Harmonising the Crowdfunding Regulation in Europe: Need, Challenges, and Risks.

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**Abstract**

This paper deals with the issue of the harmonisation of crowdfunding regulation in Europe, which is currently the subject of debate by policymakers and regulators. For this purpose, it provides an in-depth comparative analysis of the crowdfunding regulatory frameworks in force in the UK, France, Italy, and Spain. Findings show that regulatory heterogeneity negatively affects the crowdfunding market. To overcome the barriers hampering the regulatory harmonisation, European countries have to shape the highly heterogeneous nature of their regulatory environments. In this way, they can achieve a level playing field for all market actors in Europe and create a more open crowdfunding ecosystem.

**Keywords** Crowdfunding regulation, Regulatory harmonisation, European countries
1. **Introduction**

Crowdfunding (CF) is defined as a new way to finance projects, ideas or new ventures by raising usually small amounts of money from a large number of investors through online platforms (Belleflamme et al., 2014; Mollick, 2014).

Belonging to the financial technologies (FinTech) industry, crowdfunding platforms provide funding in a digital environment, thus eliminating the requirement for physical interaction and consequently reducing transaction costs as well as transaction time. This novel form of financial intermediation makes easier for those seeking funding (whether people or companies) to reach a high number of potential investors, who will receive some form of physical or moral reward in proportion to the invested funds (Zhang and Liu, 2012). Since its inception in 2006, various models of crowdfunding have been created, depending on the way in which investors are recompensed. In particular, it is possible to distinguish four main types of crowdfunding models (Mollick, 2014):

1) The donation-based crowdfunding is a simple model generally used for social or charitable causes. The investors are mainly driven by altruistic motivation, and they donate money without expecting something in return. Examples of donation-based crowdfunding platforms include GoFundMe (http://www.gofundme.com/), YouCaring (https://www.youcaring.com/) and Crowdrise (https://www.crowdrise.com);

2) The reward-based crowdfunding is the most popular model. As the name suggests, investors receive a reward based on the amount of money they brought to the project. Rewards may range from something simple such as a thank-you postcard to a prototype of the product. Cash prizes are never allowed. This model is mainly used for creative projects, ranging from arts, music, games, to design and technology. Moreover, the reward model is often used as a form of pre-selling before market entry. Two of the
oldest and largest reward-based crowdfunding platforms are Kickstarter (http://www.kickstarter.com) and Indiegogo (https://www.indiegogo.com/);

3) The lending-based crowdfunding, in both consumer (P2P- peer-to-peer) and business (P2B- peer-to-business) lending form, accounts for the largest market segment of Alternative Finance in Europe (Ziegler et al., 2018). In this type of crowdfunding, investors provide funds through small loans to consumers or business and obtain repayment with interest in return. This is a way to borrow money at a lower cost compared to the credits that banks can propose. Examples of this model include Prosper (https://www.prosper.com/), Twino (https://www.twino.eu/), and Bondora (https://www.bondora.com/);

4) The equity-based crowdfunding offers investors the opportunity to become shareholders in the funded company through the purchase of a small equity stake. In return for their funding contributions, investors will share the potential profits of the business. This participatory financing with equity participation is a solution for early stage unlisted companies that are too small and risky to obtain funding traditionally. One of the world’s first equity-based crowdfunding platforms is the English Crowdcube (https://www.crowdcube.com/) launched in 2010.

Table 1 shows crowdfunding models according to the funding form, the expected return, and the main sector.
<table>
<thead>
<tr>
<th>Model</th>
<th>Funding form</th>
<th>Expected return</th>
<th>Main sector</th>
</tr>
</thead>
<tbody>
<tr>
<td>Donation</td>
<td>Support for non-profit projects</td>
<td>No expectation of returns</td>
<td>Charity and Philanthropy</td>
</tr>
<tr>
<td>Reward</td>
<td>Financial support mostly for creative projects</td>
<td>Non-monetary rewards or products</td>
<td>Art, Music, and Design</td>
</tr>
<tr>
<td>Lending</td>
<td>Financing of loans to private persons (P2P) or companies (P2B)</td>
<td>Repayment of capital and interest</td>
<td>Education and Research</td>
</tr>
<tr>
<td>Equity</td>
<td>Equity investment mostly in start-ups</td>
<td>Profit sharing</td>
<td>Tech &amp; Innovation</td>
</tr>
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</table>

Source: Author elaboration
By using social networks, social profiles, and the viral nature of web-based communication, individuals and companies have raised billions of dollars in lending, equity, reward and donations for projects over the last few years. According to the 3rd annual European Alternative Finance Industry Report (Ziegler et al., 2018), crowdfunding transactions volume at the European level has grown by 41% in 2016, reaching €7.7 billion and doubling its volumes from 2015 [1]. The United Kingdom is the largest individual online alternative finance market, with a volume in Europe of €5.6 billion, followed by France (€443.98 million), Germany (€321.84 million) the Netherlands (€194.19 million), Finland (€142.23 million), Spain (€130.90 million), Italy (€127.06 million) and Georgia (€102.58 million).

Literature has widely recognised the importance of and need for crowdfunding (notably in the equity-based form) as an alternative way of funding new business ventures for which conventional ways of funding are often unavailable (e.g., Schwienbacher and Larralde, 2012; Bruton et al., 2015; Wardrop et al., 2015; Vulkan et al., 2016; Cumming and Vismara, 2017; Short et al., 2017; Leboeuf and Schwienbacher, 2018; Estrin et al., 2018).

