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CrowdfundingHub

Crowdfunding Crossing Borders

An Overview of Liability Risks Associated with Cross Border Crowdfunding Investments

2016

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Introduction

1. Foreword

1.1. Crowdfunding is here to stay. Its exponential growth worldwide shows that the market is seriously looking into new financing alternatives. Crowdfunding platforms pop up all over the place and are expanding rapidly. Inherently, the platforms, as well as the investors and the project owners, become confronted with other jurisdictions. Other national laws and regulations, another regulator, but most importantly another (claims) culture.

1.2. It is no news that crowdfunding platforms need scalability in order to become profitable. The main means to become scalable is to expand and grow the business on a cross border basis. Due to the lack of specific European legislation for the different types of crowdfunding, each Member State will maintain its own rules and regulations in respect of crowdfunding. Presumably, the crowdfunding market will be confronted with either takeovers of local platforms by foreign platforms or local platforms will team up and cooperate with foreign platforms.

1.3. The recently published green paper and action plan of the European Commission 'Building a Capital Markets Union' evidences that the European regulator acknowledges the potential of cross border crowdfunding activity. Presumably, a European regulatory framework for crowdfunding merely is a matter of time.

1.4. However, a European wide private law, let alone European liability law, is not something we envisage to be implemented in the near future, if at all. In addition to the regulatory regime, crowdfunding actors will be confronted with numerous different sets of national consumer law and tort law when structuring their business, fundraising or investments on a cross border basis.

1.5. Crowdfunding, like any type of investment, involves risks. The applicable risks differ depending on the actor involved in crowdfunding, albeit that – by its nature – the risk of fraud appears to be the biggest risk. The risks involved in crowdfunding can be generally summarized as follows:[1]

- the risk of money laundering, resulting in confiscation of assets;
- the counterparty risk of a failure or default by either the platform and/or the project owner, resulting in a potential loss of the (partial) investment;
- the risk of fraud resulting in embezzlement of the invested funds;

[1] ESMA opinion on investment-based crowdfunding, ESMA/2014/1378, p/ 29 - 31

- an operational risk of a (temporary) operational failure and/or discontinuity of the platform due to ICT problems and/or a disruption in the (automated) fund flows;
- the credit and investment risk resulting in a (partial) loss of investment;
- legal risks; and
- the risk of information asymmetry, lack of transparency and/or incomplete, inaccurate or misleading information as regards risk/return profile of the investment and no proper disclosure of the costs involved.

1.6. In order to bring the crowdfunding market to the next level, to actually make it a mainstream alternative for bank financing, these main risks should be mitigated as much as possible. From a regulatory perspective, the platform is generally held to be responsible for ensuring that these risks do not materialize, or, in any event, to do its utmost best to prevent such risks from materializing as much as possible. From a civil law perspective, one can ask oneself the question who actually is responsible. An investor who loses his investment will look at other means than the regulator and will generally try to claim monetary damages from either the platform and/or the project owner. Which claims are available to an investor in his capacity as a claimant under local civil law? And what are the defenses a platform and/or project owner can bring against those claims?

1.7. This report identifies the main grounds for a liability claim in respect of the different types of crowdfunding (donations, rewards, lending and investment based) in eleven Member States. This report also gives an overview of national civil law obligations that the platform and/or the project owner needs to adhere to and, as such, how to mitigate its respective civil law liability risks.

2. The research

2.1. The main research question answered in this report is the following:

Which civil law measures, outside insolvency proceedings, could an investor take against a crowdfunding platform and/or a project owner to hold it liable for damages resulting from investing in a crowdfunding project and what are the main takeaways for a crowdfunding platform and/or a project owner to prevent any such liability risks from materializing?

2.2. In answering this research question, next to national laws, amongst others the following EU directives and regulations were taken into account:

- MiFID (Directive 2004/39/EC; Regulation no. 1287/2006 and Directive 2006/73/EC) (and in the future: MiFID II (Directive 2014/65/EU) and MiFIR (Regulation no. 600/2014);
- Prospectus Directive (Directive 2010/73/EC amending Directive 2003/71/EC, which is contemplated to be replaced by a new Prospectus Regulation (COM (2015) 583) and the Prospectus Regulation (Regulation no. 809/2004);
- AIFMD (Directive 2011/61/EC);
- Consumer Credit Directive (Directive 2008/48/EC);
- Mortgage Credit Directive (Directive 2014/17/EU);

- Payment Services Directive (Directive 2007/64/EC) (and in the future PSD II (Directive 2015/2366/EC));
- Directive 1999/93/EC on a Community framework for electronic signatures;
- Directive 2000/31/EC (E-Commerce Directive);
- Unfair Commercial Practices Directive 2005/29/EC;
- Directive 2006/114/EC concerning misleading and comparative advertising;
- Consumer Rights Directive (Directive 2011/83/EU);
- Distance Marketing of Financial Services Directive (Directive) 2002/65/EC);
- Unfair Contracts Terms Directive (93/13/EEC);
- Regulation 2006/2004;
- Injunctions Directive (Directive 2009/22/EC);
- Rome I Regulation (Regulation no. 593/2008); and
- Rome II Regulation (Regulation no. 864/2007).

3. Aim of the report

3.1. This report aims to provide some insight in the civil law liability regimes in a great number of Member States. Although part of the regime in each particular Member State is based on European legislation, the civil law frameworks are still to a great extent merely nationally based laws and are driven by local cultures, norms and habits.

3.2. This report is, in our view, particularly important for platforms planning to provide cross border services and will form an interesting read for investors who are looking at making any cross border investments. It aims to give an overview of the rules that a platform and/or project owner needs to comply with and includes recommendations how any such actor can prevent as much as possible a civil law liability claim to be brought against it by an investor outside insolvency proceedings.

3.3. It is emphasized that this report does not entail legal advice and you are recommended to reach out to any of the participating law firms or your legal advisor if you have any further questions or if you require individual advice in respect of a particular situation. Moreover, it is emphasized that this report does not provide an exhaustive overview of laws and regulations that are potentially applicable. In particular, this report does not also include regulatory -, tax -, IP -, privacy -, administrative - and criminal law implications relevant for the crowdfunding sector.

3.4. We believe that this report supports a better understanding of the civil law legal framework around crowdfunding and more importantly gives relevant insights and recommendations to crowdfunding actors which could contribute to a further professionalization of this market.

4. Initiators and participating law firms

4.1. The research project Crowdfunding Crossing Borders was an initiative of Ronald Kleverlaan, founder of the Crowdfundinghub and Anne Hakvoort, partner at FG Lawyers, a Dutch boutique law firm with a special focus on alternative finance and fintech. Ronald and Anne

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are very grateful for the wonderful cooperation and hard work of each of the participating law firms listed below. A special word of thanks goes out to Peter Hoyer, who was of great value during the research by assisting us with all operational and ICT related work.

Belgium:

Estonia:

Finland:

France, Germany, Italy, Spain and the United Kingdom:

The Netherlands:

Poland:

Sweden:

Research findings

1. Introduction

1.1. This research report aims at giving a better understanding of civil law liability risks associated with cross border crowdfunding investments. Which civil law measures does a Dutch investor have against an Italian project owner if it invested in a project listed on a Polish crowdfunding platform? And what measures should a German crowdfunding platform take into account when it markets projects from French project owners to investors residing in the United Kingdom? These questions are very difficult to answer, even after having conducted this research project. However, this research report does give some insight into the civil law liability regimes in the Member States within the European Economic Area where crowdfunding is expanding rapidly and becoming a real alternative to the more mainstream ways of financing start ups and small and medium enterprises such a bank loans, venture capital or business angels.

1.2. In all eleven Member States where this research was conducted, being Belgium, Estonia, Finland, France, Germany, Italy, the Netherlands, Poland, Spain, Sweden and the United Kingdom, the regulatory framework is distinguished from the civil law framework. The United Kingdom is the only Member State which legal system is based on a common law approach rather than a civil law approach. As a consequence the United Kingdom does not have a civil code. Other than the regulatory framework, there is no clear set of rules laying down the grounds to hold a counterparty liable in the United Kingdom. Investors naturally can bring claims against the responsible counterparty, which is generally believed to be the platform, on the basis of breach of rule or breach of principle. The same applies in Finland. There is no Finnish civil code. The primary source of law and interpretation is found in developed legal principles in Finland, such as 'pacta sunt servanda' (meaning that agreements should be performed), principles of good faith and reasonableness and the protection of the weaker contractual party.

2. Regulatory framework

2.1. *Introduction*

2.1.1. The regulatory framework deals with the license or similar obligations applicable to – generally – the (operating company of an online) platform that intermediates between the investors at the one side and the project owner at the other side. It becomes apparent that the platform has the main responsibilities under the regulatory framework, in all eleven Member States, whilst the project owner generally only becomes confronted with regulatory laws and regulations if it contemplates to issue securities to the public (i.e. investment based crowdfunding). In each Member State, the exact regulatory framework applicable to the platform (and the project owner) depends on the type of crowdfunding (investment based, lending based, rewards based and donations based).

About half of the Member States where the research was conducted have specific crowdfunding regulations in place, most of which are from a recent date. The other half of the participating Member States have not yet developed specific crowdfunding regulations, albeit that most of those Member States appear to consider a more tailored regulatory approach. The regulatory framework used by each of the Member States focuses on investment based crowdfunding and lending based crowdfunding. None of the Member States confronts a platform with a regulatory license obligation when a rewards crowdfunding model is used. The same applies to donations based crowdfunding with one exception. Finland requires a money collection permit to be obtained by the project owner who raises funds through a donations crowdfunding project.

2.2. *Fund flows*

2.2.1. However, irrespective of the type of crowdfunding, the money handling by a platform is a concern in all Member States. It may trigger the applicability of the Payment Services Directive. The exact qualification of the type of payment services potentially to be provided by the platform is different in the participating Member States, albeit that the main consensus is that the receipt and transfer of the funds could qualify as a payment service within the meaning of the Payment Services Directive. Some Member States list the possibility of the platform qualifying as a mere commercial agent, resulting in the platform being exempt from a license obligation. Other Member States currently require a platform to register as an exempt payment services provider if the fund flows goes through the platform and provided that the fund flows are limited to an aggregate amount of €3 million per month. France is the only Member State that has developed a special, local and therefore non-passportable regime for lending based crowdfunding platforms (only) in France. These French platforms can opt for a light PSP status. On the other hand, an investment crowdfunding platform is prohibited to intermediate in the fund flows under French laws. In all Member States there are rules in place to safeguard the fund flows, either by requiring these fund flows to be segregated from the funds of the platform itself, by requiring that the platform does not take any intermediating role in the fund flows or by requiring that the platform cooperates with a licensed payment services provider, bank or electronic money institution.

2.3. *Investment based crowdfunding*

2.3.1. In the event crowdfunding takes place by means of the issuance of securities, such as equity or negotiable debt instruments such as bonds, the model used qualifies as investment based crowdfunding. In all Member States except for Sweden, investment based crowdfunding triggers regulatory hurdles for the platform. In Sweden, crowdfunding investments in private limited liability companies are not considered negotiable securities and – apparently – not as other form of financial instrument either and therefore is considered not to fall within the scope of MiFID. In Germany, real equity crowdfunding is no longer possible since a new law having entered into force (the Retail Investors Protection Act). The German regime has resulted in hybrid lending based crowdfunding structures being developed, such as subordinated profit-participating loans. In the other Member States, the platform either needs a license under the MiFID regime (such as in Belgium, Finland and the Netherlands) or

a comparable local license under specific local crowdfunding regulations (such as in France and Italy). In some Member States, the regulatory framework applicable to investment based crowdfunding is not yet set in stone (such as in Estonia). In the Netherlands, the MiFID regime generally applies to investment based crowdfunding platforms but under certain circumstances these platforms are exempt from the inducement ban applicable to investment firms under MiFID.

2.3.2. If the crowdfunding model used qualifies as investment based crowdfunding and therefore involves the issuance of securities, the project owner is generally confronted with the Prospectus Directive as implemented in the respective local laws. Again, Sweden has a different approach due to the interests in a Swedish private liability company does not qualify as a negotiable security under Swedish laws. As a result, the project owner – as issuer of the securities – is not considered to offer securities to the public within the scope of the Prospectus Directive. It should be noted, however, that Swedish project owners are also barred to offer securities or subscription rights to the public under a Swedish local law prohibition. An offer to the public is defined to be an offer to more than 200 investors under Swedish laws. This prohibition has caused legal insecurity for the potential of investment based crowdfunding in Sweden. The Swedish regulator recently considered the solution developed by investment based crowdfunding platforms of offering a pre sale with the ability to sign up for an issuance by up to 200 investors to be in violation of the above mentioned prohibition. In Italy, the possibility for project owners to raise capital through investment based crowdfunding is also limited to a specific type of issuer; it is only available to innovative start-ups, innovative small and medium enterprises or funds investing in such innovative companies.

2.3.3. Other than as described above, in the other Member States the project owner can generally be exempt from the obligation to publish a Prospectus Directive proof prospectus, approved by the relevant regulator, if the total offering size does not exceed a certain threshold. This threshold is set at a different level in the eleven Member States, albeit that most Member States make use of the general exemption under the Prospectus Directive for an issuance of securities against a total consideration of less than €2.5 million per annum within the European Economic Area (such as in Finland, the Netherlands and Sweden). Generally, the Member States that have specific crowdfunding regulations in place for investment based crowdfunding (such as France and Germany), have set deviating rules in respect of offering securities to the public in that specific Member State without the need for the publication of an approved prospectus. In Belgium, also deviating conditions apply to project owners who contemplate to offer securities to the public via a crowdfunding platform and who wish to rely on an exemption to publish a 'Prospectus Directive proof' prospectus.

2.4. *Lending based crowdfunding*

2.4.1. The regulatory regime applicable to lending based crowdfunding platforms differs subject to the type of project owner/borrower. If the project owner/borrower is not considered a consumer, the majority of the Member States do not impose a regulatory license requirement on the platform. This is different if the project owner qualifies as a consumer. In that case the loan itself qualifies as consumer credit, resulting in a license obligation for the

platform if the platform is considered to be the credit provider or credit intermediary. In some Member States, due to the anonymous and online nature of crowdfunding, the platform is considered to be a consumer credit provider even it does not qualify as a balance sheet lender (such as in Finland and the Netherlands). Generally, the platform will be considered a credit intermediary rather than a credit provider. Irrespective of the exact qualification, in all Member States, the platform is required to obtain a license if the project owner/borrower qualifies as a consumer. If the project owner / borrower is considered to be a business (or in any event, not a consumer), the regulatory treatment applicable to the platform differs in the Member States. In some Member States (such as France, the Netherlands, Italy and the United Kingdom), a lending based platform does become confronted with a license obligation or another sort of regulatory treatment. In other Member States (such as Belgium, Estonia and Finland), however, merely intermediating between the investors/lenders and the (non consumer) project owner/borrower in respect of a non-negotiable private loan does not trigger a regulatory regime to be applicable. Naturally, if the platform qualifies as a payment services provider, it will become confronted with a license obligation under the Payment Services Directive as implemented in the laws of the Member States (as described above).

2.4.2. In none of the Member States, a lending based platform currently qualifies as a credit institution within the meaning of CRD IV since the platform does not attract repayable funds from the public itself ánd does not provide credit for its own account.

2.5. *Non compliance with regulatory framework*

2.5.1. If a platform or, to the extent applicable, a project owner, does not comply with the regulatory framework applicable to it when operating a crowdfunding platform, structuring a crowdfunding investment project and/or raising funds through a crowdfunding campaign, the platform and/or project owner bears the risk of a regulator taking measures against it. Measures to be taken by a regulator differ in the Member States, but administrative sanctions such as a fine or a cease and desist order are relatively common. Moreover, the violator risks criminal prosecution. For the purposes of this research report, the most important risk is the risk of being held liable in civil law procedures by an individual investor or, if possible in the relevant Member States, a group of investors in a class action on the basis of breach of law, which forms a ground for liability claims being initiated against the platform or the project owner in each Member State. In some Member States (such as Finland), violating regulatory laws eases down the path to hold the violating party liable for damages in a civil law liability claim by an investor.

3. Civil law framework

3.1. *Introduction*

3.1.1. Irrespective of the potential non applicability of a regulatory framework to the platform and/or project owner, both the platform and the project owner have obligations under the applicable civil law framework in each Member State. This principle also applies in the United Kingdom, albeit that the applicable rules do not find their basis in a civil code but are laid down in specific Acts such as the Financial Services and Markets Act 2000 or in principle

based rulebooks such as the FCA Sourcebook. As a consequence, irrespective of the crowdfunding model used (lending, investment, rewards or donations), the platform and/or the project owner is – at all times and in all Member States – subject to a detailed set of rules mainly aimed at protecting consumers' interests.

3.1.2. Crowdfunding is a means for a project owner to raise funds from investors (who are generally consumers) with the intermediation of an online platform. By its nature, the contractual relationships entered into between the different actors in a typical crowdfunding project are considered distance contracts, being contracts entered into by electronic means and without the contract parties being physically present in the same room when entering into the contract. The contracts are also generally signed by electronic means. In all Member States an electronic signature can be legally recognized if specific conditions are satisfied. Estonia seems to be the most advanced in this respect; it offers foreigners the possibility to apply for a digital E-residency of Estonia. The most material condition is that the authentication method used is sufficiently reliable which is generally held to be the case if the electronic signature is based on a qualifying certificate and is generated using safe means for creating electronic signatures. Since the platform is enabling the investors on the one hand and the project owner on the other hand to enter into contractual relationships at a distance by electronic means, the platform qualifies as an information society within the meaning of the E-Commerce Directive.

3.1.3. Next to the implementation of EU legislation in the local laws of the respective Member States, different general principles of contract law are being applied in the different Member States. This has a direct effect on the contractual relationship between two or more contract parties and in particular the manner in which a court will review a contractual liability claim. General principles of contract law, like pacta sund servanda (agreements should be performed) and the principle of good faith) seem to apply in most Member States. In some Member States (such as Estonia, Finland and the Netherlands), the principle of reasonableness is held to be another leading principle in their respective contract laws. Furthermore, under Dutch contract laws and in particular in a contractual relationship between a business and a consumer, great value is attached to the intention of the contract parties. This Dutch principle could lead to legal insecurity if the actual wording of the contract appears not to be in line with the intentions of (one of) the contract parties.

3.2. *The EU Consumer Law Acquis*

3.2.1. The absolute majority of the obligations applicable to the platform and/or the project owner are based on EU legislation under the EU Consumer Law Acquis and comparable EU legislation, including the E-Commerce Directive, the Consumer Rights Directive, the Unfair Contracts Terms Directive, the Unfair Commercial Practices Act and the Distance Marketing of Financial Services Directive. In all eleven Member States the implementation of this type of EU legislation has resulted in a duty of care and a duty of information applicable to – generally – the platform but also to some extent to the project owner. Such duties aim at ensuring that the commercial practices are fair and to prevent fraud. The platform generally has a best efforts obligation to prevent fraud as a result of which some sort of due diligence

obligation is imposed to the platform in respect of the nature of the project owner as well as the type of project prior to publication thereof on the crowdfunding website.

3.2.2. The main duty of the platform and the project owner is to ensure that material information is provided to enable an investor to make an informed investment decision. Such information must at all times be accurate, complete, comprehensible and not misleading (nor misleading by omission). Although the project owner, as owner of such information, is generally held to be the main responsible party if the information provided appears not to be in line with this main point of departure, the platform also has a duty of care to ensure that the project owner has complied with such information obligation prior to publishing a project on the website.

3.2.3. These information and marketing obligations are generally derived from the civil law framework rather than the regulatory framework (with the United Kingdom being an exception). Pursuant to these transparency obligations, the platform and the project owner are subject to a minimum set of specific pre-contractual, contractual and post-contractual requirements which they need to take into account when publishing a project on a crowdfunding platform for investment.

3.2.4. The implementation of the above mentioned EU legislation has resulted in local mandatory law provisions that cannot be deviated from if a consumer is involved. This implemented EU legislation has also resulted in a withdrawal right for an investor (provided he is a consumer) if the minimum level of information was not provided, resulting in the possibility for an investor to withdraw his investment within – generally – 14 days after investing (in Italy a 7 days term is introduced in the specific crowdfunding regulation). This EU legislation has resulted in the consumer being better protected than another investor in all eleven Member States. This is particularly relevant in crowdfunding investments as a considerable part, if not all, of the investors in a specific project will generally qualify as a consumer. Although different definitions for the term consumer are used, a natural person acting outside the course of his business or profession making a relatively limited investment enjoys the consumer protection in each of the eleven Member States.

3.3. *Local law specifics and peculiarities*

3.3.1. In most Member States, in particular those with specific crowdfunding regulations, the platform is subjected to additional disclosure rules in respect of, generally, its legal structure, its fee structure and the platform's duty of care requires the platform to work diligently, fair and transparent and to avoid conflicts of interest. The minimum information levels also relate to the project owner, the project and the investment proposition. The platform generally has an obligation to warn an investor on the website in respect of the risks involved when investing in crowdfunding as well as in respect of the risks related to this specific project owner and project.

3.3.2. Moreover, in some of the Member States (such as Germany, Italy and the Netherlands) the platform needs to conduct some sort of suitability or appropriateness test before an investor can in a specific project listed on the website of the platform. Generally, these investor tests

relate to investment limits being set in the relevant Member States. There is no consensus in respect of the level of these investment limits in the different Member States if any such limits are being applied in the first place. The investor test relates to assessing the investor's knowledge and experience in crowdfunding or investing in general and to determine the investor's financial soundness. The consequences attached to the outcome of such investor test differ in the Member States; in Italy, an investor is barred from investing in an investment based crowdfunding project if he does not successfully complete such an investor test, whilst in the Netherlands, the platform only needs to provide a non-binding warning to an investor if the investment appears not to be suitable or appropriate for this specific investor.

3.3.3. Non compliance with the prescribed information and marketing requirements as well as violation of the duty of care could be grounds for holding the responsible party or parties liable. A prejudiced investor, or – if class actions are available under the relevant jurisdiction – a group of investors can initiate civil proceedings against the platform and/or the project owner if such violations have resulted in losses for the investor or group of investors.

3.4. *Main grounds for civil liability claim*

3.4.1. In all Member States, the main legal grounds on the basis of which an investor can initiate legal proceedings against either (the operating company of an online) platform or the project owner are breach of contract (contractual liability) and an unlawful act / tort. Other than in respect of a claim on the basis of breach on contract, an investor does not necessarily have to be in a contractual relationship to successfully hold a platform or project owner liable on the basis of an unlawful act / tort claim. In addition to these main legal grounds for civil law liability claims, an investor generally also has the possibility to declare (a part of) a legal act annul and void, either with or without court interference, and to terminate or cancel (a part of) a legal act on the basis of, for example, such legal act being contrary to the applicable law, in violation of good morals or public order or on the basis of the legal act being entered into on the basis of vitiated consent (such as deceit or error). Irrespective the absence of a civil law system in the United Kingdom, the grounds for a liability claim of an investor against the platform or project owner are generally similar, namely breach of a rule or breach of a principle. In itself such breach can be evidence of a breach of contract or fiduciary duty owed by the platform under the general law.

3.4.2. In Finland and France, the principle applies that a claim cannot be based on both breach of contract and unlawful act. In these jurisdictions, the claimant must choose the legal ground on which the liability claim should be made. Presumably the decisive factors will generally be whether or not the claimant is in a contractual relationship with the defendant and whether or not the claimant has the burden of proof when initiating proceedings on the basis of either breach of contract or unlawful act.

Breach of contract

3.4.3. A crowdfunding project entails multiple contracts. Generally, the platform will enter into a terms of use contract with the investor and a contract for services with the project owner. Furthermore, the investors and the project owner will enter into a separate investment

contract or deed in relation to the investment (to be) made by the investors in the project and the obligations of the project owner towards the investors in respect of such investment.

3.4.4. Depending on the type of investment (and therefore the type of crowdfunding), the terms of such contractual relationship will be different. Generally, a lending based crowdfunding project will entail a loan agreement whilst an investment based crowdfunding project could for example entail the issuance of shares in the capital of the project owner, which issuance can be subjected to specific local laws of the Member States where the project owner is incorporated (such as the requirement that an issuance or transfer of non listed shares must take place in front of a civil law notary in the Netherlands).

3.4.5. In order to be able to bring a successful claim on the basis of breach of contract, several conditions will need to be satisfied in order for the claim to be successful. The exact conditions differ in the participating Member States albeit that in all Member States a claim on the basis of breach of contract requires (i) a defective performance of an obligation under the contract, (ii) damages and (iii) a causal link between the defective performance and the damages. In some Member States (such as in Germany, Italy, the Netherlands and Sweden) it is also required that the defective performance is attributable to the defendant in order for the latter being held accountable.

3.4.6. The platform will generally not be a party to the actual investment contract between the investors and the project owner. As such, an investor will be limited in initiating legal proceedings for monetary damages resulting from the investment contract against the platform on the basis of breach of contract. However, each of the Member States provides for the possibility to initiate proceedings against the platform as well on the basis of an unlawful act.

Unlawful act / Tort

3.4.7. It is more difficult to obtain a successful claim on the basis of unlawful act than on the basis of a breach of contract in the Member States. In the relevant tort provisions, one of the prerequisites of a successful tort claim is fault, negligence, wrongful behavior, intent or any other sort of culpability or accountability at the side of the defendant. In Finland, a tort claim is also subjected to the existence of certain special reasons. This additional condition under Finnish laws, however, does not apply if specific regulatory requirements are not satisfied (for example if an investment based crowdfunding platform or project owner in an equity issuance did not comply with the regulatory rules applicable to it).

3.4.8. Under the laws of some Member States (such as Germany and the Netherlands), legi speciali (freely translated as special laws) are available to a claimant under circumstances. In Germany, for example, an investor has three specific grounds for holding a project owner and, under circumstances, a platform liable on the basis of prospectus liability. Under German law, a distinction is made between statutory prospectus liability and prospectus liability pursuant to civil law, which is in turn divided in particular prospectus liability and general prospectus liability. These types of prospectus liability are based on the principle of 'culpa in contrahendo' meaning that the liability of the defendant is based on the trust that

the claimant has or could have in the defendant. This is also a leading principle under Swedish laws. In the Netherlands, a lex specialis of the general unlawful act would be available to a claimant if the commercial practices of the platform are considered unfair (which is in any event the case if the commercial practices are misleading or aggressive). Under Dutch law, part of the burden of proof shift from the claimant to the defendant, making it easier for the claimant to get injunctions and compensation. In such case under Dutch law, the platform can only prevent being liable if it can prove that the unlawful act is not attributable to it nor that the platform can be held accountable on other grounds.

3.5. *Burden of proof*

3.5.1. Possibly one of the most important factors for an investor to take into account when considering cross border investments is whether or not he, as a potential claimant, has the burden of proof or whether the defendant carries the main responsibility to evidence to the court that he cannot be held accountable. The rules in respect of the burden of proof differs in the Member States where this research was conducted.

3.5.2. In Belgium and France for example, the burden of proof appears to lie with the claimant irrespective of the ground for holding the defendant liable (such as breach of contract or unlawful act). The same applies in Estonia and the Netherlands, albeit that in these Member States there is a reversal of (a part of) the burden of proof to the defendant in specific situations, such as in case of a claim based on unfair commercial practices.

3.5.3. In other Member States (such as Finland and Poland) different rules apply depending on the ground for holding a defendant liable. If the claim is based on an unlawful act, the burden of proof in these Member States generally lies with the claimant, albeit that under part of Finnish consumer protection laws as well as the draft crowdfunding act (which did not enter into force yet on the date of publication of this report) legi speciali apply resulting in the principle of exculpation liability to apply. This principle also applies under Finnish as well as Polish laws when the claim is based on breach of contract. The principle of exculpation liability means that the liability of the defendant is presumed resulting in the defendant having the burden of proof that it acted with due care to avoid liability. The claimant still needs to evidence the damages incurred and the causal link between the damages claimed and the ground for holding the defendant liable but, as mentioned, the wrongdoing of the defendant itself is presumed.

3.5.4. In Germany and Italy on the other hand the burden of proof in crowdfunding investments appears to lie with the defendant. It is presumed that the defendant is responsible for the breach of duty. The defendant needs to evidence that he cannot be held responsible for such breach of duty. Under German laws, a claim based on prospectus liability (irrespective of the type of prospectus liability) results in the burden of proof to lie with the claimant.

3.5.5. Sweden seems to be the only Member State where an investor has an extensive personal responsibility to perform a sufficient due diligence review on the project and the project owner prior to investing in such crowdfunding project. An investor investing in a Swedish

project, or better: entering into a relationship which is governed by Swedish laws, has a duty to inform himself and holds primary responsibility for its investment behavior.

3.6. *Class actions*

3.6.1. Due to its nature, the average investment of one investor in a crowdfunding project is generally small. The risks involved for one particular investor in one particular crowdfunding project are therefore, generally, fairly limited. However, if a project owner or a platform does cause damage to an investor, chances are that a relatively big group of investors have suffered similar damages on the same grounds. Whilst one individual investor may not take the effort to initiate proceedings against the platform and/or the project owner, it may well be that a group of prejudiced investors will combine their efforts and commence a class action against the platform and/or the project owner.

3.6.2. Although some sort of joint procedure of a group of claimants against one and the same defendant seems to be possible in all Member States, there is no real consensus as to whether or not traditional class actions are available to a group of claimants in the different Member States where the research was conducted. If a class action can be initiated against a defendant in a particular Member State, specific local procedural rules apply. For example, in Belgium a class action is only available if brought in front of the courts of Brussels and provided that the class action is more efficient than separate individual procedures. Moreover, claimants must be represented by an authorized consumer association. The latter condition also applies if a group of claimants wants to commence a class action under the laws of, for example, Italy, the Netherlands and Poland. In the Netherlands, no monetary damages can be claimed in a class action. This results in separate proceedings to determine the individual damages after a class action judgment or settlement. Furthermore, in Poland a class action is only available if the class consists of at least ten claimants with underlying claims that have the same of a similar factual basis. In France, the general principle is that no one shall plead by proxy. However, since recently (end of 2014), class actions have become available subject to specific conditions. In Estonia, opt out class actions are not permitted whilst there is no specific rule in respect of opt in class actions. In Finland and, historically, in the United Kingdom, the laws do not provide for a possibility to commence a traditional class action. There are, however, ways to initiate some kind of combined procedure against one defendant. Sweden makes a distinction between three types of class action depending on the person(s) initiated the class action: either a private class action (initiated by a private person), an organizational class action (initiated by a non-profit organization) and a public class action (initiated by an authority such as the Consumer Ombudsman).

3.7. *Sanctions*

3.7.1. The type of sanctions that a claimant can claim from a defendant depends on the grounds for holding the defendant liable. The main distinction made in the Member States is contractual liability versus liability on the basis of an unlawful act / tort. Naturally, if the claimant does not have a contractual relationship with the defendant, the claimant will generally need to base his claim on an unlawful act. Depending on the damages or losses incurred by a claimant, the claim against a project owner will generally be based on contractual liability, whilst the claim against the platform will, presumably, typically be based on an unlawful act.

3.7.2. Other than requesting cease and desist orders, a claimant has the opportunity to affect the legal validity of a contract. Generally, a contract is invalid, null and void or can be annulled, cancelled, rescinded or terminated in whole or in part in case of vitiated consent or if the contract is contrary to law, good morals or public order. The exact manner of termination and the legal consequences of such termination are different in the respective Member States. For example, if the contract is declared null and void (either by declaration of the claimant or by court order), it is deemed not to have existed at any time, resulting in claims between the original contract parties in order to bring them in positions as if there had not been a contract. As another example, if a part of a contract is held to be invalid and no 'partial invalidity clause' if included in the contract, the legal validity of the contract as a whole is prejudiced.

3.7.3. Other than the nullity or termination of a contract in whole or in part, it is possible to request for performance of (an obligation under) a contract if the main ground for holding a defendant liable is breach of contract. This rule of law applies in each Member State. In most Member States, the claimant also has an opportunity to claim monetary damages on the basis of breach of contract. In some Member States, such monetary damages are limited to the extent these were foreseeable (for example in Belgium, Estonia and Finland) or are subjected to a proviso, for example in France where monetary damages can only be claimed if these are the immediate and direct result of the breach of contract.

3.7.4. If the claim is based on an unlawful act, the claimant will generally request for compensation for monetary damages incurred. The applicable principles in respect of the type of losses and limitations of the amount that can be claimed are different in the Member States. In Finland for example, the general principle is to restore the financial situation of the claimant as if the damages were not suffered, albeit that the claim is generally limited to financial losses only and indirect damages can only be claimed if these were foreseeable. Under French laws, monetary damages in tort law are limited to direct, certain and legitimate damages. In Germany, yet another principle applies: only absolute legal interests can be claimed in tort claims whilst pure financial losses cannot. Lastly, in Sweden all purely economic losses can be claimed under Swedish tort laws.

3.8. *Statute of limitations*

3.8.1. Another critical but typical local law issue that should be taken into account by a claimant before commencing legal proceedings against a defendant is the applicable statute of limitations. After all, the grounds for holding a defendant liable should not have been barred by the lapse of time. Not only different statutes of limitations apply in each Member State, but also within each Member State different statutes of limitations apply depending on the type of claim. For example, in Estonia the statute of limitations for bringing a claim on the basis of breach of contract or tort law is generally three years, which is also the case in Finland. In Finland this three year term commences upon the claimant notices of should have noticed the ground for liability, whilst a claim must in any event be initiated ultimately ten years after the occurrence of the event which gave rise to the liability claim. In the Netherlands, such general statute of limitations for a legal claim is 20 years as from the loss

causing event, albeit that Dutch law provides for many exceptions to this term resulting in much more limited prescribed periods. The general statute of limitations for annulling a contract is three years in the Netherlands and for claiming performance of a contract, for terminating a contract or for claiming monetary damages is only five years after the claimant has noticed or should have noticed the ground for liability. In Poland, the general statute of limitations is ten years whilst declaring a contract null and void should generally be done within one year. Lastly, in Spain, a general statute of limitations of five years applies.

4. Crowdfunding crossing borders

4.1. *Introduction*

4.1.1. Within the European Economic Area, there are a number of Regulations of the European Commission which have direct effect in each of the Member States with the aim of facilitating in resolving cross border disputes and the recognition and enforceability of a court judgment against a defendant within the European Economic Area. These Regulations are:

- the (new) Brussels Regulation (Regulation (EC) No. 1215/2012) on jurisdiction, recognition and enforcement of judgments in civil and commercial matters setting out which bodies are competent in cross-border disputes (generally the court of the Member State where the defendant is domiciled) and describing how a judgment is to be recognized and enforced in another Member State;
- Regulation (EC) No. 861/2007 establishing a European small claims procedure applicable to cross-border litigation regarding civil and commercial matters where the claim does not exceed EUR 2,000;
- Regulation (EC) No. 1896/2006 establishing a European order for payment procedure simplifying, speeding up and reducing the costs of litigation in cross-border cases concerning uncontested monetary claims; and
- Regulation (EC) No. 805/2004 establishing a European enforcement order for uncontested claims.

4.1.2. In addition, the Regulations of Rome can have a great impact in cross border contracts and relationships. Rome I Regulation (Regulation (EC) No. 593/2008) deals with the law applicable to contractual obligations and Rome II Regulation (Regulation (EC) No. 864/2007) deals with the law applicable to non-contractual obligations. These Rome Regulations aim to provide the conflict of law rules in the event any such conflicts occur in cross border situations and resulting claims.

4.1.3. The main principle pursuant to Rome I is that a contract shall be governed by the law chosen by the parties. As such, great value is attached to a choice of law clause included in any kind of contract, including the terms and conditions of the platform. However, in a consumer – business contract, and therefore in the typical crowdfunding contract, such a choice of law may not have the result of depriving the consumer of the protection afforded to him by mandatory provisions in the law of the Member State where the consumer has his habitual residence. If no choice of law clause has been included, Rome I provides for conflict of law

rules in order to determine which law is applicable to the contractual relationship of the contract parties. A typical crowdfunding contract between a consumer on the one hand and a business on the other hand without a choice of law clause included will generally be governed by the law of the Member State where the consumer has his habitual residence provided that the project owner (or platform) has pursued or directed its activities in such Member State.

4.1.4. Pursuant to Rome II, conflicts of law rules are provided for non-contractual obligations arising out of – for example – tort/unlawful act. The general conflicts of law rule for tort claims under Rome II is that the applicable law shall be the law of the Member State in which the damage has occurred. However, exceptions to this general conflicts of law rule may apply if, for example the tort is manifestly more closely connected with another Member State, than the law of that other Member State shall apply. Parties can choose, however, to submit these non-contractual obligations to the law of a specific chosen Member State. As such, investors should always pay attention to the choice of law clauses included in any kind of contract they enter into, including in the terms and conditions of the platform.

