to the European political objective to strengthen active citizenship⁸² and a participatory society.

The combination of crowdfunding and crowdsourcing (shaping a project by many people) can lead to more sustainable and successful ventures. Especially the creative sector could serve as a role model in this regard.

4.2 Creating a European crowdfunding debate

While crowdfunding has been a trendy topic all across Europe, a European-wide debate on crowdfunding is still in an early stage. There are some blogs⁸³ which help to gather information about the developing crowd-businesses and platforms. However, most blogs on crowdfunding, crowdsourcing or peer-to-peer-lending only address an audience within a specific language realm, for instance German-speaking crowdfunders.

The creation of a European public debate on crowdfunding is also the aim of the Bielsko-Biela Declaration:

*The Bielsko-Biela Declaration proposes general guidelines for the support of crowdfunding by Member States, Regions and Cities in order to fully realise the potential of that funding source. It encourages the EC to develop a collaboration framework and knowledge exchange system that facilitates access to information on this new industry and promotes the adoption of common regulations at national level.*⁸⁴

This was also a request put forward by many crowdfunding experts which we interviewed. One expert suggested that the European Union to install a dialogue on crowdfunding with the crowdfunding platforms:

⁸¹ Compare James Surowiecki "The Wisdom of Crowds"
<http://www.randomhouse.com/features/wisdomofcrowds/>

⁸² See e.g. http://ec.europa.eu/citizenship/how-to-participate/doc485_en.htm

⁸³ For instance: <http://www.crowdsourcing.org/> which features discussion on crowdfunding and crowdsourcing.

⁸⁴ http://www.eurada.org/site/files/agorada%20folder%20a4_19_07.pdf

Allow certain best practice model and engage in conversations with the platforms that have fitted their constructions in the current legislation.

The following ideas came up:

- a) Creating a European network on sharing crowdfunding expertise;
- b) Convening a meeting of crowdfunding platforms, crowdfunding experts with policy-makers at the European Commission and the European Parliament;
- c) Funding research and creating guidelines for crowdfunding platforms.

Especially the latter point is also stressed in the Bielsko-Biela Declaration:

Crowdfunding initiatives should be better understood to facilitate a large acceptance. This new sector should be subject to regular surveys intended to collect information regarding the take up of this funding mechanism in Member States, by sectors and types of funding (microcredit, loans, equity, donations). Such data will be useful to demonstrate the importance of the initiatives and to set up benchmarks at national/regional and at crowdfunding provider level.⁸⁵

With this document, we aim to provide a first list of people and platforms to approach (included at the annex) for these measures.

4.3 Recommendations on regulation

4.3.1 General aims for the European Regulation

As discussed in chapter 3, legislation that is relevant for crowdfunding platforms covers various areas of regulation. Therefore recommendations have to address each specific field separately. However, the overarching recommendation by the crowdfunding experts was to apply regulation with caution:

Generally, regulators should also accept new Internet era models in finance, because they can actually make the market more transparent and effective. More complex regulation actually creates more complex instruments that actually can create more risks, when they increase speculation and make more difficult to evaluate impacts.

The Bielsko-Biela Declaration also states:

EU and national administrations have to ensure a minimum of professionalism and regulation for crowdfunding activities, but to avoid some of the constraints of any Financial Act (drafting and publicizing a prospectus, ...). The selection by a public

⁸⁵ <http://www.eurada.org/site/files/Bielsko-Biala%20Declaration.pdf>

tender of managing bodies with the capability of selecting potential fast growing and impactful projects is suggested. They also have to ensure and facilitate the development of transnational deal flows and to promote the creation of a favorable legal framework that allows transnational crowdfunding deals. Moreover if a regulation is needed, public authorities should put in place measures that keep the transaction costs as low as possible, mainly during the launch phase. The administrative procedures and control mechanisms should be proportional to the size and type of the funding required.⁸⁶

These recommendations already hint at the main issues for future crowdfunding regulation

- a) transnational payments and transaction costs
- b) transnational deal flows and publication duties (prospectus)
- c) registration of crowdfunding platforms

The platforms joined in the Declaration have expressed the hope that European norms can help to avoid and offset unnecessary national regulation:

The European level can play a role in avoiding the adoption of disturbing framework conditions by national authorities as well as in pointing out national and regional relevant practices to support a wide dissemination of the concept and its benchmark.⁸⁷

4.3.2 Regulation as a competitive advantage

The European regulation on crowdfunding is in competition with the regulation of other legislative spaces, mainly the US regulation on crowdfunding.