The rapid growth of crowdfunding has created serious challenges for policymakers and regulators around the world with financial stability implications (Financial Stability Board, 2017), and has drawn the attention of the academic world (Moritz and Block 2016). Legal scholars in the United States heavily discussed (i) the legislative changes to enable crowdfunding and provide investor protection (Bradford, 2012a and 2018; Hazen, 2012; Cumming and Johan, 2013; Stemler, 2013), (ii) the application of the Securities Act of 1933 (Bradford, 2012; Sigar, 2012), and (iii) the entry into force of the “Jumpstart Our Business Startups (JOBS) Act” on April 5, 2012 which legalised crowdfunding (Knight et al., 2012), in particular of its Title III - also referred to as CROWDFUNDING Act - (Wroldsen, 2013; Hornuf and Schwienbacher, 2017).
The existing literature on crowdfunding regulation in Europe focuses mainly on its legal implication and risks, such as the weaker investor protection and potential for fraud, caused by the rapid growth of crowdfunding (Wilson and Testoni, 2014; Boitan, 2016; Kabai, 2017; Macchiavello, 2018). By analysing the legal reforms promoting crowdfunding in six European countries, Hornuf and Schwienbacher (2017) argue that when alternative sources of entrepreneurial finance (such as angel capital and venture capital) are scarce, too strong investor protection may harm equity crowdfunding investments. Some authors (Wilson and Testoni, 2014; Courtney et al., 2017; Estrin et al., 2018) conclude that in order to mitigate the previous risks, crowdfunding must be approached with caution through specific regulation, and that this is the only workable way of helping investors make informed decisions and limiting the amounts they can put at risk. Moreover, others authors give suggestions regarding the legal provisions required to implement crowdfunding and increase access to capital for start-ups and SMEs (De Buysere et al., 2012; Klöhn and Hornuf, 2012; Juredieu and Mayoux, 2016; Estrin et al., 2018). However, little attention is given to the need to develop a harmonised regulatory framework for crowdfunding across Europe (European Commission, 2015 and 2018a).

Concerning the European Union, the regulatory harmonisation can be defined as the process aimed at eliminating, or at least reducing, regulatory diversity in economic policy areas where the Member States have autonomous regulatory jurisdiction (Leebron, 1996; Nakagawa, 2011). Individual Member States have transposed the European directives on crowdfunding through national implementation laws and have shaped their own internal regulations depending on the characteristics and needs of local markets and investors. In certain aspects national legislation, tailored to local characteristics and risks, seems to better respond to the needs of all parties involved in the crowdfunding process (capital seekers, capital providers, and crowdfunding platforms). However, the heavy fragmentation in national regulations increases transaction costs and hinders crowdfunding platforms' ability to scale their offering at European level.
Moreover, the presence of different regulatory frameworks in different jurisdictions creates an unpredictable environment and a state of uncertainty which is deterring investors and, as a consequence, strangles investments in crowdfunding (notably the lending and equity-based forms of crowdfunding). Thus, the harmonisation of crowdfunding regulation serves to create common rules among the different jurisdictions in order to reduce or eliminate regulatory differences in the crowdfunding field. In this way, it will be possible to establish a level playing field for platforms and, at the same time, ensure a high level of investors' protection.

Two related questions arise at this point:

1) Why do we need a harmonised regulation of crowdfunding in Europe?

2) What are the challenges and risks to deal with?

In order to answer these questions, this paper explores in detail the regulatory frameworks that have emerged in the UK, France, Italy, and Spain as a result of the establishment of crowdfunding as a new player in entrepreneurial finance.

Then, this analysis brings out those aspects that should be avoided and the lessons that should be learned from each analysed countries to implement the process of regulatory harmonisation. From this perspective, this study assesses the recent proposal from the European Commission clearly showing the intention to harmonise crowdfunding regulation. The aim is to create a European 'Single Market' ensuring equality in regulatory conditions for all investors and enterprises and removing potential barriers that prevent platforms activity at the trans-European level (European Commission, 2018). Moreover, the paper discusses the role and responsibilities of policymakers and regulators in guiding the process of regulatory harmonisation with careful consideration of the need, challenges, and risks of not harmonising the regulation as well.

In conclusion, this analysis presents a number of policy recommendations that emphasise the need to improve access to this innovative form of finance for businesses in lack of funding, particularly start-ups and small and medium-sized enterprises (SMEs).
The remainder of the paper is organised as follows. Section 2 describes the legal framework in force in the UK, France, Italy and Spain. Section 3 discusses the need for harmonisation and the recent proposals from the European Institutions. Section 4 analyses the challenges and risks of regulatory fragmentation in Europe. Section 5 concludes.

2. Need for harmonisation

In this section, we discuss a set of regulatory issues that must be considered with some interest by the policymakers to fully understand the extent of regulatory harmonisation which is necessary among European member countries. As will be shown in Section 3, the current regulatory architecture around crowdfunding in Europe is rather heterogeneous (European Commission, 2017). Indeed, some countries have developed a specific ecosystem for crowdfunding by enacting bespoke regulatory regimes, also relating to the different crowdfunding forms. Instead, other countries are working to improve the flexibility and scope of existing regulatory frameworks, fill the shortcomings within them, and adjust them in response to the challenges posed by crowdfunding. Moreover, the extent of regulation varies according to the different forms of crowdfunding. While equity- and lending-based crowdfunding are subject to strict rules, with high barriers to entry (Gabison, 2015), in most European countries, crowdfunding forms based on donation and reward still remain unregulated.

In general, the objectives pursued by policymakers at the national level are mostly to encourage crowdfunding growth by strengthening the internal market integrity and stability in order to facilitate the entry and participation of agents in competitive conditions, and at the same time, to minimise information asymmetries and guarantee a suitable level of transparency and investors protection. Regulation is one of the critical tools used to achieve these goals. However, the weakness of the harmonisation’ and regulatory cohesion' strategy proposed by
the European Institutions, has led to a heavy fragmentation in the regulatory frameworks of the Individual Member States, which have implemented the European Directives in very different ways (Cumming and Johan, 2013; Hornuf and Schwienbacher, 2017). This fragmented, cluttered and complex regulation leads to an unlevel playing field causing market access barriers and hindering the implementation of a more aligned Pan-European market in which platforms can easily provide their services cross-border. Furthermore, it creates an unpredictable environment a state of uncertainty which is deterring investors and, as a consequence, strangles investments in crowdfunding (notably the lending and equity-based forms of crowdfunding). It is clear that the failure to harmonise crowdfunding regulation represents a prime barrier for its development and limit the effectiveness of efforts made to promote it (European Commission, 2017). Therefore, regulatory heterogeneity does not appear to be a desirable characteristic of borderless crowdfunding common market.