4.2. *Investors*

4.2.1. An investor who contemplates to invest in a cross border project listed on a foreign platform and/or related to a foreign project owner, should take into account that generally the underlying legal and/or contractual relationship with the platform and/or project owner will be governed by other laws than the laws of his own Member State because a choice of law clause will generally be included in the underlying contractual terms. Typically, also a choice of forum clause shall be included in the applicable terms referring to another court than the local courts of the Member State of the investor. Subject to not being deprived of mandatory provisions applicable pursuant to the laws of his own Member State, an investor is warned that from a European international private law perspective, a choice of law clause and a choice of forum clause are generally held to be valid. As a consequence, the investor should make himself aware of the relevant laws that apply to his investment. In particular, an investor in crowdfunding projects should take special notice of any local laws and rules that may have a directly effect on the investor, such as investment maximums applicable to the investor, other duty of care rules or a different level of protection compared to what the investor is used to under his own local laws and regulations (for example in Finland where the consumer protection legislation is not applicable in all crowdfunding related situations, even if the investor is a consumer).

4.2.2. Due to the due diligence review obligation applicable to investors pursuant to Swedish laws, investors contemplating to invest in Swedish projects or through Swedish platforms should take special notice of these responsibilities that are assumed to be applicable to investors before investing in any crowdfunding project.

4.3. *Platform*

A platform that contemplates to expand its business into other Member States, at all times, needs to obtain legal advice in the Member State where it wishes to provide its services.

Other than mandatory local law provisions that the platform should take into account, the platform will need to take into account the local regulatory framework applicable in each Member State where it contemplates to provide its services.

Investment based crowdfunding

4.3.1. In some Member States (such as in Belgium, Finland and the Netherlands) investment based platforms fall under the scope of MiFID and are required to obtain a license as an investment firm within the meaning of MiFID in their home Member State. The advantage of a MiFID license is that it provides for the possibility to easily passport it to host Member States. Under MiFID, upon the license being passported, the platform could provide its services on a cross border basis from its home Member State into the host Member States or by opening a local branch in the host Member States. If a local branch if opened, additional rules may apply to the platform pursuant to the laws of the host Member State in addition to the laws applicable to the platform pursuant to the laws of its home Member State (for example in Sweden, where it is required to keep the books of the branch in Sweden and to appoint an auditor for the branch).

4.3.2. Irrespective of the possibility of a MiFID license to be passported, a platform may be confronted with an additional set of local rules to be applicable to the platform when it considers providing its services in another Member State (such as in Belgium, Estonia, Italy and Poland). In particular in the Member States that have specific crowdfunding regulations for investment based crowdfunding (such as France, Germany and the United Kingdom), the investment based platform with a passportable MiFID license may be required to obtain an additional local license (such as the license as IFP under French law), may need to adopt local standards (such as in the United Kingdom) or may be confronted with a practical impossibility to provide its services in the host Member State in the same manner as the platform set up its services in its home Member State (for example in Germany). Sweden is the only Member State where an investment based platform does not fall under any type of regulatory oversight.

Lending based crowdfunding

4.3.3. Other than a license as a payment services provider (to the extent applicable), none of the Member States where this research was conducted offers a passportable license for lending based crowdfunding. The regulatory approach is different in the respective Member States. As a result, the local laws of the host Member States apply to a lending based platform when it considers to provide its services in other Member States than its home Member State. In some Member States (such as Belgium, Estonia and Finland), a lending based platform does not fall under regulatory oversight, whilst in other Member States (such as France, the Netherlands, Italy and the United Kingdom), a lending based platform does become confronted with a license obligation or another sort of regulatory treatment.

4.3.4. Unlike other Member States, Sweden and Italy appear to have a relatively clear approach as to the applicability of the Payment Services Directive as implemented in their respective local laws to a lending based platform. In these Member States a lending based platform generally needs to obtain a license as a payment services provider.

Donations based crowdfunding

4.3.5. Finland is the only Member State where donations based crowdfunding falls under the regulatory framework (other than a potential license requirement as a payment services provider that could theoretically be applicable to each type of crowdfunding platform in each Member State). A foreign donations based platform considering to provide its services in Finland needs to set up a branch in Finland and should obtain a money collection permit prior to collecting funds for charitable purposes or should ensure that each project owner to be listed on its website has obtained such a permit under Finnish laws.

4.4. *Project owner*

4.4.1. If a project owner wishes to raise funds through a foreign platform and/or from foreign investors, it needs to take notice of the relevant applicable foreign rules and regulations of the host Member States in addition to the legislative framework in his own Member State. In particular, in case of fundraising by means of the offering of securities via an investment based platform, the project owner not only needs to take into account the laws in relation to a public offering of securities in his own Member State, but also the local laws of the Member States where offerings to the public are contemplated. Pursuant to any of these laws, the project owner may be confronted with the obligation to publish a prospectus within the meaning of the Prospectus Directive and the Prospectus Regulation. Subject to the relevant Member States where the project owner wishes to offer its securities to the public, the project owner in a typical crowdfunding project will generally be able to rely on an exemption to this obligation to publish a prospectus due to the relatively small total offering size.

4.4.2. Irrespective of such an exemption being available to a project owner or not, in each Member State, the project owner is held to be the main responsible party for providing any material information to enable an investor to make an informed investment decision. The project owner needs to provide such information on the website of the platform or on its own website in an accurate, complete, comprehensible and not misleading (nor misleading by omission) manner.

Lastly, local laws may apply to the project owner, especially if the project owner contemplates to raise the funds via a local subsidiary. In Sweden for example, the project owner cannot offer securities or subscription rights to more than 200 investors whilst the interests in a Swedish private liability company itself do not qualify as negotiable securities under Swedish laws resulting in the Prospectus Directive not to be applicable. In Italy, only

innovative start-ups, innovative small and medium enterprises or funds investing in such innovative companies can raise funds through an investment based crowdfunding campaign. Also, it should be noted that for example pursuant to Dutch law, the issuance of shares in the capital of a Dutch project owner can only take place in front of a Dutch civil law notary.

5. Conclusion

5.1. As mentioned in the introduction of this report, crowdfunding platforms need scalability in order to become profitable. The main means to become scalable is to expand and grow the business on a cross border basis.

5.2. Due to the absence of a European regulatory framework or a uniform European regulatory approach by all Member States as regards the license obligations and similar regulatory rules applicable to a crowdfunding platform, it is currently still relatively burdensome, inefficient and costly to expand the platform's business in other Member States.

5.3. The expanding platform will generally be confronted with a considerable part of new and/or additional local rules to be applicable to it in each host Member State. Naturally, it depends on the type of crowdfunding and the corresponding applicable regulatory regime whether or not the fragmented regulatory framework within the European Economic Area results in a negative business decision as regards expansion into a specific host Member State. However, in any event the platform cannot prevent making costs for obtaining local law advice in each of the Member States where it contemplates to provide its services.

5.4. If the exponential growth of crowdfunding as an alternative means of financing is continuing in its current pace, this fragmented regulatory approach in the respective Member States will presumably result in multijurisdictional takeovers of local platforms by foreign platforms or in the entering into of other sorts of cross border cooperation or corporate structures like joint ventures in which platforms will team up and cooperate with each other on a cross border basis. After all, why would a foreign platform reinvent the wheel in each Member State where it prefers to become operational while local platforms already have in place all what is needed and have knowledge of the relevant local laws in their Member States?

Descriptive summaries

of

civil law frameworks

in

participating Member States

Belgium

1. Introduction

1.1. In this chapter we will, in a general manner, describe the Belgian civil law liability claims that can be brought against a platform or a project owner in respect of different types of crowdfunding as well as the defenses available to mitigate those risks. The overview is by no means exhaustive and we describe only the grounds of liability that are most likely to occur in relation to crowdfunding.

1.2. Under Belgian law, civil law liability can arise if legal and/or contractual obligations are violated. Therefore, as a starting point, we will briefly describe the main legal obligations of a platform and a project owner respectively.

1.3. Firstly, the platform is required to ensure that all applicable legal obligations, amongst others relating to regulatory requirements, data protection, consumer protection, e-commerce and payment services, are fully complied with. In case any of these requirements is not fully complied with, the platform may be held liable.

1.4. Secondly, the platform should be transparent on the legal structure of the crowdfunding, in particular in case of (direct or indirect) investment based and lending based crowdfunding. Such legal structure should also ensure, as much as possible, that the investors' funds are ring-fenced and safeguarded in case of insolvency of the platform and, for as long as the crowdfunding campaign is ongoing, in case of insolvency of the project owner. At the least, if this is not the case, the platform should disclose this risk to the investor.

1.5. Thirdly, as intermediary between the project owner and the investor, the platform has a best effort obligation to prevent fraud by the project owners. It should therefore have adequate measures in place to mitigate this risk. These measures include a maximum of transparency on the nature of the projects presented, on the (identity, business and background of) project owners and on the level of screening performed by the platform prior to presenting a project on its website.

1.6. Finally, the platform has an obligation to implement adequate measures to prevent the discontinuity of the website due to ICT problems and/or a disruption in the fund flows (if the latter are handled by the platform itself).

1.7. The project owner above all has a responsibility to provide complete, not misleading and accurate information on itself and its project to the platform and the investors. This information should allow the platform to conduct an appropriate screening and enable the investors to make an informed investment decision on proper grounds.

1.8. Specific regulatory requirements, such as those relating to public offers, data protection, anti-money laundering and the rules on consumer protection may, depending on the circumstances also be applicable to the project owner and should be complied with.

2. Type of claims against a platform or a project owner: individual or class action

2.1. An investor always has an individual right to commence proceedings against the platform or the project owner, at its own costs and efforts.

2.2. If the investor is a consumer, he can, jointly with other consumers, commence a class action against the platform or a project owner, represented by an authorized consumer association (being either a recognized association defending consumer interests or an association approved by the minister for consumer affairs).

2.3. One of the conditions for the admissibility of a class action, to be assessed by the court, is that the class action must be more efficient than an individual procedure.

2.4. The damages suffered by the investors-consumers must result from a breach of either (i) a contract, or (ii) exhaustively listed Belgian legislation, including some of the rules applicable to crowdfunding, such as the legislation on data protection, consumer protection and e-commerce.

2.5. Measures other than monetary compensation, such as injunctive relief (*stakingsvordering/ action en cessation*), cannot be demanded in a class action.

2.6. Once proceedings are initiated, the court will order the parties to engage in settlement negotiations during a period determined by the court. If a settlement agreement is reached, the court will approve or reject it. If no settlement agreement is reached, the procedure will continue on the merits.

2.7. The courts of Brussels are exclusively competent for class actions.

3. Main grounds for civil liability claims in Belgium

3.1. Being a civil law country, Belgian civil law generally distinguishes between two types of claims: (i) those based on a default on a contractual obligation, and (ii) those based on an unlawful act (*onrechtmatige daad/acte illicite)*. These grounds for civil liability are discussed below.

3.2. *A claim based on a default on a contractual obligation*

3.2.1. Crowdfunding in Belgium is generally structured by means of agreements between (i) the investor and the project owner (or an intermediary company)[2] for the actual crowdfunding; (ii) the platform and the investor for the provision of the services offered by the platform;

[2] Most often in case of investment based crowdfunding

and (iii) the platform and the project owner in relation to the placement of the project on the platform.

3.2.2. As a consequence, the grounds for liability may be:

(i) A claim that no valid agreement was entered into; or

(ii) A claim that the performance of the agreement was defective.

No valid agreement was entered into

3.2.3. Under Belgian law, a valid agreement requires the consent of the parties thereto. In case of a vitiated consent (*wilsgebrek/vice de consentement*), there exists a discrepancy between the declared will of a party and the actual will of a party.[3] Two types of vitiated consent are relevant for crowdfunding: error (*dwaling/erreur)* and deceit (*bedrog/dol*) and will be briefly discussed below.

3.2.4. Error[4] exists if a party has a false impression of an essential element of the agreement. The false impression must be excusable from the side of the erroneous party, meaning that any reasonable person in similar circumstances would have erred. Whether or not an error is deemed to exist is in many cases determined by the factual circumstances and a matter of proof, as the existence of an error must be proven by the party relying on it. For example, a claim based on error could, depending on the circumstances, be deemed to exist if, based on the information provided on the platform and other than as a result of fraud by the platform or project owner, an investor erroneously believed that he was providing a loan instead of a gift.

3.2.5. Deceit[5] exists if a party has a false impression of a material element of the agreement due to fraudulent acts of the counterparty. The deceit must be conclusive, i.e., in the absence of the deceit, the agreement would not have been concluded. The failure to provide certain information can constitute deceit. In practice, the main obstacle to a claim based on deceit is the requirement on the party victim of the deceit to prove the bad faith of its counterparty. For example, deceit could be deemed to exist if the project owner intentionally and in bad faith misrepresented its project on the website.

3.2.6. The sanctions in case of proven error or deceit are the nullity of the agreement and/or, possibly, the granting of monetary damages. It should be noted that an agreement entered into in circumstances of error or deceit is not null and void by operation of law. The nullity of such agreement must be invoked in court proceedings. Damages can be granted if the error

[3] Another possibility is that a party is unable to give its valid consent, for instance a minor or mentally ill person. As the overview is limited to general matters, we do not discuss this.

[4] Article 1110 of the Belgian Civil Code

[5] Article 1116 of the Belgian Civil Code

or deceit was due to a fault of the other party and the annulment of the agreement does not place the misled party in the same (monetary) situation as prior to the error or deceit.[6]

Failure to (properly) perform the agreement

3.2.7. Under Belgian law, contractual obligations are binding upon the parties and must be interpreted and performed in good faith.[7] A party which fails to properly or fully perform its contractual obligations may be held liable (*wanprestatie/défaut d'exécution*).

3.2.8. The claimant generally has the burden of evidencing that (i) the counterparty has failed to perform a contractual obligation, and (ii) that such failure constituted a fault attributable to the counterparty.

3.2.9. The claimant may ask the performance of the agreement, the nullity of the agreement and/or monetary damages. Unless the performance of the agreement has become impossible or disproportionally burdensome, a Belgian court will order that the agreement be performed. If such performance fails to entirely remedy the non-defaulting party, monetary damages can be granted at the same time. If performance of the agreement has become impossible or too burdensome, the non-defaulting party can ask for the annulment of the agreement and the award of compensatory monetary damages. The damages must be a direct and foreseeable result of the default and must be proven by the claimant.[8]

3.2.10. In case of default in reciprocal agreements, such as the agreements entered into between the platform and the project owner/investor and between the project owner and the investor, the non-defaulting party may, if the agreement so provides and subject to prior default notice, invoke the out-of-court dissolution of the agreement and/or the suspension of the performance of its own obligations.

3.3. *A claim based on the performance of an unlawful act (tort)*

3.3.1. Before a claim on the basis of the performance of an unlawful act[9] can be successful, the claimant has the burden of evidencing:

(i) that the defendant has performed an unlawful act (being an act or a failure to act);
(ii) that such unlawful act was attributable to the defendant;
(iii) that the claimant suffered (monetary or moral) damages (*schade/ dommage*), and
(iv) the existence of a causal link between the damages suffered and the unlawful act.

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7 Article 1134, paragraph 3 of the Belgian Civil Code

8 Articles 1150 and 1151 of the Belgian Civil Code

9 Article 1382 of the Belgian Civil Code

3.3.2. A claimant can invoke liability on the basis of an unlawful act and a breach of contract at the same time, if the alleged breach is not only a breach of a contractual obligation, but also a breach of the general principle of good faith and if and to the extent that the damages are caused by such breach of good faith.

4. Descriptive summary of the framework with general applicability to crowdfunding

The legal requirements that must be complied with by platforms and project owners under Belgian law can generally be distinguished as follows:

(i) provisions deriving from the fact that crowdfunding takes place by electronic means and at distance, such as the provisions on electronic signatures, e-commerce and distance contracts;
(ii) provisions protecting the interests of parties deemed more vulnerable, mostly consumers;
(iii) provisions with general applicability in relation to contractual obligations and tort law, mostly stated in the Belgian Civil Code and as described in paragraph 3 above;
(iv) regulatory requirements; and
(v) data protection rules.

An overview of applicable legislation is provided in the framework. Below, we will briefly discuss the provisions which are most relevant for the platform, the project owner and/or the investor.

4.1. *E-commerce, distance contracts and electronic signature*

4.1.1. The project for which funding is sought will be marketed on the online website of the platform and investors will make their investment decision based on the information made available thereon. As a result, the relationship between the platform and the investor, as well as between the project owner and the investor will generally be established by electronic means. The legislation on e-commerce, distance contracts and electronic signatures therefore applies.

4.1.2. The platform must comply with the rules of the E-commerce Act.[10] The E-commerce Act imposes obligations in relation to the information to be provided to the investors and project owners, including such matters as the details of the platform, the formalities for the conclusion of the contract, the possibility to download the contract and any applicable general conditions and the contents of the order confirmation. In particular, the platform has an obligation to provide clear and unequivocal information on the fee charged to the investors and/or project owners. It is to be noted that the use of electronic mail by the platform for purposes of publicity is subject to the prior, specific and informed consent of the recipient. The E-commerce Act will generally not apply to donation-based and reward-based crowdfunding. Civil law claims (as discussed in paragraph 3 above) may be initiated by investors and/or project owners if the provisions of the E-commerce Act are not complied with.

[10] Book XII, articles XII.1-23 of the Economic Law Code

4.1.3. Title 3 of Book VI of the Belgian Economic Law Code[11] contains provisions applicable to distance contracts with consumers. The provisions of this section will apply only if the investors are consumers, i.e., natural persons acting outside their trade, business or profession, and may be applicable to the platform as well as to the project owner. This section imposes, amongst others, information obligations on the platform and provides that a consumer is entitled to withdraw from the contract within fourteen days after its conclusion, at no or limited costs.

4.1.4. Title 3 of Book VI of the Belgian Economic Law Code furthermore contains specific provisions on the provision of on-line financial services to consumers. These provisions may apply to the platform if it provides payment services (see, paragraph 4.4.4).

4.1.5. In the event of a breach of the provisions of Book VI of the Economic Law Code, any interested party can ask the president of the commercial court to order the immediate suspension (*stakingsvordering/ action en cessation*) of such breach. The president of the commercial court may furthermore impose a fine for each day that the breach continues and/or order the publication of the court order in, for instance, national or regional press. Any claim for damages must, however, be initiated in a civil law procedure (as discussed in paragraph 3 above).

4.2. *Consumer protection*

4.2.1. Book VI of the Economic Law Code[12] sets out general conduct of business rules applicable to the offering of goods and services and the conclusion of contracts between companies and consumers. The objective is to ensure fairness of commercial transactions, amongst others by means of transparency. The provisions of Book VI will apply to the platform and the project owner, in all cases only if the investors are consumers, and to all types of crowdfunding.

4.2.2. Prior to the conclusion of the contract, the consumer must receive clear and comprehensible information on such matters as the identity of the provider, prices, discounts and the characteristics of the goods sold (by the project owner) and services provided (by the platform or the project owner). Furthermore, the conclusion of contracts with consumers is subject to specific requirements. In case of doubt on the contents of a contractual provision, the interpretation which is most favorable for the consumer will be chosen.

4.2.3. Title 4 of Book VI of the Belgian Economic Law Code[13] prohibits unfair practices. A commercial practice is unfair if (i) it is contrary to professional diligence and (ii) materially distorts, or is likely to materially distort, the economic behavior of consumers. Examples are misleading or aggressive commercial practices.

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[11] Articles VI.45-63 of the Economic Law Code

[12] Articles VI.1-128 of the Economic Law Code

[13] Articles VI.92-117 of the Economic Law Code

4.2.4. Unfair contract terms in the B2B relation are equally prohibited and are defined as commercial practices which damage or could potentially damage the professional interests of one or more other companies (including misleading or derogatory advertising).

4.2.5. The potential claims and liabilities for a breach of these provisions are as set out in paragraph 4.1.5 above.

4.3. *Obligations under contracts and tort law*

The potential claims and liabilities for a breach of contract or performance of an unlawful act are set out in paragraph 3 above.

4.4. *Regulatory requirements*

4.4.1. Depending mostly on the type of crowdfunding, regulatory requirements may apply to the platform and/or the project owner.

4.4.2. Currently, no license is required for a platform providing crowdfunding services in Belgium. A platform may become subject to a license requirement in the future.[14]

4.4.3. The requirements in relation to payment services apply to all types of crowdfunding. This is the only regulatory requirement applicable to donation based and reward based crowdfunding.

4.4.4. The rules in relation to payment services as set out in the Act of 21 December 2009 on the status of payment institutions and e-money institutions (Payment Institutions Act)[15] are applicable to the platform. Pursuant to Article 5 of this law, payment services may only be provided in Belgium by, mainly, credit institutions, electronic money institutions and payment institutions. The Belgian Financial Services and Markets Authority ("FSMA")[16] considers that when an intermediary, such as the platform, intervenes in the transfer of funds between an investor and a project owner, it provides a payment service and should therefore qualify as one of the above institutions. The solutions generally adopted in Belgium are that (i) funds are directly transferred by the investor into the project owner's bank account, or (ii) funds are processed by an external provider qualifying as a payment services provider under the Payment Institutions Act.

4.4.5. Non-compliance with the provisions of the Payment Institutions Act may result in criminal sanctions (including imprisonment and fines) being imposed, in addition to administrative sanctions and fines. The platform may also be held liable under tort law for a breach of the Payment Institutions Act (as described in paragraph 3 above).

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[14] Following a draft bill proposed in 2015 a crowdfunding platform providing investment based and lending based crowdfunding will be required to obtain a license.

[15] Wet betreffende het statuut van de betalingsinstellingen, de toegang tot het bedrijf van betalingsdienstenbieder en de toegang tot betalingssystemen/ Loi relative au statut des établissements de paiement et des établissements de monnaie électronique, à l'accès à l'acivité d'émission de monnaire électronique et à l'accès aux systèmes de paiement.

[16] Autoriteit voor Financiële Diensten en Markten/ Autorité des services et marchés financiers

4.4.6. Additional regulatory requirements, as set out in the framework, are applicable to investment based and lending based crowdfunding, of which the requirements under the Prospectus Act[17] and the Investment Firms Act[18] are the most burdensome.

4.4.7. The Prospectus Act requires the publication of a prospectus prior to the commencement of any public offering of securities in Belgium. Any offering of securities on the on-line website of the platform will be deemed to be a public offering. As the term "securities" is defined broadly, the Prospectus Act applies to investment based and lending based crowdfunding. The Prospectus Act applies to the project owner offering securities (including loans) and to the platform which will be deemed to act on behalf of the project owner.

4.4.8. However, no prospectus must be published if:

(i) the offering of securities will be for a total consideration in the EEA of less than 100,000 EUR; or
(ii) each of the following conditions if fulfilled:
    a. each investor may respond to the offer for maximum 1,000 EUR;[19]
    b. the total amount of the offer is below 300,000 EUR; and
    c. all documents concerning the offer state its total amount and the maximum investment amount by investor.

The sanctions for breach of the Prospectus Act are as set out in paragraph 4.4.5 above.

4.4.9. Pursuant to the Investment Firms Act, investment services may be provided in Belgium only by investment firms and credit institutions. The FSMA has indicated that it generally considers that following elements constitute the placing of financial instruments:

a. the existence of an agreement (whether written or oral) between the issuer (i.e., the project owner) and the intermediary (i.e., the platform) whereby the intermediary acts on behalf of the issuer; and
b. A consideration paid by the issuer (i.e., the project owner) to the intermediary (i.e., the platform).

4.4.10. The platform generally offers a window to undertakings looking for funds. Investors may subscribe to the different projects on the platform and the platform manager will generally receive a fee. These elements indicate that the platform offers the services of placing financial instruments and will therefore be required to obtain a license as investment firm. As

[17] The Act of 16 June 2006 on the public offering of investment instruments and the admission to trading of investment instruments to a regulated market. Wet op de openbare aanbieding van beleggingsinstrumenten en de toelating van beleggingsinstrumenten tot de verhandeling op een gereglementeerde markt/ Loi relative aux offres publiques d'instruments de placement et aux admissions d'instruments de placement à la négociation sur des marchés réglementés

[18] The Act of 6 April 1995 on the status and supervision of investment firms. Wet van 6 april 1995 inzake het statuut van en het toezicht op de beleggingsondernemingen/ Loi du 6 avril 1995 relative au statut et au contrôle des entreprises d'investissement

[19] According to a draft bill proposed in 2015, this threshold would be increased to 5,000 EUR

an investment firm, the platform will be required to identify the investors under the applicable anti-money laundering legislation.[20]

The Investment Firms Act is applicable in case of investment based crowdfunding and, depending on the form of financial instrument offered, may apply to lending based crowdfunding.

The sanctions for breach of the Investment Firms Act are as set out in paragraph 4.4.4 above.

4.5. *Data Protection Act*

4.5.1. The Data Protection Act[21] aims to protect individuals against the abuse of their personal data. Personal data are any data that permit to identify an individual (e.g. name, (professional) e-mail address, phone number, bank account number). Anonymous or mere company data, such as a company name, do not qualify as personal data (e.g. info@[company name]). The scope of application of the Data Protection Act is broad and includes investors signing up for a project, as well as visitors of the platform. Both are protected if they provide personal data or if cookies are used to identify their IP address.

4.5.2. The Data Protection Act imposes mostly obligations on the user of personal data designated as "controller". The controller, being either a natural person or a legal entity, determines the purposes and the means of a data processing operation. It can delegate its tasks to a so-called processor, i.e., a subcontractor carrying out the data processing operation under its authority. In crowdfunding, the platform will generally be deemed to be the controller.

4.5.3. In case of infringement of the Data Protection Act, the controller will be responsible. If the controller does not have its registered offices in Belgium, it should appoint a legal representative in Belgium.

4.5.4. The legal requirements under the Data Protection Act are the following:

(i) notification of the Privacy Commission, the Belgian supervisory authority;
(ii) obligations concerning the use of personal data.

These requirements will be briefly discussed below.

4.5.5. Prior to collecting any personal data, the controller must in principle notify the Privacy Commission of the intended use thereof. Specific exemptions are available. Note that in case personal data are distributed to third parties (e.g. display on a website, communication to other investors or to attendants of seminars) a notification with the Privacy Commission will always be required.

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[20] Wet van 11 januari 1993 tot voorkoming van het gebruik van het financiële stelsel voor het witwassen van geld en de financiering van terrorisme/ Loi relative à la prévention de l'utilisation du système financier aux fins du blanchiment de capitaux et du financement du terrorisme

[21] Act of 8 December 1992 on the protection of privacy in relation to the processing of personal data. Wet van 8 december 1992. Wet tot bescherming van de persoonlijke levensfeer ten opzichte van de verwerking van persoonsgegevens/ Loi relative à la protection de la vie privée à l'égard des traitements de données à caractère personnel

4.5.6. Controllers may generally only process personal data if:

- the individuals concerned have given their unambiguous, free and informed consent for the intended use;
- the processing is necessary for the performance of an agreement entered into with the individuals concerned; or
- the processing is required by law.

Moreover, if data are collected directly from investors or visitors of the platform, the following information, amongst others, must be provided:

- the purpose of the use of personal data;
- the name and address of the controller and of his representative in Belgium;
- the recipients or categories of recipients of the data;
- the individuals' right to access and rectify their own personal data.

4.5.7. Infringements of the Data Protection Act are subject to fines of 600 euro up to 600,000 euro. The platform may also be held liable in tort (see, paragraph 3.5 above). Moreover, the platform can be ordered to cease the use of the personal data collected.

4.5.8. The proposed EU Data Protection Regulation will impose unified and more stringent data protection rules, directly applicable across all EU Member States in the future.

5. Crowdfunding crossing borders from Belgium

5.1. *Investor*

Reference is made to paragraph 7.1.1 of the section on the Netherlands. This paragraph applies, mutatis mutandis, to the Belgian investor.

5.2. *Platform*

5.2.1. A platform incorporated under the laws of Belgium that considers expanding its business into other Member States has two choices: (i) teaming up with a local platform, or (ii) itself becoming active in the other Member State. In the event that the platform chooses the latter option, it can offer its services on a cross-border basis from Belgium either without any physical presence in the other Member State, or through the opening of a branch office in the other Member State. In both cases, additional local laws and regulations will become applicable to the Belgian platform.

5.2.2. Local rules on public offerings of securities will apply in case of investment based and lending based crowdfunding. The rules on public offerings are harmonized within the European Union on the basis of the European Prospectus Directive.[22] A Belgian project owner or platform intending to make a public offering abroad, may request FSMA to inform its local counterpart and ESMA thereof. The notice of FSMA should be accompanied by a certificate of approval of the Belgian prospectus, a copy and, if required, a translation thereof, as well as

[22] Directive 2003/71/EC as amended.

any additional information required under local law. If no prospectus is required to be published in Belgium, the requirements under relevant local law should still be verified.

5.2.3. If the platform holds a license in Belgium, whether under the UCITS Act, AIFM Act, the Investment Services Act or Payment Services Act (in each case we refer to the framework for further details), it will generally be able to passport such license to another Member State subject to limited local requirements. As a result of such pass-porting, the platform can be active on the basis of its Belgian license in other Member States of the European Economic Area.

5.2.4. At all times, the platform and the project owner should obtain local law advice before commencing their respective activities in the other Member State.

5.3. *Project Owner*

5.3.1. If a Belgian project owner wishes to attract funds through a foreign platform and/or from foreign investors, it needs to take the applicable foreign rules and regulations into account in addition to the Belgian legislative framework.

5.3.2. The local rules on public offerings of securities, as set out in paragraph 5.2 above, apply mutatis mutandis to the project owner.

5.3.3. It should be emphasized that the project owner has its own responsibility to ensure that all applicable laws and regulations are complied with and that it may encounter liability risks if local laws are violated and/or foreign investors are prejudiced. The mere fact of arranging the funding through a local crowdfunding platform does not take away the responsibility of the project owner for compliance with local laws.

6. Crowdfunding crossing borders to Belgium

6.1. *Investor*

A foreign investor interested in investing in a Belgian project owner and/or through the intermediation of a Belgian platform, should inform himself of the Belgian law specifics of this investment and his position under Belgian law. Generally, an investor qualifying as a consumer under Belgian law is better protected under Belgian civil law than an investor who does not qualify as such. An important challenge for the foreign investor will be the evaluation of the trustworthiness of the platform and project owner. The general look-and-feel of the platform will give a first indication thereof. An objective way of verification can be found on the website of the FSMA,[23] which provides a list of licensees under applicable legislation, such as the Investment Firms Act, the AIFM Act; of any prospectus published in Belgium and certificates of approval of foreign prospectuses. The website of the Belgian Crowdfunding Federation[24] provides a list of approved Belgian crowdfunding platforms.

[23] www.fsma.be. It should be kept in mind that Belgian law does not currently impose a license requirement on crowdfunding platforms. However, a crowdfunding platform may need to obtain a license as an investment firm, an AIF-manager etc. In case of investment based or lending based crowdfunding , a prospectus may be required. The FSMA website publishes the prospectuses of public offerings in Belgium.

[24] www.belgischecrowdfundingfederatie.be

6.2. *Platform*

6.2.1. When considering to become active in Belgium from another Member State, the foreign platform should ensure that it takes into account the applicable regulatory framework in respect of accessing the Belgian market. If the platform holds licenses under foreign law, it may be able to rely on such license in respect of its activities in Belgium, subject to limited formalities and limited additional requirements.

6.2.2. In the case of investment based and lending based crowdfunding, it should be verified whether a prospectus is required to be published under Belgian law. A prospectus published abroad may be used for the public offering in Belgium, provided that the FSMA receives a certificate of approval of the local authority, a copy of the prospectus and, if the prospectus is drafted in a language other than Dutch, French or English, a translation (of a summary) thereof.

6.2.3. Whether or not Belgian law will be the governing law of the contracts with the project owners and/or investors, the platform will be confronted with Belgian civil law issues and Belgian liability risks if it becomes active in the Belgian market.

6.2.4. A foreign platform, regardless the type of crowdfunding, should obtain local law advice when considering to become active on the Belgian market.

6.3. *Project Owner*

6.3.1. A foreign project owner who is considering to attract funding via the assistance of a Belgian platform should ensure to understand the Belgian law implications of entering into an agreement which will, presumably, be governed by Belgian law. It should, to the extent available, verify the trustworthiness of the Belgian platform via objective information (see, paragraph 6.1 above).

6.3.2. The requirements in relation to public offerings as set out in paragraph 6.2 will apply, mutatis mutandis, to the project owner.

6.3.3. The applicability of other regulatory requirements under Belgian law should be verified (see, paragraph 6.2 above).

7. Conclusion and recommendations

7.1. Crowdfunding platforms and project owners need to adhere to numerous rules and regulations, relating not only to the regulatory but also to the civil law framework. This becomes all the more onerous if the platform and/or project owner are active in different jurisdictions, as they will need to comply with local law in all such jurisdictions. By its nature, crowdfunding could easily become international and it is regrettable that the lack of harmonization (in particular as regards civil law) is an impediment to the international expansion of crowdfunding.

7.2. The following are the recommendations, from a Belgian civil law perspective, for a platform or a project owner to avoid liability under Belgian law.

Platform

7.2.1. The platform should:

when publishing a project on the website:

- perform a (minimum level) of identification and background due diligence on the project owner and its project. More importantly, the platform should clearly indicate on its website the level and nature of the due diligence it has performed on the project owner and its project;
- perform know you customer checks on the investors;
- clearly state the risks of crowdfunding on the website (including the default rates);
- ensure that adequate and sufficient information on the project owner, its creditworthiness and its project is placed on the website in order to enable the investor to take an informed investment decision;
- provide easily comprehensible, complete, accurate and non-misleading information on:
  - the terms and conditions of the investment
  - the characteristics of the investment (type of crowdfunding, type of consideration)
  - the structure of the investment (direct or indirect investment in the project owner)
  - the rights and obligations of the investors and the project owners
  - the risks involved in the investment
- offer on its website standard investment contracts, complemented by general terms and conditions;
- publish on its website a privacy and cookie policy, ensuring amongst others that private individuals give their unambiguous and informed consent for the use of their personal data;
- be entirely transparent on its responsibilities, its fees and cost structure;

prior to/ upon closing an investment in a project:

- only allow an investor to invest in a particular project after it has explicitly acknowledged its understanding of the risks involved and its agreement with the (general) conditions;
- ensure that, if applicable, the investor does not exceed the applicable investment limits when investing in a particular project;
- segregate moneys received from investors in order to protect these (to the extent possible) from bankruptcy risks (of the platform, the project owner (as long as the crowdfunding campaign is ongoing) and, if applicable, the third party payment provider) and clearly describe on the website the risks incurred by the investor in case of insolvency of the project owner, the platform and any third party involved;
- have appropriate governance arrangements in place relating to complaints and incidents, the prevention of fraud and terrorist financing, an adequate IT system and document handling system;
- ensure that the handling of the transfer of funds is taken care of by the project owner or by a licensed third party payment services provider; and

- platforms, or the sector in general, should consider cooperate with each other with the aim to minimize the risk of fraud by exchanging relevant information and/or by introducing a system of fraud registration.

Project Owner

7.2.2. The project owner should:

- provide easily comprehensible, complete, accurate and non misleading information on:
  - itself
  - its project
  - its creditworthiness
  - the risks involved in the investment
  - the type of reward and means of delivery (for reward based crowdfunding)
  - the structure of the investment (direct or indirect loan or investment in the project owner) (for lending based and investment based crowdfunding)
- use or invest the crowdfunding funds in the manner as indicated in the crowdfunding campaign;
- if it handles the transfer of funds collected by means of crowdfunding: ensure that appropriate administrative procedures are in place.

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Estonia

1. Introduction

1.1. The aim of this short overview is to provide you with a general introduction into the main characteristics of Estonian civil law to the extent that is relevant for understanding the typical risks associated with crowdfunding. Some of the potential risks of civil law liability that could be brought against the platform or the project owner are highlighted and the possible ways to mitigate these risks are discussed.

1.2. We are going to give a short overview of the actions that investors could take against crowdfunding platforms and project owners in situations where the investments do not develop in expected manner. We will describe, in a general manner, the Estonian civil law peculiarities in respect of liability risks in crowdfunding outside insolvency proceedings.

2. Formation of a contract

2.1. From Estonian law perspective, a contract is entered into by an offer being made and accepted or by the mutual exchange of declarations of intent in any other manner if it is sufficiently clear that the parties have reached an agreement. A contract is entered into when the acceptance reaches the offeror. In the case of acceptance by an act which is not an express declaration of intent, the contract is entered into on the moment that the offeror becomes aware of the performance of the act (unless it is otherwise in practice or usage of the parties).