Kickstarter and Indiegogo are two platforms that illustrate the power of the crowdfunding principle with non-financial rewards. Both were funded by private investors in the US. Curiously, there is no major platform in the US which facilitates crowdfunding investments. A number of platforms have tried to start such a platform, but essentially through regulation they have been forced to considerably change their business model.

The reason for this is that crowdfunding investments are deemed securities according to US regulation. Platforms that deal with securities are deemed securities brokers. Both activities are subject to regulation.⁸⁸

⁸⁶ <http://www.eurada.org/site/files/Bielsko-Biala%20Declaration.pdf>

⁸⁷ <http://www.eurada.org/site/files/Bielsko-Biala%20Declaration.pdf>

⁸⁸ See for instance the reasoning at <http://www.theselc.org/programs/community-supported-entrepreneurship/>

As in Europe, the primary goal of US legislation is to protect investors from fraud. Yet it seems that unlike in Europe, the legislative barriers for creating crowdfunding platforms for business start-ups in the US are much greater. The existing US crowdfunding platforms restrict their investments to sophisticated investors.⁸⁹

This however makes it difficult for start-ups to get funding from a limited number of people with small share value. The regulation even makes it illegal to raise money through the Internet for any cooperative investment decision, as shown by the recent case⁹⁰ to obtain a Brewery via the Internet:

It seemed like an innovative way to buy a beer company: Start an online campaign to purchase the iconic Pabst Brewing Co. and sell shares on Facebook and Twitter to cover the \$300 million cost. Michael Migliozi II and Brian William Flatow found 5 million people who said they would invest a total of \$200 million. But the federal government halted the venture after it informed the two men of one major oversight — they neglected to register the public offering with the Securities and Exchange Commission, a violation of federal law.

The SEC says it reached a settlement with the two advertising executives. The men agreed to stop selling shares to the public. The case spotlights a growing challenge for regulators to patrol the Internet for business ventures.⁹¹

The US regulation makes it difficult for funders to invest into start-up without taking the route through a bank-managed investment funds or a venture capital firm. At the same time it strengthens the large venture capital industry. In Europe, the venture capital industry is comparably smaller than in the US, therefore in Europe at the moment there is a much more cooperative stance between venture capital industry and the emerging crowdfunding industry.

It should be noted that there are significant efforts in the US to ease the burden on crowdfunding for start-ups. A petition supported by prominent journalists, venture capitalists, entrepreneurs, politicians and even actors (Whoopi Goldberg) is aiming to change the SEC rules concerning investment for small business.⁹²

The main US regulatory changes are:

- a) Creation of “funding windows” for small business (companies with average annual gross revenue of less than US-\$ 5 million) of US-\$ 1million
- b) Each investor can only invest a maximum of US-\$ 10.000
- c) Eliminate the current limit of 500 investors for non licensed public offerings

⁸⁹ <http://blog.p2pfoundation.net/opening-up-crowdfunding-as-a-mechanism-for-equity-investment/2011/04/14>

⁹⁰ <http://www.startupexemption.com/?p=110>

⁹¹ <http://www.moneynews.com/Markets/US-Beer-Campaign/2011/06/08/id/399323>

⁹² <http://www.startupexemption.com>

- d) Eliminate the requirement to register as a securities broker with FINRA (the supervisory authority commissioned by the SEC for the dealing with securities trading)
- e) Exempt those crowdfunding investment from state law registration requirements⁹³

The petition initiators have been able to speak in front of a congressional hearing⁹⁴ and it is likely that changes will be made⁹⁵. For the European Union, this means that the comparative advantage of having a number of working crowdfunding platforms for business start-ups will diminish.