The fundamental objective of the regulatory harmonisation is to achieve uniformity in crowdfunding regulation of member states through the definition and share of common laws, regulations, standards and practices for crowdfunding actors. The removal of regulatory barriers on the European market will allow creating an integrated crowdfunding ecosystem which fosters transparency and healthy competition among market participants and to ensure a better protection regime and a higher level of guarantees for investors thereby helping to restore their confidence in this rapidly developing sector (European Commission, 2018a).

Moreover, the achievement of harmonisation will faster crowdfunding market growth, facilitating the emergence of a common global market which is needed to:

- maximise the growth potential of the crowdfunding market;
- stimulate cross-border activity and investment;
• help platforms to broaden their cross-border outreach by overcoming the internal market barriers;
• increase the level of investor information on the high risks incurred by them;
• create a true level playing field for all crowdfunding actors in Europe;
• enhance European investors' confidence in the crowdfunding market by increasing legal certainty as regards the fulfilment of the investor protection rules;
• ensuring the uniform and effective application of only one set of rules valid throughout Europe, in order to prevent distortions of competition between individual markets;
• define tailored rules for equity- and lending-based European crowdfunding platforms.

These needs can only be fulfilled (met) when there is standardised regulation for crowdfunding activity which is internationally accepted.

3. The legal framework in Europe

European countries facing the many legal issues raised by the development of alternative financial markets (such as crowdfunding market) are likely to look at other countries experiences for guidance on the lessons to learn and the aspects that should be avoided.

For this purpose, the following paragraph provides an in-depth comparative analysis of the current crowdfunding regulatory frameworks in force in the UK, France, Italy, and Spain. These are summarised in Table 2. Table 3 shows the regulatory barriers hindering growth of the crowdfunding market in the analysed countries, as well as facilitators fostering it development.
<table>
<thead>
<tr>
<th>Country</th>
<th>Regulation</th>
<th>Scope</th>
<th>Financial instruments</th>
<th>Crowdfunding service providers</th>
<th>Authorisation and registration</th>
<th>Maximum offers (Prospectus exemptions)</th>
<th>Maximum investment limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>United Kingdom</td>
<td>The FCA’s regulatory approach to crowdfunding over the internet, and the promotion of non-readily realisable securities by other media - PS14/4 of March 2014</td>
<td>Securities and lending</td>
<td>Equities and debt securities, transferable and non-transferable. Non-readily realisable securities (NRRS) only to retail investor certified as sophisticated investors, high net worth investors, and advised investors</td>
<td>Entities authorised by the FCA to carry out the regulated fundraising activities in the UK</td>
<td>Authorisation by FCA</td>
<td>Lower than € 5 million in a period of 12 months</td>
<td>10% of the net investable assets for non-sophisticated investors; No investment limit for sophisticated investors, high-net-worth investors, and retail clients who receive an investment advisory or investment management service from an authorized person</td>
</tr>
<tr>
<td>France</td>
<td>Ordonnance n. 2014-559 du 30 mai 2014 relative au financement participatif</td>
<td>Securities and lending</td>
<td>Since the “Loi Macron” preference shares with voting rights (ordinary shares only previously), convertible bonds (straight bonds only previously), and the minibonds</td>
<td>Intermediaire en Financement Participatif (IFP) and Conseiller en Investissement Participatif (CIP)</td>
<td>Authorisation by AMF and registration in the “Registre Unique des Intermédiaires en Assurance, Banque et Finance” managed by ORIAS</td>
<td>€ 2.5 million per year per project (€ 1 million previously)</td>
<td>No investment limit per project and per year. Limit of € 2,000 (€ 5,000 for interest-free loan) per project and per year for lenders</td>
</tr>
<tr>
<td>Country</td>
<td>Law</td>
<td>Sector</td>
<td>Description</td>
<td>Authorisation and Registration</td>
<td>Investment Limits</td>
<td>Exemptions</td>
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<tr>
<td>Italy</td>
<td>Decreto Legge n.179/2012 (Decreto Crescita 2.0) and Decreto Legge n.3/2015 (Investment Compact)</td>
<td>Equity</td>
<td>Shares or units of small and medium-sized businesses, social enterprises and mutual investment bodies or other joint stock companies that invest mainly in small and medium-sized businesses</td>
<td>Entities authorised to provide investment services and subject to MiFID rules (ipso iure managers) and other legal entities authorised ad hoc by CONSOB</td>
<td>Lower than €5 million per year (€100,000 previously)</td>
<td>No investment limit. Exemption from MiFID rules for single investment less than €500 (natural persons) or €5,000 (legal entities) and overall investments during a year less than €1,000 (natural persons) or €10,000 (legal entities)</td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td>Ley 5/2015, de 27 de Abril, de Fomento de la Financiación Empresarial (LFFE)</td>
<td>Securities and lending</td>
<td>Ordinary and preferential shares, bonds, limited liability company's shares and other transferable securities</td>
<td>Plataformas de Financiación Participativa, (PFP)</td>
<td>€2 million per project, per platform, in a given year. €5 million when projects are targeted only to accredited investors</td>
<td>No investment limit for accredited investors. Limit of €3,000 per project and maximum €10,000 per year for non-accredited investors</td>
<td></td>
</tr>
</tbody>
</table>