3. Type of claims

3.1. *Introduction*

3.1.1. As from civil law perspective, Estonian law provides numerous grounds for holding counterparty responsible for its behavior. In the case of non-performance of a contract by an obligor, the obligee may (i) require performance of the obligation *(täitmise nõudmine)*, (ii) withhold performance of an obligation which is due from the obligee *(kohustuse täitmisest keeldumine)*, (iii) demand compensation for damage *(kahju hüvitamine)*, (iv) withdraw from or cancel the contract *(taganemine/ ülesütlemine)*, (v) reduce the price *(hinna alandamine)*, or (vi) in the case of a delay in the performance of a monetary obligation, demand payment of a penalty for late payment *(viivis).* Under the circumstances provided by law, a transaction may also be declared null and void.

3.2. *Declaring a transaction null and void*

3.2.1. A transaction may also be declared void if it is (i) in contrary to good morals or public order, (ii) in contrary to law, or (iii) an ostensible transaction.

3.2.2. A transaction is contrary to good morals, inter alia, if a party knows or must know at the time of entry into the transaction that the other party enters into the transaction arising from his

or her exceptional need, relationship of dependency, inexperience or other similar circumstances, and if: (i) the transaction has been entered into under conditions which are extremely unfavorable for the other party or (ii) the value of mutual obligations arising for the parties is out of proportion contrary to good morals.

3.2.3. A transaction contrary to a prohibition arising from law is void if the purpose of the prohibition is to render the transaction void upon violation of the prohibition, especially if it is provided by law that a certain legal consequence must not arise.

3.2.4. An ostensible transaction is a transaction upon which the parties have agreed that the declarations of intention made upon entry into the transaction do not have the legal consequences corresponding to the intention expressed since the parties wish to create an impression of the existence of a transaction, or to conceal the transaction they actually wish to enter into.

3.2.5. If a transaction is validly declared null and void, it has no legal consequences from inception. That which was received on the basis of a void transaction shall be returned pursuant to the provisions concerning unjust enrichment.

3.3. *Cancellation of transaction*

3.3.1. A transaction may be cancelled if it was entered into under the influence of a relevant (i) mistake, (ii) fraud, (iii) threat or violence. A part of a transaction may be cancelled if the transaction is divisible and it may be presumed that the transaction would have been entered into also without the cancelled part. If a transaction is cancelled on the basis and pursuant to the procedure provided by law, the transaction is invalid from inception of. That which is received on the basis of a cancelled transaction shall be returned pursuant to the provisions concerning unjust enrichment. We will discuss the terms and grounds of cancellation of transaction in more detail below.

3.3.2. Mistake is an erroneous assumption relating to existing facts. A transaction is entered into under the influence of a relevant mistake if upon entry into the transaction the mistake was of such importance that a reasonable person similar to the person who entered into the transaction would not have entered into the transaction in the same situation or would have entered into the transaction under materially different conditions.

3.3.3. A person who entered into a transaction under the influence of a relevant mistake may cancel the transaction if (i) the mistake was caused by circumstances disclosed by the other party to the transaction, or non-disclosure of circumstances by the other party if disclosure of the circumstances was required pursuant to the principle of good faith, (ii) the other party knew or should have known of the mistake and leaving the mistaken party in error was contrary to the principle of good faith, or (iii) the other party to the transaction entered into the transaction on the basis of the same erroneous circumstances, except if the other party could have presumed, having the correct perception of the circumstances, that the mistaken party would have entered into the transaction even if it had known about the mistake. A person who has entered into a transaction shall not cancel the transaction if according to the

circumstances under which the transaction was entered into and the content of the transaction, the risk of mistake was to be borne by the person.

3.3.4. Fraud means intentionally leading or leaving a person in error by disclosing false circumstances to the person in order to induce the person to enter into a transaction. Non-disclosure of circumstances which should have been disclosed according to the principle of good faith, and disclosure of circumstances as correct without verifying the correctness of the circumstances which subsequently prove to be false, is deemed to be equal to disclosure of false circumstances.

3.3.5. If fraud is committed by a third person for whom the other party to the transaction is not responsible, the party who entered into the transaction due to fraud may cancel the transaction if the other party was or should have been aware of the fraud. If the other party was not nor should have been aware of the fraud, the transaction may be cancelled if the third person who committed the fraud acquired rights on the basis of the transaction.

3.3.6. A person who entered into a transaction under the influence of an unlawful threat or violence may cancel the transaction if the threat or violence was under the circumstances so imminent and serious as to leave the person who entered into the transaction no reasonable alternative. Threat is unlawful if (i) the act or omission with which the person who entered into the transaction was threatened is unlawful, (ii) the objective of the transaction entered into under the influence of the threat is unlawful, (iii) use of the act or omission for threatening in order to induce the person to enter into the transaction is unlawful.

3.3.7. A transaction may be cancelled in the case of threat or violence within six months as of the time when the influence of the corresponding circumstance ceased. In the case of fraud or mistake a transaction may be cancelled within six months as of discovery of the fraud or mistake. Regardless of the previously mentioned circumstances, a transaction shall not be cancelled after three years have passed from entry into the transaction.

3.3.8. A general ground for annulment of a transaction can also be found in fraudulent preference (*actio pauliana*) outside insolvency. A debtor shall not conclude transactions or perform other acts with (deemed) knowledge that these transactions or acts damage the interests of the creditors before the declaration of bankruptcy. A court may revoke such transactions or other acts. A transaction or another act is deemed to damage the interests of the creditors, if the transaction subject to recovery is concluded or the act subject to recovery is performed during the period from the appointment of an interim trustee until declaration of bankruptcy.

4. Claims for damages

4.1. *Introduction*

4.1.1. Under Estonian law, the basic rule is that everybody is obligated to compensate the damages that one has caused with a non-performance of contractual or non-contractual obligation. However, the parties may agree on exclusion and limitation of liability both for contractual

and non-contractual obligations. In principle, the parties are free to agree in advance on an exclusion or limitation of liability for whatever obligation regardless the type of damages (indirect/direct/non-patrimonial). It is generally recognised that the parties may also agree on liability after the breach of an obligation (contractual or non-contractual), e.g. the parties may agree on concluding a compromise contract or termination of the obligation due to the obligee waiving the claim.

4.1.2. However, this aspect of freedom of contract is not unlimited. With respect to contractual obligations, agreements, under which liability is excluded or limited, are void, if the agreements: i) exclude or limit liability for intentional non-performance or (ii) allow the obligor to perform an obligation in a manner materially different from that which could be reasonably expected by the obligee or (iii) unreasonably exclude or limit liability in some other manner.

4.1.3. Abovementioned restrictions do not apply for the law of delict (tort law). With respect to extra contractual obligations, agreements, under which liability is excluded or limited, are void, if the agreements exclude or limit liability for damage caused intentionally.

4.2. *Failure to perform*

4.2.1. Non-performance under Estonian law is failure to perform or the improper performance of an obligation, including a delay in performance.

4.2.2. Before claim of damages, the claimant generally has the burden of evidencing that the counterparty has caused damage, that the act was unlawful, and that the counterparty is liable for the damage. In the case of non-performance, the obligee may resort to any legal remedy separately or resort simultaneously to all legal remedies which arise from law or the contract and can be invoked simultaneously. The parties may change these terms by contract. However, invoking a legal remedy arising from non-performance shall not deprive the obligee of the right to demand compensation for damage caused by non-performance.

4.2.3. In general, an obligor shall be liable for non-performance unless the non-performance is excused. A non-performance is excused if it is caused by force majeure, i.e. the circumstances which are beyond the control of the obligor and which, at the time the contract was entered into or the noncontractual obligation arose, the obligor could not reasonably have been expected to take into account, avoid or overcome the impediment or the consequences thereof which the obligor could not reasonably have been expected to overcome. In the cases provided by law or contract, a person shall be liable for non-performance only if the person is culpable of the non-performance.

4.3. *Unlawful causing of damage*

4.3.1. A person (tortfeasor) who unlawfully causes damage to another person (victim) shall compensate for the damage if the tortfeasor is culpable of causing the damage or is liable for causing the damage pursuant to law. The causing of damage is unlawful if, above all, the damage is caused by (i) causing the death of the victim, (ii) causing bodily injury to or damage to the health of the victim, (iii) deprivation of the liberty of the victim, (iv) violation of a

personality right of the victim, (v) violation of the right of ownership or a similar right or right of possession of the victim, (vi) interference with the economic or professional activities of a person, (vii) behaviour which violates a duty arising from law, (viii) intentional behaviour contrary to good morals. In case the damage was caused as a result of the violation of contractual obligation, the claimant may claim for damages under the provisions of non-contractual obligations only if death, bodily injury or damage to health of a person was caused as a result of the violation of a contractual obligation.

4.3.2. Before claim of damages, the claimant generally has the burden of evidencing that (i) the objective composition of the act *(süüteokoosseis)*is fulfilled, and (ii) the act is unlawful *(teo õigusvastasus)*. In order to release from liability, a defendant may prove that there is a circumstance that precludes the unlawfulness or that his/her lack of guilt (*süü puudumine*).

4.4. *Claiming monetary damages*

4.4.1. Generally, the burden of proof of the apparent wrongdoing by the defendant lies with the claimant. The claimant could claim for patrimonial damage, mainly for loss of profit. Loss of profit is loss of the gain which a person would have been likely to receive in the circumstances, in particular, as a result of the preparations made by the person, if the circumstances on which compensation for damage is based would not have occurred. Loss of profit may also include the loss of an opportunity to receive gain. It is not likely that immaterial damages could successfully be claimed in case of crowdfunding precedents.

4.4.2. A person shall compensate for damage only if the circumstances on which the liability of the person is based and the damage caused are related in such a manner that the damage is a consequence of the circumstances (causation). Also, any gain received by the injured party as a result of the damage caused, particularly the costs avoided by the injured party, shall be deducted from the compensation for the damage unless deduction is contrary to the purpose of the compensation. The defendant shall only compensate for such damage which he foresaw or should have foreseen as a possible consequence of non-performance at the time of entering into the contract unless the damage is caused intentionally or due to gross negligence.

4.4.3. The right to require performance of an act or omission from another person expires within the term provided by law (limitation period). The obligated person may refuse to perform the obligation after expiry of the claim. The limitation period for a claim arising from a transaction is three years and the limitation period for a claim arising from law is ten years as of the moment when the claim falls due. The limitation period for a claim arising from unlawfully caused damage is three years as of the moment when the entitled person became or should have become aware of the damage and of the person obligated to compensate for the damage. Conditions for the expiry of a claim may be alleviated by a transaction, especially, the limitation period may be shortened. The alleviated conditions for expiry shall not be applied if the obligated person intentionally violated the person's obligations. Waiver of the right to demand application of limitation is void.

5. Class action

5.1. Under Estonian law, traditional class actions as such are not regulated and therefore opt-out class actions are not possible. Opt-out class actions would violate some rights provided by the Constitution of Estonia, mainly the person's right to attend court hearings held in their case.

5.2. Although opt-out class actions are not permitted in Estonia, the Code of Civil Procedure provides procedures that are similar to the opt-in class action procedures. For example, it is possible to join different actions related to the same subject matter into one proceeding and to file a joint action. However, these kind of actions should be considered as multitude of individual lawsuits and different from traditional opt-in class actions as each party participates in the proceeding independently with regard to the opposite party. In addition to that, joining claims or filing a joint action does not mean that all of the claims are transformed into one.

6. Descriptive summary of the framework with general applicability to crowdfunding

6.1. *Distance contract signed by electronic means*

6.1.1. Under Estonian law, a distance contract means a contract between a trader and a consumer if (i) the contract is entered into under a marketing or service-provision scheme used for the entry into of such contracts; (ii) the trader and the consumer are not present simultaneously at the same time upon entry into the contract; and (iii) contracting parties' declarations of intention for entry into the contract, including consumer's declaration of intention to assume the contractual obligations, shall be sent exclusively by means of distance communication.

Trader (*ettevõtja*) means a person, including a legal person in public law, who concludes a transaction which is related to independent economic or professional activities. Consumer (*tarbija*) means a natural person who concludes a transaction not related to independent economic or professional activities.

6.1.2. Crowdfunding takes place by electronic means through an online platform. The project for which funding is being sought by the project owner will be marketed on an online website of the platform and investors will make their investment decision on the basis of the information that is made available on the website of the platform in relation to the project and the project owner.

6.1.3. Also this results in the question of legal recognition of an electronic signature. In Estonia, digital signature is widely used as a method of authentication. A digital signature has the same legal consequences as a hand-written signature if these consequences are not restricted by law and if it is proved that the digital signature and the system of using the digital signature complies with the requirements set forth in Estonian Digital Signature Act.

6.1.4. Since December 2014 Estonia gives qualifying non-resident foreigners the same digital credentials within the framework of its "E-residency" initiative. Non-residents can use the Estonian digital signature infrastructure and access several of Estonia's e-government

services to perform transactions with the same ease as Estonian residents, regardless of their location.

6.2. *Validity of the contract*

Mandatory statutory provisions

6.2.1. The contract itself or an obligation therein may not be contrary to good morals or Estonian public policy nor in violation of mandatory statutory provisions. The parties have to follow the principle of good faith, which means that rights must be exercised and obligations must be performed in good faith and must not be exercised in an unlawful manner or with the objective to cause damage to another person. An obligation under the agreement shall also not be unacceptable according to standards of reasonableness. With regard to an obligation, reasonableness is to be judged by what persons acting in good faith would ordinarily consider to be reasonable in the same situation.

6.2.2. There are further restrictions regarding the unfair standard terms, e.g. in a contract where the other party is a consumer, a standard term is considered to be unfair (and void) if, in particular, the term excludes the liability arising from law or limits such liability in the case where the death of the other party or damage to the health of the other party is caused or in other cases where damage is caused intentionally or due to gross negligence.

Exclusion of liability by contract

6.2.3. The right of parties to exclude or limit the liability does not depend on the type of damages that have been caused (direct/indirect/non-patrimonial), but on the content of such agreement. This means that in advance the parties are free to exclude or limit liability for direct damages arising directly from a breach of contract as long as the agreed provisions for limitation or exclusion of liability are not foreseen for the case of intentional non-performance, the provisions do not allow the obligor to perform an obligation in a manner materially different from that which could be reasonably expected by the obligee and the provisions do not exclude or restrict liability unreasonably in some other manner. If the exclusion or limitation of liability is foreseen for the case of intentional non-performance, allow the performance materially differently or exclude or limit the liability unreasonably, the agreements are void.

6.2.4. Whether the agreements on exclusion or limitation of liability are allowed, should be tested in each case. According to the Estonian legal literature, e.g. an absolute exclusion of liability of one party for non-performance of a fundamental obligation should not be allowed in cases where the other party must fulfil his obligations. The agreement is considered to be unreasonable, when it excludes the person basically from all responsibility and prevents the creditor to use all remedies or most of them, and consequently excluding the creditor's possibility to protect his rights. The Estonian Supreme Court has not yet given his interpretation to the rules in question.

6.3. *Informed investment decision*

6.3.1. In respect of the information provided on the website of the platform on the basis whereof an investor should make his investment decision, several transparency rules apply to both

the platform and the project owner. Because of the online nature of crowdfunding, the platform qualifies as an information society *(infoühiskonna teenus)* which triggers the provisions of Directive 2000/31/EC (the E-Commerce Directive) to be applicable.

6.3.2. The platform shall render minimum information provided in Estonian Information Society Services Act directly and permanently accessible to the investors. Under Estonian law, the service provider (the platform) will not be deemed to be liable for the information stored at the request of a recipient of the service if the platform does not have actual knowledge of the information and, as regards claims for the compensation of damage, is not aware of facts or circumstances from which the illegal activity or information is apparent, or upon obtaining knowledge or awareness of these facts, acts expeditiously to remove or to disable access to the information. Moreover, the platform is not obligated to monitor information upon the mere transmission thereof or provision of access thereto, temporary storage or storage thereof at the request of the recipient of the service, nor is the platform obligated to actively seek facts or circumstances indicating illegal activity. Although the responsibility is primarily borne by the project owner and the platform only transfers the information provided by project owner, the platform is obliged to notify competent authorities promptly in case of any alleged illegal activity.

6.3.3. Moreover, the platform, publishing information provided by the project owner, takes an intermediary position. The platform should have the duty of care to some extent to the investors to ensure that the project owner has compiled with the applicable rules and regulations when publishing such information on its website. Moreover, the platform should have the responsibility to make sure that the information provided on its website in respect of a specific project and relating to a specific project owner includes all such information that is needed for the investor to make his informed investment decision. The platform and the project owner therefore both face a liability risk if it appears that the investor was not adequately informed. However, it is not clear under Estonian law, to what extent the platform is obliged to verify the information provided by the project owner and to what extent it bears the responsibility for inaccuracy of such information.

6.4. *Lex specialis unlawful act – unfair commercial practices*

6.4.1. Before making any investment decision, an investor should be provided with the material information on the basis of which he can make an informed investment decision. The investor will rely on the information that is provided on the website of the platform. The project owner should have the primary responsibility to provide such information but as stated above, it is not clear under Estonian law to what extent the platform shall verify the accuracy and sufficiency of such information.

6.4.2. Estonian law includes some special unlawful acts that generally result in reversal of the burden of proof from the claimant to the defendant. For example the unfair commercial practices under Estonian Consumer Protection Act and some rules regarding misleading and comparative advertising. These rules are both based on European Directives (Directive 2005/29/EC (Unfair Commercial Practices Directive) and Directive 2006/114/EC (Directive on

Misleading and Comparative Advertising) respectively and were transposed in Estonian Consumer Protection Act and Estonian Advertisement Act.

6.4.3. The use of unfair commercial practices is prohibited before, during and after making a commercial transaction related to goods or services. Commercial practices are unfair if they mislead consumers or are aggressive with respect to consumers. A commercial practice shall be unfair if it is contrary to the requirements for professional diligence to be applied by a trader in the economic or professional activities thereof, and it materially distorts or is likely to materially distort the economic behavior with regard to the product or service of the average consumer whom it reaches or to whom it is addressed. Violation of the prohibition on the use of unfair commercial practices does not result, in itself, in the nullity of the transaction.

6.4.4. A platform will, most probably, be considered a trader and must ensure that any of his commercial practices are fair and in any event not misleading nor aggressive. The very basic (but not exhaustive) rules to comply with in respect of the provision of information is that (i) any information provided must be complete, accurate, comprehensible and not misleading, (ii) information provided to consumers shall be in Estonian, (iii) its commercial character should be made explicit to the consumer, (vi) any material information should be provided in a transparent and timely fashion, (v) compliance with any applicable marketing restrictions.

6.4.5. The platform acts unlawfully towards customers if the commercial practice of the platform is considered to be unfair and in such cases the consumer may file a suit against the platform. The burden of proof in respect of material accuracy and completeness of information provided lies generally with the platform. Violation of the prohibition on the use of unfair commercial practices does not result, in itself, in the nullity of the transaction. The consumer has a right to demand compensation for any patrimonial or non-patrimonial damage.

7. Crowdfunding crossing borders from Estonia

7.1. *Investor*

7.1.1. When an Estonian investor is investing on foreign platforms, and/or relating to a fundraising project of a foreign project owner, the investor should take into account that very likely the transactions related to the platform are governed by the laws of another state and the disputes are likely to be solved in a foreign court. Generally, a choice of forum clause is also included in the applicable terms referring to another court than Estonian court. The investor should be aware of the relevant laws that apply to the investment. Moreover, local laws and rules of that other Member State may have a broader impact on the Estonian investor. Local laws and rules could for example set investment maximums which apply to the Estonian investor as well as other duty of care rules may apply resulting in potentially a higher administrative burden and/or a different level of protection compared to what Estonian investor is used to under Estonian laws and regulations.

7.2. *Platform*

7.2.1. The requirements for a platform, wishing to passport its activities to another Member State, depend mostly on the structure of the platform and the type of services it offers. Passporting of a license means that the platform can be active on the basis of its license from its home Member States in other Member States of the European Economic Area without having to apply for the same license again in the host Member State. Please note that in Estonia, there is currently no common legal understanding which kinds of platforms (structures) must hold a license and whether these licenses could be passported. Also, some local rules of the destination country (including additional obligations and duties) may apply. For these reasons, it is highly recommended to obtain legal advice in Estonia as well as in each relevant jurisdiction before becoming active in such jurisdictions irrespective of having validly passported such license.

7.3. *Project owner*

7.3.1. An Estonian project owner wishing to attract funds in foreign states should first notice the applicable law to the platform. It is very likely that the law applicable to all the actions relating to the platform is the law of the country where the platform was established. For example, if an Estonian project owner contemplates to offer shares in its capital to the public (i.e. the crowd) part of which is not located in the Estonia, the Estonian project owner not only needs to take into account the Estonian securities laws in relation to a public offering of securities, but also the local securities laws of the Member States where offerings to the public are contemplated as well. The project owner has its own responsibility to ensure that all applicable laws and regulations are complied with and it faces liability risks if local laws are violated and/or foreign investors are prejudiced. The mere fact of arranging the funding through a crowdfunding platform does not take away any such responsibility and/or liability risks.

8. Crowdfunding crossing borders to Estonia

8.1. *Investor*

8.1.1. A foreign investor who is interested in investing in a project launched by Estonian project owner and/or through the intermediation of a Estonian platform, should inform himself of the Estonian law specifics of his investment and his position under Estonian law.

8.1.2. In Estonia, an investor qualifying as customer is better protected than an investor who does not qualify as such. A consumer under Estonian law means a natural person to whom goods or services are offered or who acquires or uses goods or services for purposes not related to their business or professional activities. For example, there are specific rules in relation to the precision of pre-contractual information in case of contracts entered into with consumers. Agreements which derogate from these provisions to the detriment of the consumer are void. Also, there are different rules determining the validity of standard terms in contracts where the other party is a consumer. Except for some consumer friendly mandatory Estonian law provisions, an Estonian law governed contract generally does not have a prescribed form and the contract parties may deviate from the Estonian civil law rules and regulation subject

to their mutual agreement and taking into account the principle of reasonableness and fairness.

8.2. *Platform*

8.2.1. A foreign crowdfunding platform, considering becoming active in Estonia from another Member State, should ensure that it takes into account the applicable regulatory framework in respect of accessing the Estonian market and that it is aware of the marketing rules when approaching Estonian investors and/or Estonian project owners. Irrespective of Estonian law being the governing law of the underlying agreement or not, the platform will be confronted with Estonian civil law issues and potential liability risks.

Lending based

8.2.2. Until recently, lending based crowdfunding platforms in Estonia did not need any license. However, the Creditors and Credit Intermediaries Act (**CCIA**) that entered into force on 29th March 2015, obligates creditors and credit intermediaries to apply to the Estonian Financial Supervision Authority (**EFSA**) for authorisation and to bring their activities into compliance with the statutory requirements. Under the CCIA, the licensing requirement will also apply to credit intermediaries. Intermediation of credit under the CCIA means (i) intermediating the granting of credit or indicating the possibility to enter into a credit agreement to a consumer for a charge, (ii) assisting consumers in acts preliminary to entering into a credit agreement or in entering into the agreement and any other activities related thereto, or (iii) in the interests of and for the benefit of the creditor, negotiating or entering into agreements on behalf and on the account of the creditor independently and on a permanent basis. By 21st March 2016, lending based platforms, depending on the structure and activity of a platform, will be obliged to hold a license granted by the EFSA. Supervision may also be exercised over foreign creditors and credit intermediaries and their Estonian branches that grant or intermediate credit to consumers in Estonia in the framework of their economic or professional activities.

8.2.3. A person who, under the legislation of its home Member State, is authorised to grant or intermediate credit or to provide advisory services may, on the basis of the authorisation granted by the competent supervision authority of the home state, provide the same service in Estonia by establishing a branch or by providing cross-border services in Estonia, unless otherwise provided for in the CCIA. These rights also extend to a foreign person who intermediates mortgage-backed credit or provides advisory services, provided that they hold authorisation granted in their home Member State. To establish a branch or to provide cross-border services in Estonia, a foreign creditor or credit intermediary must apply to the EFSA for authorization.

Investment based

8.2.4. There is no common understanding in Estonia, whether an equity crowdfunding platform is considered to provide investment services or not. There is, however, high risk that such services will be considered to be investment services in the meaning of MiFID and are therefore subject to licensing requirement. In this case the activity of the platform would fall under the scope of Estonian Securities Market Act.

8.3. *Project owner*

8.3.1. When a foreign project owner attracts investors through Estonian crowdfunding platform, the law applicable to the transactions will presumably be Estonian law. The applicable law is generally determined in the standard terms on the webpage of the platform. Generally, the platforms have extended the applicability of Estonian law not only to the agreements between the investor and the project owner but also to all actions in relation to the platform.

9. Conclusion

9.1. In Estonia, there is currently no comprehensive legislation governing crowdfunding. Estonian legislator has shown no initiative for enacting specific law regulating crowdfunding and no guidelines have yet been provided by EFSA.

9.2. However, the obligations and the corresponding liability risks are not only based on the regulatory framework in respect of market access and ongoing regulatory obligations but also on the civil law framework. Even if the platform could rely on a passportable regulatory license it still needs to take into account local law in every jurisdiction where it contemplates to provide its services.

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Finland

1. Introduction

1.1. *Legal landscape*

1.1.1. The Finnish legal system is based on civil law whereby the most important sources of legal information and their hierarchy are as follows: laws and legislation, preparatory works of laws and legislation, court practice and legal literature. No specific "civil law code" exists in Finland. It is, however, important to note that especially within the field of contract law, legal principles developed over the past decades are the primary source of law and interpretation. Certain principles such as *pacta sunt servanda*, protection of a weaker contractual party, reasonableness and good faith have a strong influence on the evaluation of all contractual relationships under Finnish law.

1.1.2. An interesting feature of the legal landscape concerning crowdfunding is that the activities of crowdfunding platforms are currently not explicitly regulated. It should be noted, however, that the drafting process of new legislation concerning crowdfunding is currently in progress as the Ministry of Finance has given a draft proposal for a Crowdfunding Act during autumn 2015. According to the draft proposal, the Crowdfunding Act would include provisions concerning liability for damages caused by a platform as well as a project owner.

1.1.3. In spite of the above and when evaluating civil law measures concerning crowdfunding in Finland currently available, the following general legislation should be considered. Firstly, the Finnish Contracts Act (in Finnish: *laki varallisuusoikeudellisista oikeustoimista*, 228/1929) governs the legal rules on how contracts are entered into as well as the validity thereof. The Finnish Sale of Goods Act (in Finnish: *kauppalaki*, 355/1987) governs business to business or consumer to consumer contractual relationships. The Sale of Goods Act applies to the sale of property other than real property (goods). For non-contractual damages, damage claims are as a general rule to be evaluated based on tort law (Tort Liability Act, in Finnish: *vahingonkorvauslaki*, 412/1974). Furthermore, the Consumer Protection Act (in Finnish: *kuluttajansuojalaki*, 38/1978) and the Act on Class Actions (in Finnish: *ryhmäkannelaki*, 444/2007) can also set forth certain requirements as well as provide remedies for illegal conduct.

1.1.4. Finnish consumer protection legislation is not applicable in all situations regarding crowdfunding. For example, according to the Ministry of Finance, peer-to-peer business lending, even when the lender is a private person, would fall out of the scope of the Consumer Protection Act. Due to the above and when reading the below, it should be noted that the specific requirements set forth by mandatory consumer protection laws are not unambiguous.

1.1.5. In addition to the general rules of contractual and tort liability that may need to be considered when claiming for or defending from damages in crowdfunding situations, it is important to note that certain *lex specialis* legislation exists as well. This legislation may include specific rules and grounds for which damages may be claimed. These issues are taken into consideration in section 5 herein.

2. Legal Acts

2.1. *Formation of a legal act*

2.1.1. According to the Finnish Contracts Act, a contract is formed in accordance with the classical contract theory. The necessary components for forming a contract are an offer and a response to such offer. In accordance with the principle of freedom of contract and subject to an approving offer, a contract can be formed between two parties acting under free will. As a general rule, there are no other formal requirements for constituting a contract in its most simple form. However, there are several *lex specialis* regulating contracts between unequal parties that need to be considered under their scope of applicability.

2.1.2. The Finnish rules on consumer protection provided in the Consumer Protection Act always apply when services or products are offered, sold or otherwise marketed to Finnish consumers. Pursuant to Chapter 2 of the Consumer Protection Act, marketing shall not be inappropriate or otherwise unfair (as further defined in the Consumer Protection Act) from the consumer point of view. Furthermore, Chapter 6a of the Consumer Protection Act governs distance selling of financial services and instruments and sets forth obligations regarding the need to provide information concerning the financial service provider as well as the financial services provided prior to the conclusion of a contract.

2.2. *Declaring a Legal Act Invalid or Null and Void*

2.2.1. The legal rules governing the invalidity and adjustment of legal acts are incorporated in Chapter 3 of the Finnish Contracts Act. According to the main rules, a transaction can be declared invalid or it can be adjusted in a situation of duress, fraudulent inducement, and in a case where someone is taking advantage of one's distress, lack of understanding, imprudence or position of dependence.

2.2.2. The Finnish Contracts Act also includes a general clause stating that a transaction that would otherwise be binding shall not be enforceable if it was entered into under circumstances that would make it incompatible with honor and good faith for anyone knowing of those circumstances to invoke the transaction, providing that the person to whom the transaction is directed is presumed to have known said circumstances.

2.2.3. With reference to the possibility of declaring a contract (or a contractual clause) invalid, the main rule under Finnish law is that limitations of liability clauses are interpreted as invalid in situations where damage has been caused intentionally or as a result of gross negligence. This principle has a solid base in Finnish court practice and is also internationally established. The idea behind the principle is that a party cannot gain advantage by purposefully breaching a contract by comparing possible gains against its limit on liabilities under thereto. Gross

negligence can theoretically be at hand in situations where a party has acted in a clearly careless manner.

2.2.4. By way of another example, a contract could be interpreted as invalid in a situation where a fundraising platform or a project owner intentionally or negligently gives untrue and misleading information to an investor with the intention of gathering further funding from investors that have trusted the accuracy of the information provided.

2.2.5. Situations where untrue or defective information has been given should be reviewed with utmost care especially in situations where mandatory consumer protection legislation is applicable. For example, it should be noted that any contractual terms that are against Chapter 6a of the Consumer Protection Act referred to above (distance selling of financial services and instruments) will be deemed void.

2.2.6. Declaring a legal act invalid should not be confused with declaring a legal act null and void. The nullity of legal acts does not require that a contractual party claims that a certain legal act is null and void (i.e. courts must consider this *ex officio*). The nullity of legal acts can be at hand in e.g. situations where a party has clearly acted against mandatory legislation.

3. Civil Law Measures Available; Defenses Available

3.1. *Types of Damage Claims*

3.1.1. Under Finnish law, damage claims can either be based on breaches of contract or tort law (Tort Liability Act, 412/1974). Contractual damages claims are naturally governed by different principles and rules as opposed to tort law. Section 1 of the Tort Liability Act explicitly sets forth that "*the Act does not apply to liability for damages under contract*". It can therefore vice versa be stated that non-contractual relationships (in most cases and when no other law is applicable) fall under the scope of the Tort Liability Act.

3.1.2. Under its scope of applicability and if its applicability has not been excluded, the Finnish Sale of Goods Act (355/1987) can also play a significant role – especially in the evaluation of the distinction between indirect and direct damages.

3.1.3. Finnish legislation concerning contract law does not cover situations where contracts have effects over contractual boarders between two parties. The Finnish Contracts Act does not provide a solution to a situation where a contract between two parties has an effect on rights and obligations of a third party not being a party of the same contract.

3.1.4. It may in certain situations be possible that a third party would be directly liable to a party to a contract on grounds of contractual liability (even though an explicit contract has not been entered into by this third party). This could be the case if grounds for breaking the privity of contract doctrine are at hand. Otherwise the Tort Liability Act is the main source of means available when claiming for damages from a non-contractual party.

3.1.5. In situations of breaches of contract, compensation under Finnish law usually concerns financial losses but can also be granted for damages to persons and property. With regards breaches of contracts, financial losses are treated in the same manner as damages to persons and property.

3.1.6. It should be noted that under Chapter 5 of the Tort Liability Act, compensation for economic loss that is not connected to personal injury or damage to property requires that the injury or damage has been caused by an act punishable by law or in the exercise of public authority, or especially weighty reasons.

3.1.7. Therefore and as opposed to contractual damage claims, tort claims for financial losses require additional criteria, i.e. *the existence of certain special reasons*. This can potentially have a substantial effect when evaluating situations relating to crowdfunding. If an investor is not in a contractual relationship with the party that has caused damage, it might in some situations be difficult to claim for financial losses under the Tort Liability Act.

3.1.8. The above concerns have been noted in the draft proposal for a new Crowdfunding Act. According to the draft proposal, both the platform and the project owner could be held liable for damages caused to investors (without the requirement of certain special reasons) even if the investors would not be in a contractual relationship with the party having caused damage. This would clarify the ambiguities between contractual damages and tort damages and the problems stemming from the assumption of contract being a legal act between two parties. Furthermore, this would be in line with *the lex specialis* damages provisions currently applicable to investment based models in Finland (please see section 5 below).

3.1.9. When evaluating damage claims available, also the statutes of limitations should be considered. The statute of limitations differs depending on the ground underlying the claim. According to the Act of Statute of Limitations (in Finnish: *laki velan vanhentumisesta*, 728/2003), the general statute of limitations for a claim under Finnish law is three years.

3.1.10. When evaluating the statute of limitations for damage claims, it should be noted that the time limit will begin to run when the damage or grounds giving liability for such damage have been noticed or should have been noticed. Even though the statute of limitations in this regard is three years from such an event, it should be noted that – if the damage goes unnoticed – damage claims will be barred by the elapse of time after 10 years have passed from the occurrence of the event giving rise to liability for damages.

3.2. *Burden of Proof Issues*

3.2.1. When operating under general principles of Finnish contract law, a party must prove that it has acted with due care in order for a party to avoid liability for a breach of contract. Burden of proof with regards thereto vests with the party allegedly having breached the contract. A breach of contract is therefore pre-sumed to have occurred if a claim related thereto has been made. In situations of contractual liability, the party having incurred damages is under an obligation to present evidence of the damages caused, but not under an obligation to present evidence on the level of negligence of the other party.

3.2.2. The burden of proof concerning contractual liability is therefore so called "exculpation liability". Exculpation liability is, as described above, based on reverse burden of proof, under which the question of negligence shall only rise if the party having breached the contract claims that it has acted with due care. The burden of proof in this regard vests with the party having breached the contract. This party needs to prove, in order to avoid liability for a breach of contract, that it has acted with due care. The doctrine of the applicability of exculpation liability is, however, rather ambiguous as some of the situations governed by exculpation liability have been confirmed in legislation and other situations have not.

3.2.3. In situations governed by tort law, burden of proof vests with the party that has incurred damages. The suffering party must therefore provide evidence of damages caused as well as of that the party having caused damages has acted in an intentional or negligent manner. When considering this together with the fact that under tort law there are specific criteria that need to be fulfilled in order to claim damages for financial losses, claiming damages based on contractual liability can (theoretically) be seen as method with a more likely chance of success.

3.2.4. Notwithstanding the above, it is clear that in all cases the party that has incurred damages must prove the quantum of damages as well as the causal link between the damages and act or omission of the party having breached the contract. This should not be confused with the fact that the party that has allegedly breached the contract must prove that it has not breached the contract. That is, that the allegedly breaching party executed its duties and obligations according to the terms of the contract, acting with diligence and without negligence.

3.2.5. Chapter 5 of the Consumer Protection Act could, in theory, be applicable in certain situations concerning crowdfunding (especially in reward based model). As opposed to rules under tort law, the burden of proof with regard to defects governed by Chapter 5 of the Consumer Protection Act would vest with the "seller" of the goods.

3.2.6. The draft proposal for the Crowdfunding Act would impose exculpation liability for tort law claims. The proposal states that a damage shall be seen to have been caused by negligence unless the responsible party can prove that it has acted with due care. According to the proposal the question of liability would follow the doctrine of exculpation liability for both the platform and the project owner regardless of whether a contractual relationship exists with the investor. This approach adopted would further narrow the gap between contractual damage claims and damage claims based on tort law in crowdfunding situations.

3.2.7. The Crowdfunding Act would set the burden of proof on the party having allegedly breached the contract. Therefore, the question of the level of negligence would not most likely become an issue in most cases as the main focus would be on the evaluation of the monetary damages caused by a breach of contract. Therefore and when evaluating situations governed by exculpation liability, the conduct of the party in breach of a contract is not necessarily as

significant as the monetary damage itself. It should be emphasized that pursuant to the proposal for the Crowdfunding Act, both the platform and the project owner would fall under the doctrine of exculpation liability.

3.3. *Claims for Direct and Indirect Contractual Damages*

3.3.1. Under Finnish law, compensation for a contractual breach is not limited to direct damages. When operating under the applicability of the Sale of Goods Act (e.g. when its applicability has not been excluded from a contract), the difference between direct and indirect damages is more evident than when operating under general principles of contract. The legislation is based on the idea that it defines indirect damages and consequently all other damages are direct.