The European Union also has to ensure that there is competitive legislation on crowdfunding in the European Union. Crowdfunding needs scalable growth and therefore cross-border access to platforms is a key to its success. There is no doubt that the US crowdfunding platforms for non-financial rewards have drawn such a large audience because of the size of the American market.

One expert had the following thoughts on this:

Regulatory frameworks will always influence design. It does not matter if it is taxation of land that pushes creativity within architecture or if it is national taxation law that pushes idea generation around crowdfunding systems.

Even though that there has been a homogenisation of regulation in Europe due to the EU there are still many unique national particularities. I guess this will generate a large number of innovations the upcoming years all claiming that they are solving some specific national issue. Is this good or bad?

From my point of view it is kind of bad since all these models are sensitive to scale. But if we want to have a competitive edge in this industry (internationally), that is dependent on big amounts of micro transactions, we will need to see a consolidation to a pan-European thinking around the modelling and implementation or there will be many small not for profit initiatives around never really taking off.

Otherwise history will repeat itself. Kickstarter with its initial market of 300M potential users has 22 employees and 10 large institutional investors when it is time for them to go overseas they will buy 27 national players very easily. There is already one copycat in each European country preparing this to happen. If we believe that there are other strategies to funding that also could be interesting to develop, based on a European tradition of thought, we need to simplify cross-boarder activities.

⁹³ http://www.startupexemption.com/?page_id=9#axzz1WvTjB1lv

⁹⁴ <http://www.startupexemption.com/?p=89>

⁹⁵ See this article in the Wall Street Journal about upcoming regulation reforms: <http://online.wsj.com/article/SB10001424052748704843404576251160999848924.html>
See this blogpost by the Peer2PeerFoundation about upcoming regulation reforms: <http://blog.p2pfoundation.net/opening-up-crowdfunding-as-a-mechanism-for-equity-investment/2011/04/14>

The aim is to create a pan-European crowdfunding regulation that stays competitive vis-à-vis the United States, but harmonises the crowdfunding market in Europe without hindering innovation.

4.3.3 Adequate regulation

A large number of experts and platform owners cited the necessity to adopt legislation for the different crowdfunding purposes. As one expert mentioned:

A clear regulatory distinction should be made between crowdsupporting (giving money, without reward), crowdfunding (investing for benefits) and peer-to-peer lending initiatives.

The main differentiation should be:

- a) the purpose of the crowdfunding project (business, creative, political, social)
- b) the aim of the funder (donation, non-financial reward, financial reward, return of loan)
- c) the underlying tax regime (for profit, non-profit)

Based on this structure, regulation for crowdfunding will be different for each type of crowdfunding. This would result in *consistent policy regarding 'providers' of CF platforms*, as one expert noted.

Based on this structure, different requirements will be set out for the project owners, the project itself, the funder and transactions between the funder and the project owner.

All crowdfunding platforms have in common issues of registration and transparency. The platform owners mentioned that platforms should be registered with financial authorities. Experts said that the platforms need to be fully transparent about the crowdfunding projects:

- Aim of a crowdfunding project
- Person or company benefiting from the project
- Type of rewards
- Transaction costs

Platforms should also co-operate with research institutions in providing data about the projects, such as the success rate of projects. The German Crowdfunding Facebook

Group⁹⁶ argued that platforms should also have to continue to display unsuccessful projects. Some platforms, among them the German crowdfunding platform pling⁹⁷, are hiding projects not successfully financed. This however gives a false impression to prospective project owners.

The experts suggested to develop a pan-European “trust certificate” which would be given to crowdfunding platforms. Platforms that have registered and fulfil certain standards of financial transparency and investment protection would be given that “trust certificate”.

4.3.4 Recommendation on electronic payments regulation

Since crowdfunding platforms often co-operate with providers of electronic payments or with banks, the only recommendation mentioned by crowdfunding platforms is to further harmonise transactions in the Single European Payment Area (SEPA)⁹⁸.

4.3.5 Recommendation on copyright regulation

As discussed earlier, the general applicability of copyright to the funding of immaterial goods does not seem to be of great concern to crowdfunding projects. Legislative effort however is needed to solve the conflict of crowdfunding and licensing of immaterial goods, such as movies and films.