Source: Author elaboration
<table>
<thead>
<tr>
<th>Country</th>
<th>Regulatory barriers</th>
<th>Regulatory facilitators</th>
</tr>
</thead>
<tbody>
<tr>
<td>UK</td>
<td>• Obstacles to cross-border expansion due to the complexity of the authorisation and compliance process.</td>
<td>• Passport for platforms (under MiFID).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• UKCFA code of conduct.</td>
</tr>
<tr>
<td>FR</td>
<td>• Foreign platforms have to be registered in France as CIP, PSI or IFP.</td>
<td>• FPF code of conduct.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Passport for PSIs platforms (under MiFID).</td>
</tr>
<tr>
<td></td>
<td>• CIPs and IFPs platforms cannot operate their activities outside of Franc.</td>
<td>• A quality label of “Plateforme de Crowdfunding Régulée par les Autorités Françaises” for platforms.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Specific statuses for platforms (IFPs and CIPs), both subject to anti-money laundering and anti-terrorists regulations.</td>
</tr>
<tr>
<td>IT</td>
<td>• No Passport. Platforms cannot directly carry out their activity in other European countries.</td>
<td>• A specific protection regime for retail investors.</td>
</tr>
<tr>
<td></td>
<td>• No code of conduct.</td>
<td>• Foreign platforms can directly operate on the Italian market (under MiFID EU license).</td>
</tr>
<tr>
<td></td>
<td>• Limits on the issue of financial instruments.</td>
<td></td>
</tr>
<tr>
<td>SP</td>
<td>• The companies’ regime does not lend itself to the offering of shares</td>
<td>• Specific statuses for platforms (PFPs)</td>
</tr>
<tr>
<td></td>
<td>• No Passport. Platforms cannot directly carry out their activity in other European countries</td>
<td>• Advanced policies for managing conflicts of interest</td>
</tr>
<tr>
<td></td>
<td>• No code of conduct</td>
<td></td>
</tr>
</tbody>
</table>

Source: Author elaboration
### 3.1 The United Kingdom

The UK provided for a nimble set of new rules specifically designed for equity-and lending-based crowdfunding to facilitate and promote the development of crowdfunding market.

The new rules introduced by the Financial Conduct Authority (FCA) in March 2014 (PS14/4) came into force on 1 April 2014 and were then reviewed in February 2015 and most recently in December 2016 through the publication of a Feedback Statement providing 'Interim feedback to the call for input to the post-implementation review of the FCA’s crowdfunding rules' (FS16/13).

According to the regulation of Securities Model under the Financial Services and Markets Act 2000 (FSMA), both equity-and lending-based platforms are regulated by the FCA, and they need to be authorised beforehand to carry out the regulated fundraising activities in the UK. Moreover, they have to conform to standards set out by the FCA. There is no national registry for crowdfunding platforms in the UK. Since the UK, as well as Italy, rely upon the self-certification of investors, platforms have to inform investors of potential losses. In addition, platforms must carry out a screening process to identify the so called 'non-sophisticated investors', i.e. retail clients who certify that they will not invest more than 10% of their investible assets (excluding their principal residence, pension and life cover) in unlisted share or debt securities over the 12 months following the investment (FCA, 2014).

The FCA allows investing more than 10% of the net investible portfolio in unlisted shares to the following categories of investors:

1) sophisticated investors, i.e. investors who: (i) certify to be member of a network or syndicate of business angels from at least 6 months; (ii) to have made more than one investment in an unlisted company in the previous two years; (iii) to have worked over the last two years in the private equity sector, or in the provision of finance for SMEs; (iv) or to have been in the last two years a director of a company with an annual turnover of £1 million or more;
2) high-net-worth investors, i.e. investors that earn at least £100,000 a year or have at least £250,000 in assets, excluding principal residence, insurance and pension policies; and

3) retail clients who receive an investment advisory or investment management service from an authorised person.

Equity crowdfunding platforms may offer investors equities and debt securities, transferable and non-transferable. However, the FSMA restricts the offer of 'non-readily realisable securities' (NRRS), i.e. shares or debt securities not listed on the stock markets but carrying significant risks, only to retail investor certified as sophisticated investors, high net worth investors, and advised investors. Shares in private limited companies cannot be offered to the public (Section 755 of the Companies Act 2006). UK platforms may offer transferable securities across the European Economic Area (EU passport status). However, the complexity of the authorisation and compliance process (due to the different national regulatory regimes) hinders the cross-border expansion. Although the FSMA requires that a prospectus gets published when transferable securities are offered to the public, crowdfunding offers of less than €5 million in a period of 12 months are exempted from such publication. In order to operate, lending-based platforms must have a minimum capital of £50,000 and expose transparent, clear and not misleading information about the offered interest rates. Moreover, all risk warnings shall be clearly identified to ensure an appropriate level of customers’ protection.

The regulatory regime for lending-based platforms only apply to loans where either:

- the borrower is an individual;
- the loan is GBP 25,000 or less; or
- the individual is not borrowing for business reasons.

The UK securities regulation does not apply to donation- and reward-based crowdfunding as they do not offer equity stakes or return. Since 2017, the FCA also regulates payment services provided in connection with donation and reward. The UK Crowdfunding Association (UKCFA), set up as a self-
regulatory trade body by several UK crowdfunding businesses, published its own code of conduct. The code focuses mainly on investors protection.

3.2 France

Until 2014, in France there was no specific definition or legal status for crowdfunding, whose activity was allowed within the general discipline. For a long time, French platforms have been forced to adopt the status of Investment services providers (PSI) other than asset management companies, generally adopted by investment companies and credit institutions defined in Article L.531-1 of the Monetary and Financial Code (Code Monétaire et Financier). On February 14, 2014, the ministry of economic affairs and finance announced measures to facilitate crowdfunding that have become effective since September 2014 [2]. In order to make rules regarding crowdfunding more flexible, in 2016 the French regulation has been revised with the entry into force of the Law no. 2015-990 dated 6 August 2015, known as 'Loi Macron', by which has been given to the web-users the opportunity to invest in projects via new instruments, i.e. preference shares with voting rights (ordinary shares only previously), convertible bonds (straight bonds only previously), and the minibonds.

