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COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

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Subject: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY
OF THE IMPACT ASSESSMENT Accompanying the document Proposal
for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL on European Crowdfunding Service Providers (ECSP) for
Business and Proposal for a DIRECTIVE OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL amending Directive 2014/65/EU on
markets in financial instruments

Delegations will find attached document SWD(2018) 57 final.

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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

**Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL**

on European Crowdfunding Service Providers (ECSP) for Business

and

**Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL**

amending Directive 2014/65/EU on markets in financial instruments

{COM(2018) 113 final} - {COM(2018) 99 final} - {SWD(2018) 56 final}

Executive Summary Sheet

Impact assessment on a legislative proposal for a European crowdfunding services regime for business

A. Need for action

Why? What is the problem being addressed?

Crowdfunding is a technology-enabled financial service that carries the potential to help business projects in need of funding and investors to diversify their portfolio. Crowdfunding is increasingly establishing itself as an essential part of the funding escalator for start-ups and young businesses. It is often the main funding tool for early stage companies financed where venture capital or even private equity funds are only partially taking interest in them. Crowdfunding provides an alternative to unsecured bank lending, such as bank overdrafts or credit card loans, which are currently the main sources of external finance for SMEs. Crowdfunding complements bank finance and corporate and thereby diversifies the sources of finance in the economy. It provides new opportunities in particular for young, innovative companies without extensive collateral, fixed asset or financial track record.

Despite this important role, EU crowdfunding markets for business finance are largely underdeveloped compared to other major economies, and most importantly unable to properly operate cross-border. Recent studies and evidence gathered via targeted consultations has confirmed that, due to fragmented and conflicting regulatory regimes, crowdfunding platforms are unable to scale and freely provide their services on a pan-European level. Likewise, investors refrain to engage cross-border due to a lack of trust in those platforms and their fragmented regulatory frameworks applicable to the service provision..

What is this initiative expected to achieve?

The initiative aims to enable crowdfunding activity across the EU Single Market for early stage finance and alternative finance for SMEs, in line with the objective of the Capital Markets Union (CMU). The initiative would also help to further diversify Europe's financial system for the benefit of financial stability, investor protection and competition among market players. The initiative has two specific objectives. The first objective is to enable platforms to scale cross-border, namely by creating a licensing regime that can be used across the EU without requiring further authorisation in each EU country. The second objective is to ensure that platforms are subject to a framework ensuring proper management of platforms and protection of fund providers, by focusing on sound risk management – notably on business conduct, fit and proper, risk management, due diligence - and on adequate information disclosure. This should increase investors' trust to engage cross-border.

What is the value added of action at the EU level?

The action taken will address the problems as identified in the impact assessment, that is the difficulty for platforms to scale across EU borders as well as the lack of trust for cross-border investments and fundraising that we are currently facing. EU action would reduce significantly the complexity, financial and administrative burdens for all key stakeholders, i.e. crowdfunding platforms, project owners and investors at the same time ensuring a level playing field among all the service providers using the same EU label.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

The Impact Assessment has considered the following policy options:

- Option 1 - Baseline scenario (no EU action)
- Option 2 - Building on reputational capital: minimum harmonisation combined with self-regulation
- Option 3 - A product-based approach: bringing crowdfunding within the existing single rulebook
- Option 4 - A complementary service-based solution: a voluntary "European Crowdfunding Provider (ECP)" regime that would define certain common EU standards for crowdfunding regimes.

Upon evaluation and consideration of the impacts, the fourth option (ECP regime) was found to be preferable because it provides a clear regulatory framework to address the problems identified, whilst remaining proportionate and minimising compliance costs.

Who supports which option?