Crowdfunding experts mentioned that the European copyright regime makes it very expensive and time-consuming to obtain the rights to distribute pieces of art, especially across the border. The experts said that the European copyright regime should be simplified - for instance the idea came up to create a very simple licensing system for commercial creatives, very similar to the Creative Commons licensing system.⁹⁹ The following remarks should be taken into account in the broader context of the existing EU Copyright Directive, and the difficulties involved in introducing changes to it.

The crowdfunding experts indicated that the current copyright regime is based too strongly on copyright collection societies - which sometimes feel threatened since their monopoly on managing copyrights for artists diminishes.

As Andrea Kamphuis, one of the crowdfunding experts stated she would like to see:

Reshaping the tasks of the Verwertungsgesellschaften (copyright collectives) to allow artists to exempt certain works from the 'Wahrnehmungsvertrag' - i. e. set free certain

⁹⁶ <http://www.facebook.com/groups/crowdfunding/>

⁹⁷ <http://www.pling.de/>

⁹⁸ http://ec.europa.eu/internal_market/payments/sepa/

⁹⁹ <http://creativecommons.org/>

works in co-operation with a crowdfunding platform according to the street performer protocol.

Therefore legislative efforts are needed to allow crowdfunded material to enter into the public domain if the artist wishes to do that.

4.3.6 Recommendation on tax regulation

In the areas of taxes, which continues to be exclusively in the domain of the Member States, legislative efforts are needed most.

For crowdfunding platforms offering no financial rewards, it is still necessary to resolve issues related to the necessity of filing a sales tax report when starting a crowdfunding project.

An issue that came up in the interviews with the crowdfunding platforms was the tax status of the platforms themselves. One expert suggested to use the different approaches of regulation to distinguish different tax duties:

The recommendation regarding regulating platforms that provide a crowdfunding based service is: first separate them between profit and non-profit, with easier access to non-profit status that, in Portugal, provides fiscal benefits to potential sponsors that platforms seek in order to finance their functioning. The profitable ones are a normal business and are regulated by general fiscal law.

Another expert stated:

A tax and VAT exemption so that either the start-ups and the funders will not have an issue in terms of tax and VAT. Both in the matter of actual funding amount, but also when it comes to rewards/perks. A maximum funding amount for the funders and the project could be set to avoid misuse of the crowdfunding system to obtain tax free transactions.

Exemption from VAT is still a matter of the EU Member States. There is however a great confusion among crowdfunding platforms on the applicability of this tax exemption. The German crowdfunding platform startnext¹⁰⁰ has applied for a non-profit status and has been granted such a status.¹⁰¹ Other crowdfunding platforms in Germany are using a for-profit status, even though they function very similarly, the target group is almost the same and the design of the projects as well.

¹⁰⁰ <http://www.startnext.de/>

¹⁰¹ <http://www.startnext.de/Blog/Blog-Detailseite/b/Startnext-ist-gemeinnuetzig-und-streicht-die-Provis-252>

The issue of tax exemption is also relevant for start-up crowdfunding. A number of experts suggest tax exemptions for investments done via start-up crowdfunding, thus allowing the platforms to grow faster and reaching more investors. One expert stated:

Regulate the relation between entrepreneurs that create a project and supporters that fund a project, allowing small businesses to start this way more clearly, with fiscal benefits or exemptions for the collected funds in order to promote crowdfunding as a valid way to create new businesses and jobs.

From the feedback of the experts, tax exemptions were deemed more feasible for value added tax, income tax or capital gains taxes. Further research on this issue is necessary.

4.3.7 Recommendation on investors' protection

A recurring recommendation given by the crowdfunding experts and the platforms were Prospectus Requirement. Experts noted that in a number of European countries, the Prospectus requirement for crowdfunding project effectively hindered the development of a platform.