French regulation, supervised by the Authority of Financial Markets (AMF-Autorité des Marchés Financiers) and the National Financial Services Regulator (ACPR-Autorité de Contrôle Prudentiel et de Résolution), has created two specific statutes for the Crowdfunding platforms, both subject to anti-money laundering and anti-terrorism regulations:

1. Intermediaire en Financement Participatif (IFP). Issuers offering straight loans either interest-free or generating interest through crowdfunding platforms must be accredited as Investment Intermediary. Since 1 December 2016, portals providing funds in the form of donations (with or without rewards) have to be accredited as IFP. Platforms registered as IFP are regulated by the ACPR, and they must have a minimum capital equal to €40,000;
2. *Conseiller en Investissement Participatif (CIP)*. Issuers conducting a securities offering (shares or debt instruments) through crowdfunding platforms must be accredited as an advisor in participative investments. They can also opt for the status of Investment Services Provider (*PSI-Prestataire de Services d’Investissement*). Platforms registered as CIP are regulated by the AMF and are subject to different obligations. Those registered as PSI, on the other hand, are subject to the joint supervision of both the ACPR and the AMF and they must have a share capital of € 50,000 if the platform does not hold securities or customer funds and € 125,000 if it holds.

For both CIPs' and PSIs' status, the total offering amount may not exceed, for the same issuer, € 2.5 million per year (€ 1 million previously). Law has additionally established that to qualify as an IFP, CIP or PSI, a platform shall be registered in the 'Registre Unique des Intermédiaires en Assurance, Banque et Finance' managed by ORIAS [3] and subscribe a professional liability insurance policy (this being mandatory as from 1 July 2016). They shall also comply with good conduct and organisation rules and ensure that their clients’ interests are protected and that they receive an adequate level of information to appreciate the risks associated with their investment. Platforms that respect the obligations mentioned above can use the label of 'Plateforme de Crowdfunding Régulée par les Autorités Françaises' showing that they have been approved by the French authorities [4].

Concerning the prospectus exemptions [5], the offering of equity and debt instruments on crowdfunding websites is not considered as a public offering (subject to a prospectus) and that’s why the issuance derogates from the obligation to produce a prospectus when the project is raising less than € 2.5 million, since 30 October 2016 (€ 1 million previously), calculated over a period of 12 months. Beyond this threshold, the obligation to draw up a prospectus for a securities issuer is mandatory. Concerning to investors, no limit per project and per year is established by the law. However, in lending-based crowdfunding lenders can invest up to € 2,000 (€ 1,000 previously) per project and per year, when interest is charged on loan and, up to € 5,000 (€ 4,000 previously) per
project and per year when interest is no charged on loan. For IFPs' platforms offering straight loans the total offering amount may not exceed € 1 million per project, and lenders can invest up to € 2,000 (€ 1,000 previously) per project and per year, when interest is charged on loan and, up to € 5,000 (€ 4,000 previously) per project and per year, when interest is no charged on the loan. Platforms with the PSI status are empowered to offer the investment services for which they are licensed for across the European Economic Area (EU passport status). By contrast, CIPs and IFPs platforms cannot operate their activities outside national borders. Such a limitation is due to the fact that in other European countries do not exist statuses equivalent to those of CIP and IFP. Foreign platforms, which operate under the equity or lending crowdfunding model, have to be registered in France as CIP, PSI or IFP and have to abide by French regulation. This represents an obstacle to cross-border activities.

Equity crowdfunding platforms may offer in France securities of non-French companies, under certain conditions. Since 1 December 2016, donation- and reward-based platforms are subject to IFP status.

In France, as in the UK, the national crowdfunding association - called Financement Partic和平 FPF - establish a code of conduct for its members.

3.3 Italy

Italy gave a strong signal to its fellow European Member States, being the first country to regulate equity crowdfunding in Europe by the Decree Law 179 of 18 October 2012 (so called Decreto Crescita 2.0) on 'Further urgent measures for Italy’s economic growth', converted into Law 221 of 17 December 2012. The long path of regulation development ended with the entry into force, on 3 January 2018, of the Legislative Decree n.129 dated 3 August 2017, implementing the Directive 2014/65/UE (MiFID II) which has further amended the existing rules of the Italian Consolidated
Financial Act (TUF, Testo Unico della Finanza) on the risk capital fundraising through online portals. Under the current Italian law, the fundraising through equity crowdfunding platforms is available for:

- all SMEs, regardless of their innovative nature [6], including those established in the form of limited liability companies (in derogation from Article 2468 of the Italian Civil Code) [7];
- Collective Investment Undertakings (CIUs) and investment companies that mainly invest in SMEs.

According to Article 50 quinquies (sub-paragraph 2) of TUF, the management of equity crowdfunding portals can be carried out by two types of subjects:

1. 'ipso iure' managers: entities authorised to provide investment services and subject to MiFID rules, such as 'investment firms, EU investment companies, companies of non-EU countries other than banks authorised in Italy, the managers referred to in article 1 (sub-paragraph 1, letter q-bis) of the TUF [8], for just the offer of stakes or shares of UCI that invest mainly in small and medium-sized businesses and banks, authorised to the relative investment services' [9];

2. other legal entities authorised ad hoc by the Italian financial markets regulator (CONSOB, Commissione Nazionale per le Società e per la Borsa) and subject to MiFID rules only in so far as they are required to transmit investors’ orders for the subscription, buying and selling of financial instruments representative of capital exclusively to professional brokers (such as banks, investment firms, EU investment companies and Companies of non-EU countries other than banks) for the execution thereof.