3.3.2. When operating under general principles concerning i.e. contractual damages, the rules concerning the treatment of direct and indirect damages are not as straightforward. The difference between direct and indirect damages is not very clear in Finnish legal practice. The main rule of interpretation under Finnish law means that loss of profit, loss of sales opportunities etc. are most commonly construed as indirect damages. Compensation for damages can therefore, in theory, comprise of a number of different instalments.

3.3.3. In spite of the above, in practice contractual parties often agree on a limitation of liability clause excluding liability for indirect damages. Such limitations are, in essence, considered valid and naturally affect the nature of instalments recoverable based on damage claims.

3.4. *Quantum of Damages*

3.4.1. For a damage claim concerning indirect damages to be successful under Finnish law, the damages incurred must in some way have been foreseeable. When evaluating this requirement, it is common to take into consideration different types of general interests usually relating to similar contracts, as well as special intentions of the creditor that have come to the knowledge of the debtor when forming the contracts. The foreseeability of damages is therefore to be evaluated based on possible effects of a contractual breach that the debtor should have known when entering into the contract.

3.4.2. The point of departure under Finnish law with regards calculating compensation for damages is the principle of “compensation in full”. Compensation is (or should be) calculated so that the party suffering damage is restored to the financial situation it would have been in had no damage been suffered. The amount of compensation can be calculated by applying the principle of differentiality (in Finnish: *differenssioppi*) whereby the series of events actually occurred is compared to the series of events that would have been presumed to occur had the contract been fulfilled as originally intended. If the principle of differentiality is to be applied, one needs to determine the fictional series of events that would have occurred had no breaches and short-comings taken place.

3.4.3. It is to be noted that the comparison with the actual series of events to a hypothetical series of events will not in every case point out all items that can be construed as damages. In order for a damage claim to succeed, the damages that have occurred must have been foreseeable

and have a causal connection to the breach of contract. Finnish law requires that a clarification of the damages incurred must be presented. The requirements for fulfilling such an obligation to clarify the damages have usually not been extremely high.

3.4.4. Furthermore, Section 17:6 of the Finnish Code of Judicial Procedure (in Finnish: *oikeudenkäymiskaari*, 4/1734) sets forth the following:

"If the issue relates to the quantum of damages and no evidence is available or if evidence can only be presented with difficulty, the court shall have the power to assess the quantum, within reason."

3.4.5. Finnish legal practice has not adopted a strict approach to the above, whereby the foregoing rule has been applied even in situations where evidence could have been obtained. For example, in situations where liability for damages is based on the fact that the party having breached the contract has neglected to abide by a certain obligation that would have advanced the position of the party that has suffered damages, compensation is usually determined based on the minimum level of conduct that would have been enough to abide by contractual obligations.

4. Class Action and Group Complaints

4.1. The Finnish judicial system does not recognize class actions in its traditional meaning. However, under certain circumstances, there is a possibility to raise class action lawsuits in Finland. Class action lawsuits can be possible provided that the claim is filed by the Consumer Ombudsman (in Finnish: *kuluttaja-asiamies)* and relates to certain types of disputes between consumers and entrepreneurs.

4.2. The Act on Class Actions (444/2007) entered into force on 1 October 2007. The Class Action Act is applicable in relations between consumers and entrepreneurs and it is possible in disputes concerning a defective consumer good or the interpretation of contract terms governing relationships between consumers and entrepreneurs. The Finnish Competition and Consumer Authority (in Finnish: *Kilpailu- ja kuluttajavirasto*) has ruled that the Class Action Act also applies to disputes between consumers and entrepreneurs concerning the selling and marketing of investment products and insurances.

4.3. The Finnish class action system allows that only the Consumer Ombudsman can file a class action lawsuit and represent the plaintiffs. This serves to prevent malicious lawsuits from being filed.

4.4. Even though the possibility for filing a class action has been available since 2007 there has not yet been a single class action case that has been evaluated by the Finnish Supreme Court.

4.5. In addition to a class action lawsuit, another possible analogous remedy is a group complaint, where the Consumer Ombudsman submits an application concerning the case to the Consumer Disputes Board (in Finnish: *Kuluttajariitalautakunta*). The Consumer Complaint Board is authorized to give recommendations after which the Consumer Ombudsman would

assist members of the group to act on based on this recommendation. If a recommendation in response to a group complaint is not complied with, the Consumer Ombudsman has the option to take the matter to court as a class action lawsuit.

5. Specific Crowdfunding Legislation

As mentioned above, at the present there is no coherent regulatory regime specially adapted to crowdfunding in Finland. Thus, the regulatory treatment of the crowdfunding platform and the project owner is dependent on how the service of the platform and the product it offers are constructed. This also has an effect on what types of possibilities an investor would have when claiming for damages.

5.1. *Investment based crowdfunding*

5.1.1. Especially the investment based crowdfunding model is subject to heavy regulation, as the general financial market legislation becomes applicable, including the Finnish Act on Investment Services (in Finnish, *sijoituspalvelulaki*, 747/2012, the "**ISA**") implementing the EU Markets in Financial Instruments Directive (Directive 2004/39/EC, MiFID) in Finland, and the Finnish Securities Markets Act (in Finnish: *arvopaperimarkkinalaki*, the "**SMA**") implementing the Prospectus Directive (Directive 2010/73/EU, amending Directive 2003/71/EC) in Finland. Pursuant to the ISA, the provision of investment services is a regulated activity. The provision of investment services includes, for example, investment broking (reception and transmission of orders in relation to financial instruments and their execution on behalf of customers), contract broking (execution of purchase and sale orders on behalf of others) and the offer to the public of financial instruments without a firm commitment basis. Financial instruments within the meaning of the ISA include transferable securities (i.e. shares and bonds or other forms of securitised debt) and other financial instruments. The offer to the public of shares or bonds is regulated as the issue of securities in accordance with the SMA.

5.1.2. In respect of the investment based crowdfunding model, it is important to note that pursuant to the Finnish Financial Authority's (the "**FIN-FSA**") current interpretation of the ISA, an investment based crowdfunding service is an investment service for which the service provider (i.e. the platform) must be authorized. Lawful investment services requiring authorisation consist of reception and further transmission of orders related to financial instruments (Chapter 1, section 11, subsection 1(1) of the ISA). Such transmission of orders is considered to include a service, where the purpose is to bring together parties to a business transaction related to a financial instrument in the manner that enables execution of a transaction between these parties. Consequently, transmission of orders also includes acting as a place of subscription, where the service provider – for instance, in connection with a share or bond issue – receives subscriptions from the public and transmits them further to the organiser of the issue. It shall be noted that the scope of the authorisation is dependent on the services provided by the crowdfunding platform and the scale of its operations.

5.1.3. In addition to the licensing requirements deriving from the ISA, also the requirements of the SMA shall be taken into account when using the investment based crowdfunding model. Pursuant to the SMA, anyone who offers securities to the public or applies for the admission

to public trading of a security shall be under an obligation to publish a prospectus relating to the securities before the entry into force of the offer or the admission to public trading and to have it available for the public during the validity of the offer. Shares and bonds are regarded as securities in accordance with the SMA in Finland. The prospectus requirement does not apply to an offering of securities with a total consideration of less than EUR 2,500,000, calculated for the preceding 12-month period. However, when evaluating the total consideration for securities included in the above mentioned offer, offers for the same type of security throughout the EEA are considered. As a rule, Finnish crowdfunding platform providers operate under the exemptions of the regulatory regime, i.e. securities may be offered through the platforms only to the extent that the obligation to publish a prospectus does not arise. Nevertheless, pursuant to Chapter 1, section 4 of the SMA, anyone who (by himself or on the basis of an assignment) offers securities, shall be liable to keep sufficient information on factors that may have a material effect on the value of the security equally available to the investors. Thus, even if there is no requirement to publish a prospectus, all investors shall in any case be provided with sufficient information on the factors that may have a material effect on the value of the security. Therefore, if the platform offers securities on the basis of an assignment (this is the case e.g. when the platform offers the project owner such service that constitutes the placing of financial instruments within the meaning of the ISA), the platform could be held liable if the securities are offered to investors in such manner that sufficient information has not been made available to the investors. Furthermore, pursuant to the general marketing rules of the SMA, it is always prohibited to provide false or misleading information in the marketing and exchange of securities or other financial instruments and, consequently, anyone who markets securities or other financial instruments in Finland shall comply with this requirement (it is possible that both the platform and the project owner are carrying out marketing activities in relation to the securities offered through the platform, in which case both of them must take into account the general marketing rules of the SMA).

5.1.4. From an investor's point of view it is of significance that both the ISA and the SMA contain *lex specialis* damages provisions. According to Chapter 16, section 1 of the SMA, anyone who wilfully or through negligence causes damage to another person through conduct in violation of the SMA, the provisions or regulations issued thereunder or of the regulations or decision of the European Commission issued under the Transparency Directive, the Prospectus Directive or the Market Abuse Directive shall be liable to compensate a damage caused by him. Thus, conduct violating the SMA can result in damages for parties that are in a contractual relationship with the party having caused damages as well as damages for parties that are not in a contractual relationship with such a party. As explained above, under the Tort Liability Act, compensation for economic loss that is not connected to personal injury or damage to property requires the existence of certain special reasons. However, in order to treat suffering contractual and non-contractual parties in a similar manner, damage claims under the SMA do not require the existence of certain special reasons as defined under the Tort Liability Act. When evaluating the applicability of the SMA with regard to contractual parties, it is important to evaluate whether damage has been caused as a result of a breach of contract or whether damage has been caused due to violation of obligations under the

SMA (such as the obligation to keep sufficient information on factors that may have a material effect on the value of the security equally available to the investors). Depending on how the service of the platform and the product it offers are constructed, both the platform and the project owner could be held liable for economic loss suffered by investors if securities are offered or marketed in a manner that violates the SMA.

5.1.5. Under the ISA, compensation for economic loss is not dependent on the existence of certain special reasons either. For example, according to Chapter 16, section 1 of the ISA, an investment firm (i.e. the platform) shall be liable to compensate any damage it has caused to a client or to another person wilfully or through negligence with a procedure in violation of the ISA, the provisions or orders issued thereunder, EU regulations issued under the MIFID, Regulation (EU) No 575/2013, or EU regulations issued under the CRD IV regime. Therefore, if the platform fails to comply with any of the requirements of the ISA (including the suitability and appropriateness assessments as well as the various disclosure requirements), investors have relatively good grounds for claiming for economic loss.

5.1.6. In light of the above, when using the investment based crowdfunding model, both the platform and the project owner (especially the platform in its capacity as an investment services provider) are subject to exhaustive regulation, which can grant the investors clear grounds for claiming for damages.

5.2. *Lending based model*

5.2.1. As explained above, the offer to the public of bonds is regulated as the issue of securities in accordance with the SMA. As the provision of services relating to securities (such as bonds) can be generally considered to constitute an investment service under the Finnish law, a platform providing services relating to bonds might fall under the scope of the ISA and thereby become subject to the licensing requirements of the ISA and the *lex specialis* damages provisions of the ISA and the SMA. On the other hand, platforms providing peer-to-peer lending operate outside of the licensing requirements of the ISA. Pursuant to the current interpretation of the FIN-FSA licenses are not required for peer-to-peer lending since individual loan agreements do not constitute regulated securities and, therefore, lending of funds to a company from the crowd through individual loan agreements has been interpreted to be an unregulated activity.

5.2.2. If the platform receives repayable funds from the public, the platform might fall within the scope of the Finnish Act on Credit Institutions (in Finnish: *laki luottolaitostoiminnasta*, 610/2014, the "**ACI**") and, consequently, the platform shall comply with all the requirements of the ACI starting from the authorisation requirement. According to Chapter 1, section 5 of the ACI, *credit institution activity* means business operations where repayable funds are received from the public as well as where credit and other financing is offered for own account. The ACI contains *lex specialis* damages provisions for the violations of the provisions of the ACI.

5.3. *Donations based model*

5.3.1. In Finland the decision of the National Police Board restricts the use of the donations model: collecting money without consideration and for charity requires a money collection permit granted by the authorities. According to the Finnish Money Collection Act (in Finnish: *rahankeräyslaki*, 255/2006, the "**MCA**"), a money collection permit may be issued for an association or foundation which is registered in Finland and if the sole purpose of the association is to work for public good. Furthermore, according to the MCA, money can be collected only for charitable purposes.

5.3.2. Thus, a project owner shall make sure that a money collection permit is acquired before arranging the collection of money. Funds raised through the money collection must be used for the purpose laid down in the money collection permit. Pursuant to section 22 of the MCA, the authority that has granted the permit may prohibit continuation of the arrangement of a money collection and use of funds raised through the money collection if it is suspected that the arrangement of the money collection or the use of the funds raised through the money collection is proceeding or has proceeded incorrectly or if matters have come to the attention of the authority that are likely to lead to cancellation of the money collection permit. A permit authority may impose a conditional fine to enforce prohibition. It might even constitute a criminal offence to arrange the collection of money without the permit referred to in the MCA. In order to avoid any consequences, also the platform should make sure that a money collection permit is acquired before the project can be entered in the platform and that the funds raised through collection will be used for the purpose laid down in the money collection permit.

5.4. *Reward based model*

5.4.1. As stated above, Chapter 5 of the Consumer Protection Act could, in theory, be applicable in certain situations concerning crowdfunding. Chapter 5 of the Consumer Protection Act governs i.e. the delivery of goods, passing of risk and liability for defects and could be applicable to crowdfunding in situations where the investor would receive actual "goods" as defined in the Consumer Protection Act as compensation for the investment made. If Chapter 5 of the Consumer Protection Act would be applicable, the goods sold would need to correspond with can be deemed to have been agreed.

5.4.2. The goods would be deemed defective if they do not i.e. conform to what has been agreed, the information given by the seller or by a person other than the seller either at a previous level of the supply chain or on behalf of the seller on the characteristics or the use of the goods when marketing the goods or otherwise before the conclusion of the sale. A seller's liability for defects begins at the passing of risk from the seller to the buyer (i.e. when the buyer is in possession of the goods/transfer of the product).

5.4.3. As already set forth above, as opposed to rules under tort law, the burden of proof with regard to defects governed by Chapter 5 of the Consumer Protection Act would vest with the "seller" of the goods.

Finland

6. Crowdfunding crossing borders from Finland

6.1. *Investor*

6.1.1. When a Finnish investor contemplates to invest in crowdfunding projects that are listed on foreign platforms or relate to a fundraising project of a foreign project owner, the investor should take into account that generally foreign laws shall apply to his investment. Therefore the investor should make himself aware of the relevant laws governing the relationship with the platform or the project owner, particularly the rules and regulations concerning the scope of protection the investor is granted and the possibilities the investor would have when claiming for damages.

6.2. *Platform*

6.2.1. When a Finnish platform considers expanding its business by entering the crowdfunding market of another Member State, the required procedure depends on the type of services the platform offers and whether performing such services requires a licence in the host Member State.

6.2.2. A Finnish investment based crowdfunding platform may become active in another Member State based on its license obtained from the FIN-FSA without having to apply for another license in the host Member State by following the passporting procedure set out in MiFID. Alternatively, the platform has an option to establish a branch in another Member State. In case of passporting, the platform shall notify the FIN-FSA of the Member State(s) in which it intends to operate and a programme of operations it intends to perform. The FIN-FSA shall forward the information to the competent authorities of the Member State(s) in which the platform wishes to operate and the platform may then start to provide the investment services concerned. However, additional local rules may apply and it is recommended that the platform obtains local law advice before becoming active in another Member State.

6.2.3. However, lending based, donations based and reward based crowdfunding platforms fall outside the scope of the MiFID passporting procedure and therefore such platforms may require relevant local licences before they can expand their business to another Member State.

6.3. *Project owner*

6.3.1. When a Finnish project owner is interested in collecting funds through a foreign platform or from foreign investors, it needs to take into consideration the relevant Finnish rules and regulations as well as the applicable foreign laws. For example in case of offering of securities, the Finnish project owner must take into account the local securities laws of each Member State where the securities will be offered in order to assess whether an obligation to publish a prospectus arises and whether any exemptions thereto apply. In addition, in case the crowdfunding platform between the Finnish project owner and the foreign investor is subject to licensing requirements, the project owner should ensure that the platform holds an appropriate license in each Member State it contemplates becoming active.

Finland

7. Crowdfunding crossing borders to Finland

7.1. *Investor*

7.1.1. When a foreign investor is interested in investing in a crowdfunding project listed on a Finnish platform or relating to a fundraising project of a Finnish project owner, the investor should make himself aware of the Finnish laws governing his investment and his position under Finnish law.

7.1.2. As crowdfunding is not currently coherently regulated in Finland, the construction of the platform and the product it offers has an effect on the scope of protection of an investor, as well as what types of possibilities an investor would have when claiming for damages. In general, an investor who qualifies as a consumer or a non-professional investor has a wider scope of protection under Finnish law than an investor qualifying as a professional investor. However an investor should take into account that Finnish consumer protection legislation is not applicable in all situations regarding crowdfunding, even when the investor is a private person.

7.2. *Platform*

7.2.1. When a platform from another Member State contemplates to become active in Finland, the platform should take into account the applicable regulatory framework that governs entering the Finnish crowdfunding market. The applicable laws are dependent on how the service of the platform and the product it offers are constructed and whether the platform wishes to operate on a cross border basis or by establishing a local presence in Finland. Before commencing any operations in Finland, local law advice in relation to Finnish rules and regulations should be obtained. It is recommended to obtain such local advice already in the structuring phase in order to avoid any pitfalls.

Investment based model

7.2.2. If an investment based platform qualifies as an investment services provider and falls under the scope of the ISA, entering the Finnish crowdfunding market is relatively easy. The platform holding a MiFID licence can passport its license into Finland by requesting the competent authority of its home Member State to inform the FIN-FSA of the platform's intention to operate in Finland as well as a programme of the investment services it intends to perform. The competent authority of the home Member State shall forward the information to the FIN-FSA and the platform may then start to provide the investment services concerned. In case of passporting on a cross border basis, the laws of the home Member State will be applied to the operations of the platform on the basis of the home country control principle. However, depending on the type of services the platform offers, Finnish law may impose some further requirements in addition to the requirements deriving from MiFID.

Lending based model

7.2.3. When a lending based platform intends to enter the Finnish crowdfunding market, the platform must first make itself aware of its legal definition under Finnish laws, since the applicable rules and regulations are dependent on the construction of the platform and the operations it performs. If the platform qualifies as a grantor of consumer credits that falls

within the scope of the CPA, the platform must be registered in a list maintained by the Regional State Administrative Agency for Southern Finland.

7.2.4. If a platform receiving repayable funds from the public qualifies as a credit institution under the laws of the home Member State, it may access the Finnish crowdfunding market by either passporting its license and operating on a cross border basis or establishing a branch in Finland by notifying the supervisory authority of its home Member State. Even when the platform operates on a cross border basis, the platform must comply with all the requirements of ACI and other relevant Finnish laws.

7.2.5. On the other hand, lending of funds to a company from the crowd through individual loan agreements has been interpreted to be an unregulated activity in Finland and therefore accessing the Finnish peer-to-peer crowdfunding market does not require licensing.

Donations based model

7.2.6. According to the MCA, a money collection permit may be issued for an association or foundation which is registered in Finland and if the sole purpose of the association is to work for public good. Furthermore, according to the MCA, money can be collected only for charitable purposes. Thus, a foreign platform or project owner interested in collecting funds solely for charitable purposes in Finland must first establish a branch in Finland and apply for a money collection permit.

8. Conclusions and recommendations

8.1. As brought out in this report, the Finnish legislative framework for crowdfunding consists of numerous different rules and regulations. Therefore prior to becoming active in the Finnish crowdfunding market, the platform should make itself aware of its legal definition under Finnish laws as this has an effect on the prerequisites for becoming active in Finland as well as the regulatory treatment of the operation of the platform.

8.2. Particularly the investment based crowdfunding model is subject to heavy regulation in Finland. In case the platform is considered an investment services provider within the meaning of the ISA and therefore falls under the scope of the ISA, the platform must comply with the following requirements when providing investment services:

- the platform must inform the investor of whether he is considered a non-professional investor, a professional investor or an eligible counterparty;
- the platform must act honestly, fairly and professionally in accordance with the best interest of the investor;
- in case of offering services to a non-professional investor, the platform and the investor must make a written agreement;
- the platform must obtain the necessary information regarding a non-professional investor's knowledge and experience in the products or services offered;
- the platform must provide necessary information about the services and products offered to non-professional investors so that they can reasonably understand the nature and risks of the investment service;

- the platform must execute orders on terms most favourable to the investor;
- the platform must keep a record of the relevant data relating to all services it has provided to investors;
- the platform must maintain telephone records relating to providing investment services and
- the platform must have an efficient procedure for dealing appropriately with non-professional investors' complaints.

8.3. To conclude, both the platform and the project owner should be aware of the applicable Finnish legislation before commencing any operations in Finland as well as obtain legal advice already in the structuring phase in order to avoid any pitfalls.

8.4. The drafting process of new legislation concerning crowdfunding is currently in progress in Finland and this new legislation should bring coherence to the fragmented regulatory framework currently applicable to crowdfunding in Finland

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France

1. Introduction

1.1. In 2014, the French crowdfunding environment has substantially evolved both from a market and a regulatory perspective. A new dedicated regulation entered into force on 1 October 2014 and had a positive impact on the market, with a clear focus on crowd-lenders or crowd-investors' protection.

1.2. Two dedicated regulatory statuses have been created for the crowdfunding platforms, with substantially lighter requirements than for pre-existing regulatory status (PSI, credit establishment…). Dedicated derogations to public offering rules and prospectus requirement as well as to French banking monopoly rules have also been provided. This put an end to regulatory exposures borne by project owners and platforms under the equity model, and by the lenders, project owners and platforms under the lending model.

1.3. At the end of 2015, the overall French crowdfunding market was composed of c. 80 active platforms. Funds raised through crowdfunding platforms reached c. €78m in 2013, c. €152m in 2014, and c. €133m during the first semester of 2015[25]. At the end of 2015, 79 platforms have registered under those new statuses (with 3 of them cumulating both status)[26].

1.4. Apart for fraud which would typically lead to criminal sanctions and derived indemnification obligations, potential liabilities of platforms and project owners may typically arise when a project does not develop in an expected manner and does not allow repayment of lent money or adequate return on investment. Risk is particularly topic on the crowdfunding market as project owners are most often start-ups or small businesses that have no access to bank financing[27] or to professional investors (VCs, private equity firms…). We have not considered here specifics of French insolvency laws.

2. Formation of a legal act

2.1. Generally, crowdfunding will entail a multilateral legal act between two or more parties. Crowd-lenders or crowd-investors will at least enter into contract with the platform (terms of use), the project owner and, usually a payment service provider for collecting of funds and as the case may be, repayment of loans. The rules of evidence of the French Civil code require as a general rule an agreement be in writing to evidence against a person who is not a merchant (*commerçant*).

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25 Source: Finance Participative France, a non-for-profit organization regrouping most of the French crowdfunding platforms, based on a survey performed amongst its members

26 Source : ORIAS

27 Interest rates are usually higher on crowdfunding market than on the banking market

3. Type of claims

3.1. French civil law provides for numerous grounds for holding a person (legal entity or natural person) responsible for his wrongful behavior, either out of any contractual relationships or, upon contract formation or, in the course of a contract performance, entailing claims aiming to contract cancellation or nullification (with subsequent repayment obligations) and/or monetary damages.

3.2. *Contract formation*

3.2.1. The French Civil code provides that a contract can be declared null and void on the ground of a vitiated consent, or for absence of or unlawful purpose of cause or, for breach of public order as well as public decency. There exist two different kind of nullity regime (absolute nullity and relative nullity), with different set of rules as to the persons allowed to claim for nullification of an agreement and statutes of limitations.

3.2.2. When declared null and void by a court, a contract is deemed to have never existed (usually with retroactive effect) entailing restitution obligation on both side and in some instance damages for the claimant.

3.3. *French civil liability*

3.3.1. French civil liability is traditionally divided between tort law and contract law. There is a principle in France which excludes the concurrence of contractual and tort liability actions (in French "*non-cumul des responsabilités*"). Contractual liability imposes sanctions for the non-observance of contractual obligations, while tort law attaches sanctions to a wrongful behavior (as breaching of rules of conduct which are imposed by statute, regulation or case law such as security obligation) that caused a damage/loss to a legal entity or a natural person. Pursuant to the principle of non-concurrence of actions, tort liability regime cannot apply to indemnify a damage arising from the performance of a contract a person is a party to, even though tort law would be more advantageous to said person (including but not limited to indemnification computation rules).

3.3.2. Tort liability under article 1382 et seq. of the French Civil code (i.e. general tort liability) requires the demonstration of a wrongful behavior, so called "fault" (*faute*). Negligence or imprudence can constitute a fault under tort law.

3.3.3. Under tort law, the nature of the fault (intentional or negligent) has no impact on the existence of the liability of the author of the fault. As long as there is a fault, the author will be held liable (whatever the nature of the fault). However, if the nature of the fault is not taken into consideration to determine the existence of one's liability, courts tend to take such nature into consideration to set the amount of damages (even though French law does not recognize punitive damages).

3.3.4. To be indemnified under French tort law, a damage (material loss, body and moral injury) shall be direct, certain and legitimate. French law does not indemnify indirect damages.

3.4. *Claim under French contract law*

3.4.1. Non-performance or wrongful performance of a contract can entail a variety of consequences from monetary damages to cancellation (*resolution* or *résiliation*) of the contract which would entail repayment obligations on both side (and additional damages allocated to claimant if contract cancellation does not cover the entire loss suffered).

3.4.2. In the event of a damage suffered by a contract party resulting from the failure of another party to meet a contractual obligation, the French Civil code sets forth the type and quantum of damages that can be recovered by the other party. Articles 1142, 1147, 1149, 1150, and 1151 of the Civil Code allow a claimant to recover damages when the losses are caused by a breach or delay in the performance of defendant's contractual obligations, provided that the breach or delay does result from an outside factor not attributable to the defendant (i.e. act of god, *force majeure*).

3.4.3. To be indemnified under contract law, the claimant must prove that the alleged loss is the immediate and direct consequence of the breach of the other contract party. The amount of monetary damages awarded will not generally exceed the amount of the proved loss (incl. loss of profit) as foreseeable at the execution date of the contract, except when the breach and failure to perform derived from a bad faith behavior (e.g. a party breaching intentionally a contract obligation) or gross negligence of the breaching party. In that case, limitation of liability clauses do not apply and the breaching party has to indemnify the entire loss suffered by the claimant, even for those losses that were not foreseeable when the contract was entered into. Unlike tort law claim, damages for contract law claim cannot include amounts attributed to moral prejudice.

3.4.4. Based on article 1147 of the Civil code, French courts developed three main features for intermediaries' duties of care: a duty of information, a duty of advice and a duty to warn.

4. Class actions

4.1. One of the major principles of French procedural law is that "No one shall plead by proxy" (*Nul ne plaide par procureur*). As a result, class actions as such did not exist under French law until very recently (Law 2014-344 of 17 mars 2014, effective as at 1st October 2014).

4.2. Class actions rules have been incorporated to the French Consumer code. A class-action requires that consumers (within the meaning of the code) be involved in the litigation as claimants. Definition of a consumer under the French Consumer code seems broad enough to cover most of crowd-lenders and crowd-investors as it refers to "…. any individual who acts for purposes that are not in the framework of his/her commercial, industrial, artisanal or liberal activities".

4.3. Class-actions are limited to material losses (damage to property, assets and financial losses) only. They shall be brought to court by an association (non-for profit organization) approved by the government. Shall a consumer not be initially part of a class-action, he/she can

however benefit from the favourable outcome resulting therefrom, subject to adequate recourse within 2 to 6 months from the date where the court decision has been made public.

5. Descriptive summary of the framework

5.1. The new regulation applying to the crowdfunding activities in force since 1st October 2014 created two tailored regulatory status for crowdfunding platforms, namely CIP – *Conseil en Investissement Participatif* (crowdfunding investment advisor) and IFP – *Intermédiaire en Financement Participatif* (crowdlending intermediary) with lighter requirements than pre-existing regulatory status (PSI, credit establishment…).

5.2. The CIP and IFP statuses are optional. Crowd-lending or crowd-investment platform operators can also register or be licensed, if they meet the relevant statutory requirements, as PSI or credit institutions (implying far more costs and constraints). Donation/reward platforms can elect the IFP status or stay out of the regulatory status. Claim against donation/reward platforms are limited by nature (as crowd is not expecting for a repayment or a return on investment). Hence, we have not further considered exposures and claims against donation/rewards platforms which would continue to operate out of the IFP status.

5.3. Failing to elect and comply with the proper regulatory status and associated regulatory requirements, lending-based or investment-based platforms would incur criminal sanctions. They would also be exposed to claim based on civil liability law as such failure could per se constitutes a ground to demonstrate a fault under the French civil liability rules. On the other hand and as described below, the new regulation set out a comprehensive framework as to platforms obligation and duty of care which brought clarity as to their duty of care and thus contributes to limit their exposure provided they do comply with the regulation.

5.4. *CIPs – definition and statutory duty of care*

5.4.1. CIP are legal entities providing services relating to investment in ordinary shares and non-convertible bonds with fixed interest issued by certain companies limited by shares, on an internet website complying with specifications set forth by the AMF General Regulations.

5.4.2. CIP may provide a limited number of ancillary services (e.g. handling subscription applications). However, they cannot receive funds from investors (except for their remuneration).

5.4.3. CIP shall (i) be registered with the ORIAS (register for intermediaries in banking operations and payment services) after a screening process, (ii) present certain moral guarantees, (iii) be members of an AMF accredited association[28] which controls their activities in compliance with the AMF General Regulation (no such association has been created yet and the AMF supervises directly registration of platforms and their activities) and (iv) subscribe specific insurance policies (mandatory as from 1 July 2016).

[28] See articles 325-34, 325-45 and 325-51 *et seq.* AMF General Regulations

5.4.4. CIP shall also (v) comply with the good conduct rules set forth in the Ordinance and the AMF General Regulations and (vi) ensure that their clients' interests are protected and that they receive the adequate level of information to appreciate the risks connected to their investment.

5.4.5. Offer of securities (ordinary share and fixed interest- bonds) on CIP (or PSI) platforms are exempted from prospectus requirement provided they are limited to € 1 million per project. The regulation provides however for a detailed set of information to be provided on the platform on each project, in a language accessible to a lay person.

5.4.6. CIP regulatory duties include in particular (as detailed in the great level of detail in the regulation):

- a statutory duty of care to advise and propose projects selected on criteria defined in advance (with such criteria being published on the platform), to the best of crowd-investors' interest,
- CIP shall have adequate resources and processes and implement them with care and efficiency ; they shall establish policies to prevent conflict of interests and communicate on the services (and connected costs) provided to project owners and provide information as to privileged relationships they may have with issuers as the case may be,
- all information provided by a CIP (including those of a promotional nature) shall be accurate, fair and non-deceptive,
- CIP shall allow access to the offers on a step-by-step manner with due enquiry on potential crowd-investors resources, experience and objectives to ensure that the offer is adequate. Failing to answer the potential crowd-investor shall be refused access to the securities' offer.

5.4.7. In case of a claim brought by crowd-investors against a platform, contract law liabilities principles will apply. Duty of care will be analyzed by courts in light of the numerous statutory obligations of the CIP.

5.4.8. If a CIP does not comply with the regulatory requirements, it might thus be held liable for monetary damages potentially covering all or part of the loss suffered by the crowdinvestor, depending on the materiality of the alleged breach. At this very early stage, the grey zone where courts might elaborate on the extent of CIPs' duty of care is the deepness of due diligence a platform has reasonably to perform on the projects and issuers it selects. The process of selection of projects is indeed not specified in the regulation.

5.4.9. Also and as crowd-investors are usually non-professional investors, the limitation of liability provisions provided in the term of use of the platforms might not always be declared valid by French courts.

France

5.5. *IFP - definition and statutory duty of care*

5.5.1. IFP are legal entities putting in contact on a website people carrying projects and people financing such projects by way of loans (bearing interest or not) or donations, within conditions and limits set forth by the regulation as regards loans' features.

5.5.2. To qualify as IFP, a platform shall (i) be registered with the ORIAS, (ii) present certain moral guarantees, (iii) subscribe specific insurance policies (mandatory as from 1 July 2016); and (iv) abide by a good conduct code implemented per the terms of the Ordinance. The regulation specifies (a) the conditions of applicability of the good conduct code together with (b) the registration modalities for the internet site of the intermediaries and (c) the conditions of use of the intermediaries' services.

5.5.3. An exception to the French banking monopoly has been set. Under this statutory exception, individuals can loan money to project owners on a crowdfunding platform, on a project per project basis, subject to duration and amount limitations. A project owner cannot raise more than € 1 million per project on crowdfunding platforms, whether by way of loan bearing interests or not. Interest-free loans are capped at €4,000 per year, per project and per lender, while no limitation is currently set on their duration. Interest bearing loans are capped at €1,000 per year, per project and per lender. They shall be of a maximum duration of seven (7) years. They cannot be granted at usury rates (determined according to a legally binding formula).

5.5.4. IFP regulatory duties includes in particular (as detailed in the great level of detail in the regulation) the obligation to:

- inform the public on the criteria for selection of the projects and project owners,
- provide warning on the exposures for crowd-lenders including but not limited to default risk of the project owner and risk connected to excessive indebtness,
- make available to potential crowd-lenders tools allowing them to evaluate the amount of loan they can grant in consideration of their revenues and charges, as well as all information allowing to evaluate the economic soundness of the project and project owner, including business plan,
- make available on the platform a loan standard form compliant with the regulation,
- ensure that interest rate proposed by crowd-lenders complies with regulatory requirement,
- define and organize the follow up of the loan repayment.

5.5.5. Failing to provide information and tools as summarized above, the IFP might be held liable to crowd-lender according to contract liability rules. Interestingly, the regulation does not expressly provide for an advising ("*conseil*") role for IFP, whereas it does for CIP. This would not mean that courts cannot consider in the future that there is nevertheless a duty of care entailing also an advising part. In that occurrence however, it is not unreasonable to foresee that courts might not require the same level of due diligences on projects and project owners than for CIP.

5.5.6. In addition and given the very low limits that regulation has set on the lender side for the maximum amount they are allowed to lend per project (€1,000 to €4;000 – see above) the actual risk of claim against platforms seems de facto more limited than for CIP, save if class-actions develop in the crowdfunding area.

5.6. *Projects owners*

5.6.1. The new regulation has not elaborated on a duty of care of platforms towards project owners as it has towards crowd-investors and crowd-lenders. The lending scheme (i.e. loan offered on IFP platforms and bonds with interests offered on CIP platforms) entails more immediate risk for a project owner than equity investment, primarily this of excessive indebtness. It cannot be excluded that French courts may build up a minimal framework for a duty of care of platforms towards project owners based on French contract law rules.

5.6.2. Conversely, project owners may be held liable towards crowd-lenders or crowd-investors based on contract formation rules (or fraud) typically when information delivered to the public was not accurate and misleading and the investment/loan has been made based on a vitiated consent. In that case a platform that would have offered such a project could undergo a concurrent liability towards deceived crowd-lenders or crowd-investors based on contract law liability rules for breach of statutory obligations and duty of care as the case may be.

5.7. *Other regulations*

5.7.1. As French new crowdfunding regulation is comprehensive and embraces most of the requirements set out by regulation as to e-commerce marketplaces and protections of consumers. Such other regulation shall have thus an ancillary role in claims brought by crowd-lenders and crowd-investors.

5.7.2. IPF and CIP are not per se allowed to provide payment services to crowd-lenders and crowd-investors. More specifically CIP cannot receive funds from investors. If an IFP wishes to implement fund transfer between lenders and borrowers, they would need to be authorized by the ACPR and hold a licence as a payment institution (*prestataire de services de paiement*) under a simplified regime. Most of the platforms act as *agent de prestataires de services de paiement*, entailing a contractual relationship between the crowd-lenders or the crowd-investors and the payment institution which services are proposed on the platform.

France

5.7.3. IFP and CIP status and connected regulation are pure domestic rules and cannot be passported. Therefore, a French platform targeting crowd-lenders or crowd-investors outside of France shall comply with relevant rules applying in those jurisdictions for crowdfunding activities.

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Germany

1. Introduction

1.1. In case of a breach of duty the German Civil Code (*Bürgerliches Gesetzbuch*, "**BGB**") provides a wide range of claims for damages. Therefore the following section will give you a better understanding of the relevant types of liability existing in the German Civil Law in accordance with the BGB.

2. Main principles as regards the civil law liability regime.

2.1. In a first step it is necessary to distinguish between such claims, which arise from contractual relationships and others which are a result of an unlawful act. If the parties have any contractual relationship, the conditions are in accordance with the sections 280 et seq. BGB. In the absence of such a contractual relationship, a claim for damages can further arise as a result of an unlawful act in accordance with section 823 BGB. If the correct legal basis was found, the sections 249 et seq. BGB concretize the type, the content, and the scope of the claim. Please note that an important difference between a contractual claim and claims for damages which result from an unlawful act is, that they are subject to different legal limitation periods.

