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DEPARTMENT Integrated Supervision
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EC Public Consultation on Crowdfunding - View of the Austrian Financial Market Authority

In the past two years the FMA has noted a rising interest in crowdfinancing (CF). We record an increasing number of inquiries by potential CF-operators on the legal requirements for the establishment of CF-models. To our knowledge two Austrian companies operate smaller crowd*investing*-online-platforms (profit-based models) so far. There are no supervised providers.

Although the market in Austria for typical CF-Models seems to be small, the issue of crowdfunding has taken a prominent place in the public discussion which tends to label all types of “alternative financing models” as crowdfunding. These are often models of regional citizen funding for SMEs or public projects like a solar plant. So, regarding the terminology we can say that there is no specific legal term for CF in Austria and that we have a broad understanding of “crowdfinancing”, comprising all types of private/public, profit-based/non-profit, lending/debt/equity/donation/reward-based models where the public is invited to fund a specific project, regardless of the commercial objective and regardless of whether the platform is electronic or not. Whether a license is required depends on the individual model.

All models typically target retail investors and therefore entail risks of lacking transparency (SMEs for instance that seek crowdfunding are normally not required to publish certified accounts), misleading information (e.g. fraudulent representation and false statements on internet sites), project failure (contributors do not receive what they were promised) and unexpected losses (unlike with credit institutions there are no deposit guarantee schemes or similar facilities that could compensate crowd investors). **We therefore strongly advocate an approach of critical awareness of consumer protection.** Awareness-raising first and foremost among citizens in general (as potential contributors), but also among specific groups, such as small entrepreneurs (as potential fund raisers), seems necessary. We also see a number of possibilities to create and implement models already under and in compliance with existing supervisory laws. Within the existing legal framework, a license or even prospectus is not required in all cases. Tailor-made regimes regulating crowdfunding-models, however, seem difficult to develop due to the diversity of models.

As a supervisory authority, it is not our task to evaluate the benefits of CF for the economy but to

focus on the legal framework for providers and the risks for (retail) investors. For this reason, we published a guidance document on alternative and civic financing models on our website in February 2013. Accordingly, we support actions on the EU-level to raise awareness for the legal setting providers are operating in as well as for the potential risks of such forms of “off-bank-financing”. We would also consider discussions on how risks for retail investors could be mitigated (especially in non-supervised markets (e.g. a limitation of investment volumes)) as useful.

We would also like to point out in relation to EU Anti-Money Laundering and Combating of Terrorist Financing (AML/CFT) legislation only regulates certain legal and natural persons in the performance of specific economic activities subject to mandatory licensing. Pursuant to Article 2 of Directive 2005/60/EC, these include credit and financial institutions and specific natural and legal persons in the exercise of their professional activities – so-called designated non-financial businesses and professionals (e.g. external accountants, auditors, tax advisors, real estate agents and certain commercial businesses). The license-free provision of crowdfunding services per se – e.g. through the establishment of a crowdfunding platform on the internet – would therefore not fall within the scope of application of the EU AML/CFT framework; consequently, unlike credit and financial institutions, crowdfunds may not be subject to customer due diligence, transactions monitoring and suspicious activity reporting requirements on a national level, as this area is not harmonized by EU AML/CFT Directives. However, as crowdfunding regularly involves unregulated financial transactions it can be susceptible to money laundering, terrorist financing and other financial crimes. Crowdfunding models that involve two-way financial transactions (profit-sharing schemes, peer-to-peer lending and/or equity and investment crowdfunding) are especially prone to being misused for money laundering purposes, as illegally acquired assets can be laundered i.a. through the resale of securities or via the reimbursement of funds lent to the project owner. In the interest of preserving the integrity of financial markets and ensuring that they are not used, however inadvertently, for money laundering and other financial crimes, concerted action on the European level is required with regards to specific crowdfunding models.

Finally, since crowdfunding is often an internet-based and transnational phenomenon, we encourage any discussion and/or action on EU-level on risks and regulation.


With kind regards,

Austrian Financial Market Authority
On behalf of the Executive Board

Sergio Materazzi

Stefan Orlowski

signed electronically

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