Therefore, as stated by Article 100-ter (sub-paragraph 2-bis) of TUF, 'ipso iure' managers, as 'intermediaries qualified for the provision of one or more of the investment services provided for in article 1, paragraph 5, letters a), b), c), c-bis and e)' [10], are the only ones that can subscribe and sell investments shares representing the capital of SMEs and of social enterprises incorporated in the form
of companies with limited liability, for their own account and on behalf of third parties that have
taken up the offer of financial instruments via online portals. On the contrary, managers in the second
category may not, in any case, hold sums of money or financial instruments pertaining to third parties
(sub-paragraph 4, Article 50-quinquies). They must, therefore, transmit the subscription orders to the
authorised entities to make them effective. They must also collect - in general, seven days after the
dispatch of the participations purchase order, i.e. at the end of the period linked to the revocation right
- the corresponding amounts in a tied account. This account is destined to the issuer held by the
authorised entities that receive and complete the orders [11]. In Italy, equity crowdfunding is
accessible only for financial instruments issued by 'small and medium-sized businesses, social
enterprises and mutual investment bodies or other joint stock companies that invest mainly in small
and medium-sized businesses' (Art. 100-ter, sub-paragraph 1). At least 5% of the financial
instruments offered shall be subscribed (i) by professional investors; (ii) banking foundations; (iii)
innovative start-ups incubators; (iv) investors in support of small and medium-sized enterprises that
fulfil certain requirements. The rules on solicitation of public savings laid down in Part IV, Title II,
Chapter I, of the TUF do not apply to above mentioned public offers of financial instruments, as long
as the overall amount of the offer is lower than €5.000.000 per year, as established by CONSOB [12]
pursuant to article 100, sub-paragraph 1, letter c). In this case, the obligation to publish a prospectus
shall not apply. All portals’ managers, other than banks and financial intermediaries, have to register
with the ordinary section of the Register of the portals’ managers, published on the CONSOB website.

To be enrolled on the CONSOB register, these portals’ managers must meet a set of capital and
disclosure requirements (see Article 50 quinquies, sub-paragraph 2 of TUF). Unlike portals’
managers enrolled in the ordinary section, the 'ipso iure' managers, being already authorised to carry
out investment services, are enrolled in a special section of the Register of the portals’ managers, and
they only need to inform CONSOB of their intention to start managing an online portal. As said
above, MiFID conduct rules apply only to 'ipso iure' managers. Thus, CONSOB authority sets forth
ad hoc rules that the other types of portals’ managers must respect in their relations with investors, contemplating a simplified system for professional investors and monitors compliance with those rules. Equity crowdfunding regulation in Italy makes a distinction between Professional Investors, as defined in point (j) of Article 2, and Retail Investors, providing for the latter a different protection regime, which depends on the amount they wish to invest.

There are no limits for investors, but in order to reduce the intermediaries’ obligations, whilst ensuring an adequate level of investors protection, an exemption from MiFID rules is provided for investments 'below threshold' i.e. single investment less than €500 (natural persons) or €5,000 (legal entities) and overall investments during a year less than €1,000 (natural persons) or €10,000 (legal entities).

Despite being duly authorised by CONSOB, Italian equity crowdfunding platforms cannot directly carry out their activity in other European countries. Such activity, in fact, are not subjected to the principle of mutual recognition (stemming for Regulation (EC) n. 764/2008), defining rights and obligations for public authorities and enterprises that wish to market their products in another EU country by ensuring that any product lawfully sold in one EU country can be sold in another. Foreign equity Crowdfunding platforms, instead, can directly operate in the Italian market with the prior obtainment of the relevant authorisation by CONSOB. Moreover, foreign platforms which hold a MIFID EU license no need to obtain such CONSOB license. They may perform their activity in Italy through (i) the setting up a local branch office, according to the right of freedom of establishment, or (ii) directly without any establishment of a local branch office, in accordance with the right of freedom to provide services, or (iii) through an agent established in the Member State in which platforms wish to operate. Donation and reward-based crowdfunding do not fall under the scope of the Italian financial services regulation. As a consequence, platforms do not need to be licensed and are not monitored by the CONSOB Authority. Italy recognised lending-based crowdfunding (P2P and P2B) only recently. The Bank of Italy resolution n.584, published on 9 November 2016 and come into force the 1 January 2017, lays down provisions concerning Savings Collection by non-Banks. In particular,
in Section IX of the resolution the lending-based crowdfunding is defined as 'social lending,' i.e. an instrument through which a plurality of subjects can request to a plurality of potential lenders, through online platforms, repayable funds (bearing interests) for personal or business use. Lending activity is allowed in compliance with the rules regulating the activities reserved to special categories of subjects, which include, for example and without limitation, banking activity, credit brokerage, payment services and savings collection. Platforms that want to carry out the lending activity have to apply for the Payment Service Provider (PSP) or Electronic Money Issuer (EMI) license granted by the Bank of Italy or ask for passport the license granted by another European supervisory authority in the relevant home member state. The Provisions do not set out a specific limit to the maximum amount that can be invested and raised through online platforms managed by non-bank managers. According to market practice, to date, an indicative threshold is from €50.000 up to €100.000 of investments per project and from €15.000 up to €300.000 of raising per project. No quantitative limits to raising capital through online platforms are set out for Banks. Lending platforms which are allowed by Bank of Italy to act as Payment Service Provider (PSP), Electronic Money Issuer (EMI) or financial intermediaries can provide payment services in any other European Member State. They can operate through (i) the setting up a local branch office, according to the right of freedom of establishment, or (ii) directly without any establishment of a local branch office, in accordance with the right of freedom to provide services, or (iii) through an agent established in the Member State in which platforms wish to provide payment services. In the same way, foreign PSPs and EMIs, authorised in a European State Member, can provide payment services in Italy, without the need to obtain further authorisation. Due to the PSD2 implementation, in the last year many lending platforms from other European countries established their local platforms in the Italian market.
3.4 Spain