2.2. *Main types of claims available for claimant*

2.2.1. The general claims for damages are stated in section 280 subsection 1 BGB (*Schadensersatz neben der Leistung*) and sections 282, 280 subsection 1 BGB (*Schadensersatz statt der Leistung*). This requires a damage resulting from a breach of contractual obligations. The decisive factor is, however, that the opposing party has to take the responsibility of the infringement. The responsibility of this infringement complies with section 276 BGB, which states that the opponent is liable for all forms of negligence and intent.

2.2.2. Further a claim for damages can arise because an unlawful act has been committed. In accordance with this section a person is liable to make compensation to the other party for the damage arising from any unlawful, intentionally or negligently committed injuries of the life, body, health, freedom, property or another right. Section 823 BGB solely protects so-called absolute legal interests. Therefore pure financial losses cannot be demanded to be replaced. Further the infringer must be culpable of tortious liability. The fault must also be determined in accordance with section 276 BGB.

2.3. *Main grounds for civil law liability*

2.3.1. As mentioned above, the main grounds for civil law liability are the breach of duty in case of contractual relationships between several parties and damages which are a result of an unlawful act.

2.4. *Main defense available to the defending party*

2.4.1. The German Civil Law establishes the principle, that the obligor of a claim for damages must prove that he is not responsible for the breach of duty. In accordance with section 280 subsection 1 sentence 2 it is presumed that the obligor is responsible for the breach of duty. The precise scope is established in section 276 BGB, after which the obligor is responsible for intention and negligence, if a higher or lower degree of liability is neither laid down nor to be inferred from the other subject matter of the obligation. Further the obligor can be held responsible for third parties. In accordance with section 278 subsection 1 BGB the obligor is responsible for fault on the part of his legal representative (*Erfüllungsgehilfe*), and of persons whom he uses to perform his obligation, to the same extent as for fault on his own part. In this case he is also responsible for intention and negligence as before mentioned. In accordance with section 276 subsection 2 a person acts negligently if he fails to exercise reasonable care. According to the explanations above the obligor has to prove that neither he, nor his legal representative, is responsible for the breach of duty which has caused the damage. Apart from that in a process can solely be considered, what the parties have introduced and claimed. Further each party generally has to prove the relevant facts and circumstances upon which a claim for damages is based.

3. Descriptive summary of the framework with general applicability to Crowdfunding in general

3.1. *Applicability of civil law to Crowdfunding in general*

Civil Law

3.1.1. Due to the nature of Crowdfunding as a game played by a number of different players, various contractual relationships are created and the conclusion of contracts in a Crowdfunding scenario is governed by a number of different legal regimes – various of them being parts of Civil law.

3.1.2. A significant part of investors in Crowdfunding are considered as consumers from a legal perspective. Consumer (*Verbraucher*) in the legal sense means any natural person who is acting for purposes which are not related to their business or profession. As a consequence, a number of consumer protection provisions will have to be taken into account when platforms and project owners interact with consumers in a Crowdfunding campaign. These provisions and their lawful implementation do not only affect the content and structure of the agreements in place, they also have significant impact on processes on the platform – from onboarding investors as registered users over maintaining a contractual relationship as a registered user up to concluding and executing investment agreements in the course of Crowdfunding campaigns.

3.1.3. For instance, in connection with distance contracts and off-premises contracts the BGB requires fulfillment of a number of certain information obligations, which affect the procedure of the conclusion of the contract as well as references to terms and conditions, instructions regarding to the right of withdrawal as well as mandatory information on the platform and the project owner (such as contact information, legal representatives etc.).

3.1.4. In case such information should not be provided at the right point of time and in the correct format, the spectrum of potential consequences covers potential cease and desist letters (from consumers, consumer protection authorities or competitors), significant extension of the withdrawal period and even invalidity of the contract concluded.

3.1.5. Incompliance with legal requirements as to the content of contractual regulation agreed upon with consumers will lead to invalidity of the respective contractual regulation and might as well cause cease and desist letters.

Unfair Competition regulation

3.1.6. As an act that shall serve the purpose of protecting competitors, consumers and other market participants against unfair commercial practices, the Unfair Competition Act will be applicable to Crowdfunding at any stage of preparing, presenting and executing a campaign.

3.1.7. Given that Crowdfunding brings together various market participants during the preparation, presentation and execution of Crowdfunding campaigns, it is obvious that the interests protected by the Unfair Competition Act will be affected by Crowdfunding and that the legal requirements resulting from Unfair Competition regulation will need to be preserved at any stage of and by any player involved in Crowdfunding campaigns.

3.1.8. As a consequence, Unfair Competition regulation will impact the contractual regulation needed in order to realise Crowdfunding campaigns, but also the processes in communicating with all the players involved.

3.1.9. In addition, Unfair Competition regulation has significant impact on which marketing activities can be realised in relation to which (potential) participant in a Crowdfunding campaign.

3.1.10. Finally, due to the fact that Unfair Competition regulation – among others – is supposed to protect the interests of consumers when participating in market activities of platforms and project owners, there is a remarkable overlap of legal requirements resulting both from Consumer Protection regulation and Unfair Competition regulation. Thus, a breach of Consumer Protection regulation is likely to be considered a breach of Unfair Competition regulation as well and might therefore also trigger consequences as set out in the Unfair Competition Act.

3.2. *Prospect liability according to civil law (sections 280, 241, 311 BGB)*

3.2.1. In Germany, there are two prospectus liabilities for persons involved in offering investments – the so called statutory prospectus liability (*spezialgesetzliche Prospekthaftung,* e.g. pursuant to the Securities Prospectus Act - *Wertpapierprospektgesetz "**WpPG**"* or the Investment Products Act (*Vermögensanlagengesetz – "***VermAnlG**")) and the prospectus liability according to civil law (*zivilrechtliche Prospekthaftung*). The latter often applies to capital investments that are not covered by a statutory prospectus liability. This lack of prospectus liability inspired several German courts to "invent" a prospectus liability based on

the legal concept of *culpa in contrahendo. Culpa in contrahendo* means the liability of a person that is based on the trust someone else has in that person (*Vertrauenshaftung*).

3.2.2. The prospectus liability according to civil law arises from sections 280, 241, 311 BGB and several decisions of the Federal Supreme Court (*Bundesgerichtshof* – "**BGH**") and - with regard to the addressees (e. g. platforms or project owners) - can be divided into

- particular prospectus liability (*Prospekthaftung im engeren Sinne*) and
- general prospectus liability (*Prospekthaftung im weiteren Sinne*).

Both liabilities only apply if it can be proved that the liable person is guilty of intent (*Vorsatz*) or negligence (*Fahrlässigkeit*), i. e. default (*Verschulden*).

Particular prospectus liability (Prospekthaftung im engeren Sinne)

3.2.3. The particular prospectus liability (*Prospekthaftung im engeren Sinne*) applies to initiators, founders, management and other persons of the issuing company that have particular influence on the issuing company. These persons have participated in providing the prospect in a way that is externally recognizable for others. It is characteristic that these persons make use of typified confidence in the issuing company.

3.2.4. Usually *platforms* are not the initiators, founders, management or any other person that has particular influence on or control over the issuing company. Therefore, the platform would not be subject of the particular prospectus liability within the aforementioned meaning. Furthermore, the platform generally may not be involved in the creation of the prospect in a way that is externally recognizable.

3.2.5. Other than the platforms, *project owners* have influence on the information published on the website of the platform. Consequently they are liable for any incorrectness of the information published.

3.2.6. If default of the platform/project owner can be proved by the investor, the investor generally would be able to exercise all types of civil law claims referred to in section 2 and 2.1 above – depending on the type of breach of civil law (e. g. contractual obligations or statutory obligations).

General prospectus liability

3.2.7. The general prospectus liability on the other side applies to persons that are not connected to the issuing company, but personally involved in providing the prospect, e. g. persons that adopt the prospect as their own. These persons often are obligated to provide certain information to the investors and in order to fulfill their obligation they sometimes adopt parts of the prospectus.

3.2.8. A general prospectus liability may arise only in case one of the following requirements are met:

- particular personal trust of the liable person (particular personal trust influenced the investment decision of the investor significantly); or
- direct economic interests regarding the conclusion of the contract (the payment of commissions to the person is not sufficient, the acting persons must - in an economic sense - act on their own account, e. g. because their own existence is connected to the prosperity of the company).

3.2.9. Platforms that provide investment broking of subordinated profit-participating loans (i.e. investment products pursuant to the VermAnlG) may be subject to a general prospectus liability. It cannot be completely excluded that platforms may take a particular personal trust (e.g. if they assess project owners before presenting them on their website in the course of a due diligence). Moreover, the platform may not act with direct economic interests regarding the conclusion of the contracts. This is due to the fact that the payment of the commissions of the platform is not sufficient for a general prospectus liability.

3.2.10. However, one German legal scholar claims that platforms may act on their own accounts (and therefore with direct economic interest) since their business model is exclusively designed to earn commissions. This argument would connect the economic existence of the platform to the project owners that are presented on the website of the platform. In the end this would lead to an "acting on own accounts". As a consequence the platform could be subject to a general prospectus liability.

3.2.11. However, there is no precedent in Germany regarding platforms that provide investment broking and may be subject to prospectus liabilities in the abovementioned sense.

3.2.12. Project owners and the (natural) persons involved in preparing a prospectus are subject to the general prospectus liability as they (at least) have direct economic interests regarding the conclusion of the contract.

3.2.13. Project owners have influence on the information published on the website of the platform. Consequently they are liable for any incorrectness of the information published.

3.2.14. Project owners also are highly personally involved, make use of particular personal trust and have direct economic interests when publishing information regarding their project (funding of their project).

3.2.15. In case the general prospectus liability applies to the platform/project owners and the investors can prove that the platform acted intentionally or negligently, investors can exercise all of the civil law claims referred to in section 2 and 2.1 above.

3.3. *Summary of Regulatory Framework in Germany*

Investment Products Act (Vermögensanlagengesetz – VermAnlG)

3.3.1. The VermAnlG constitutes the legal framework for investment products (*Vermögensanlage*) and especially for publishing a prospectus when offering investment products to the public (e. g. by project owners). The Retail Investors Protection Act (*Kleinanlegerschutzgesetz* – "**KASG**") which entered into force on 10 July 2015 provides for the following most relevant changes of the VermAnlG:

- subordinated profit-participating loans (*partiarische Nachrangdarlehen*) qualify as investment products (*Vermögensanlagen*) and – as a rule – trigger a prospectus requirement under the VermAnlG
- increased regulation for all investment products (*Vermögensanlagen*) – such as silent partnerships (*stille Beteiligungen*), participation rights (*Genussrechte*) and (now also) subordinated profit-participating loans (*partiarische Nachrangdarlehen*)
- exception from most requirements under the VermAnlG explicitly tailored to fit financing by means of Crowdfunding ("Crowdfunding Exception")
  - only applicable when offering profit participating loans (*partiarische Darlehen*), subordinated loans (*Nachrangdarlehen*) or commercially comparable investments (*wirtschaftlich vergleichbare Anlagen*)
  - no prospectus requirement up to a threshold of EUR 2.5 million per project
  - total investment amount for each investor is limited to a maximum of EUR 10,000; if exceeding a threshold of EUR 1,000 investors must comply with further requirements, i.e. self-exploration on wealth or income
  - corporations (*Kapitalgesellschaften*) are not limited to the absolute maximum investment of EUR 10,000 per investor
  - online platforms need a licence under the GewO, under the KWG or the WpHG (each as defined below)
- mandatory right of withdrawal (*Widerrufsrecht*) from investment for investors
- three-page fact sheet (*Vermögensanlagen-Informationsblatt* – "VIB") – which must contain a highlighted warning notice
- no combination of Crowdfunding Exception with other exceptions under VermAnlG (ban of combination - *Kombinationsverbot*)
- strict rules for marketing of investment products (*Vermögensanlagen*) - especially rules regarding duties to publish specific warning notices with any advertising
- exception from VermAnlG for cooperatives (*Genossenschaften*) is narrowed
- extended powers for the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht* – "**BaFin**")

3.3.2. Regarding Peer-to-Peer-Lending (a special type of Lending based Crowdfunding) BaFin now ruled that the currently existing models should – as a rule – fall within the regulation of the Retail Investors Protection Act (*Kleinanlegerschutzgesetz* – "**KASG**"). As a result, also Peer-to-Peer Lending platforms are forced to use an exception from regulation (in particular the Crowdfunding Exception with the aforementioned prerequisites).

*Capital Investment Act (Kapitalanlagegesetzbuch – "**KAGB**")*

3.3.3. German AIFMD regulation does not apply to operating companies outside the financial sector which do not invest in accordance with a defined investment policy. According to the KAGB the AIFMD regulation of funds and fund managers applies when there is an alternative investment fund ("**AIF**") managed by an alternative investment fund manager ("**AIFM**").

3.3.4. In general, due to the fact that an operator of a platform does not raise capital from investors for its own business, the platform should not qualify as an AIF. On the other hand – depending on the crowdfunding model – the KAGB may apply to project owners.

*Security Prospectus Act (Wertpapierprospektgesetz – "**WpPG**")*

3.3.5. The WpPG constitutes the legal framework for the drawing up, approval and publishing of a prospectus for securities to be offered to the public or admitted to trading on an organized market.

3.3.6. platforms in Germany usually do not offer securities to the public and are therefore not obligated to publish a prospectus pursuant to the WpPG. project owners issuing securities to investors can be subject to a prospectus requirement pursuant to section 3 of the WpPG.

3.3.7. The general prospectus requirement regarding securities does – inter alia – not apply where the offering of securities meets the following requirements:

- sales price does not exceed EUR 100,000 within a time period of 12 months;
- offer addresses not more than 150 investors per country in the European Economic Area or
- price per share amounts to minimum EUR 100,000 per investor

*Trade, Commerce and Industry Regulation Act (Gewerbeordnung – "**GewO**")*

3.3.8. The GewO is the central trading regulation and i. a. regulates brokering of financial investments (*Finanzanlagen*). Businesses that intend to broker financial investments must apply for a license with the local Chamber of Commerce (*Industrie- und Handelskammer*) / local authority (e. g. Berlin district authority (*Bezirksamt*)) and then must comply with the requirements set out in the GewO and Ordinations decrees pursuant to the GewO.

3.3.9. Since 1 January 2016 (at the latest) platforms must have applied for a licence pursuant to section 34f GewO. Pursuant to obtaining this licence they have to comply with additional requirements resulting from the Financial Investments Brokering Regulation (*Finanzanlagenvermittlungsverordnung*) ("**FinVermV**").

3.3.10. The FinVermV mainly constitutes - besides organisational provisions - two requirements for platforms:

- information of investors about brokered financial investments regarding the status of the platform as well as associated risks, costs and possible conflicts of interests

- suitability test of brokered financial investment which requires that the platform asks investors for information of knowledge and experience regarding kind, extent and frequency of transactions of financial investments.

3.3.11. Project owners usually do not broker financial investments (*Finanzanlagen*), so that they do not have to comply with section 34f GewO.

*Payment Services Supervision Act (Zahlungsdiensteaufsichtsgesetz – **ZAG**)*

3.3.12. Pursuant to the ZAG (which is based on the Payment Services Directive – "**PSD**") any undertaking providing payment services within the meaning of the ZAG constitutes a payment services provider (*Zahlungsdienstleister*) and must obtain a licence pursuant to section 8 ZAG.

3.3.13. Any transfer of funds through the operator of a platform generally constitutes money remittance services (*Finanztransfergeschäft*) within the meaning of the ZAG. Such transfer of funds could occur if the investors pay their investment amounts to the operator of the platform which then passes the funds to the entrepreneur. In this context BaFin has decided that operators of internet platforms (such as Crowdfunding platforms) in general are not covered by the exemption for commercial agents. A solution to avoid such licensing requirements would be that the project owner collects the funds from the investors on their own bank account. The power of disposal (*Verfügungsbefugnis*) over the funds collected would be limited until the respective platform agrees.

3.3.14. The project owner normally constitutes the recipient of the funds collected by means of the platform. Therefore, as a general rule the project owner should not provide money remittance services and should therefore often fall outside the regulation pursuant to the ZAG.

4. Particular civil law liability issues per type of Crowdfunding

4.1. *Investment (equity) based Crowdfunding*

4.1.1. In the early stages of crowdfunding in Germany equity based crowdfunding was commonly organized by means of silent partnerships (*stille Gesellschaftsbeteiligungen*) or also securities. Individuals were making investments in return for a share in the profits or revenue generated by the project owner. However, due to high bureaucracy efforts, the (high) requirements for a licence pursuant to the German Banking Act (*Kreditwesengesetz* – "**KWG**") and the changes pursuant to the KASG especially the securities model became outdated. Today, there is no (relevant) equity crowdfunding platform operating in Germany.

4.2. *Lending based Crowdfunding*

4.2.1. Here individuals lend money to a project owner in return for the repayment of the loan and interest on their investment. This is currently the most common model of crowdfunding in Germany. In almost all cases the loan is structured as subordinated profit-participating loan (*partiarisches Nachrangdarlehen*). The subordinated profit-participating loan (*partiarisches Nachrangdarlehen*) grants the right of the investors to participate in the success of the funded project without sharing the liability for any losses. Lending based crowdfunding is

structured according to the general loan law. Special regulations regarding consumer loan law (*Verbraucherdarlehensrecht*) are not applicable since consumers are granting loans as lenders instead of receiving loans as borrowers.

4.3. *Donations and Rewards based Crowdfunding*

4.3.1. In Germany the donation or Reward based models are used predominantly to finance social or creative project owners (e.g. NGOs). Generally, no financial investment or return is involved since investors fund projects or companies and do not receive any return at all or a non-monetary reward (e.g. tickets, CDs etc.). In some cases the rewards are of a symbolic value only.

4.3.2. As far as the funding is granted without any return at all the transaction should be qualified as donation in terms of section 516 para. 1 BGB. If the funding is granted in return for a non-monetary reward, the qualification of the transaction depends on the concrete configuration of the non-monetary reward. In the most cases such transaction are qualified as mixed contracts (*typengemische Verträge*). The determination of the legal status of the transaction results from the main object test (*Schwerpunkttheorie*). Typically sales law (*Kaufrecht*) will overbalance the donation part, so that the principals of sales law (*Kaufrecht*) in accordance with sections 433 ff. apply.

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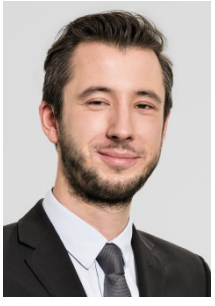

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Italy

1. Introduction

1.1. In order to provide a better understanding of the potential risks and liability claims that can be brought against a crowdfunding platform in respect of different types of crowdfunding as well as the manners to mitigate those risks, we would like to give you a short introduction to the Italian main applicable provisions. This is by no means meant to be complete, but merely provides you with an introduction to some of the applicable provisions to the extent these are relevant for understanding the typical risks associated with crowdfunding.

1.2. The platform should have adequate measures in place to mitigate the relevant risks involved in their activity (the main of which is the risk of fraud) and to comply with the applicable laws and regulations. These measures should include minimum levels of disclosure of information, transparency, protection of the investors and protection of the project owners. Platforms have a duty of care and must act professionally, ethically and must be aimed at continuity.

1.3. Any issuer offering shares to the investors has a responsibility to mitigate the risks involved in crowdfunding, by providing complete, not misleading and accurate information enabling the investors to make an informed investment decision on proper grounds.

1.4. The lending platform operating in the form of Payment Service Providers are also subject to the provisions requiring safeguarding of the third parties' moneys, as well as the administration of rights and obligations of the lenders and borrowers.

2. Equity crowdfunding

Despite, as a general rule, the manager of an equity crowdfunding platform does not raise capital directly from investors with respect to a specific project, but merely arranges the investment into the different projects published on his *on-line* portal, such manager is, in any case, subject to certain duties and obligations towards the investors investing through the relevant on-line portal expressly set forth in the Consob Regulation 18592/2013 (the "**Consob Regulation**"). Such Consob Regulation is actually under a procedure of modification in order to include in the relevant text also provisions dealing with Innovative SME's, who have been allowed to raise capital through equity crowdfunding in Italy very recently by Law 33/2015.

Such duties and obligations set forth by Consob Regulation can be divided in two different categories:

1) duties of care, consisting in adopting adequate measures to protect the investors and mitigate the risks involved in an investment in the projects published on the on-line portal by fulfilling specific duties of transparency and protection;
2) duties of information, consisting in providing to the investors specific information about the platform, the investments in equity (in general) and the single offer.

2.1. Please be in any case aware that under the Italian laws the possibility for companies to raise equity funds through a crowdfunding campaign is limited only to:

(a) innovative start-ups: these are companies (in general joint stock companies – "*Società per azioni*" and limited liability companies – "*Società a responsabilità limitata*") which: *(i)* are not listed on a regulated market; *(ii)* have started their activity by no more than 60 months; *(iii)* have their registered office in Italy or a branch or a production facility in Italy; *(iv)* have total turnover of maximum Euro 5,000,000; *(v)* have as exclusive company object the manufacturing and marketing of innovative products or services which are highly innovative;
(b) innovative SMEs: these are companies (in general joint stock companies – "*Società per azioni*" and limited liability companies – "*Società a responsabilità limitata*") which: *(i)* are not listed on a regulated market, but which can have the shares traded on MTF; *(ii)* have their registered office in Italy or a branch or a production facility in Italy; *(iii)* have independent firm revision of the last available balance sheet;
(c) collective investment undertakings (investment funds) and investment companies (holdings) which invest primarily in innovative start-ups and in innovative SMEs.

2.2. *Duties of care*

2.2.1. Although a platform cannot be held liable for merely passing the information provided by a project owner, the latter is generally believed to have a duty of care towards the investors to ensure that the issuers have complied with the applicable rules and regulations when providing the relevant information to be published on the on-line portal.

2.2.2. According to Article 13 of the Consob Regulation the platform has to work with diligence, fairness and transparency, avoiding any conflicts of interest which could arise in the management of the relevant portal that may affect the interests of the investors and the issuers, and ensuring equal treatment of the beneficiaries of the offers who are in identical conditions.

2.2.3. As a specification of the above mentioned general principle, Paragraph 2 of said Article 13 specifies that the platform has to make available to the investors, in a detailed, correct and not misleading manner and without omissions, all the information regarding the offer that is provided by the issuer so that the investors can reasonably and completely understand the

nature of the investment, the kind of financial instrument offered and the risks related to such offer, and can take decisions on investment with full awareness.

2.2.4. The platform also has to draw the attention of the non-professional investors to the fact that investments in high risk financial assets (as an equity investment is) should be adequately proportionate to their financial resources. In particular, according to Article 15, Paragraph 2, of the Consob Regulation the platform must ensure that non-professional investors may access sections of the relevant portal where it is possible to adhere to the single offers only if they:

(a) have read the information of investor education provided by Consob and published in the relevant website and the information referred to the platform itself;
(b) answered positively to a questionnaire demonstrating the full understanding of the essential features and main risks related to the investment in innovative start-ups via an on line portals;
(c) declared that they can financially sustain the possible entire loss of the investment they intend to make.

2.2.5. Moreover the platform shall not circulate news that is not consistent with the information published on the on-line portal and shall refrain from expressing recommendations regarding the financial instruments of the single offers which could influence the trend of adhesions to the same, as well as it shall guarantee that all the information provided on the portal is always updated and accessible to those eventually interested for a period for 12 months after the conclusion of the equity crowdfunding campaign.

2.2.6. The above mentioned duties are similar to those provided by Article 94, Paragraph 8, of the Italian Consolidated Law on Finance (Legislative Decree 58/1998) with reference to the liabilities of the issuer and the offeror in case of a public offer which states that the issuer, the offeror or any guarantor or the persons responsible for the information contained in the prospectus, shall be liable, each in relation to the extent of their own duties, for damages caused to the investor placing reasonable faith in the truth and accuracy of information contained in the prospectus itself, unless it is proved that all due diligence was adopted for the purpose of guaranteeing that the information in question complied with the facts and that no information was omitted that could have altered the sense thereof.

2.2.7. Therefore the platform is subject to a specific responsibility for making sure that the information provided on its on-line portal regarding a specific project and relating to a specific project owner includes all such information that is needed for the investor to make an informed investment decision.

2.2.8. Having said that, considering the information asymmetry between the platform and the investor, the Italian laws provide for the hypothesis of unlawful acts conducted by a platform in performing its duties of care towards the investors which have caused damages to the investors, this results in a reversal of the burden of proof from the claimant to the defendant,

who has to prove, in order to avoid the relevant liability towards the investors, to have acted in compliance with the above mentioned duties and with the due diligence of a manager of a crowdfunding platform in accordance with the general principle of the due diligence in performing obligations by a professional set forth in Article 1176, Paragraph 2, of the Italian Civil Code.

2.2.9. In other words in order to avoid any responsibility towards the investors, the platform has to prove to have properly verified (and as the case may be update) all the information provided by the project owner and published on the on-line portal.

2.3. *Duties of information*

2.3.1. Together with the duties of care an equity crowdfunding platform is also subject to some specific duties of information set forth by the Consob Regulation; such duties of information can be divided in three different groups:

(1) information about the platform itself;
(2) information about investment in innovative start-ups;
(3) information about any single offer.

2.3.2. Specifically with regard to the information that has to be provided by the platform regarding itself and the relevant activities conducted through its on-line portal the Consob Regulation requires that the platform has to publish information, in a summarized and easily comprehensible form, also by means of multimedia techniques, regarding:

(a) the portal manager, the relevant controlling shareholders, the persons who perform managerial and supervisory functions;
(b) the activities performed, including the methods for selecting the offers, and any activities outsourced to third parties;
(c) the procedures for management of the orders relating to financial instruments offered via the portal,
(d) any costs charged to the investors;
(e) the measures adopted to reduce and manage fraud risks;
(f) the measures adopted to ensure the proper handling of the personal data and information received from investors, pursuant to Legislative Decree n° 196 of 30 June 2003 as subsequently amended;
(g) the measures adopted to manage conflicts of interest;
(h) the measures adopted to deal with complaints and indication of the address to which complaints must be sent;
(i) the mechanisms for the ADR resolution of disputes;
(j) the aggregate data on the offers made through the portal and on the relative results;
(k) the relevant legislation, the indication of the hypertext link to the register and to the investor education section of the Consob website and to the special section of the Register of Enterprises in which the innovative start-ups are listed;
(l) details of any sanctions and precautionary measures adopted by Consob; and

(m) the initiatives that the platform may adopt against issuers in the case of failure to observe the portal functioning rules; if no such initiatives exist, the fact must also be indicated.

2.3.3. The latter duty of information is particularly interesting from the perspective of the liability of the platforms due to the fact that it assumes an active role of the platform itself in imposing specific regulations and connected duties of care and information over the project owners, the non-fulfilment of which shall have a direct impact in the hypothesis of a claim for damages both over the platform and over the project owner (whose project shall be, in the worst case, cancelled from the portal and the offer revoked).

2.3.4. With reference to the information that has to be provided with regard to the investments in innovative start-ups the Consob Regulation states that the platform has to inform the investors in respect of: *(a)* the risk of losing the entire invested capital; *(b)* the risk that it may be impossible to immediately cash in the investment; *(c)* the ban on distributing profits for the period in which the company is registered un the Special Register for Innovative start-ups; *(d)* the taxation benefits applicable to such investments (especially regarding the temporary nature of the benefits and the hypothesis of their loss); *(e)* the derogations from corporate law contemplated by article 26 of Law Decree 179/2012 and from the bankruptcy law contemplated by article 31 of said Law Decree; *(f)* the typical contents of a business plan; *(g)* the right to withdraw from any offer within the following 7 days and the relative procedures for its exercise.

2.3.5. With regard to any specific offer published in the relevant portal the platform has to provide to the investors the following information, also by using multimedia techniques: *(a)* the information requested by Consob (and reported in a specific information documents drafted by the project owner) and the relative updates; *(b)* the identification details of the bank(s) or the investment companies which provide the processing of the orders and the identification details of the escrow account in which the relevant funds are deposited until the completion of the offer; *(c)* details of the procedures for the exercise of the right of revocation in case of modifications of the conditions of the offer or of the relevant conditions or in case of material mistakes in the information published in the portal; *(d)* the frequency and procedures by which the information on the state of the adhesions, the amount underwritten and the number of the adherents.

2.3.6. Also in case of non-fulfilment of the duties of information the platform shall be considered liable towards the investors and also in such a case under the Italian laws provide the reversal of the burden of proof from the claimant to the defendant, who has to prove, in order to avoid the relevant liability towards the investors, to have acted in compliance with the above mentioned duties.

3. Lending crowdfunding

3.1. As far as the lending crowdfunding activity is concerned, in Italy there are no specific regulations dealing with lending crowdfunding activity and as a consequence with the duties

of care and/or the duties of information that have to be performed towards the lenders investing their money in a specific lending project published on on-line platforms. Nevertheless, on November 2015 Bank of Italy has expressed its intention to adopt a regulation dealing with the lending crowdfunding business and asked the stakeholders for comments or suggestions before to issue the relevant draft.

3.2. Actually the only requirement is for those online platforms willing to open and manage payment accounts who must apply for the Payment Service Provider or Electronic Money Issuer license or ask to passport the license granted by another European Supervisory Authority. The terms to be granted with said license in Italy are set forth by the Italian Consolidated Law on Banking (Legislative Decree 385/1993) and the relevant Regulation on PSP and EMI issued by the Bank of Italy on 20 June 2012.

3.3. Having said that, considering the similarities between an equity crowdfunding platform and a lending crowdfunding platform regarding the activities towards the relevant investors (despite the different level of risks between an investment in equity and an investment in lending), it should be possible to consider said platforms (also those acting under PSP or EMI licence) subject to similar duties of care and duties of information as those provided for the equity crowdfunding platforms.

3.4. In case of non-fulfilment of the relevant duties lending crowdfunding platforms shall be considered liable of the damages suffered by the investors. Also in such a case the Italian laws provide the reversal of the burden of proof from the claimant to the defendant, who has to prove, in order to avoid the relevant liability towards the investors, to have acted in compliance with the relevant duties of care and information as well as the specific duties set forth by the Bank of Italy for those platform acting as PSP and EMI.

3.5. In addition to the above, the platforms acting as PSP and EMI are also subject to Anti Money Laundering and Terrorism Financing obligation set forth by Legislative Decree 231/2007, the non-fulfilment of which shall face a liability of the platform towards the relevant Italian Public Authorities.

3.6. *Duties of care*

3.6.1. As far as the duties of care are concerned also lending crowdfunding platforms have to: *(a)* act with diligence, fairness and transparency, avoiding any conflicts of interest which could arise in the management of the relevant portal that may affect the interests of the investors and the borrowers; *(b)* ensure equal treatment of the beneficiaries of the offers who are in identical conditions; *(c)* have to provide to the investors all the information regarding the platform, the possible risks in providing lending to companies and the different lending projects published on the platform.

3.6.2. In particular, as equity crowdfunding platforms, lending crowdfunding platforms shall make available to the investors, in a detailed, correct and not misleading manner and without omissions, all the information regarding the offer that is provided by the borrower so that

the investors can reasonably and completely understand the nature of the investment, and the related risks, and can take decisions on investment with full awareness.

3.6.3. Moreover, the lending crowdfunding platforms shall:

(a) draw to the attention of the non-professional investors to the fact that investments in financial assets should be adequately proportionate to their financial resources, due to the possibility that also lending investments are subject to the risk of the loss of the entire investment in case of bankruptcy of the borrower;

(b) not circulate news that is not consistent with the information published on the on-line portal and shall refrain from expressing recommendations regarding a single offer which could influence the trend of adhesions to the same, as well as it shall guarantee that all the information provided on the portal is always updated and accessible.

3.7. *Duties of information*

3.7.1 With specific regard to the information duties that have to be performed by lending crowdfunding platforms, similarly with the duties of information set forth for equity crowdfunding platforms, they have to publish information, in a summarized and easily comprehensible form, also by means of multimedia techniques, regarding:

(a) the activities performed, including the methods for selecting the offers, and any activities outsourced to third parties;
(b) the procedures for management of the orders relating to any lending offered via the portal;
(c) any costs charged to the investors;
(d) the measures adopted to reduce and manage fraud risks;
(e) the measures adopted to ensure the proper handling of the personal data and information received from investors, pursuant to Legislative Decree n° 196 of 30 June 2003 as subsequently amended;
(f) the measures adopted to manage conflicts of interest;
(g) the measures adopted to deal with complaints and indication of the address to which complaints must be sent;
(h) the mechanisms for the ADR resolution of disputes, if any;
(i) the aggregate data on the offers made through the portal and on the relative results.

3.8. *Lending crowdfunding platforms acting as PSP and EMI*

3.8.1. For those online platform willing to open and manage payment accounts, the Bank of Italy has set the need to apply for the Payment Service Provider (PSP) or Electronic Money Issuer (EMI) license or ask to passport the similar license granted by another European Supervisory Authority in the Home Member State.

3.8.2. Such platforms, in addition to the general duties of care and duties of information reported above, have also to respect specific duties and obligations towards their clients set forth by

the Bank of Italy in the relevant Regulation on transparency and correctness between intermediaries and clients.

3.8.3. In particular, according to such Bank of Italy Regulation:

(a) any agreement dealing with a payment transaction performed by a PSP or an EMI has to be drafted in written form and a copy has to be delivered to the client;
(b) it is necessary to provide specific pre-contractual information on the PSP or the EMI providing the activities and on the main conditions and characteristics of the services provided;
(c) the costs of the services provided an the interest rate applicable to the financing have to be expressly reported.

3.8.4. With specific regard to the lending crowdfunding platform authorized as PSP or EMI dealing directly with the management of payment transactions between the clients considering the relevant contractual relationship with the clients (both lenders and borrowers) they are also subject to: *(a)* a claim to terminate the relevant contract entered with the EMI and PSP for non-fulfilment; *(b)* a claim for performance or monetary damages on the basis of an attributable non-performance of a contractual obligation.

4. Class action

4.1. Irrespective of a claimant's individual rights to commence proceedings, under the Italian Consumer Code (Legislative Decree 206/2005) claimants who can be qualified as consumers having the same interests can jointly commence a class action, represented by a duly authorized association or committee. An association or a committee will only be admissible in legal proceedings to the extent any claim aims to protect the similar interests of consumers whose interests such association or committee purports to represent.

4.2. According to Article 140-bis of the Consumer Code, as far as crowdfunding is concerned, consumers having the same interests can start against a crowdfunding platform a class action in order to claim for performance or monetary damages on the basis of an attributable non-fulfillment of the relevant duties of care and duties of information.

4.3. The relevant claim has to be started by writ of summons to whom the consumers can adhere, also without an own lawyer also by fax or certified e-mail.

5. Crowdfunding crossing borders to Italy

5.1. *Investor*

5.1.1. A foreign investor who is interested in investing in a project published on an Italian on-line crowdfunding portal should inform himself of the relevant Italian laws applicable with regard to the relevant project (both equity or lending) in which he is investing to and of his position under the Italian laws.

5.1.2. As reported above, in general, an investor who can be qualified as consumer is better protected under Italian laws than an investor who does not qualify as such.

5.2. *Platform*

Equity based

5.2.1. When considering to become active in Italy from another Member State a foreign equity crowdfunding platform has to be aware that the relevant activity in Italy has to be expressly authorized in advance by Consob in accordance with the relevant applicable Italian laws and Regulations and accordingly the platform has to comply with all the Italian laws and regulations and has to ensure that it takes into account the applicable Italian regulatory framework in full. Equity crowdfunding is, in fact, not subject to the EU passport regime.

5.2.2. The need of a previous authorization obtained by Consob in compliance with the Italian laws and regulations is instead not required for those equity crowdfunding platforms who are already authorized in their Home Member State as investment companies, who can apply for EU passport for the provision of their services (including equity crowdfunding) in the Italian market.

5.2.3. According to Article 27 of the Italian Consolidated Law on Finance EU investment companies may provide their services (including equity crowdfunding) in Italy:

(a) by establishing a local branch, in accordance with the right of freedom of establishment in the EU. The establishment of the first branch is subject to prior notification to Consob by the competent Authority of the Home Member State of the relevant investment company; the branch shall commence business after two months from the notification.

(b) without establishing a local branch, in accordance with the right to freedom to provide services in the EU; in this case Consob has to be previously informed by the competent Authority of the Home Member State of the investment company.

Lending based

5.2.4. With specific regard to lending based crowdfunding foreign platforms has to bear in mind that in Italy any activity relating to payment transactions must be performed by an authorized entity such as banks, PSPs or EMIs. In general in Italy lending platforms operate under PSP license (or are applying to get a PSP license), while as of the date hereof there no cases of EMI being authorized in order to operate a lending platform or PSP or EMI authorized to operate a lending platform through an agent.