The experts interviewed suggested to create exceptions from the Prospectus directive for start-up crowdfunding projects. The exceptions could be applied to all crowdfunding platforms certified by a central agency or a similar mechanism, with upper limits on one or all of the following criteria

- a) Total volume of the investment per platform
- b) Total volume of the investment per project
- c) Total number of investors per platform
- d) Total numbers of investors per project
- e) Maximum share per investor per project
- f) Total numbers of projects on a platform

The experts also suggest certain minimum standards for investor protection, such as:

- a) Requirement to provide details of the business plan
- b) Requirements to provide details of ownership in the start-ups
- c) Requirements for the platform to deposit in an escrow account

The experts also confirmed that standardisation on the forms of enterprises in Europe is necessary, to allow transnational business crowdfunding to become more transparent.

One expert pointed to the fact that crowdfunding shares would still be accepted, traded and inherited, even despite lighter regulation:

It would give less protection to investors, than regulated securities markets, but with acceptance of this conditions should enable small projects to be crowdfunded. [...] A security-like crowdfunding certificate will allow to be traded on the second market, to be inherited and will provide an evidence of the investment. In my opinion special conditions in such investment will be acceptable by both investors and entrepreneurs, even if it won't be comparable with investing on regulated securities markets in case of investors safety, transparency and tax purposes.

Some experts suggest not to create a separate regulation for crowdfunding, but use existing regulatory institutions:

It is worth to think how to apply or change rules on investment funds, so that various "modern" equity financing models could work without the necessity to create a formal body. These areas of activity should be regulated, but because normally the amounts invested are not so big, the rules could be not so strict. The model of equity crowdfunding is also very similar to the KG model evolved in Germany in respect of shipping assets.

If investors would not have to be formally qualified, then this would also support cross-border access to crowdfunding:

For investors willing to invest more than €100 on a given project, we should have a very light qualified investor status, where people could register to a central database, and platform would require confirmation to the central database before accepting any investment from this investor. The EU could then set a level (e.g. €20K) that investors could not breach in a given year without obtaining a formal qualified investor status from a local authority.

In general, the hope was expressed that light regulation on crowdfunding could help to advance the European investment market:

Crowd funding should become the standard, not remain an exotic, marginal way of raising funds. [...] We have to liberate the marketing of financial products concerning privately-held companies. We have to allow these companies and the crowdfunding platform to market and promote more effectively the sales of their shares to people.

4.3.8 Recommendations on credit regulation

The complex nature of credit regulation in the European Union and the Member States makes giving recommendations on Peer2Peer lending systems quite difficult.

In general, peer to peer lending should not be prohibited per se, as one French expert stated:

In France, only Commercial Banks are allowed to lend money. Individuals are not allowed (A person may lend money but with very restrictive conditions. An individual cannot pay frequently, it can be pursued by commercial banks!), neither a crowdfunding platform. We have to liberalize this archaic system.

It seems that Peer2Peer Lending platforms have already initiated contacts with the credit regulation authorities in their countries. The British lending company Zopa has been in touch with the regulation authority:

Social lending is regulated by the Office of Fair Trading (OFT), whose job is to protect borrowers from unscrupulous lenders, but not the FSA [Financial Services Authority]¹⁰². Zopa says the sector's growth requires more checks to make sure new entrants are secure.

Giles Andrews, chief executive of Zopa, said he had spoken to officials at the FSA and to Mark Hoban, financial secretary to the Treasury before and since the election. He wants to see minimum capital standards, FSA approval of directors and checks on risk controls.

Mr Andrews said: "We are very keen for the FSA to put appropriate regulation in place for the peer-to-peer lending sector."

[...]

Mr Andrews said Zopa now has more than 1pc of personal unsecured lending and is on track to lend a total of £100m by the end of this year. Strict checks on borrowers had kept bad debts at an industry low of 0.7pc.¹⁰³

In addition to that, the European Consumer Credit Directive, which is focused on traditional lending and borrowing, applies to credits above 200 Euros.¹⁰⁴ It formulates expectations towards credit brokers and suppliers, which are costly and time-consuming to fulfill. Experts stated that there should be a branch-exception for micro-lending.

¹⁰² <http://www.fsa.gov.uk/> UK Financial Services Authority

¹⁰³ <http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/8012269/Zopa-calls-on-Government-and-FSA-to-regulate-social-lending-sector.html>

¹⁰⁴ <http://www.eurofinas.org/index.php?page=ccd>

4.3.9 Recommendations on data security

There is an ongoing process of harmonizing data security across the European Union, to which the European crowdfunding platforms have to comply. The experts consulted during the research did not focus on this issue, further research would be necessary.