In Spain, the Law 5/2015, of 27 April, on the Promotion of Corporate Financing, also called 'LFFE' (Ley de Fomento de la Financiación Empresarial), provides a regulation for equity and lending crowdfunding investment through the participatory financing platforms (Plataformas de Financiación Participativa, or PFP) [13] - a new category of intermediary in the financial market. Donation and reward-based crowdfunding are not being regulated in Spain. In this kind of crowdfunding the general laws affecting the VAT or tax allowance applies. The LEFE law also introduces new developments in securitisation and important changes to the bond issuance mechanism. The Spanish regulation, which took effect on April 29, 2015, the day following its publication in the Spanish Official Gazette (BOE- Boletín Oficial del Estado), arrives in Europe after the Italian one (2013), the French one (2014) and the guidelines of the English FCA. According to the article 46, participatory crowdfunding platforms are those authorised companies whose activity is to bring investors (individuals or legal entities who provide funding in exchange for a monetary compensation) into contact with promoters (natural or legal persons who request financing on their own behalf to allocate it to a participatory financing project), in a professional manner and through websites or other electronic means. This rule shall not apply for platforms seeking funding for promoters through donations, the sale of goods and services and interest free loans. The participatory crowdfunding platforms may offer different instruments (such as bonds, ordinary and preferential shares or other securities) and provide a range of ancillary services (such as the projects analysis to determine the level of risk for investors and advisory services to promoters). Collective financing platforms are under the authorisation and registration of the CNMV, the Spanish securities market regulator, with the participation of the Bank of Spain in the case of lending-based crowdfunding (art.53). The special CNMV register is regularly published on the CNMV's website and must contain the updated data of the corporate name, Internet domain address and registered office of the platform, as well as the identity of the administrators and a list of the partners with significant participation (art.54). Spain regulation also provides for
advanced policies for managing conflicts of interest. Platform's directors, managers, and significant shareholders may invest no more than 10% in a project, and can act as an issuer up to a maximum 10% of funds raised through the platform. Companies have to fulfil certain administrative and financial requirements to be allowed to operate as crowdfunding platforms (articles 55 and 56). Projects may be proposed by natural or legal persons with tax residence or validly constituted in Spain or another Member State of the European Union and (art.67). The amount of funding that can be raised per project through each platform may not exceed €2 million per year, with the possibility to carry out successive rounds of financing that do not exceed the aforementioned amount in annual calculation. Funding amount increases up to €5 million when projects are targeted only to accredited investors. In addition, promoters cannot have more than one project published simultaneously on one platform (art. 68). Taking as an example the US and UK legislation, Spain makes a distinction between accredited (or professional) investors and non-accredited ones (i.e. retail investors). Accredited investors are not subject to any specific investment limits but are exposed to greater risks and enjoy lesser protection. Non-accredited investors cannot invest or commit to investing over €3,000 in the same project managed by the same platform or more than €10,000 over a period of twelve months in projects published by the same platform (art.82). Spanish law applies to platforms, as well as to promoters and investors, operating within Spanish territory including those who are abroad but are offering products specifically to residents in Spain, or whose purpose is to advertise, promote themselves or otherwise attract customers in Spain (art.47).
4. Challenges and risks of fragmentation

Crowdfunding industry has expanded over the past decade, and its growth in Europe is predicted to be extremely strong in the coming years, notably in equity-and lending-based forms (European Commission, 2017a). The divergence of regulatory approaches to crowdfunding among European countries pose significant risks to the growth of the European crowdfunding market that, compared to other major world economies, is currently underdeveloped. A recent survey indicates that for the 40% of the European crowdfunding platforms, the risks associated with regulatory changes at both local and European levels are widely perceived as the greatest concern (Ziegler et al., 2018). Moreover, evidence suggests that cross-border transactions still represent a relatively modest share of overall volumes and this may be partly attributed to differences in national regulation which increases transaction costs and hinders crowdfunding service providers' ability to scale their offering at EU level. Even if there is still no unified regulation at European level (Boitan, 2016), policymakers and regulators in different countries are currently working hard to promote the use of crowdfunding by enacting new or revising existing regulatory frameworks. However, provide a harmonised regulation for crowdfunding, tailored to its characteristics and risks, to create a European Single Market poses a number of challenges, including:

1. the emergence of a streamlined and sound regulatory regime enabling and not stifling the crowdfunding market;
2. the adoption of a sympathetic tax system encouraging investors and firms;
3. the removal of cultural barriers concerning the approach to SMEs finance and investors' mentality which are still firmly entrenched in many European countries;
4. the identification of linkages with other important policy objectives such as the building of a Capital Markets Union (CMU).

Recognizing the need to establish a harmonized regulatory regime for crowdfunding, on 8 March 2018, the European Commission published a proposal for a Regulation on European Crowdfunding
Service Providers (ECSP) [14] as well as a proposal to amend MiFID II to exclude ECSPs from its obligations [15] (European Commission, 2018b and 2018c). The proposals are part of the European Capital Markets Union initiative and the Commission's FinTech Action Plan.

Key initiatives of the proposed ECSP Regulation include:

1. the possibility for crowdfunding platforms to apply for the 'European Crowdfunding Service Providers' (ECSP) label which would allow them to passport their services across Europe according to a single set of rules under the authorisation and ongoing supervision by ESMA;
2. all payments for crowdfunding transactions should take place through entities authorised under the Payment Services Directive;
3. greater protection for European investors through clearer rules on information disclosures, an entry knowledge test and a simulation of the ability to bear the loss;
4. stronger supervisory powers by ESMA on crowdfunding service providers and the enforcement of sanctions and administrative fines.