5.2.5. Having said this, according to the Italian Consolidated Law on Banking (TUB) a PSP or an EMI authorized in a EU Member State is allowed to provide payment services (and, as the case may be, operate the relevant platform) in Italy:

(a) through the establishment of a local branch, in accordance with the right of freedom of establishment in the EU; or

(b) directly without any establishment of a local branch, in accordance with the right of freedom to provide services in EU; or
(c) through an agent established in Italy.

5.2.6. In compliance with the right of freedom of establishment in the EU the TUB states that any authorized EU PSP (or authorized EU EMI) wishing to provide payment services for the first time in Italy is allowed to do so through the establishment of a branch in Italy. In this case, according to the Bank of Italy Regulation on PSP and EMI the possibility to provide payment services in Italy by an EU Payment Institution (or by an EU EMI) through the establishment of a branch is subject to:

(a) the notification by the EU Payment Institution (or by the EU Electronic Money Institution) to the competent Authority of its home Member State in compliance with the relevant legislation of this Member State, of its intention to operate in Italy through a local branch; such Authority has then to inform the Bank of Italy;
(b) the absence of any communication by the Bank of Italy to the competent Authority of the Member State of the EU Payment Institution (or of the EU Electronic Money Institution) with regard to the existence of reasonable grounds to suspect that with the intended establishment of the branch money laundering activities or terrorists financing is taking place or has taken place or that such establishment could increase the risk to commit such activities;
(c) the communication by the EU Payment Institution (or the EU Electronic Money Institution) to the Bank of Italy of the date of the beginning of the activity of the local branch.

5.2.7. In accordance with the right of freedom to provide services in the EU, an EU Payment Institution (or an EU Electronic Money Institution) shall also provide payment services in Italy directly without establishing a branch. In such a case the Bank of Italy Regulation for PSP and EMI states that an EU Payment Institution (or an EU Electronic Money Institution) can provide payment services in Italy directly without any establishment of a branch after the date in which the Bank of Italy has received the relevant notification by the competent Authority of the Member State of the EU Payment Institution (or the EU Electronic Money Institution). Therefore, also in this case, the EU Payment Institution (or the EU Electronic Money Institution) has to notify the relevant intention to provide services in Italy to the competent Authority of its home Member State in compliance to the relevant applicable legislation.

5.2.8. According to the TUB an EU Payment Institution (or the EU Electronic Money Institution) can also provide payment services in Italy through an agent in providing payment services established in Italy. In compliance with the provisions of the Directive 2007/64/EC on payment services an agent in payment services is any natural person or legal entity which acts on behalf of an EU Payment Institution (or an EU Electronic Money Institution) in providing payment services.

5.2.9. In this scenario if an EU Payment Institution (or an EU Electronic Money Institution) intends to provide payment services in Italy through an agent the Bank of Italy Regulation on PSP and EMI states that:

(a) the EU Payment Institution (or the EU Electronic Money Institution) has to notify to the competent Authority of its home Member State in compliance with the applicable legislation, the relevant intention to operate in Italy through an agent in providing payment services established in Italy;
(b) the Bank of Italy, after having received the relevant communication by the competent home Authority of the EU Payment Institution (or of the EU Electronic Money Institution), have to communicate to such Authority if there are reasonable grounds to suspect that with the intended engagement of said agent money laundering activities or terrorists financing is taking place or has taken place or if such engagement could increase the risk to commit such activities.
(c) the EU Payment Institution (or the EU Electronic Money Institution) has to communicate to the Bank of Italy the date of the beginning of the activity of the relevant agent.

5.2.10. The beginning of the activity of the agent is subject to the receipt by the Bank of Italy of the relevant communication from the competent home Authority of the EU Payment Institution (or of the EU Electronic Money Institution) and the absence of any suspect with regard to the conduction of money laundering activities or financing of terrorism.

5.2.11. Moreover, Article 128-quarter, Paragraph 7, of the TUB states that an agent in providing payment services established in Italy which acts only on behalf of an EU Payment Institution (or an EU Electronic Money Institution) in providing payment services in Italy is not obliged to obtain any specific authorization to perform this activity and, as a consequence, it has not to be registered in any public register in Italy. However, in order to avoid any lack of control with regard to possible conduction of money laundering activities or terrorist financing by the agent in the performing of its activity on behalf of the EU Payment Institution (or an EU Electronic Money Institution) article 128-quarter of the TUB states that the relevant agent:

(a) has in any case to be subject to the provisions of the Legislative Decree 231/2007 on prevention of money laundering;
(b) has to communicate (by way of certified registered e-mail) to the competent Italian Authority designated to control all the agents in providing financial activities (including agents in providing payment services) the *Organismo degli Agenti e dei Mediatori* (OAM): *(i)* the date of the beginning of its activity in Italy; *(ii)* all its information and data and any relevant change; *(iii)* the termination of the activity.

5.2.12. In compliance with the right of establishment and freedom to provide services an agent established in an EU Member State (eventually already authorized in said Member State to act as agent in financial activities of agent in providing payment services) can provide its

activities also in Italy without any need of further registration by way of establishing a branch.

5.2.13. Please be in any case aware that the activity of administering payment transaction in Italy shall be performed directly by the EU PSP or the EU EMI or by an agent or by an outsourcer (not authorized to act as agent) of such EU PSP and EU EMI; in this case the agent or the outsourcer have to act under a specific outsourcing agreement to be drafted in compliance with the provisions set forth in the Bank of Italy Regulation. This agreement, has to be drafted in order not to:

(a) determine the delegation by the PSP or EMI of its responsibilities provided by the applicable laws and regulations with respect to the provision of its services;
(b) alter the obligations of the PSP and EMI towards the clients;
(c) threaten the respect of the conditions required for the provision of the services by the PSP and EMI.

5.3. *Project owner*

5.3.1. A foreign project owner who is considering to attract its required funding with the assistance of an Italian platform should ensure to understand the Italian law implications of entering into an agreement which will be governed by Italian law.

5.4. *Liability*

5.4.1. In case of passporting on a cross border basis, the platforms generally do not take any regulatory responsibility. Instead, the regulator of the Member State where the platform obtained its license will regulate the platform on the basis of the Home Country Control principle. This would, however, be different in case of passporting on a branch office basis. In that case the platform, in addition to the home Member State's supervision over the platform, is also supervised by the Italian Competent Authorities under the Host Country Control principle.

5.4.2. As a consequence, irrespective the passporting of the license as provided by the other Member State, part of the relevant Italian applicable laws apply. These include, for example, rules in relation to:

(a) Provide comprehensible, clear, complete, accurate and not misleading information (both pre- and post-contractually as well as in relation to any information provided for commercial and promotion purposes);
(b) comply with KYC obligations;
(c) comply with rules in relation to personal data and information;
(d) prevents any actions that could harm the integrity of the market;
(e) comply with best execution rules and requirement to have a policy in place safeguarding these rules; and
(f) comply with regulation anti-usury;
(g) comply with all the mandatory provisions of the Italian law dealing with protection of investors.

Italy

6. Conclusion and recommendations

6.1. Crowdfunding platforms, issuers and borrowers are subject to several laws and regulations; obligations and liabilities are not only based on the regulatory framework in respect of market access and ongoing regulatory obligations applicable to the platform and the issuers, but also to other laws applicable in the Italian jurisdictions.

6.2. Even if the platform can rely on a regulatory license, such as a MiFID license as an investment firm granted by the Home Member State Authority which allows its passport, it will need to take into account and comply with local laws. Crowdfunding crossing borders requires the capability to deal with different European laws and regulations.

6.3. In the absence of a European harmonized legislative framework for Crowdfunding, the creation of a European single market regime is very important in order to allow the development of a professional and sustainable Crowdfunding market.

6.4. With the aim to assist the platforms in mitigating liability risks, the following recommendations are to be taken into account when operating in Italy:

Equity crowdfunding platform

(a) perform due diligence on the issuer and the project;
(b) conduct a risk analysis;
(c) complete AML and KYC procedures;
(d) duly inform investors;
(e) apply MIFID proceedings where required by local laws and regulations;
(f) ensure that investors do not exceed applicable investment limits upon investing in a particular project (if a limit is applicable);
(g) provide easily comprehensible, complete, accurate and not-misleading information about:
    (i) the project;
    (ii) the issuer;
    (iii) the terms and conditions of the investment;
    (iv) the characteristics of the investment;
    (v) the financing mechanisms;
    (vi) the rights and obligations of both the investors and existing shareholders;
    (vii) the risks involved in the investment;
    (viii) the existence of shareholders' agreement;

(h) provide the required prospectus and the documents concerning the risks associated with the issuer and the offer, the platform fees, the issuer offer and its project on the website;

Lending crowdfunding platform

(a) assess the borrower credit worthiness/rating;
(b) protect the funds by segregating accounts;

(c) either obtain a license as a payment services provider/electronic money issuer or outsource the money-handling activities to a third party who is an agent/outsourcer;

(d) have in place corporate governance arrangements, robust and adequate procedures and policies, effective and appropriate internal controls to: *(i)* ensure a sound and ethical business, in particular in respect of an adequate IT system, document handling, conflicts of interest, complaints and incidents; and *(ii)* prevent fraud and terrorist financing;

(e) establish appropriate organizational arrangements to ensure that the investments can remain being administered if the platform itself goes out of business;

(f) ensure that the persons behind the platform are competent, ethical, financially sound and have the relevant capabilities to perform the services;

(g) have documented policy of grounds for risk assessment and creditworthiness determination, valuation etc. of the borrowers;

(h) ensure that, if applicable, different interest rates apply corresponding to different risk classifications.

6.5. Any foreign platform, regardless the type of crowdfunding, is recommended to read this report closely and to obtain local law advice when contemplating to concur the Italian market.

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The Netherlands

1. Introduction

1.1. In order to provide a better understanding of the potential risks of civil law liability claims that can be brought against a platform or a project owner in respect of different types of crowdfunding as well as the manners to mitigate those risks, we first give you a short introduction to the Dutch civil law framework in general. This is by no means meant to be complete, but merely provides you with a general introduction into the main characteristics of Dutch civil law to the extent these are relevant for understanding the typical risks associated with crowdfunding.

1.2. We refer to paragraph 1.5 of the Foreword for an overview of the most evident risks involved in the different types of crowdfunding. The risk of fraud is considered to be the biggest threat to this alternative manner of financing. The platform should have adequate measures in place to mitigate this risk (as well as other risks) as much as possible.[29] These measures should at a bare minimum include minimum levels of transparency, protection of the investors and protection of the project owners. The platform has a duty of care and must act professionally, ethically and must be aimed at continuity. Moreover, platforms, or the sector in general, such as via a branch organization, should cooperate with each other with the aim to minimize the risk of fraud by exchanging relevant information and/or by introducing a system of fraud registration. Lastly, the platform should ensure a backup scenario should it become insolvent, safeguarding the third parties' moneys as well as the administration of rights and obligations of the investors and project owners. The project owner also has a responsibility to mitigate the risks involved in crowdfunding, by providing complete, not misleading and accurate information enabling the investors to make an informed investment decision on proper grounds.

1.3. Even if the above minimum measures are taken into account, investing in crowdfunding is not without risk. If an investment does not develop in the expected manner, investors will, individually or jointly via a representative body, be able to take action against the wrongdoers. Who bears the liability risks; the platform or the project owner? In this chapter we will, in a general manner, describe the Dutch civil law peculiarities in respect of liability risks in crowdfunding outside insolvency proceedings.

2. Formation of a legal act

2.1. Generally, crowdfunding will entail a multilateral legal act between two or more parties. From a Dutch law perspective, the formation of a legal act requires (i) an intention to effectuate a legal effect that (ii) was made apparent by means of a declaration. The declaration does not

[29] See report of the AFM, 'Crowdfunding – Towards a sustainable sector', December 2014.

have a prescribed form, albeit that agreements involving a consumer are generally required to be in writing.

3. Type of claims

3.1. As in all civil law frameworks, Dutch civil law provides for numerous grounds for holding a counterparty responsible for his behavior. These grounds include (i) the performance of a contractual obligation (*nakoming*) or of an obligation to nullify (*ongedaanmakingsverbintenis*), (ii) termination of the underlying agreement in whole or in part either by an out of court declaration by the claimant to the non performing party or by court order, (iii) declaring a legal act null and void, (iv) annulment of a legal act with retroactive effect, (iv) a claim on the basis of undue payments (*onverschuldigde betaling*) or unjust enrichment (*ongerechtvaardigde verrijking*), (v) a court order or an injunction and (vi) an attributable unlawful act (*onrechtmatige daad*). We will discuss the most relevant grounds in more detail.

3.2. Declaring *a legal act null and void*

3.2.1. Under circumstances, a legal act can be declared null and void or annulled. No legal act may by its content or its object or scope be contrary to good morals or public policy. The scope of this provision is relatively broad as both terms refer to norms of unwritten law which are deemed to be fundamental in a specific social or public situation.

3.2.2. If a legal act is validly declared null and void, it is deemed not to have existed at all. If any payments were already made on the basis of the legal act, the paying party has a claim for undue payments against the recipient. If any goods were already delivered, the delivering party remains the title-holder.

3.3. *Annulment of a legal act with retroactive effect*

3.3.1. A legal act can be annulled in whole or in part with retroactive effect if an obligation under a legal act violates a mandatory statutory provision. Under Dutch contract law, the provisions are generally not mandatory; parties generally have the possibility to deviate from the provisions if mutually agreed. However, when dealing as a legal entity with a consumer, Dutch law does include mandatory statutory provisions of which the parties cannot deviate and in any event not deviate to the detriment of the consumer.

3.3.2. In addition, any legal act that was formed under the influence of a vitiated consent (*wilsgebrek*) can generally be annulled. In case of a vitiated consent, there was no discrepancy between the two cumulative conditions for formation of a legal act, being (i) an intention to effectuate a legal effect that (ii) was made apparent by means of a declaration. However, the intention to effectuate a legal effect was formed on improper grounds. Under Dutch law four types of vitiated consent are distinguished: threat (*bedreiging*), deceit (*bedrog*), undue influence (*misbruik van omstandigheden*) and error (*dwaling*). In each of the situations, the legal act would not have been effectuated in case of a correct or complete representation of the facts and therefore can generally be annulled (*vernietigen*). Under

circumstances, also claims for damages could be initiated on the basis of an unlawful act (see below).

3.3.3. Moreover, a general ground for annulment of a legal act can be found in fraudulent preference (*actio pauliana*) outside insolvency. A debtor cannot enter into any not obligatory legal act with the (deemed) knowledge that this will result in prejudicing the remedies of one or more of his creditors. A prejudiced creditor can in his relationship with the debtor annul such legal act.

3.3.4. If a legal act is annulled, the annulment has retroactive effect until the moment that the legal act was effectuated. From the outset, the legal act is deemed to be null and void. As such, generally the same consequences apply in case of an annulled legal act as described above in respect of a null and void legal act. However, annulment on the basis of fraudulent preference has more limited consequences. The annulment will in that case only occur to the benefit of the prejudiced creditor and only to the extent required to eliminate such creditor's loss. Moreover, generally, third parties acting in good faith are protected.

4. Claims for damages

4.1. In the report we will zoom in into civil law liability risks and corresponding ground for claiming monetary damages. Under Dutch law, four main grounds for claiming monetary damages can be distinguished. These are: (i) an attributable failure to perform a contractual obligation (*wanprestatie*), (ii) an attributable unlawful act (*onrechtmatige daad*), (iii) management of another person's affairs (*zaakwaarneming*) and (iv) unjust enrichment (*ongerechtvaardigde verrijking*). In this report, we will only look into the first two grounds, being the failure to perform and the unlawful act as the other two grounds are of less relevance to crowdfunding.

4.2. *Failure to perform*

4.2.1. Before a claim for damages on the basis of an attributable failure to perform a contractual obligation can be successful, the claimant generally has the burden of evidencing that (i) the counterparty has failed to perform a contractual obligation (*wanprestatie*), (ii) that such failure was attributable to such person (*toerekenbaar*), (iii) that the claimant suffered damages (*schade*), (iv) that there is a causal link (*causaal verband*) between the suffered damages and the attributable failure to perform a contractual obligation and – only applicable if the performance is not permanently impossible – (v) the non performing party must be in default (*verzuim*). Generally, the claimant must notify the non performing party of the default and offer the non performing party a reasonable period in which it can still perform its obligation. Under circumstances no such prior default notice is required and moreover, parties can have deviated from these clauses by agreement.

4.3. *Unlawful act*

4.3.1. Before a claim for damages on the basis of an unlawful act can be successful, the claimant generally has the burden of evidencing that (i) the defendant has performed an unlawful act (*onrechtmatige daad*), (ii) that such unlawful act was attributable to such person

(*toerekenbaar*), (iii) that the claimant suffered a financial loss (*schade*), (iv) that there is a causal link (*causaal verband*) between the suffered financial loss and the unlawful act and (v) that the standard breached has the purpose of protecting the losses as suffered by the claimant (*relativiteitsvereiste)*.

4.3.2. Due to the nature of this provision, the consequences of a specific unlawful act could also be dealt with in other provisions or, alternatively, the violation of any other provisions may trigger a claim for damages on the basis of this provision of tort law. Except in limited circumstances, under Dutch law, the claimant can invoke the legal consequences of each provision on a cumulative basis (*cumulatie*) in case of concurrence (*samenloop*) of such provisions.

4.4. *Claiming monetary damages*

4.4.1. A platform or project owner being confronted with a claim under Dutch civil law initiated by an investor (or a representative body of a group of investors) does have some defenses available under Dutch civil law.

4.4.2. Firstly, generally, the burden of proof of the apparent wrongdoing by the defendant is on the claimant. It should be emphasized, however, that specific Dutch law provisions which are of relevance to crowdfunding includes an evidentiary presumption and therefore a shift of the burden of proof to the defendant (we refer you to paragraph 6 below).

4.4.3. Secondly, a claimant is generally only eligible for claiming monetary damages in the form of financial losses (*vermogensschade*). Immaterial damages can generally not be claimed in crowdfunding precedents.

4.4.4. Thirdly, only such losses that resulted from and can be attributed to the defendant's wrongdoing are eligible for compensation (*condicio sine qua non* relationship).

4.4.5. Fourthly, when deciding on the amount of compensation, the court will generally set off any advantage the claimant enjoyed resulting from the wrongdoing of the defendant and will take into account mitigating factors or manners for the court to reduce the compensation. Examples are contributory negligence (*eigen schuld*) of the claimant, the financial ability of the defendant to pay as well as the financial standing of the claimant and the nature of the financial losses.

4.4.6. And lastly, but perhaps the actual starting point of the defense, the grounds for holding a defendant liable should not have been barred by the lapse of time. The statute of limitations differs depending on the ground underlying the claim. Although the general statute of limitations for a legal claim is 20 years under Dutch civil law, Dutch law provides for many exceptions to this term resulting in much more limited prescriptive periods. The time limit is for example limited to 3 years when the claims aims at annulling a legal act because of such legal act being entered into on the basis of error, prejudice (pauliana) or a vitiated consent such as threat, deceit or undue influence. The time limit is generally only 5 years to claim performance (*nakoming*), to terminate an agreement or to claim damages on the basis of an

attributable failure to perform a contractual obligation or on the basis of an attributable unlawful act. The exact moment when these time limits commence depends on the type of claim and other factors, such as the moment of a receivable becoming due and payable and/or the moment of becoming aware of the financial loss. The general statute of limitations of 20 years mostly forms a maximum period in which claims for monetary damages could be brought, commencing from the date of the loss causing occurrence.

5. Class action

5.1. Irrespective of a claimant's individual rights to commence proceedings, claimants having the same interests can jointly commence a class action, represented by a duly authorized separate entity. A foundation or association will only be admissible in legal proceedings to the extent any claim aims to protect the similar interests of other persons whose interests the legal entity purports to represent according to its articles of association.

5.2. The representative legal entity can bring almost any claim, except for a claim for monetary damages. Usually, the foundation will request the court to declare that the defendant has acted unlawfully / in tort, followed by separate proceedings in which investors claim damages.

5.3. Alternatively, the entity can request a court to declare a settlement agreement entered into between the representative entity and the defendant universally binding to the benefit of all claimants that the legal entity represents. There are detailed rules in respect of such settlement agreement which need to be complied with in order for a judge to be able to declare such settlement agreement universally binding.

6. Descriptive summary of the framework with general applicability to crowdfunding

6.1. *Distance contract signed by electronic means*

6.1.1. By its nature, crowdfunding takes place by electronic means. The project for which funding is being sought by the project owner will be marketed on an online website of the platform and investors will make their investment decision on the basis of the information that is made available on the website of the platform in relation to the project and the project owner.

6.1.2. Subject to the contractual relationship between the platform and the project owner, the platform will under Dutch law generally qualify as the engaged party (*opdrachtnemer*) and the project owner as the client (*opdrachtgever*), resulting in a duty of care to be applicable to the platform towards the project owner as its client. The platform generally facilitates the contractual relationship between the investors and the project owner by means of providing template contracts which are finalized by the platform on behalf of the project owner and which are electronically signed by the investors with the assistance of the platform.

6.1.3. When the conditions set for an individual investment or a project to be successful are all satisfied, the agreement will become effective. The agreement will, again by the nature of crowdfunding, be a distance agreement: the contract parties have not been in each other's

existence when entering into the agreement. This results in specific consumer friendly provisions to be applicable, such as the right for an investor (provided the investor qualifies as a consumer) to terminate the agreement without cause within 14 days of the later to occur of the agreement becoming effective or the date of receipt of all required (pre)contractual information that should be provided to the investor.

6.1.4. Also this results in the question of legal recognition of an electronic signature. A mere confirmatory e-mail does not suffice: the electronic signature only has the same legal validity as a handwritten signature if it consists of electronic data that are attached to or logically associated with other electronic data which serve as a method of authentication (such as an encrypted hash value, biometric signatures or pdf-copies of handwritten signatures).

6.2. *Validity of the contract*

6.2.1. The contract itself or an obligation therein may not be contrary to good morals or Dutch public policy nor in violation of mandatory statutory provisions. Although Dutch contract law accepts a great deal of contract freedom, subject to mutual agreement by the contract parties and the standards of reasonableness and fairness, Dutch consumer related law generally include mandatory statutory provisions. As a consequence, crowdfunding triggers protective provisions in favor of the consumer-investor which need to be adhered to by both the platform and the project owner in order to prevent the contract from being terminated or annulled. The inclusion of a partial invalidity clause in the contract could prevent the legal relationship in full being affected.

6.2.2. In this respect, it should also be noted that general terms and conditions that are applicable to the legal relationship and/or form part of the contract by means of incorporation by reference cannot include unreasonably onerous stipulations. Dutch civil law provides for detailed lists of stipulations which are deemed or presumed to be unreasonably onerous. At a bare minimum, general terms and conditions should be checked against these detailed lists to make sure that any such stipulation is annulled.

6.3. *Informed investment decision*

6.3.1. In respect of the information provided on the website of the platform on the basis whereof an investor should make his investment decision, several transparency rules apply to both the platform and the project owner. Because of the online nature of crowdfunding, the platform qualifies as an information society (*informatiemaatschappij*) which triggers the provisions of Directive 2000/31/EC (the E-Commerce Directive) to be applicable.

6.3.2. The platform needs to provide minimum information in an easy, direct and permanent manner, commercial communications should be clearly identifiable as such, and the platform needs to be fully transparent as regards the information it obtains from the project owner and which is made available on the website of the platform in order to enable the investor to make an informed investment decision. Such information should be accurate, complete and not misleading (neither by omission) and it should be presented unambiguously in an easily comprehensible manner and should be easily accessible. The latter responsibility is primarily borne by the project owner (being the owner of the information). A more detailed

description in respect of the rules related to the provision of such information is provided in paragraph 6.4 below.

6.3.3. Although the platform – in its capacity as information society and under limited circumstances only – cannot be held liable for merely passing on information provided by a project owner, other applicable Dutch laws and regulations could cause the platform to face liability risks irrespective of the aforementioned exception. From a regulatory perspective for example the platform is generally believed to have a duty of care to some extent to the investors to ensure that the project owner has complied with the applicable rules and regulations when providing such information to be published on the website of the platform.

6.4. *Lex specialis unlawful act – unfair commercial practices*

6.4.1. Before making any investment decision, an investor should be provided with the material information on the basis of which he can make an *informed* investment decision. The investor will rely on the information that is provided on the website of the platform. Due to the information asymmetry between the project owner on the one hand and the investor on the other hand, the primary responsibility for providing such material information is with the project owner. However, taken the intermediating position taken by the platform, the platform automatically accepts a partial responsibility for making sure that the information provided on its website in respect of a specific project and relating to a specific project owner includes all such information that is needed for the investor to make his informed investment decision. The platform and the project owner therefore both face a liability risk if it appears that the investor was not adequately informed.

6.4.2. Dutch civil law includes some special unlawful acts (*lex specialis*) generally resulting in a reversal of the burden of proof from the claimant to the defendant. Examples of such *legi speciali* are the Unfair Commercial Practices Act (*Wet oneerlijke handelspraktijken*) and the rules in relation to misleading and comparative advertising. These rules are both based on European Directives (Directive 2005/29/EC (Unfair Commercial Practices Directive) and Directive 2006/114/EC respectively) and were implemented in the Dutch Civil Code. These special unlawful acts are of particular importance in respect of crowdfunding. It forms the basis for a claim for monetary damages by an investor when the information provided to the investor appears to be inaccurate, incomplete, misleading or incomprehensible.

6.4.3. Dutch law makes a distinction between business-to-consumer and business-to-business situations. When the investor is a consumer, the lex specialis on the basis of the Unfair Commercial Practices Act applies. When the investor is not a consumer, the lex specialis on the basis of misleading and comparative advertising applies. Both special unlawful acts have a fairly similar coverage, although the Unfair Commercial Practices Act includes detailed lists of commercial practices that are presumed to be unfair as well as blacklists of misleading and aggressive commercial practices that will at all times be considered to be unfair.

6.4.4. In both situations, generally, the burden of proof in respect of the material accuracy and completeness of the information provided shifts from the claimant to the defendant. This makes it easier for a claimant to evidence that the defendant acted unlawfully against the

claimant. Irrespective of this partial shift of the burden of proof, the claimant still needs to evidence the remaining elements of an unlawful act, such as a financial loss and causal link (please see paragraph 4.3.1 above).

6.4.5. It is interesting to look into the overlap between the different grounds for holding a wrongdoer liable for its actions. Informing an investor inaccurately, not completely, not timely and in a misleading manner could for example form the basis of (i) a claim to annul the underlying contract on the basis of deceit (3:44 Dutch Civil Code) if this was done intentionally, (ii) claim for performance or monetary damages on the basis of an attributable nonperformance of a contractual obligation (6:74 Dutch Civil Code), (iii) claim for monetary damages on the basis of an attributable unlawful act (6:162 Dutch Civil Code), (iv) claim for monetary damages on the basis of an unfair commercial practice or misleading advertisement (legi speciali 6:193a e.a. Dutch Civil Code) and (v) claim for monetary damages on the basis of non-compliance with the statutory information obligations pursuant to the E-Commerce Directive as implemented in the Dutch Civil Code. Although in respect of the latter, the platform can, under circumstances, excuse itself and point fingers to the project owner as the platform is dependent on the project owner for the provision of the material information in an accurate, complete, comprehensible, not misleading and timely manner, this example shows that the investors can bring other grounds on the basis of which it could hold the platform liable (in addition to the project owner).

7. Crowdfunding crossing borders from the Netherlands

7.1. *Investor*

7.1.1. Taken the development and rapid growth of the crowdfunding sector, it seems only a matter of time that foreign platforms and/or foreign project owners start to bring potentially interesting investment opportunities to the attention of Dutch investors also. If a Dutch investor contemplates to invest in crowdfunding projects that are listed on foreign platforms and/or relate to a fundraising project of a foreign project owner, a Dutch investor should take into account that generally the underlying legal and/or contractual relationship with the platform and/or the project owner will be governed by other laws than the laws of the Netherlands. Generally, also a choice of forum clause shall be included in the applicable terms referring to another court than a Dutch court. An investor is warned that from a European international private law perspective, a choice of law clause and a choice of forum clause are generally held to be valid and that as a consequence, the investor should make himself aware of the relevant laws that apply to his investment. Moreover, local laws and rules of that other Member State may have a broader impact on the Dutch investor. Local laws and rules could for example set investment maximums which apply to the Dutch investor as well, other duty of care rules may apply resulting in potentially a higher administrative burden and/or a different level of protection compared to what the Dutch investor is used to under Dutch laws and regulations.

7.2. *Platform*

7.2.1. A platform incorporated under the laws of the Netherlands that considers scaling up its activities by expanding its business into other Member States from the Netherlands actually has two choices. Either (i) teaming up with a local platform that has the same business model and product offering as the platform itself or (ii) becoming active itself in another Member State. In the event that the platform chooses the latter, it depends on the type of crowdfunding, and therefore on the type of services that the platform offers, whether it can easily passport its regulatory license obtained from the relevant Dutch regulator, either the Netherlands Authority for the Financial Markets (*Stichting Autoriteit Financiële Markten*, the "**AFM**") or the Dutch Central Bank (*De Nederlandsche Bank,* "**DNB**"),[30] depends on the type of license. Passporting of a license means that the platform can be active on the basis of its license from its home Member State in other Member States of the European Economic Area without having to apply for the same license again in the host Member States. Limited local rules may however apply. For that reason, it is highly recommended to obtain local law advice in each relevant jurisdictions before becoming active in such jurisdictions irrespective of having validly passported such license.

7.2.2. Under the current Dutch regulatory framework, only an investment-based crowdfunding platform with a valid MiFID license can passport the same to other Member States.[31] It can then choose between offering its services on a cross border basis from the Netherlands without any physical presence in other Member States or offering its services through opening a branch office in the other Member State, generally resulting in additional local laws and regulations to apply to the Dutch platform. If the platform does not have any passporting possibilities, it will need to obtain the relevant local law licenses before becoming active in such other Member State. At all times, the platform should obtain local law advice before commencing its activities in another Member State as, even in the event of a passportable MiFID license, local law may set additional obligations to which the platform needs to adhere.

7.3. *Project owner*

7.3.1. If a Dutch project owner wishes to attract funds through a foreign platform and/or from foreign investors, it needs to take notice of the relevant applicable foreign rules and regulations in addition to the Dutch legislative framework. If a Dutch project owner for example contemplates to offer shares in its capital to the public (i.e. the crowd) part of which is not located in the Netherlands, the Dutch project owner not only needs to take into account the Dutch securities laws in relation to a public offering of securities, but also the local securities laws of the Member States where offerings to the public are contemplated.

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30 Up until the 31 March 2016 the Dutch Central Bank did not have much involvement in respect of the different Crowdfunding models. Although it is questionable whether under circumstances the platform could qualify as a payment services provider under the PSD, the Dutch Central Bank has not taken any action in this respect yet. Under the current Dutch regulatory framework, the relevant regulator in respect of Crowdfunding is the AFM.

31 Other than the PSD, donations based- and reward based crowdfunding do not immediately trigger regulatory issues under Dutch law. Lending based crowdfunding however does and generally requires a dispensation from the prohibition to act as intermediary in respect of repayable funds under Article 4:3 Dutch Financial Supervision Act ("**Wft**") and – in case of consumer credit only (i.e. the project owner being a consumer) – a non passportable license as a consumer credit offeror.

Naturally, the crowdfunding platform 'brokering' between the Dutch project owner and the foreign investors needs to have a passported MiFID license in both the Netherlands and each of the Member States where investors are approached or at least comply with the local rules and regulations applicable to such platform if not a Dutch platform. From a civil law liability perspective, it is an interesting question whether the project owner or the platform will be liable in case local securities laws are not complied with. If it were Dutch securities laws not being complied with and Dutch investors being prejudiced, most probably both the project owner ánd the platform could be held liable under the Dutch civil law liability regime. It should be emphasized that the project owner has its own responsibility to ensure all applicable laws and regulations are complied with and that it faces liability risks if local laws are violated and/or foreign investors are prejudiced. The mere fact of arranging the funding through a crowdfunding platform does not take away any such responsibility and/or liability risks.

8. Crowdfunding crossing borders to the Netherlands

8.1. *Investor*

8.1.1. A foreign investor who is interested in investing in a project of a Dutch project owner and/or through the intermediation of a Dutch platform should inform himself of the Dutch law specifics of his investment and his position under Dutch law. Generally, an investor qualifying as a consumer[32] is better protected under Dutch civil law than an investor who does not qualify as such. In particular, in respect of a Dutch law governed contract between a consumer and a non-consumer, Dutch contract law attaches great importance to the intentions of the contract parties when entering into the contract, even if the contract itself does not fully capture such apparent intention. Except for some consumer friendly mandatory Dutch law provisions,[33] a Dutch law governed contract generally does not have a prescribed form and the contract parties may deviate from the Dutch civil law rules and regulation subject to their mutual agreement and taking into account the principle of reasonableness and fairness.

8.2. *Platform*

8.2.1. When considering to become active in The Netherlands from another Member State, the foreign platform should ensure that it takes into account the applicable regulatory framework in respect of accessing the Dutch market and that it is aware of the marketing rules when approaching Dutch investors and/or Dutch project owners. Irrespective of Dutch law being the governing law of the underlying agreement or not, the platform will be confronted with Dutch civil law issues and potential liability risks if it becomes active in the Dutch market. Any foreign platform, regardless the type of crowdfunding, is recommended to read this report closely and to obtain local law advice when contemplating to concur the Dutch market.

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[32] Although more definitions are used for the term consumer under Dutch civil law depending on the relevant part of the Dutch Civil Code and corresponding laws and regulations, the description that is mainly used is that a consumer is a person who is not acting in the course of his/her profession or business.

[33] In particular such mandatory Dutch law provisions apply in case of consumer credit and payment services.

Lending based

8.2.2. Under the current regulatory framework, a foreign lending based crowdfunding platform requires a dispensation for a specific prohibition under Dutch law and - to the extent consumer loans are being originated through the platform with or without the platform being a party thereto - a license as a consumer credit offeror.

8.2.3. The prohibition referred to prohibits anyone in the Netherlands who acts in the pursuit of his/her business or profession to provide services as an intermediary in connection with attracting or obtaining redeemable funds from the public. A lending based crowdfunding platforms provides such services as an intermediary between the investors (lenders) and the project owner (borrower) acting in the course of his business of profession. This prohibition does not provide for a possibility to obtain a license granted by the regulator. However, the AFM does have the discretionary power to grant any person who foresees to violate this prohibition a (temporary) dispensation for such prohibition.

8.3. The dispensation regime applicable to business lending crowdfunding platforms was recently amended as per 1 April 2016. The amendments resulted in a more intensified dispensation regime; a crowdfunding platform applying for a dispensation of the prohibition as described above will be subjected to more specific market entrance rules in order to be able to obtain a dispensation. The new regime introduces a set of rules which is comparable to the market entrance rules applicable to financial services providers. The character of the new set of rules applicable to lending based crowdfunding platforms as per 1 April 2016 is more aligned with the regulatory framework involved as if there would be a license obligation rather than an individual dispensation regime. Any lending based platform looking into providing its services in the Netherlands, needs to obtain a dispensation from this prohibition (or a license if consumer credit is involved) from the AFM prior to becoming active in the Netherlands.

Investment based

8.3.1. A foreign investment based crowdfunding platform holding a MiFID license can relatively easy passport its license into the Netherlands. The passport is created by requesting the regulator of the home Member State (i.e. the regulator who provided the MiFID license to the platform) to inform the AFM of the intention to passport the MiFID license into the Netherlands. This information should include a listing of the investment services that the platform wishes to provide in the Netherlands and whether these services shall be offered on a cross border basis (no physical presence in the Netherlands) or via a Dutch branch office (with physical presence in the Netherlands). For reasons of Dutch public interest only, the AFM may impose additional local conditions to which the platform should adhere when providing its services in the Netherlands.

- In case of passporting on a cross border basis, the AFM generally does not take any regulatory responsibility. Instead, the regulator of the Member State where the platform obtained its MiFID license will regulate the platform on the basis of the home country control principle. This would, however, be different in case of passporting on a branch office basis. In that case the AFM may, in addition to the home Member State's supervision over the platform, supervise the Dutch branch on the basis of Dutch rules and regulations under the host country control principle. As a consequence, irrespective the passporting of the MiFID license as provided by the other Member State, part of the Dutch Financial Supervision Act (*Wet op het financieel toezicht*) applies to the Dutch branch office of the foreign platform. These include, for example, rules in relation to establishing a branch which business:

- safeguards orderly and transparent financial markets processes;
- safeguards clear and not conflicted relationships between market parties;
- safeguards prudent, honest, fair and professional client treatment;
- prevents conflicts of interests;
- provides comprehensible, clear, complete, accurate and not misleading information (both pre- and post contractually as well as in relation to any information provided for commercial and promotion purposes);
- complies with KYC obligations;
- complies with rules in relation to building individual files with clients and retention of such data;
- prevents any actions that could harm the integrity of the market;
- complies with the general ban on paying and receiving commissions other than directly received from the client (subject to some exceptions);[34]
- complies with best execution rules and requirement to have a policy in place safeguarding these rules; and
- complies with real time post trading information requirements in relation to OTC transactions in shares that are listed on a regulated market.