4.4 Concluding recommendations

Crowdfunding is growing at a fast pace. In order to adapt the right regulation for crowdfunding, it is necessary to analyse carefully the different branches and types of crowdfunding.

Existing regulation should be carefully applied, in order not to diminish innovative crowdfunding ideas. The current crowdfunding practices indicate that there is very little danger that crowdfunding will be misused for illegal activities - so far there have been no incidents of crowdfunding projects where legal actions had to be taken. The crowd is a powerful filter.

Further research on crowdfunding practices and related regulations is necessary. The legal framework of crowdfunding is complex, but a considerable number of publications discuss the legal framework comprehensively.

A European crowdfunding network needs to be established, which brings together platform owners, project owners, policy makers and interested experts for an ongoing discussion on the European framework for crowdfunding. The Bielsko-Biela Declaration is a good starting point for this discussion. Platform owners, experts and policy makers should be brought together through on- and offline discussions and exchange.

Appendix

Internet references given in this Annex and in the main document have been checked between August and September 2011.

Resources about crowdfunding

In order to get a first overview please, have a look at the authors' social bookmarks at

David Röthler:

<http://www.delicious.com/davidro/crowdfunding>

Karsten Wenzlaff

<http://www.diigo.com/user/echologist/crowdfunding>

A good comparison of crowdfunding platforms for investments can be found at

<http://socialcompare.com/en/comparison/crowdfunding-for-entrepreneurs-crowd-investing-investment-rounds-for-startups>

"Social Compare" is a tool for co-operative comparisons.

The most comprehensive but still not exhaustive list of crowdfunding platforms compiled by Ari Massoudi can be found at

http://management-of-innovation.over-blog.com/pages/List_of_Crowd_Funding_Web_Sites_and_Web_Sites_To_Find_Investors-4605700.html

Another list of crowdfunding platforms is kept up-to-date by Leander Wattig:

<http://leanderwattig.de/index.php/2010/10/22/liste-mit-crowdfunding-plattformen-wer-kennt-noch-andere/>

A description of various crowdfunding platforms for the creative industries can be found here:

<http://culture360.org/news/crowdsourced-funding-for-the-arts/>

Discussion groups on social networks

Facebook: <http://www.facebook.com/groups/crowdfunding/>

Xing: <https://www.xing.com/net/priaa62b2x/crowdfunding>,

<https://www.xing.com/net/priaa62b2x/yooproduce>

Linkedin: e.g. http://www.linkedin.com/groups/Crowdfunding-Europe-3175801?trk=myg_ugrp_ovr

Blogs:

<http://www.crowdsourcing.org>

<http://www.crowdsourcing.net>

<http://www.crowdsourcing.net>

<http://www.crowdsourcing.net>

<http://www.leanderwattig.de/tag/crowdfunding>

<http://politik.netzkompetenz.at/tag/crowdfunding>

<http://www.p2p-kredite.com/>

<http://blog.p2pfoundation.net>

<http://www.crowdfunding.nl/>

<http://www.wiseclerk.com>
<http://pimbetistcrowdfunding.wordpress.com/>
<http://crowdfunding.pl/>
<http://www.crowdfundcompany.com/index.html>
<http://crowdfunding.trampolinesystems.com/blog/>
<http://www.crowdfunding-deutschland.de/>
<http://www.smartermoney.nl/>

List of crowdfunding platforms and experts

Platforms and Experts by country:

United States

<http://www.kickstarter.com>
Most prominent platform in the USA in the cultural sector

<http://www.indiegogo.com/>
Crowdfunding for movies and other creative industries, non-financial rewards

<https://www.profounder.com>
Entrepreneurship related

<http://www.microventures.com/>
Offers equity in exchange for capital investment

<http://www.40billion.com>
Donations and Loans from Friends&Family to Entrepreneurs

<http://peerbackers.com>
Crowd funding website enabling entrepreneurs to raise donations

<http://www.spot.us>
Crowdfunding for journalism

<http://www.emphas.is>
Crowdfunding for photo journalism

Experts:
Kevin Lawton, author of "The Crowdfunding Revolution".