With the introduction of the ECSP passport, the current national frameworks will not be repealed. However, crowdfunding platforms which wish to provide services in more than one EU Member State will have to comply with only the proposed ECSP Regulation. In this way, platforms would only be authorised once without the need to ask the national approval from time to time. This would determine a reduction of market entry costs (regulatory and supervisory costs) for crowdfunding platforms and, at the same time, would minimise risks of regulatory arbitrage by ensuring solid investor protection. The proposed Regulation, still awaiting formal adoption by the European Parliament and the Council clearly showed the intention to create a European 'Single Market' for crowdfunding where the connections between investors and businesses in need of funding can easily occur both national and trans-European level. A further proposal comes from the European Parliament's Committee on Economic and Monetary Affairs (European Parliament, 2018). The
proposal foresees the opportunity to regulate token sales by creating new regulations for public initial coin offerings (ICOs). According to a document published on 10 August, crowdfunding service providers 'should be permitted to raise capital through their platforms using certain cryptocurrencies.' Supported by a single regulation this proposal should facilitate access to finance through crowdfunding and provide investors for more cybersecurity and legal protection from risks of fraud.

5. Conclusions

Crowdfunding is a burgeoning market (more than €7 billion reached in 2017) requiring increasingly regulatory attention. There is currently no a single regulation aimed at crowdfunding at European level yet, and the regulatory fragmentation is one of the biggest obstacles to achieving a more aligned Pan-European crowdfunding market. While this study requires further thinking, it contributes to the ongoing regulatory debate on how to remove obstacles and design an appropriate framework for the development of a single crowdfunding market in Europe. The results of the comparative analysis bring out some key policy implications by recognising the need, challenges, and risks due to the lack of regulatory harmonisation of crowdfunding. A central implication is that, even though the different national regimes may promote and stimulate crowdfunding market locally, these are not necessarily compatible with each other within a transnational context. European policymakers and regulators, with the support of the properly tailored national regulations, should design a single framework which reaches across and beyond the borders of the European Union with the objective of harnessing the great potential of crowdfunding-driven innovations. In particular, it will be necessary to strike a balance between the national potentially conflicting objectives, and identify the aspects that should be avoided and the lessons that should be learned from each European countries. Only in this way will it be possible to establish an innovation-promoting regulatory regime opening new economic opportunities for Europe and generating real impact in terms of new business creation. The work done
by policymakers is thus of the highest importance to strengthen the growth of alternative sources of funding - including crowdfunding - and to ensure their access to all Europe's companies, notably start-ups and SMEs. Crowdfunding regulatory landscape is changing rapidly, and further research could assess the impact of the harmonisation process on the crowdfunding market and its implications from the perspective of investor protection at the European level. One conclusion that emerges in response to the recent proposal of the European Commission is that regulatory harmonisation constitutes the basis for solid, sustainable and inclusive growth of crowdfunding, and FinTech in general.
Notes

1. The report is based on 344 crowdfunding, P2P lending and other alternative finance platforms across 45 European countries.

2. The 'Ordonnance n. 2014-559 du 30 mai 2014 relative au financement participatif' provided the basis for a regulatory framework applicable to crowdfunding to ensure its development according to secure legal conditions and to protect investors and borrowers. The new legal and regulatory framework came into force on 1 October 2014.

3. ORIAS is a French association in charge of a single register of insurance, banking and finance intermediaries.

4. The use of this collective label is reserved for legal entities meeting the following regulatory requirements: registration on the French register of insurance, banking and finance intermediaries (ORIAS), as a crowdfunding investment advisor (CIP) or a crowdfunding intermediary (IFP); authorization by the ACPR to provide an investment advisory service as an investment services provider (PSI) and offer financial securities offers through a progressive-access website that meets the characteristics set out in Article 325-32 of the General Regulation of the Autorité des Marchés Financiers.

5. See the 'Prospectus Directive' 2010/73/EU on the prospectus to be drawn up, approved and published when securities are offered to the public or admitted to trading on a regulated market.

6. As defined in Article 2 (point 1) of Regulation (EU) n. 2017/1129 dated 14June 2017, Small and Medium-Sized Enterprises’ or ‘SMEs’ are (i) companies, which, according to their last annual or consolidated accounts, meet at least two of the following three criteria: an average number of employees during the financial year of less than 250, a total balance sheet not exceeding €43 million and an annual net turnover not exceeding € 50 million; (ii) small and medium-sized enterprises as defined in point (13) of Article 4(1) of Directive 2014/65/EU i.e. the companies that had an average market capitalization of less than EUR 200 million on the basis of end-year quotes for the previous three calendar years.

7. At first, the Decree Law 179 restricted the public offer of equity participations through online portals solely to the 'Innovative start-ups', as defined in Article 25 of the same Decree Law. With the so called 'Investment Compact Decree' n. 3 of January 24, 2015, the use of equity crowdfunding was also extended to the 'Innovative SMEs.' And then, to all SMEs, through the Law n.232/2016, and also
to SMEs established in the form of limited liability companies, with the Decree Law n. 50/2017 (Article 57, sub-paragraph 1).

8. The asset management company, SICAV or SICAF which directly manages its own capital, an EU management company, an EU AIFM, a non-EU AIFM, and a EuSEF manager.

9. Until 2017, only 'banks and other investment undertakings already authorised to provide investment services' were listed among the authorised entities. With the Decree Law n. 50 of 24 April 2017, in force from January 2018, the category has been significantly extended to all the subjects mentioned above.

10. Investment services above are: (i) dealing for own account, (ii) execution of orders for clients, (iii) underwriting and/or placement based on an irrevocable commitment towards the issuer, and (iv) placement without an irrevocable commitment to issuers.

11. See Article 25 of CONSOB Regulation.

12. See Section 34-ter, sub-section 1 c), of CONSOB resolution 14th May 1999, no. 11971 (the 'Issuers Regulation'), as amended.

13. The draft law was developed at the end of February 2014, as part of the bill to promote SMEs funding, in order to respond to Spanish companies’ traditional dependence on bank financing.

14. This new proposal only applies to those crowdfunding services entailing a financial return for investors (such as investment and lending-based crowdfunding).

References