8.3.2. The foreign platform becoming active in the Netherlands on a cross border basis may already commence its activities upon the notification of the intention of the same having been received by the AFM from the home Member State's regulator. However, due to the possibility of the AFM imposing additional conditions for reasons of Dutch public interest it is recommended to contact the AFM and/or await the written confirmation that no such additional conditions are imposed before becoming active in the Netherlands. The foreign platform becoming active in the Netherlands through a branch office however should take into account a two-month period before becoming active in the Netherlands. The AFM may

[34] As per 1 April2016 , a crowdfunding platform that requires a license as an investment firm will be excluded from the inducement ban if and to the extent it complies with the conditions set for a platform in order to be able to rely on this exception. The main conditions are that (i) the services of the platform are limited to the investment service of reception and transmission of orders, (ii) the services of the platform relate to securities issued in a crowdfunding campaign and (iii) the platform has notified the AFM that it wishes to provide these investments services (and as such wishes to rely on this exception). Moreover, a definition for crowdinvesting is introduced and provides for a further limitation to the potential reliance on this exception by a platform.

use this period to impose additional conditions to the platform from a Dutch public interest perspective. As a consequence, the foreign platform is prohibited from providing investment services in the Netherlands until the earlier to occur of (i) expiration of such two-month period, or (ii) the receipt by the foreign platform of the decision of the AFM to impose any such additional conditions. Not receiving any such decision means that the AFM decided not to impose any such additional conditions.

8.3.3. A foreign platform could also become active in The Netherlands on a cross border basis without having physical presence of the platform itself in the Netherlands, but through tied agents in the Netherlands. Tied agents are persons who may act under the full and unconditional responsibility on behalf of solely one investment firm (i.e. the platform) in relation to specific investment services only. These are limited to investment services as defined under sections 1 (reception and transmission of orders), 5 (investment advice) and 6 (underwriting or placing on firm commitment basis).

8.4. *Project owner*

8.4.1. A foreign project owner who is considering to attract its required funding with the assistance of a Dutch platform should ensure to understand the Dutch law implications of entering into an agreement which will, presumably, be governed by Dutch law. In relation of investment based crowdfunding (such as equity), the laws governing the project owner will generally determine the manner in which for example a share issuance can be validly executed. In this respect, it is emphasized that a project owner incorporated as a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) and a public company (*naamloze vennootschap*) can only issue and transfer shares with the cooperation of and in front of a Dutch civil law notary.

9. Conclusion and recommendations

9.1. As it becomes apparent in this report, mainly Crowdfunding platforms but also project owners are confronted with numerous rules and regulations to which they need to adhere. These obligations and the corresponding liability risks are not only based on the regulatory framework in respect of market access and ongoing regulatory obligations applicable to, mainly, the platform, but also on the civil law framework of the jurisdictions where the respective Crowdfunding actors are active. Even if the platform can rely on a passportable regulatory license, such as a MiFID license as an investment firm, it will need to take into account local law in every jurisdiction where it contemplates to provide its services. Crowdfunding crossing borders therefore comes with some legal challenges.

9.2. In the absence of a European harmonized legislative framework for Crowdfunding, the creation of a European self regulatory regime is advocated. In order to create a professional and sustainable Crowdfunding market, and with the aim to assist the platform in mitigating its liability risks, the following recommendations are made to the platform:

prior to publishing a project on the website:

- perform identification and background due diligence on the project owner, the project and the proposition made;
- perform know your customer checks on the investors including anti money laundering checks;
- conduct a risk analysis;

when publishing a project on the website:

- enable investors to make an educated investment decision and assess the risk-reward ratio of investing in a particular project by providing easily comprehensible, complete, accurate and not-misleading information about:
  - the project;
  - the project owner;
  - the project owner's creditworthiness;
  - the terms and conditions of the investment;
  - the characteristics of the investment;
  - the financing mechanisms;
  - the rights and obligations of both the investors and project owner;
  - the risks involved in the investment;

  on the basis of the due diligence, know your customer checks and risk analysis as described above;
- provide draft standardized transaction documents on the website;

prior to closing an investment in a project:

- conduct a suitability test on the investor in accordance with the AFM rules;
- only allow an investor to invest in a particular project after it has explicitly acknowledged its understanding of the information provided and the risks involved on website and publications;
- ensure that, if relevant, a investor does not exceed applicable investment limits upon investing in a particular project;
- continuously advise investors to diversify investments and to limit the investments to a responsible part of the total assets available for investments;

generally:

- be as transparent as possible in respect of itself including the platform's responsibilities, the fees and cost structure and publication of default rates;
- protect the funds by segregating accounts or having similar adequate arrangements in place;
- either obtain a license as a payment services provider or outsource the money-handling activities to a third party who is a licensed payment servicer provider;
- have in place corporate governance arrangements, robust and adequate procedures and policies, effective and appropriate internal controls (i) to ensure a sound and ethical business, in particular in respect of an adequate IT system, document handling, conflicts of interest, complaints and incidents; and (ii) to prevent fraud and terrorist financing;
- establish appropriate organizational arrangements to ensure that the investments can remain being administered if the platform itself goes out of business;
- ensure that the persons behind the platform are competent, ethical, financially sound and have the relevant capabilities to perform the services;
- have documented policy in place listing the grounds for risk assessment and creditworthiness determination, valuation etc. of the project owner and the project;
- ensure that, if applicable, different interest rates apply corresponding to different risk classifications; and
- ensure that sufficient and adequate information is provided by the project owner to enable the investor to take an informed investment decision.

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Poland

1. Introduction

1.1. Crowdfunding is still a relatively new and evolving phenomenon. It can be based on donations, rewards, equity or loans, and the business models employed by platforms may differ significantly both between each of these categories and within them. As a result, the applicable legal rules may also vary greatly.

1.2. In an attempt to mitigate this, some countries have introduced dedicated rules for crowdfunding and, as noted in the foreword to this paper, the European Union may introduce a regulatory framework for crowdfunding in the future. Poland has not yet adopted such rules. The government decided that it was still too early to do so, but also stated its willingness to cooperate with the European Commission on the matter.

1.3. Therefore, the civil liability of crowdfunding platforms and project owners towards investors in Poland currently has its source in universal rules, i.e., those applicable to all natural and legal persons. These are primarily contained in the Polish Civil Code, as part of the basic framework of civil law.

1.4. However, the Code's provisions are sometimes modified, replaced or complemented by provisions of other legislative acts, for a variety of reasons. This is done, for example, to better protect consumers or to adjust the law to better match the specifics of certain activities.

1.5. To help with understanding how these rules are interrelated, we begin our description of the civil liability regime with the most general ones and gradually delve into details. We describe both claims for damages and other claims which investors may raise. We have limited ourselves to describing select claims which are most relevant for crowdfunding. Therefore, this is by no means a comprehensive study of all claims on which an investor could rely against a platform or a project owner.

1.6. The special status of consumers should also be taken into account. The law treats them as the weaker party and grants them additional safeguards through mandatory provisions. A consumer is a natural person who performs a legal transaction (for example by entering into a contract) with a business, and such transaction is not directly connected with that person's business or professional activity. Most platforms are businesses, which is usually also true for project owners. Therefore, more often than not investors supporting a project are consumers.

1.7. Finally, you may find it useful to have a general idea of the Polish court system. There are two types of courts: state courts and arbitration courts. Civil cases, such as those submitted

by investors, are heard by common courts, one type of state court unless the parties agree to arbitration.

1.8. There are two instances of common courts. First instance cases are heard by a district court (*sąd rejonowy*), unless specific provisions of law grant jurisdiction to a regional court (*sąd okręgowy*), for example due to claim's high value. Decisions of the first instance court can be appealed to a regional court or a court of appeal (*sąd apelacyjny*) respectively. The decisions of second instance courts are final, though in extraordinary circumstances a cassation appeal may be filed to the Supreme Court (*Sąd Najwyższy*) as a last resort review.

2. Formation and validity of contracts

2.1. In lawyers' eyes, crowdfunding consists of several legal relationships (contracts) between three parties: the platform, the project owner and the investor. The law determines, among others, how these contracts are concluded, under what circumstances they are invalid and the consequences of their invalidation.

2.2. In Polish law a contract is defined as a legal act comprising at least two unanimous declarations of intent (*oświadczenia woli*), which consist of two elements: (i) the will to cause legal effects (intent) and (ii) its perceptible manifestation (declaration). Whilst a declaration of intent does not generally need to follow a prescribed form, consumer agreements must usually at least be recorded on a tangible medium, if not concluded in writing.

2.3. In general, a legal act (or its part) that is contrary to statutory law, seeks to circumvent it, or is contrary to principles of community life, is null and void (*nieważny*). If the investor's contract with the project owner is null and void, the investor has an unjustified enrichment claim – it is as if the contract never existed in the first place. The investor can demand a refund of his payment, but he must also return the goods delivered by the platform, or their value if returning the goods is no longer possible.

2.4. Under Polish law, there are many grounds on which a contract may be considered null and void. First of all, a contract is null and void if its provisions violate a mandatory statutory provision, unless the provision envisages a different effect, such as replacement. As a rule, contract law provisions are not mandatory and the parties may agree to modify them. This does not apply to consumer law, the provisions of which are usually mandatory and can only be modified to the benefit of the consumer.

2.5. Secondly, a contract may be considered null and void if a person's declaration of intent is defective. The law specifically describes the circumstances when this is the case. One such case is where a person is in a state that precludes him from making a conscious or free decision and a declaration of intent, for example due to medication or illness.

2.6. Furthermore, an investor may sometimes evade the effect of a declaration of intent. This does not make the contract null and void, but effectively terminates it, since a contract requires at least two unanimous declarations. The investor can maintain that he made the

declaration in error (which is very difficult), due to deceit or under illegal threat, but he may do so only within a year from detecting the error or cessation of state of fear.

2.7. Finally, a contract is sometimes null and void if it does not have the prescribed form. For example, platforms that specialize in real estate crowdfunding must be aware that ownership of real estate must be transferred by a notarial deed. Similarly, equity crowdfunding platforms should note that a contract for sale of shares in a Polish limited liability company must be made in writing and with notarially certified signatures.

2.8. An investor can also raise a so-called exploitation claim against a contract and demand either a reduction of payment, an increase of the project owner's performance or if both are excessively difficult, that the contract be declared null and void. For the claim to be successful, an investor must prove that the project owner took advantage of his difficult situation, infirmity or inexperience to demand a payment strikingly disproportionate compared with the goods or services he supplied. This claim expires after two years from the date of entering into the contract.

2.9. We recommend that platforms and project owners should periodically evaluate their contracts as regards their compliance with the law. One may also consider including a severability clause, which specifies what happens if part of a contract is declared null and void. Under Polish law, if nullity affects only part of a contract, the remaining parts are still valid if the parties have not decided otherwise.

2.10. Furthermore, the legal relationships between the different parties in crowdfunding should be clearly distinguished, especially if they involve consumers. A platform should make every investor aware that the contracts with the platform and the project owner are separate, what their terms are as well as how and when the investor declares to be bound by them.

3. Due care standard

3.1. The Polish Civil Code requires everyone to fulfill their obligations, contractual or other, with due care (*należyta staranność*). There is no universal due care standard. The courts always evaluate the circumstances of specific cases. The only explicit statutory rule is that the evaluation of due care of businesses should take into account their professional character. Since many platforms and project owners are businesses, they should act with more care and will usually have to apply a more stringent standard.

3.2. The due care standard is used to decide whether a given person is liable if the liability is fault-based. Fault-based liability can be summarized as follows: a person is liable if he either intended to harm the other party or has done so unintentionally due to negligence. To evaluate whether a person was negligent, the courts evaluate whether he exercised due care which could be reasonably expected of him in the circumstances.

3.3. Understandably, there has been no case law in Poland yet regarding the due care of platforms and project owners. As regards project owners, due care should mainly consist in

doing everything necessary to ensure the delivery of goods or services promised to investors. The platforms, on the other hand, should always carry out a basic verification of project owners and their background; e.g., their past (successful and not) projects and the project's feasibility. If the platform discovers or could easily discover any information related to the project owner which may damage the investor's interests, it should disclose such information to the investor (assuming that disclosure is legal). Otherwise the platform is at risk of becoming the target of at least some investor's claims.

3.4. Both the platform and the project owner should also take care to fulfill the various informational obligations imposed by law. The primary information requirements under Polish law come from implementations of EU legislation and relate to providing information society services (E-Commerce Directive No 2000/31/EC) as well as mandatory consumer information (Consumer Rights Directive No 2011/83/EC). Additional informational obligations may apply to specific industries, goods or services.

4. Investors' claims against platforms and project owners

4.1. Polish law provides for numerous remedies which may be utilized by investors against both platforms and project owners to enforce their liability. These remedies may be based on a variety of grounds. For the sake of simplicity we have grouped remedies that are most relevant for crowdfunding into three broad categories: (i) claims for contract performance; (ii) claims for damages and (iii) various remedies related to consumer protection.

4.2. The investor's claims will usually be directed at project owners. While platforms are less likely to become their targets, the exact level of their risk depends, in particular, on the scope of their involvement. In general, if a platform takes a more active role, it can be presumed to assume more liability. Since a crowdfunding platform would usually qualify as an information society service in the meaning of E-Commerce Directive No 2000/31/EC, they can also attempt to rely on the Directive's exemptions for intermediaries, as implemented in Poland, to shield them from liability. The hosting exemption would be particularly relevant, but it requires a platform to assume a relatively passive role.

4.3. Not all the remedies we describe require filing an application to a court. If they do, the applications are usually filed by individuals, but under Polish law it is also possible to file a class action lawsuit (*postępowanie grupowe*). The group of claimants must number at least 10 and they must select a group representative. Furthermore, their claims must be based either on the same or on a similar factual basis. Finally, class actions are only allowed for three types of claims: claims related to consumer protection, claims related to defective products liability and claims related to delicts (an unlawful act, somewhat analogous to torts; for details see section 4.6. below). The judgment applies only to persons who have joined the class action.

4.4. You should also remember that under Polish law all financial claims (*roszczenia majątkowe*), as opposed to personal claims (*roszczenia osobiste*), are subject to the statute of limitations. The limitation period for financial claims is 10 years, except for claims relating to business

activity and periodic performances, where it is three years. However, there are numerous provisions which change the length of limitation periods for specific claims.

4.5. Below we have briefly characterized each of the categories of remedies by describing some possible legal bases for claims, situations in which they can be used as well as measures and defenses that platforms and project owners can take against them.

4.6. *Claims for contract performance*

4.6.1. Once an investor enters into a contract with a platform or a project owner, he can demand that the other party fulfils its obligations. This demand, however, may only be successfully enforced if, among others, the deadline for the performance has passed. Under Polish law, if parties do not specify a deadline and it does not follow from the nature of the obligation, the performance must occur without undue delay, upon the creditor's request.

4.6.2. This is especially important for project owners, and less so for platforms whose performance is the continuous provision of intermediation services. If a project owner does not specify a clear time limit for his performance, then the investor (creditor) can try to immediately demand, for example, the delivery of goods or services. Therefore, project owners should specify the time limit for performance in their contracts with investors, not necessarily by indicating a specific date, but rather describing the circumstances or conditions for delivery.

4.6.3. The importance of the time limit is underscored by the consequences of late performance. If a project owner (debtor) fails to deliver his performance within an agreed time period, he is in delay (*opóźnienie*). If this delay is a result of circumstances for which he is liable, it is default (*zwłoka*). If the investor incurs losses as a result, he can claim damages for the project owner's default but he must still accept the performance. On the other hand, if as a result of default, the performance lost its significance to the investor (creditor) wholly or substantially, the investor can refuse to accept it and claim damages for non-performance instead. For example, the investor wanted to give the goods as a birthday present and had to quickly buy another gift instead.

4.6.4. Additionally, if a project owner is in default in a mutual contract, the investor can also give him an additional time limit for performance and warn that upon its ineffective lapse he will have the right to withdraw from the contract. Upon withdrawal the investor can demand the return of what he paid as well as claim damages for non-performance. A mutual contract is one where each party's performance is the equivalent of the other's. Usually rewards-based crowdfunding involves mutual contracts, unless the goods delivered by the project owners are simple tokens of appreciation and their value does not match the investor's contribution.

4.6.5. The above are just some of the general rules on contract performance and in specific cases other rules might apply, regarding for example the impossibility of performance. However, apart from the general rules, there are also rules for specific contract types under the Civil Code. These specific rules do not only apply to contracts which match the type, but may also apply to similar contracts by analogy.

4.6.6. For example, the Civil Code extensively regulates the contract of sale, which are likely to apply especially to rewards-based crowdfunding. Under these rules, the buyer has a number of claims, but from a project owner's perspective the most important ones relate to the statutory warranty for defects. The warranty encompasses both physical and legal defects (e.g., the seller did not own the goods). If the sold goods are defective, the buyer has four types of claims. First of all, he can demand their replacement or removal of the defects. The buyer can also withdraw from the contract (but only if the defects are substantial) or demand a reduction in price, unless the seller replaces or repairs the goods immediately and without excessive inconvenience for the buyer – but not more than once. As a rule, this warranty for defects cannot be limited in a consumer contract.

4.6.7. Another contract regulated by the Civil Code is the contract of donation. The rules might be, unsurprisingly, relevant for donation-based crowdfunding, where the investor does not receive anything in return from the project owner. Under these rules, the donor may revoke the donation in the circumstances described in the Civil Code, for example when the donee has acted with glaring ingratitude towards him. The Civil Code also regulates other contract types, and their specific claims, which might be relevant to crowdfunding, for example the loan contract or the partnership contract.

4.6.8. Some contracts are regulated outside the Civil Code, in other acts. For example, contracts related to payment services fall under the Payment Services Act of 2011, an implementation of the so-called PSD – Payment Services Directive (No 2007/64/EC). Platform's intermediation in passing funds from the investors to project owners might qualify as a payment service in the meaning of this act, in which case the platform's liability would be governed by special rules. However, many platforms may fall under the exemption for payment transactions executed by the person acting to lead to the conclusion of an agreement between the payer and payee. In other words, the payment services of platforms could be exempt from the regulation as they serve only to enable the conclusion of an agreement between the project owner and the investor. This may change in the future, since the recently adopted PSD2 slightly modifies this exemption by requiring that the agent acts on behalf of only one of the parties.

4.7. *Claims for damages*

4.7.1. If a platform or a project owner (a debtor) fails to perform his contractual obligations or improperly performs them, the investor (creditor) has a claim for damages. This is one of the basic types of liability, called contractual liability (*odpowiedzialność kontraktowa*). Sometimes the investor will also be able to base his claims for damages on tortious liability (*odpowiedzialność deliktowa*).

4.7.2. Contractual liability applies if the parties have obligations arising from a contract (or a different prior legal relationship), whereas tortious liability in the absence of such. The basic conditions for liability are common to both. A platform or a project owner is liable for damages if:

(a) the investor suffered damage;

(b) either an unlawful action/event or action against contract has occurred;
(c) there is a causal link between the damage and an unlawful action/event.

4.7.3. An investor will usually base their claims for damages on contractual liability, since he concludes contracts with both platforms and project owners. However, in some cases they may be allowed to also base them on tortious liability. This is a significant choice because of the differences between liability types.

4.7.4. Most importantly, if an investor bases his claims on the tortious liability regime, the burden of proof falls, in most cases, entirely on him. He must prove the damage, the unlawful action, the causal link between them as well as indicate the legal basis, which makes the platform/project owner liable. On the other hand, claims derived from contractual liability benefit from a presumption that the non-performance or improper performance (*niewykonanie lub nienależyte wykonanie zobowiązania*) results from circumstances for which the debtor (platform/project owner) is responsible. If an investor proves all the remaining facts, it is up to the debtor to demonstrate that the non-performance was not his fault. The debtor may also resort to defense by challenging other liability conditions, such as the existence of a valid contract or non-performance.

4.7.5. Additionally, the claims are subject to different length time-bars under the statute of limitations. Claims arising from contractual liability fall under either the general statute of limitations, or rules specific to contract type. On other hand, claims arising from tortious liability are covered by a specific statute of limitations.

4.7.6. Apart from the above, project owners should also take into account the Civil Code's rules on hazardous product liability, an implementation of Directive 85/374/EEC. The rules introduce slight changes to the burden of proof which make it easier for injured parties to prove their claims. A hazardous product is one that does not provide the safety which one might expect during its normal use. Whether a product is hazardous is determined on the basis of circumstances in which it was placed on the market, in particular its presentation and information provided to consumers.

4.7.7. The product's manufacturer is liable for damage to a person caused by a hazardous product. He is also liable for damage to property if it is equal to at least 500 EUR, but only in regard to items which are commonly utilised for personal use and were used as such by the injured party. Even if the project owner does not manufacture the products supplied to investors himself, he is liable if he presents himself as the manufacturer by putting his business name, trade mark or other distinctive designation on the product.

4.8. *Consumer protection*

4.8.1. We have already underscored the importance of paying attention to consumer protection rules, which are generally treated as the weaker party. It is impossible to compose a comprehensive catalogue of these protections, since they are contained within a variety of legal acts. Furthermore, some of them may only apply to specific industries, goods, or services. However, platforms and project owners should pay particular attention to several

legal acts and institutions which make up the basic framework of Polish consumer protection law.

4.8.2. The key element of this framework is the Consumer Rights Act of 2014, an implementation of EU Directive No 2011/83/EU. Contracts concluded in crowdfunding will generally be considered to be distance contracts, which are regulated by the Act. Prior to concluding a distance contract with a consumer, the business must provide him with numerous items of information.

4.8.3. Moreover, the Act extensively details the consumer's right to withdraw from the contract. With regard to a contract to supply goods, the consumer has the right to withdraw within 14 days from delivery. For some types of crowdfunding this might mean that the consumer will be able to withdraw for a long time after pledging his funds. What is more, this period is further extended by 12 months if the business fails to inform the consumer about the right of withdrawal. On the other hand, the right of withdrawal does not apply to all contracts. For example, contracts for digital content that is not supplied over a tangible medium are excluded, if the consumer explicitly agrees to its immediate delivery and the loss of the right to withdraw.

4.8.4. The consumers are also protected by the Unfair Commercial Practices Act of 2007, which implements the EU Directive No 2005/29/EC. Under the Act, unfair commercial practices are forbidden. A commercial practice is unfair if is contrary to good customs and it materially distorts (or is likely to) the economic behaviour of the average consumer before, during or after the conclusion of contract related to a good or service. For example, misleading actions or omissions, as well as aggressive commercial practices, are considered unfair commercial practices – the Act lists numerous examples. Therefore, if the platform or project owner failed to provide appopriate information to an investor, he can base his claims on the Unfair Commercial Practices Act.

4.8.5. A consumer whose interests were harmed or endangered by an unfair commercial practices has a number of claims. He can demand: (i) the cessation of the practice; (ii) removal of its effects; (iii) the making of a statement of appropriate content and in appropriate form; (iv) damages according to general principles and (v) payment of a specific sum of money to a specified public purpose related to supporting Polish culture, protection of national heritage or protection of consumers.

4.8.6. Finally, the consumer protection framework is also supported by rules on abusive contract clauses found in the Civil Code. Abusive contract clauses do not bind the consumer. An abusive contract clause is a provision of a contract concluded with a consumer that:

(a) was not individually agreed with him (i.e., he had no influence on its contents);
(b) shapes his rights and obligations in a manner contrary to good custom and in flagrant violation of his interest and

(c) is not a provision that specifies the basic performances of the parties, such as remuneration, if determined explicitly.

4.8.7. The Civil Code contains a catalogue of clauses that may be deemed to be abusive such as clauses that exclude or substantially limit the liability towards a consumer for non-performance or improper performance of an obligation. While this should not be taken to mean that limitation of liability clauses are banned from consumer agreements, it certainly severely reduces their possible scope. To avoid employing banned clauses, the Register of Prohibited Clauses should be checked. This lists clauses that the Court of Competition and Consumer Protection ruled abusive.

5. Crowdfunding crossing borders from and to Poland

5.1. As a rule, both a crowdfunding platform operating in Poland as well as a foreign one crossing borders to target its services at Polish customers must comply with Polish law. However, the matter is much more complex when it comes to determining whether the Polish civil law liability regime applies. After all, a Polish platform can also conclude contracts with persons established in other countries, while a foreign platform established abroad – with customers residing in Poland. As a result, uncertainty about the applicable liability regime might appear – in other words, a conflict of laws.

5.2. Such conflicts are resolved through special sets of rules – Private International Law of 2011 in Poland. However, the applicable liability regime cannot be determined solely on its basis, since the relevant rules have been largely replaced by EU regulations, namely Rome I and Rome II.

5.3. The Rome I Regulation helps determine which country's legal system should apply to a contract, including the issue of liability. In general, the will of the contract's parties takes precedence and they can freely choose which law applies (there are exceptions). Preferably, to avoid any doubts, this should be done by including a choice of law clause in the contract.

5.4. The applicable law can also be chosen in business-to-consumer contracts, but it cannot deprive the consumer of the protection granted by laws in his place of residence.

5.5. Some provisions of law may apply regardless of the parties' choice. For example the so-called overriding mandatory provisions, which according to Rome I's definition are those 'regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation'. This may influence the applicable liability regime, for instance through the application of provisions that protect the party deemed to be weaker.

5.6. If the parties do not make a choice on applicable law, the Rome I Regulation helps determine it through the use of so-called connecting factors. For example, a contract for the sale of goods is governed by the law of the country where the seller has his habitual residence.

5.7. It follows from the above that platforms (and project owners) should always include a choice of law clause in their contracts to avoid any doubts regarding applicable law.

5.8. The Rome II Regulation helps determine the law applicable to non-contractual obligations, such as delicts or product liability obligations. Unlike Rome I, the primary means to do so are the connecting factors. The parties may determine the applicable law only if they are all pursuing a commercial activity. Otherwise they may only do so after the event giving rise to damage occurs. Therefore, it is not possible to choose the law for non-contractual obligations in consumer contracts in advance.

6. Conclusion and recommendations

There are many forms of crowdfunding and they serve to finance a variety of projects. As the nature of goods and services provided to investors changes, so do the associated liability risks. However, platforms and project owners can take some measures which should help mitigate those risks in most circumstances. Platforms and project owners should:

- exercise due care in fulfilling their obligations; platforms in particular are advised to screen project owners before allowing them to host a project;
- provide investors with all legally-required information as well as additional information relevant for the type of crowdfunding and the nature of goods or services in a transparent manner;
- clearly delineate the legal relationships between platforms, project owners and investors so that it is evident what is the status of each, which contracts bind them and what are their rights and obligations;
- include a choice of law clause in contracts to avoid doubts regarding applicable law;
- ensure that contracts comply with consumer protection laws (where applicable), in particular that they do not contain any banned clauses;
- consider including a limitation of liability clauses in contracts;
- obtain an unequivocal consent to the contract terms from the investor; the investor should be made aware at what point and in what manner he expresses this consent, and what are his rights and obligations;
- identify and comply with any specialized legislation related to the specific goods or services provided;
- platforms should protect the investors' funds, for example by using trust accounts.

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Spain

1. Introduction

1.1. In order to fully understand the eventual liability for damages of a crowdfunding platform and/or a project owner, we must independently analyse the figures (the platform and the project owner) and, additionally, identify the mechanics of such liability from both a regulatory/supervisory and a civil liability perspective. Please note that the consequences of insolvency regulations are specifically excluded from the scope of this report.

2. Platform

2.1. *Regulatory perspective*

2.1.1. Law 5/2015, of 27 April, Promoting Corporate Financing (**Law 5/2015**) provides the regulatory framework for any model of crowdfunding in which a financial return is involved. This Law provides regulations applicable to the three sides involved in the financing channel: the platform, the project owner and the investor.

2.1.2. Although Law 5/2015 establishes a penalty regime for crowdfunding platforms (and not for project owners), this regime applies just from a regulatory point of view, that is, only for breaches of the regulatory provisions set forth in that Law and other related regulations referred to in Law 5/2015. Thus, no specific judicial proceedings are established by Law 5/2015 nor any other regulatory regulation regarding the platform's liability for damages in the frame of the crowdfunding activity.

2.1.3. The potential administrative sanctions derived from breaches of the regulatory provisions set forth by Spanish Law are the following:

(a) For very serious infringements, as defined in article 92 of Law 5/2015, the Spanish National Stock Exchange Commission (*Comisión Nacional del Mercado de Valores - CNMV*) may impose one or more of the following sanctions:

(1) fine amounting between (A) three and five-times the amount of the profit derived from the infringement, (provided that such profit can be determined); or (B) 5 and 10% of the total annual turnover of the legal entity; or (C) EUR 75,000 and EUR 200,000; and/or

(2) withdrawal of the authorisation; and/or

(3) prohibition to apply for a crowdfunding platform license for a period between 1 and 5 years; and/or

(4) removal of the infringer from the crowdfunding platform's management body or from his or her directorship post, and his or her disqualification from holding management or directorship duties in any crowdfunding platform for up to a 10 year period.

(b) For serious infringements, as defined in article 92.2 of Law5/2015, the CNMV may impose one or more of the following sanctions:

(1) fine amounting between (A) two and three-times the amount of the profit derived from the infringement (provided that such profit can be determined); or (B) 3 and 5% of the total annual turnover of the legal entity; or (C) EUR 50,000 and EUR 100,000; and/or

(2) suspension of the authorisation to act as a crowdfunding platform for a maximum period of one year; and/or

(3) suspension from the exercise of the infringer's management or directorship duties in a crowdfunding platform for up to a one year period.

Additionally, sanctions for serious and very serious infringements will be published in the official website of the CNMV and in the Official Gazette of the Commercial Registry (*BORME*).

(c) For non-serious infringements (i.e., all those infringements that do not qualify as very serious or serious infringements) the CNMV may impose a fine amounting between (i) one and two times the amount of the profit derived from the infringement; or (ii) 1 and 3% of the total annual turnover of the legal entity; or (iii) EUR 10,000 and 50,000.

2.2. *Civil liability perspective*

2.2.1. According to Law 5/2015, the platform acts as a mere intermediary of a financing contract between the investor and project owner and not as an actual party to such agreement. Thus, in case of default by the project owner, investors would not be entitled, in general terms, to bring actions against the platform.

2.2.2. Notwithstanding the foregoing, if the platform failed to comply with its transparency obligations, the investors might claim civil liability based on such failure against the platform should the project owner not return the amounts received. Since Law 5/2015 has been approved very recently there is no case law on admissibility of such civil liability actions yet. However, in order to minimise that risk, it is highly advisable that the platform obtains specialised legal advice to implement its transparency requirements.

Spain

3. Project owner

3.1. *Regulatory perspective*

3.1.1. Since project owners do not need licences or authorisations nor are they supervised by any regulatory authority, investors would not be able to bring actions against them before regulatory authorities.

3.2. *Civil liability perspective*

3.2.1. The applicability of civil procedures will vary depending on whether the platform follows the investment-based or the lending-based crowdfunding model.

3.2.2. The investment-based model resembles a regular equity investment, where an individual receives equity in an entity in return for financing. In this case, the amount contributed by the investor is considered equity, as opposed to the lending model, where the investment is considered debt. In the investment-based model, investors receive a share in the undertaking's equity and expect to participate in the profits eventually generated by the business. In this model, the investor assumes a higher risk level, since there is no guarantee that the project will be successful. Thus, there is no contractual obligation to return the amount invested. Accordingly, as a general rule, the investor will not be entitled to bring legal actions for damages against the project owner, based on the lack of profitability of the project or the failure to meet the investor's expectations.

3.2.3. Notwithstanding the above, in case the project owner misled the investor with an intentional misrepresentation or consciously or negligently concealed important facts or information upon which the investor was meant to rely on to make the investment (such us the mandatory information to be included in the platform's webpage), then the project owner may be held liable towards the investor and, in case of fraud, even face criminal charges.

3.2.4. The lending-based model is very similar to any ordinary lending scenario. Thus, investors would be entitled to initiate any regular debt collection procedure established under Spanish Law.

3.2.5. In Spain, debt recovery proceedings can be divided into two categories, depending on the type of instrument the creditor can rely on to enforce his claim. If the claimant can make proof of debt on certain specific documentary evidence he may initiate a special enforcement proceeding in order to collect his debt. Otherwise, he will have to go through the ordinary declaratory proceeding in order to obtain an enforceable court resolution determining the existence of the debt.

Declaratory proceedings

3.2.6. The declaratory proceeding is the usual debt-recovery proceedings based on non-qualified private documents (generally, agreements that have not been notarized or raised to the status of public document). Depending on the amount involved, declaratory actions may be divided into two categories:

(a) Ordinary proceeding (*juicio ordinario*), for claims exceeding EUR 6,000.
(b) Oral proceeding (*juicio verbal*), for claims up to EUR 6,000.

3.2.7. Each proceeding has its particular rules (maximum number of submissions permitted, contents of submissions, filing deadlines...). Generally, both proceedings share the following stages: (i) initial allegations (whether contained in the lawsuit or specific writs or briefs); (ii) trial (where the evidence is analysed by the court); and (iii) judgment. Although the Procedural Law establishes short time periods for submission of briefs and a document by the parties, the court is not subject to the same time constrains and, depending on each court's workload, an ordinary procedure may last around one year. Oral proceedings are supposed to be abbreviated and last around 6 months, but this is not always the case.

Special proceedings

3.2.8. The Spanish Procedural Law contemplates several special proceedings for debt-collection:

(a) Enforcement order procedure *(juicio monitorio)*

This abbreviated proceeding is used when proof of debt can be made on trade documents (generally, bills or invoices).

This is an abbreviated proceeding, which begins by submitting a written claim together with the unpaid bills or any other documentary evidence proving the existence of the debt. Should the debtor not answer the claim within 20 days, the proceeding will immediately become executory (please see "Enforcement proceedings" below). If the debtor opposes the claim, the proceeding switches into a declaratory proceeding (ordinary or oral, depending on the amount claimed - see "Declaratory proceedings" above).

(b) Collection proceeding for negotiable instruments (juicio cambiario)

This is an abbreviated proceeding to claim debts represented by negotiable instruments (such as bills of exchange, promissory notes and checks). They begin by producing the negotiable instrument before the court, together with a written claim. The Judge has 10 days to issue a payment order and an immediate seizure order (precautionary seizure). The debtor can only oppose the claim based on very limited grounds. If the debtor does not oppose nor pay within the 10 days period, the proceeding turns into an enforcement proceeding (see "Enforcement proceedings" below). If he opposes, the court will run a simple trial similar to that of the oral proceeding (see "Declaratory Proceedings" above).

(c) Enforcement proceeding

The plaintiff may apply for an enforcement proceeding when his debt is recognized by a so called "enforcement title" (*título ejecutivo*). Typical enforcement titles are judgements, arbitral awards and public deeds executed before a notary public, among others.

Once the enforcement title is produced before the court, it will issue a payment and/or seizure order. If no information is available, the judge can also order investigation on the debtor's assets or order the debtor to inform the court about his assets. Opposition to the enforcement by the debtor can only be based on very limited grounds. If he opposes, the court will call the parties to trial, where it will decide if the enforcement goes ahead or not. As a general rule, debtor's opposition does not suspend the enforcement proceeding, which can only be suspended on very limited cases. If the debtor does not pay nor deposit the amount of money into escrow, the court can order the seizure of the debtor's assets. In case the debtor's does not oppose the enforcement or his opposition does not prevail, the seized assets that cannot be automatically converted into cash will be sold, generally, through a public auction.

Statute of limitation on claims against the project owner

3.2.9. Pursuant to a recent amendment of the Spanish Civil Code, the statute of limitation applicable to any claim filed by the investor against the project will generally be of 5 years.

Appeal and provisional enforcement

3.2.10. Judgements can be appealed before the Court of Appeal (Audiencia Provincial) and ultimately, before the Supreme Court (Tribunal Supremo). The awarded party may request the provisional enforcement of the favourable judgement rendered by the lower court, without need to constitute a bond or other surety.

3.2.11. The judgement from the Court of Appeal can only be appealed before a higher court (normally the Supreme Court) based on procedural grounds or when the amount of the claim exceeds EUR 600,000.

Injunctions and preventive or interim measures

3.2.12. Before or during proceedings, injunctions or precautionary seizures can be requested over the defendant's assets to eventually secure the enforcement of a favourable judgment.

