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The European Federation of Financial Services Users
Fédération Européenne des Usagers des Services Financiers

EuroFinUse Response to the European Commission Consultation 'Crowdfunding in the EU – Exploring the added value of potential EU action'

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Executive Summary

EuroFinUse welcomes this Consultation from the European Commission on an issue of growing importance not only for the EU economy as a whole, but especially for retail investors and other financial services users. As a matter of fact, unlike most financial instruments, crowdfunding is exclusively reserved to individual investors and "retail" financial services users including SMEs; since institutional investors such as pension funds and insurance companies are not targeted by crowdfunding promoters. In general, we note that crowdfunding is far less developed in Europe than in the United States, but we feel regulatory action at EU level should not be further delayed: we are very concerned to see that national regulators[1] are already taking uncoordinated steps in this direction and it is imperative regulatory consistence at EU level for financial services is preserved. Indeed, we count on the EC to find the right balance between financial services user protection and the promotion of a sustainable European crowdfunding business.

EuroFinUse has recently been very active in a number of actions in the field of Crowdfunding. EuroFinUse's views were already presented at the Crowdfunding workshop organised by the European Commission last June in Brussels, and we responded to the Consultation from the French Autorité des Marchés Financiers on this issue. EuroFinUse organised a Conference in October 2013 where the potential benefits of crowdfunding may provide to financial services users to escape financial repression and circumvent the negative impact that the current European monetary policies and prudency rules have on the returns delivered by the financial products most commonly available at retail level.

In our position we will not refer, at this stage, to the substantial possible benefits that crowdfunding schemes can deliver to both promoters and financial services users in general, since the Commission has already extensively referred to those in its consultation document; and we agree with the European Commission's analysis.

Crowdfunding Taxonomy

We believe the taxonomy proposed by the European Commission is quite appropriate. We

[1] In a number of EU Member States such as UK, Italy and France.

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would like to state that, from that typology, the three first categories (donations, rewards and pre-selling) should be considered as "electronic means of payment", as there is no investment component attached to these activities. On the other hand, for the three other categories (profit sharing, lending and securities) there is a clear investment component. Both sub-groups fall into the scope of interest of EuroFinUse.

Therefore, it is necessary to harmonize pre-contractual information and conduct of business rules for both of these categories with the relevant existing regulations at EU level (first and foremost with the Payment Services Directive and also with the Insurance Mediation Directive, MiFID, the Prospectus Regulation and the hopefully upcoming Key Information Document (KID) for investment products Regulation.

At the same, the Public authorities should not stifle the emergence and development of such alternative funding platforms that respond to a need and typically offer better terms both to borrowers and issuers on the one side, and to lenders and shareholders on the other side, compared to established banking networks. In the mid to long term, the development of crowdfunding may therefore also lead to more competitive banking services.

EuroFinUse is also aware and concerned that a failure for Europe to quickly provide an appropriate and homogenous regulatory framework for crowdfunding will only favour crowdfunding platforms based outside of the EU.

Therefore, we count on the EC to find the right balance between financial services user protection and the promotion of a sustainable European crowdfunding business.

Crowdfunding Adviser

The proposal by the French Autorité des Marchés Financiers in their consultation document to create a special category of adviser (Conseiller de Financement Participatif) seems quite appropriate. We feel that the creation of such a category should however be subject to initiatives by regulators at national level, as they are best placed to supervise them. We acknowledge as well that the volume of crowdfunding in some EU markets could very well be negligible. There should in any case be some EU-wide rules, especially regarding the most basic information duties as well as advertising and selling practices to intermediaries for crowdfunding platforms, no matter whether rules at national level exist or not. This is necessary to ensure the coherence of the retail financial products legislation at EU level and guarantee minimum levels of investor protection. One of the most important precepts is to guarantee the duty of "best interest of the clients", as proposed by the AMF, and as already required for intermediaries by MiFID and IMD.

Supervision of Crowdfunding platforms

While national regulators are best placed to supervise the selling and advertising practices of crowdfunding projects, ESMA is best placed to supervise crowdfunding platforms as they may incur significant transnational activity in diverse EU Member States.

We are very concerned to see several Member States not going for an EU-wide regulatory framework and instead already drafting their national crowdfunding regulations: this is a recipe for failure as mentioned above, and is certainly welcomed by crowdfunding initiatives of non EU competitors.

Guarantee in case of Crowdfunding platform bankruptcy

We feel there should be specific regulatory provisions for the event of a bankruptcy of a crowdfunding platform, as there would be many open questions such as the possible impact on the crowdfunding projects in that platform (whose viability should not be compromised) and especially on investors. Those guarantees could take the form of some kind of deposit guarantee scheme or insurance. Most importantly, specific provisions should be in place for the transfer of crowdfunding projects to other platforms.

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