UK

<http://www.fundingcircle.com>
Peer-2-Peer lending platform, people can lend money to UK small businesses in the UK)

<http://www.innovatrs.com>
Discover, partner with or invest in innovative young startups and entrepreneurs globally

<http://www.crowdfunder.co.uk>
Dozens of different projects have been successfully funded since November 2010

<https://www.buzzbnk.org>

Crowd funding website enabling social entrepreneurs and social ventures to raise funds and build a crowd of supporters. Funding types from donation/goodies, pre-sales/perks and loans

<http://www.sponsume.com>

UK based crowdfunding platforms for creative projects, but available to creative projects all over Europe. Does not make use of the threshold-principle.

<http://wedidthis.org.uk>

Crowdfunding platform with non-financial rewards.

www.wefund.co.uk

Crowdfunding platform with non-financial rewards. Wefund was launched in October 2010. It is the first crowd-funding platform for the arts and the creative industries in the UK. Lawyer Michael Troughton has created this platform.

<http://bluedotworld.com/>

Blue Dot is a digital social currency that records and rewards the great actions people do for others, with great stuff for free. Blue Dot utilises popular culture to motivate & enable millions of consumers to participate in creating positive global change.

<http://en.fansnextdoor.com/>

Crowdfunding platform for musicians, non-financial rewards

<http://www.unbound.co.uk/>

Crowdfunding for books

Independent Expert:

Francis Davey, <http://www.francisdavey.co.uk/>

Ireland

<http://www.seedups.com>

Successful platform for raising start-up capital with the help of micro-investors.

<http://www.venturesocially.com>

Submission of business projects in this web site in the goal to attract investors

<http://www.fundit.ie>

Fundit is an Ireland-wide initiative that provides a platform for people with great ideas to attract funding from friends, fans and followers across the world. Project creators have to have a bank-account in Ireland. Rewards have to be non-financial.

Germany

<http://couchtycoon.net/>

Crowd funding business ideas and early-stage startups

<http://www.seedmatch.de>

Recently launched start-up oriented platform

<http://www.globumbus.com/>

<http://de-de.facebook.com/Globumbus>

Not yet launched. Will crowdfund start-ups.

<http://www.cofundos.org>

Crowdsourcing+Crowd funding m-apps, software, games, e-business

<http://www.innvestment.de/>

Investments for start-ups, not yet launched

<https://www.sellaband.com/>

Crowdfunding for music production

<http://www.smava.de>

Successful peer-to-peer lending

<http://www.startnext.de> and www.startnext.at

Crowdfunding for the cultural sector. No financial rewards.

<http://www.mysherpas.com>

Crowdfunding for the cultural sector and beyond. No financial rewards.

<http://www.visionbakery.com>

Socio-economic non-commercial projects. No financial rewards.

<http://www.inkubato.com>

Crowdfunding for the creative sector without financial rewards.

<http://www.pling.de>

Creative sector related. No financial rewards.

<http://www.friendfund.com>

Collecting money with friends for any cause.

<http://www.games-plant.com>

Crowdfunding for games

<http://www.betterplace.org>

Donation-based crowdfunding for social projects

<http://www.einfachgeben.org/>

Donation-based crowdfunding for social projects

Independent Experts:

Andrea Kamphuis, Crowdfunding Author

Filipe da Costa

CEO Innvestment

Jens-Uwe Sauer

CEO Seedmatch

Jochen Hemer

Fraunhofer Institute Karlsruhe, Crowdfunding Author

Thomas Hessler

CEO Globumbus

Austria

<http://www.respekt.net>

Crowdfunding for social projects

<http://www.querk.net>

Crowdfunding for social projects

Independent Expert:

Wolfgang Gumpelmaier, Crowdfunding Author

<http://gumpelmaier.net/>

Switzerland

<http://www.c-crowd.com>

<http://www.cofundit.com>

Crowdfunding and P2PLending

<http://www.investiere.ch>

Offer equity in exchange for capital investment

Expert:

Oliver Rappold, Rechtsanwalt, LL.M. (Partner bei Gloor & Sieger Rechtsanwälte)