Stakeholders have expressed support for a regulatory approach through several open public consultations. First, as regards the 2015 Green Paper on CMU, and although a few respondents clearly stated that no action was

necessary at EU level, many respondents called for regulatory certainty at EU level to facilitate cross-border activity and greater trust through transparency and investor protection. Second, in the context of the 2017 consultation on the CMU Mid-term review, many respondents made similar statements arguing in favour of the development of a proper legal framework for crowdfunding across the EU, so as to create a market of sufficient size. Third, in the consultation on FinTech that closed on 15 June 2017 most respondents believed that national regulatory regimes hindered cross-border crowdfunding activity and that an EU-level harmonisation was therefore required. Among the potential areas for harmonisation cited were platforms' disclosure requirements, registration requirements and investor protection rules.

Moreover, on the basis of the inception impact assessment, most representatives of Member States in the meeting of the Expert Group of the European Securities Committee (10 November 2017) expressed support for EU regulation in this area (option 4) and a few Member States suggested an initiative to harmonise national regimes (option 3).

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)?

The preferred option provides crowdfunding platforms with a simple and comprehensive method of scaling their cross-border operations under a new EU label. Common provisions on governance and transparency requirements for platforms will also give cross-border investors assurances with regard to proper protection against issues like conflicts of interest or fraudulent activities and better information about the projects being financed. Overall action could reduce cost of non-Europe by at least EUR 20 billion in new market volume in Europe.

By providing additional financing opportunities in particular for start-ups and innovative SMEs, the initiative is also expected to have a positive effect on economic growth, job creation and innovation. SME's currently employ 67% of the European workforce and are a significant driver of innovation. At the same time, SME's continue to experience significant problems to raise funds. The 2016 European Commission's Innobarometer survey confirms that access to funding is a key obstacle for spurring R&D and the commercialisation of innovative products or services.

What are the costs of the preferred option (if any, otherwise main ones)?

The preferred options generate compliance costs for platform providers, which are detailed in Annex 3 of the Impact Assessment and vary whether the regulated entity was already authorised under MiFID and whether platform providers seek or have sought authorisation in multiple countries. There will be an increase in compliance costs if the platform's activity is currently unregulated and if it provides or intends to provide services only in one country. The preferred option may also generate costs for administrations. The proposal might have some budgetary implications for ESMA, estimated around EUR 2.5 million, to be shared among industry and the EU budget in the first year of full implementation.

How will businesses, SMEs and micro-enterprises be affected?

Businesses, SMEs and micro-enterprises are the main users of crowdfunding platforms. This initiative will thus ensure that they will have additional sources funding available as an alternative to traditional financing measures such as bank loans, overdrafts and credit card debt that are often expensive for early-stage businesses. As the average fee to access crowdfunding is typically lower than costs of short-term bank funding, the initiative may also result in a reduction of funding costs for SMEs at early and first expansion phase.

Will there be significant impacts on national budgets and administrations?

The preferred option holds implications in terms of costs and administrative burden for NCAs and ESMA. The magnitude and distribution of these costs will depend on the precise requirements placed on ECPs and the related supervisory and monitoring tasks. However, the cost implications for supervisors will be significantly lower than those arising from a respective MiFID authorisation.

While there are no concrete estimates available as to the costs level, it can be assumed that the supervisory costs will be comparable to those associated with national regimes that only cover the activity of 'order transmission'. Depending on the involvement of ESMA in the authorisation and supervisory process, there will also be a cost impact on the EU budget. Assuming that ESMA will be in charge of authorising ECPs, it is estimated that there will be a one-off costs of around EUR 500,000 in order to setup respective IT systems and arrange for a team to take charge of the authorisation process.

Will there be other significant impacts? Max 6 lines

None.

D. Follow up

When will the policy be reviewed?

The crowdfunding market is growing fast and business models evolve in line with rapid technological developments. The relevance of the policy approach will therefore be monitored on a regular basis in line with the Better Regulation approach to make sure that the scope of the action (investment and lending based crowdfunding in projects up to EUR 1 million) and the extent of the measures are always aligned with their objectives and do not become disproportionate.