<http://www.gloor-sieger.ch/>

Steffen Wagner

Managing Partner investiere.ch

France

<http://www.wiseed.fr>

Offer equity in exchange for capital investment

<http://www.financeutile.com/>

Offer equity in exchange for investment

<http://www.crowdsourcing.org/site/finance-utile/wwwfinanceutilecom/4121>

<http://www.friendsclear.com/>

P2P Lending

<http://www.babyloan.org>

P2P Lending

<http://www.ulule.com>

Crowdfunding platform for the creative industries, non-financial rewards

<http://www.kisskissbankbank.com>

Crowdfunding platform for the creative industries, non-financial rewards

<http://www.mutuzz.com/>

Crowdfunding platform for the creative industries, non-financial rewards

Expert:
Ari Massoudi, <http://www.strategy-of-innovation.com/>
Frederic Baud, P2PVenture.org

Spain

www.fandyu.com

Allows project owners to design rewards of different types, including financial rewards

<http://www.lanzanos.com/>

Crowdfunding for creative projects

<http://www.verkami.com/>

Crowdfunding platform for artists and creative projects

www.partizipa.com

p2c (person to company) lending instead of p2p lending. Individual investors can lend money together to fund a company.

<http://www.volanda.com/>

Platform to crowdfund cultural projects

Netherlands

<http://www.crowdaboutnow.com/CrowdAboutNow/>

<http://www.symbid.com>

Offer equity in exchange for capital investment

<http://www.onepercentclub.com>

<http://www.voordekunst.nl/>

Crowdfunding for arts projects

<http://tenpages.com/>

Crowdfunding for Books

<http://www.schrijversmarkt.nl/>

Crowdfunding for Books

<http://www.bookabook.nl/>

Crowdfunding for Books

<http://www.cinecrowd.nl/>

Crowdfunding for Movies

<http://nieuwspost.nl/>

Crowdfunding for Journalism

<http://www.crowdfundingfacilities.nl/>

Personal crowdfunding

<http://www.cinemareloaded.com/en/>

Allows filmmakers to directly connect with film lovers in order to finance and distribute their projects through combined online crowd sourcing and crowd funding.

Experts:

Valentine Van der Lande
CEO Tenpages

Ronald Kleverlaan

Korstiaan Zandvliet
Managing director Symbid

Gijsbert Koren
Crowdfunding Expert

Tim Klein Robbenhaar
CEO Sprowd

Belgium

<http://www.believersfund.com>

Crowd funding m-apps, software, games, e-business

<http://www.westartup.eu/>

Crowdfunding for start-ups

<http://www.sonicangel.com>

Crowdfunding for musics

<http://launch.sprowd.com/>

<http://www.sandawe.com>

Comic Crowdfunding

Experts:

Leo Exter
CEO Westartup

Finland

<http://venturebonsai.info>

Crowd investment for young enterprises

<http://www.growvc.com>

Crowdsourcing

Expert:

Valto Loikkanen

<https://twitter.com/#!/valto>

Anita Kangas

Professor, PhD, Department of Social Sciences and Philosophy, University of Jyväskylä

Sweden

<http://tunerights.com/>
Crowdfunding for Music

<http://www.crowdculture.se/>
Crowdfunding for Cultural Projects

<http://www.fundedbyme.com/>
Crowdfunding Platform for the creative industries in Scandinavia, based in Sweden. Offers non-financial rewards as well as financial rewards.

Bulgaria

<http://planetpreneur.org/grow/3challenge/>
Crowdfunding competition

Experts:
Nickolay Andonov
President StartItSmart

Denmark

<http://www.boomerang.dk/>
Crowdfunding for creativity and social innovation

http://www.vidensbanken.com/pages_translated.asp?HPID=131
Experts:
Michael Eis
CEO of Boomerang

Italy

<http://www.eppela.com/>
Crowdfunding for creativity, culture, social innovation

Czech Republic

<http://www.fondomat.cz/>
Platform for various non-commercial projects

Poland

Experts
Karol Król, crowdfunding.pl

Rafal Malujda
Rafal Malujda Law Office