3.2.13. Under the declaratory proceeding, injunctions or precautionary attachments are generally only awarded if (i) the documentary evidence produced proves the existence of the outstanding debt and (ii) there are reasonable indications that the debtor will abscond or fraudulently dispose of his assets to the detriment of the creditor. If the measures are finally awarded, the creditor may be required to post a bond to guarantee potential damages caused to the debtor as a result of the precautionary seizure.

Litigation costs in Spain

3.2.14. Where the amount of the claim is higher than EUR 2,000, the parties must be represented in court by a legal counsel (attorney admitted to practice in the Bar Association) and a "court representative" (*procurador*). The role of the court representative is to facilitate the service of notices to the parties by the court.

3.2.15. It may be advisable to investigate the debtor's financial situation and obtain solvency reports (from specialised agencies) before filing legal actions, in order to avoid unnecessary legal costs when the debtor has no assets.

3.2.16. As a general rule, litigation costs are awarded to the winning party.

Practical matters

3.2.17. In light of the above, it is advisable to consider the following guidelines:

(a) When possible, all payment obligations should be guaranteed by means of executory documents (i.e. bills of exchange, bank guarantees, etc). Where possible, additional personal guarantee (e.g. joint and several guarantees) should be obtained from the directors of the company or its owner, particularly when the reputation of the company involved is dubious or unclear.

(b) Documentary evidence is critical in Spanish judicial proceedings. It is thus advisable to record all agreements in writing and to keep all original documents related to the commercial transaction.

(c) Claims that may benefit from abbreviated collection procedures should be expressly excluded from general arbitration clauses, as the enforcement of the arbitral award ordering the debtor to pay the debt will add additional time and cost.

(d) In principle, default interest is only payable when expressly agreed by the parties. If no default interest was agreed, the court will use the applicable legal interest (as approved by the Parliament annually) starting from the date the debt was formally claimed.

(e) In order to support their arguments, the parties may propose the deposition of the other party before the court. The party called to make the deposition must personally appear before the court to answer the questions of the other party.

European cross-border proceedings

3.2.18. Finally, please note that the European Union has implemented a system designed to aid individuals and business in cross-border disputes. The aim of this system is to facilitate the free circulation of judgments and to enhance access to justice. This system offers citizens and businesses across EU the means to efficiently and quickly resolve cross-border disputes,

facilitating the enforcement of a judgment against a defendant in another Member State. The main regulations to be taken into account are the following:

(a) Regulation (EU) no 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters sets out which bodies are competent in cross-border disputes and how to recognize and enforce a judgment in another Member State. The competent bodies are typically the courts of the Member State in which the defendant is domiciled. However, if the respondent is a consumer, the right of immunity is waived and is entitled to choose between the bodies of their own Member State or the defendant.

(b) Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure: The procedure simplifies, speeds up and reduces the costs of litigation in cross-border cases concerning uncontested pecuniary claims. The regulation permits the free circulation of European orders for payment throughout European Union (EU) countries by laying down minimum standards, compliance with which renders unnecessary any intermediate proceedings in the EU country of enforcement prior to recognition and enforcement.

(c) Regulation (EC) no 805/2004 of the European Parliament and of the Council of 21 April 2004 creating an European Enforcement Order for uncontested claims. This Regulation applies to judgments, court settlements and authentic instruments on uncontested claims and to decisions delivered following challenges to judgments, court settlements and authentic instruments certified as European Enforcement Orders.

(d) Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European small claims procedure. This procedure applies to cross-border litigation regarding civil and commercial matters where the claim does not exceed EUR 2,000.

4. Conclusions

4.1. In order to create a professional and sustainable crowdfunding market in Spain, Spanish legislative authorities decided to establish the regulatory framework of the crowdfunding in Spain in the recently approved Law 5/2015. In the absence of a European harmonized legislative framework for crowdfunding, this regulation provides legal certainty to all those interested in carrying out crowdfunding activities in Spain.

4.2. However, liability actions will be still subject to a variety of civil regulations which cannot be easily summarized in this report.

4.3. Notwithstanding this, under Spanish law, we consider that civil liability actions brought by investors against crowdfunding platforms should not easily prevail. As long as the platforms

comply with all its disclosure and due diligence obligations, investors should not have grounds for legal actions against the platforms, since these are not a party to the finance agreements.

4.4. Therefore, the major risks a platform could face arise from a potential breach of the applicable regulatory provisions. Platforms failing to comply with such provisions may face not only administrative sanctions but, in certain cases, may also be held liable in case the project owner fails to pay back the amounts due to the investors.

4.5. Accordingly, it is advisable for crowdfunding platforms operating in Spain to request expert regulatory advice in order to comply with the applicable Spanish regulatory provisions and, particularly, those aimed to enable investors to make informed investment decisions and to properly assess the risk level of the investment.

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Sweden

1. Introduction

1.1. Stockholm is per capita the second most prolific tech hub after Silicon Valley and is named the start-up capital of Europe. Sweden is a country with an innovative and entrepreneurial population who are fast-adopters and initiators of new technology and trends. Crowdfunding as an alternative form of investment is therefore, not surprisingly, a strongly increasing phenomenon in Sweden.

1.2. Although crowdfunding has shown positive competitive and financial effects on the market, crowdfunding is entailed with high risks for the investor compared to the traditional forms of investing. Crowdfunding is only partially regulated in Swedish law despite the related consumer risks. Crowdfunding has however raised considerable interest with the Swedish government, which commissioned the Swedish Financial Supervisory Authority (the "S-FSA") to investigate and analyse the crowdfunding market and the regulatory framework for equity and lending based models. The report was published on 15 December 2015.

1.3. In order to provide a wider understanding of the Swedish civil law liability connected to crowdfunding, the three crowdfunding forms that are active in Sweden and applicable legislation will first be outlined.

1.4. *The equity based model*

1.4.1. The equity based platforms in Sweden falls outside of the MiFID regulations and there are no legislated license requirements, since the platforms act as intermediaries that do not trade transferrable securities according to the Securities Market Act (2007:528). Therefore, the equity based platforms are not subject to the S-FSA's supervision.

1.5. *The lending based model*

1.5.1. The legislation on the lending based model is far more complex and the S-FSA conducts an individual assessment of each specific case. The crowdlending activities are mainly regulated by the Consumer Credit (Certain Activities) Act, "LVK", (2014:275) and the Payment Services Act (2010:751). The applicable rules depend on the platforms' management of the funds.

1.5.2. For peer-to-peer lending platforms that accept funds for forwarding the loans, the S-FSA has concluded that the platforms are required to apply for a license under the provision of payment services. However, if the platform only mediates between consumers without accepting any funds, authorisation as a consumer credit institution according to LVK is sufficient.

1.5.3. The Payment Services Act is based on the Payment Services Directive. Any transfer of funds through the crowdfunding platform operator, i.e. the platform operator receives the investments and then passes the funds to the project owner, would constitute a service

regulated by the Payment Services Act, which would require a license to become an active payment service provider. However, if a platform falls within the limited exemptions of the Payment Services Act, e.g. the total activities are below EUR 3 million/month, the platform is only required to apply for a registration with the S-FSA.

1.6. *The reward and donation based model*

1.6.1. According to the Swedish legislator, the donation and reward based models need the least regulation due to the low risks attached and since no financial investment or return is offered.

2. Formation of a legal act

2.1. Sweden has a freedom of contract. An agreement that is formed upon the simple principle of offer and acceptance constitutes a legal act between two or more parties. This principle has been codified in the Contracts Act (1915:218). The parties shall have a joint declared intention to enter an agreement. A legal act can be either a deed of donation (e.g. gift) (*benefik*) or of pecuniary interest (e.g. purchase agreement) (*onerös*). A contract does not have to be in writing to be valid, but written form is obviously preferable from an evidential perspective.

2.2. There is a greater contractual freedom between equal parties such as two companies compared to consumer-seller relationship where the law implies mandatory provisions.

3. Type of claims

3.1. *Declaring a legal act null and void*

3.1.1. An agreement or a part of an agreement can be declared invalid or be subject to amendments due to a party's fault in conclusion of a contract (*Latin: culpa in contrahendo*) such as misleading or fraudulent behaviour or entering a contract under threat and violence (unlawful contract). Consumer relationships or other circumstances of a weaker party shall be taken into account in the validity assessment.

3.1.2. Actions that can constitute an unlawful act and lead to annulment are, including but not limited to, a party's bad faith, deceit, or other actions of negligence or intent (Contracts Act, chapter 3 Section 30, 33 and 36).

3.1.3. A legal act can also be declared null or void if it was entered by a representative who acted outside his or her authorisation and power (Contracts Act, chapter 2).

4. Claims for damages

4.1. Provided that the claimant who has suffered damage give notice to the breaching party in a timely manner, the investor can claim, including but not limited to,

i. Monetary damages on the basis of a non-performance of a contractual obligation. The performance depends on the type of contract, but it can be attributable to payment or

delivery of goods or services. The non-performance shall not be temporarily. The breaching party may, upon the claiming party's notice, have a period of fulfilling the obligation before the monetary damage is imposed;

ii. Monetary damages on the basis of unlawful act (lex specialis), or

iii. Monetary damages on the basis of unfair commercial practice or misleading advertisement (Marketing Act, section 37)

iv. Monetary damages based on violation of the Companies Act (chapter 29, section 1).

4.2. If a legal representative or agent act without a proxy or outside the scope of his authorisation or power given by his or her principal (*behörighet eller befogenhet*) and if the third party is in good faith, the legal representative or agent have a strict liability for damages incurred by third party (*latin: falsus procurator*).

4.3. A party that has suffered damages in a contractual relationship can claim monetary damages on civil liability grounds. For damages based upon failure to perform or on an unlawful act, the claiming party has the burden of proof that;

i. the counterparty has failed to perform a contractual obligation, or that the counterparty's actions has led to an unlawful act;

ii. that such failure to perform or that such unlawful act was attributable to the counterparty;

iii. that the claimant suffered damage (financial loss); and

iv. that there is adequate causality between the failure to perform/unlawful act and the damage.

4.4. *Monetary damage based on the Companies Act (2005:551)*

4.4.1. According to Swedish law, a limited liability company cannot, towards a shareholder, be held liable for damages that arise out of share purchase or subscription in the company. Instead, the board of directors shall be held personally liable for damages incurred by intent or negligence.

4.4.2. In equity based crowdfunding, a flawed and erroneous valuation of a company that is seeking funding can lead to financial damage for the investors. The fund seeking projects are mainly newly established companies and the valuation is usually based on estimations. Provided that the investors base their investment or loan upon errors in the financial documentation that is provided, the investors will be able to claim damages if there is a clear adequate causality.

4.4.3. According to the Companies Acts, a founder, a board member or a managing director who, in the performance of his or her duties, intentionally or negligently causes damage to the company shall compensate such damage.

4.5. *Claiming monetary damages*

4.5.1. According to the Swedish liability principles in contractual relationships, the breaching party's liability shall cover the positive contractual interest (*positivt kontraktsintresse*), which is to compensate the damaged party to the situation as in which the contract would have been fulfilled. The liability can depending on the contract be limited to direct losses incurred by the breach. The claimant is entitled to compensation that brings the party to the same financial situation as it was prior to concluding the agreement; negative contractual interest (*negativt kontraktsintresse*).

4.5.2. The evidential burden is always on the claimant, who amongst other things must prove the causality between the suffered damage and the breaching act.

4.5.3. The breaching party may claim adjustment/reduction of the damage if the claimant was able to mitigate the damages or if the claimant contributed to the breach.

4.5.4. Pursuing a damage claim can be a costly burden from a processual economic perspective, especially for a consumer with a limited budget.

4.6. *Other risks*

4.6.1. Imminent risks with crowdfunding are fraud and money laundry. Compared to the traditional ways of investing in a company, the investors have an extensive personal responsibility to pursue a sufficient due of the project and project owner before investing. This due diligence may at times be difficult if the project owner is located in a different country and jurisdiction.

5. Class action

5.1. The Class Action Act (2002:599) was passed in 2002 and is yet relatively new. The act provides the right for a claimant to commence proceeding on behalf of a group of persons with the same interests, claims and circumstances. A class action usually relates to a trader that has caused damage to a group of consumers in which the consumers want compensation.

5.2. There are three types of class actions; private class actions, organizational class actions and public class actions. A private class action can be brought by a natural or a legal person, who has a claim within the scope of the action. Organizational actions may be brought by a non-profit organization if it is in accordance with its bylaws to protect consumers in disputes with a seller. Finally, a public class action may be brought by an authority such as the Consumer Ombudsman, who can represent a group of consumers, provided however, among other things, that the dispute has a large general consumer interest, for example, that the dispute is of great interest in how the law is applied.

5.3. A settlement that the plaintiff enters on behalf of a group applies to all group members if the court confirms it by judgment. The settlement shall be confirmed on the request of a party, if it is not discriminatory against certain members of the group or otherwise is unfair. The judgment has a legal effect to all group members.

Sweden

6. Descriptive summary of the framework with general applicability to crowdfunding

6.1. *Tort Law*

6.1.1. According to the Tort Liability Act (1972:207), the general rule is that all purely economic loss (*Sw. ren förmögenhetsskada*) incurred by a criminal act leads to liability. The Tort Liability Act is subsidiary to other regulations of liability, lex specialis, such as the Criminal Code, the Marketing Act and the Companies Act. Legislation concerning pure financial loss usually imposes liability if the damaging action was committed by intent or negligence.

6.1.2. An investor, who has suffered damage from an investment, can claim damage from the platform but it is far more difficult to prove adequate causality. According to Swedish case law (NJA 2011 s. 454), non-contractual tort law principles can be applied in a contractual relationship in certain circumstances. In the named case, the court based the liability assessment on applicable tort principles and adequate causality instead of the liability clause in the contract. For a crowdfunding platform, it is possible that a court would apply the same principle in order to protect the weaker consumer in this case being the investor, provided that the platform has contributed to the damage.

6.2. *The prospectus duty*

6.2.1. The duty to prepare a prospectus for *transferrable securities* is stated in the Swedish Financial Instruments Trading Act (1991:980), chapter 2 sections 2-7. According to the act, all offerings of transferrable securities in companies are subject to prospectus requirements. In order to facilitate the funding process for smaller companies, the act includes exemptions of the prospectus duty for offerings of transferrable securities below EUR 2 500 000 within a period of twelve months. According to the definition in the act, transferable securities are securities that can be traded on a regulated market. Securities in private companies are found not to be transferrable securities and thus exempted from the prospectus duty. However, in order for a platform to host a secure and legal intermediary service, the platform shall require the project owners to submit financial information of the company.

6.3. *The prohibition of spreading shares*

6.3.1. The Companies Act allows registration of public and private limited liability companies. Private companies can have a share capital of minimum SEK 50.000 and may raise capital through share offerings. All fund seeking project on the crowdequity platforms are mainly private limited liability companies.

6.3.2. According to Companies Act (chapter 1 section 7), a private liability company or a shareholder in such company is not allowed to offer securities or subscription rights to the public. The prohibition means that such offering is not allowed through *marketing* or in *other ways* offer or attempt to offer securities to more than 200 investors, as it constitutes a "public" offering.

6.3.3. There are exemptions to the rule that are applicable for instance when the offer is directed solely to a group of persons who have previously given notice of interest in such offers and

where no more than 200 trading units are offered. Violation against the spreading prohibition is sanctioned both under civil and criminal law.

6.3.4. This prohibition causes a high insecurity within crowdequity in Sweden. In order to comply with the law, some crowdfunding platforms offer a pre-sale period where 200 investors can pre-register their interest or require an investor to sign in before investing. The S-FSA has assessed that offering shares in limited liability companies on a platform leads to spreading of shares to the public, which the currently applied measures do not tackle.

6.4. *Distance contracts signed by electronic means*

6.4.1. In crowdfunding, the investors, platforms and the project owners enter into different types of contracts such as share subscriptions, credit agreement, payment agreement and other financial services or in respect of transfers or issue of financial instruments. The agreements are entered online through various means of identification tools and electronic signatures.

6.4.2. Agreements signed by electronic means falls within the scope of the Distance and Off-Premises Contracts Act (2005:59), which contains consumer friendly conditions and a minimum protection level for consumers in conjunction with distance contracts, such as i.e. information duty and cancellation right. Any contracts containing less favourable terms than what is stated in the act shall be invalid and unenforceable against the customer. The act also provides a higher protection in terms of damages due to unfair marketing.

6.4.3. According to chapter 3 section 2, the provisions concerning the right of cancellation shall however not apply where both parties, at the consumer's request, have performed their obligations under the contract. Furthermore, the cancellation right is not applicable to contracts concerning:

- financial services or transfers of financial instruments where the price depends on fluctuations on the financial markets beyond the project owner's control and which may occur during the cancellation period; and
- participation in share issues or another similar activity, where the price for the right to which the activity relates will, following the expiration of the subscription period, depend on such fluctuations on the financial markets.

6.5. *Information society*

6.5.1. Crowdfunding constitutes electronic commerce with goods, services and credits that are marketed, purchased and agreed to online. The parties are dependent on the information provided on the web in order to complete a sale or contract. Crowdfunding therefore falls under the conditions for information society services as set out in Electronic Commerce and Other Information Society Services Act (2002:562) and the Directive 200/31/EC (the E-Commerce Directive). This act also includes provisions applicable to service providers from other EEA jurisdictions when conducting business in Sweden. According to the act, it is highly important that the platforms and the project owners are transparent with information, which the investors base their decision upon.

6.6. *Lex Specialis – Marketing Act*

6.6.1. Methods of marketing in Sweden must be in compliance with the Marketing Act (2008:486). According to Section 9, all marketing shall be designed and presented in such a manner that no doubt exists as to its nature as a marketing product. The company responsible for the marketing shall be clearly indicated. Violation against this act can lead to monetary damages to the consumer and punitive damages to the state. A two-instance judicial procedure has been introduced for marketing cases. Stockholm District Court (*Stockholms tingsrätt*) is now the first instance and Market Court (*Marknadsdomstolen*) the second and final instance. Minor violations are handled by the Consumer Ombudsman, which is also responsible for investigating and acting in cases of improper marketing.

7. Crossing borders from Sweden

7.1. *Investors*

7.1.1. In order to buy equity or lend money to foreign private companies in a secure way, the investors are advised to thoroughly review the contracts, the financial documentation and evaluate the credit risks. It is also important to examine what requirements the platforms set up for the fund seeking project. The investors should also pay attention to choice of law and forum clauses when entering a contract with both the platform and project owners. Although the private commercial law in the Member States have great similarities, it is essential to understand the differences in national legislation when investing in a new country. We therefore advise Swedish investors to consult with a legal advisor before making any large or multiple investments.

7.2. *Platforms*

7.2.1. A Swedish crowdfunding platform, that decides to enter an EEA Member State by establishing a subsidiary or a local branch office, is advised to first study and understands the applicable legislation and to be aware of the differences with Swedish law. The legislation may differ in each Member State depending on how the platform is set up and the type of crowdfunding model that is offered. Therefore, the platform needs to receive legal advice on the regulatory aspects before the new market is entered.

Crowdequity platforms

7.2.2. An equity based platform does not need a MiFID-licence or registration to operate in Sweden. This is however the Swedish national implementation of the MiFID Directive, which may differ from other Member States' implementation. Although many Member States might have similar legislation, some Member States may require a national passportable license. Since the S-FSA does not issue MiFID-licenses for crowdequity platforms, it can create an unfair situation compared to platforms in other jurisdictions, from a competitive point of view.

Crowdlending platforms

7.2.3. A crowdlending platform that wish to offer its services in other countries needs to apply for a licence under the Payment Service Act (chapter 3, sections 18-23) with the S-FSA. When a passportable licence is obtained, the S-FSA will notify the regulatory authority in the relevant

Member State. A lending platform that only holds a registration by the S-FSA cannot offer cross-border activities with such registration.

7.3. *Project owner*

A project owner that contemplates to seek funding in another Member Sate, can market its project on a foreign platform, provided that the project owner fulfils the requirements of the platform. The project owner must comply with the rules of multiple jurisdictions; the host Member State and Swedish law. Furthermore, the project owner can become liable for damage claims of foreign investors, which often entails foreign jurisdictions and forums. With regard to the level of risk connected with the project, the project owner shall initially contact a local lawyer.

8. Crossing borders to Sweden

8.1. *Investors*

8.1.1. Investors who enter the Swedish market will enter contracts that are governed by Swedish law. Consumers (in this case being investors) have a privileged protection under Swedish commercial law. However, since there are no specific crowdfunding rules, it can create interpretation difficulties when foreign investors apply the current legislation. It is thus vital to understand the legislative framework in respect of the crowdfunding investment. An investor who seeks to invest or lend a great amount of money is advised to carefully review the credibility of the platforms and the projects. All limited liability companies are listed on official records. It is therefore possible to use free online services to receive information of the board, financial documents etc.

8.2. *Platforms*

8.2.1. Foreign platforms that wish to become active on the Swedish crowdfunding market are encouraged to gain knowledge of the Swedish regulatory framework for crowdfunding. The platform will be subject to Swedish law and in regard to liability issues, consumer relationship and other claims, it is important to be aware of the legal differences with the home state. Financial institutions that pursue their activities through a local branch office in Sweden are required to keep their books in the country and to have an auditor (Act on Branches of Foreign Companies). Financial institutions are also required to comply with the Accounting Act.

Crowdequity platforms

8.2.2. Equity crowdfunding platforms that intent to offer their services on the Swedish market as an intermediary do not need to apply for any licenses or permits. However, the legislation in this area is not fully established and clear at the moment. We therefore encourage the platforms to receive updated legal advice before the commencement of any activity.

Crowdlending platforms

8.2.3. Platforms that wish to offer crowdlending services in Sweden must be licensed payment service providers in the home Member State. The platform may then conduct activities in Sweden if it is within the scope of a relevant EU Single Market Directive (2006/123/EC). The institution must first contact its home-state regulator which will notify the S-FSA. The license

is thereby passported in order to enable cross-borders services. When operating in Sweden, the platform also needs to comply with Swedish national rules.

8.3. *Project owner*

8.3.1. Foreign project owners that seek to attract Swedish investors need to understand the Swedish regulations applied to mainly equity and lending based platforms as well as the legal protection a consumer is entitled to in a contractual relationship. The contracts will be governed by Swedish law, and it is therefore highly important to consult with a legal advisor in order to have a safe and valid funding.

9. Conclusion

9.1. Crowdfunding is an expanding phenomenon in Sweden that lacks satisfactory legislation at the moment. Equity crowdfunding platforms are not subject to a financial licence and are not under the S-FSA's supervision. The donation and reward based models are not subject to any license or registration either. However, the crowdlending platforms, depending on how the funds are managed, need to register their business with the S-FSA or apply for a license as a payment service provider. The latter license is required for cross border activities. There are currently no licensed crowdfunding platforms under the S-FSA's supervision. The platforms are constructed in a way that falls in between the statutes. There are furthermore no judgements in this area yet that can be used as guidance. However, the S-FSA are sending out questionnaires to active platforms to follow up on the construction, management and organization of the platforms and in order to outline which platform that can be covered by the license requirements.

9.2. The platforms, investors and project owners that wish to pursue cross border activities are recommended to thoroughly review the legislative framework for each Member State and evaluate which jurisdiction that is most suitable and favourable from a legal and a cost and time efficient perspective. The importance of the investors' due diligence before investing shall be emphasized to reduce the risk of damage and fraud.

9.3. Although there is no current crowdfunding regime, the Swedish Government has expressed interest in crowdfunding as an investment tool and it is not improbable that exemptions or targeted regulations intended to facilitate business for crowdfunding platforms may be introduced in the coming years.

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United Kingdom

1. Introduction

1.1. The UK legal regime broadly comprises the common law (court made law relying on precedent, including contract law and torts, such as negligence and misrepresentation) and law emanating from the legislature (statue, statutory instrument, regulatory authority rules and European regulations) which may have civil or criminal consequences. There is no civil code and so the only condensed body of law pertaining to crowdfunding as a specific activity is the financial services regulatory regime, which has in the case of P2P lending been designed expressly for crowdfunding. The financial services regime does not apply to donations or rewards-based crowdfunding, which are therefore not covered in this memorandum.

1.2. The creation of a new regime for crowdfunding in the UK allows us to easily summarise the main regulatory objectives reflected in that regime. The obligation in discharging these objectives falls to the platform operator, which accordingly is the most likely party to whom liability would attach. Liability could also rest of investment issuers, but they are not the focus of the regulatory regime. Crowdfunding platform operators are responsible for:

1) Becoming authorized or operating as the agent of an authorized person in order to operate the platform;
2) Clearly describing the investment opportunity and the associated risks;
3) Keeping investor contributions, distributions and investments safe and segregated from the operator's own money and assets;
4) Maintaining regulatory capital and a living will in order to guard against the risk of insolvency;
5) Protecting consumer borrowers through appropriate disclosure and fair handling of debt collection processes.

2. Formation of contract

2.1. In order to ensure that crowdfunded investments do not fall under the regime for collective investment schemes (similar to alternative investment funds), which is not generally compatible with retail participation, it is important that the offering is structured so that there is a direct contract formed between the investor/lender and the ultimate recipient of funding (which should not itself be a collective investment undertaking). This means the platform operator must ensure bilateral transactional contracts are formed, as well as signing investors and issuers up to its own terms and conditions.

3. Venues for claims

3.1. There are two main venues for users to bring a claim against a crowdfunding platform operator:

1) the courts;
2) the Financial Ombudsman Service.

3.2. Claims brought in the courts can relate to a breach of any form of law. The courts give great weight to any regulatory guidance provided by the FCA in interpreting financial services law.

3.3. Claims brought to the Financial Ombudsman Service do not have to have a basis in law, as the Ombudsman can determine cases based on considerations such as fairness and is not strictly bound by a system of precedent. The Ombudsman's determinations are only binding on firms up to a maximum of £150,000 per claim. Where the Ombudsman recommends a higher level of redress, if the firm does not voluntarily accept it, the complainant would need to either accept the £150,000 or bring a fresh claim in court. The Ombudsman does not have jurisdiction to determine criminal cases.

4. Enforcement Action

4.1. Even if there is no investor complaint, the FCA can take direct enforcement action against firms for breach of the regulatory system. The FCA has the power to impose financial penalties on firms and individuals, disqualify or suspend firms and individuals from working in the financial sector, publically censure firms or individuals and launch investigations appointing third party financial services experts to report on firm practices, whose professional fees must be paid for by the firm under investigation.

4.2. The FCA does not have jurisdiction to determine criminal cases, but it has the standing to bring certain types of criminal proceedings before the courts under the Financial Services and Markets Act 2000, such as unauthorized persons performing regulated activities or the making of illegal financial promotions.

5. Class action

5.1. Historically, UK law has not provided the facility for class actions to be brought and joint claims can ordinarily only be brought in relation to the same subject matter. However there are some statutory provisions that can obviate the need for individuals to make their own claim.

5.2. First, the Consumer Rights Act 2015 has introduced consumer rights to bring group claims in respect of price fixing.

5.3. Secondly, the FCA has the power to order regulated firms to conduct consumer redress schemes under section 404 of the Financial Services and Markets Act 2000. It is not necessary for a consumer to complain in order to trigger the FCA ordering a consumer

redress scheme, but it is a mechanism whereby consumers may benefit from the actions of others.

6. Descriptive summary of the framework with general applicability to crowdfunding

6.1. *Sources of regulatory rights*

6.1.1. The main rights that customers have against crowdfunding platform operators emanate from:

1) Statute and statutory instrument: the Financial Services and Markets Act 2000 is the main body of law, with several statutory instruments, such as the Regulated Activities Order and the Financial Promotion Order being made under it; and
2) The FCA's Handbook of Rules and Guidance: the principal sourcebooks that give rise to customer rights include the Conduct of Business Sourcebook (COBS), which applies to firms offering equity and debt investments; and the Consumer Credit Sourcebook (CONC) which provides protections to consumer borrowers. The sourcebooks contain principles, rules, evidential provisions, statements of EU law and guidance.

6.2. *Consequences of breach*

6.2.1. Breach of FCA sourcebook evidential provisions and guidance is generally symptomatic of a breach of a rule or a principle unless there is a good reason for departing from it in the circumstances. Breach of rules, principles and EU provisions are actionable by the FCA and, where provided for under the Financial Services and Markets Act 2000, individuals can bring claims in respect of such breaches. Such breaches may also be evidence of a breach of contract or fiduciary duty owed by the firm to its customer under the general law.

7. Crowdfunding crossing borders

7.1. *Investor*

7.1.1. If an overseas platform operator communicates a financial promotion to a UK investor, inviting them to invest in securities or P2P loans, this will be subject to regulation in the UK. It is a criminal offence for a person (no matter where based) to communicate a financial promotion to unrestricted categories of investor unless the person is authorized or the representative of an authorized firm, or the communication is in writing and has been approved by an authorized firm. It is also possible to promote certain types of unlisted security (not P2P loans) to individuals who have signed a certificate in prescribed form attesting to high net worth or sophistication. The FCA has a financial promotions team that has investigated and taken action against offshore firms making financial promotions into the UK.

7.1.2. In addition to the financial promotion restriction, crowdfunding platforms targeting UK investors could potentially conduct regulated activities here. The regulated activity of arranging deals in securities is likely to take place in the country the investor is based. Conversely, the regulated activity of operating an electronic system in relation to lending

(P2P) is likely to take place whether the electronic system is being operated (which is not necessarily the country in which investors live).

7.1.3. European platform operators that are authorized in their home jurisdiction can exercise passport rights under the Markets in Financial Instruments Directive to conduct securities business in the UK on a cross-border basis. This would enable the platform to arrange deals in securities and communicate financial promotions, with the former activity being subject to home state rules and the latter activity being subject to UK rules.

7.1.4. The regulated activity associated with P2P lending is specific to the UK and European P2P platform operators cannot exercise passport rights into the UK, although they may have rights under the Electronic Commerce Directive to provide their services subject to home state regulation.

7.1.5. As well as being a criminal offence, the investors may be able to rescind any investment agreement entered into under UK law. Such a right would have to be enforced in the jurisdiction where the platform operator was based, which would typically stipulate that local law applied and local courts had exclusive jurisdiction.

7.2. *Recipient of funding*

7.2.1. If a UK platform wishes to raise money from UK investors for a foreign issuer of securities or borrower, it will continue to be subject to UK regulation in respect of fund raising, but may be subject to local law in respect of its dealings with the recipient of funding.

7.2.2. If a foreign platform operator wishes to raise funds from non-UK investors in respect of a UK recipient of funding, it may be subject to UK regulation. If the platform invites the UK recipient of funding to issue shares or debt securities, this would constitute a financial promotion and any arrangements relating to the same would constitute a regulated activity. Similarly, if the platform invites UK borrowers to use its P2P services, this would constitute a financial promotion having effect in the UK.

7.2.3. If the recipient of funding was a consumer borrower, the platform operator would engage in credit broking and be subject to requirements imposed under the UK consumer credit regime. Unless the loan agreement was formed in accordance with the requirements of this regime, the contract would be difficult to enforce against the borrower. Similar considerations apply to borrowers falling within the scope of the Mortgage Credit Directive. It would not be possible to force such borrowers to submit to a jurisdiction outside the UK in bringing a claim against the borrower.

8. Conclusion and recommendations

8.1. Perhaps unlike jurisdictions with a civil code, the obligations and the corresponding liability risks of a UK crowdfunding platform are primarily based on the regulatory framework for securities and lending-based crowdfunding, because these regimes are tend to be much more specific to the operation of a crowdfunding platform than the general law. In addition,

the likelihood of customers complaining through the Financial Ombudsman Service or the FCA taking direct enforcement or supervisory action is generally higher than of customers taking court action and, even where the court is the venue, regulatory law will generally be the basis of the claim.

8.2. Platform operators also face potential liability from other sources, such as commercial partners and service providers, employees etc. It is beyond the scope of this note to consider how commercial arrangements are different for crowdfunders as opposed to any other sort of business, but it is fair to say that a high proportion of such claims against regulated companies draw on the higher fiduciary standards imposed on regulated firms under the regulatory system.

8.3. Firms outside the UK doing business with UK investors or funding recipients will have to consider the application of the UK regulatory system to them in detail and will generally have to adopt at least some UK standards (most notably in relation to financial promotion).

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Frameworks

of

civil law frameworks

in

participating Member States

Belgium

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
Prospectus Directive (Directive 2003/71/EC, as amended)	Act on public offerings of investment instruments of 16 June 2006 (*Wet op de openbare aanbieding van beleggingsinstrumenten en de toelating van beleggingsinstrumenten tot de verhandeling op een gereglementeerde markt/ Loi relative aux offres publiques d'instruments de placement et aux admissions d'instruments de placement à la négociation sur des marchés réglementés,* **Prospectus Act**)	Amongst others: *Investment based and lending based:* Art. 20 Prospectus Act (requirement to publish prospectus) Art. 18§1(j) Prospectus Act (crowdfunding exemption) Art. 55, §2, 3° Prospectus Act (crowdfunding exemption for intermediary services) Art. 56 Prospectus Act (monopoly for offering intermediary services) *Investment based, lending based and possibly reward based:* Art. 68bis Prospectus Act (prohibition on receipt of deposits or other repayable funds)	A prospectus is required to be published for any public offering of investment instruments (including equity and loans) in Belgium No prospectus is required to be issued if the public offer: (i) limits the maximum amount per INVESTOR to Eur 1,000[1]; and (ii) limits the total amount of the offer to Eur 300,000 Art. 56 Prospectus Act prohibits the offering of intermediary services for the placement of investment instruments by any organisation other than a credit institution or specified financial institution. This prohibition does not apply if the offering benefits from the crowdfunding exemption (as stated in Art. 18§1(j) of the Prospectus Act) Art 68bis prohibits the receipt of deposits or other repayable funds from the public in Belgium by any organisation other than a credit institution or specified financial institution. This prohibition does not apply if the offer of investment instruments benefits from an exemption under the Prospectus Act	**Intermediary services:** any intervention in relation to INVESTORS, even if temporary or accessory, in the placement of Investment Instruments for the account of the Offeror or the Issuer, against remuneration **Investment Instrument**: amongst others, securities and any instrument which allows a financial investment, regardless of the underlying assets. The definition therefore includes shares, bonds and loans **Issuer**: the legal entity which has issued investment instruments, issues investment instruments or plans to issue investment instruments **Offeror**: the legal entity or natural person offering investment instruments to the public **Public offer:** an offer is deemed public if there is a communication in any form and by any means addressed to natural persons or legal entities which contains sufficient information on the terms of the offer and the securities offered to allow investors to decide whether to buy or subscribe the securities and which is made by the person entitled to issue or transfer the securities or on this person's behalf. An offer is not deemed to be public, amongst others, if the total consideration is less than Eur 100,000
AIFMD (Directive 2011/61/EC)	Act on alternative investment funds and their management of 19 April 2014 (*Wet betreffende de alternatieve instellingen voor collectieve belegging en hun beheerders/ Loi relative aux organismes de placement collectif alternatifs et à leurs gestionnaires,* **AIFM Act**)	Amonst others: *Investment based and lending based* : Art. 11§1 (obligation to obtain a license as manager of alternative investment funds) Art. 106 (*de minimis exemption*)	A manager of an Alternative Investment Fund (AIF) must obtain a licence as Alternative Investment Fund Manager (AIFM) with the FSMA An AIFM which manages an AIF with less than Eur 100 million in assets or, subject to conditions, an AIF with less than 500 million in assets, can benefit from the *de minimis* regime. Only a notification containing limited information will need to be sent to FSMA	**Alternative Investment Fund (AIF)**: an entity for collective investment which (i) sollicits capital from investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors and (ii) which is not subject to UCITS requirements **Manager of AIF (AIFM)**: a manager of an AIF or an AIF not managed by an AIFM
UCITS Directive (Directive 2009/65/EC)	Act on collective investment undertakings of 3 August 2012 (*Wet betreffende de instellingen voor collectieve belegging die voldoen aan de voorwaarden van Richtlijn 2009/65/EG en de instellingen voor belegging in schuldvorderingen/ Loi relative aux organismes de placement collectif qui répondent aux conditions de la Directive 2009/65/CE et aux organismes de placement en créances,* **UCITS Act**)	Amongst others: *Investment based and lending based:* Art. 30 (obligation to register for public collective investment undertaking) Art. 5§ 1 (private placement exemption)	A collective investment undertaking is an entity which purpose is the collective placement of financial means received through a public offer of participation rights. Collective management means that assets are put together and managed on a discretionary basis without any direct intervention of the participants A collective investment undertaking must be registered with the FSMA and publish a prospectus when offering participation rights to the public However, no prospectus needs to be published if, amongst others, the offer of securities is for a total consideration in the EEA of less than Eur 100,000 (calculated over a twelve-month period) (so-called private placement exemption)	**Collective investment undertaking (UCITS)**: a Belgian or foreign entity which purpose is the collective placement of financial means received from investors **Public collective investment undertaking**: a UCITS which attracts financial means in Belgium or abroad by means of a public offer of participation rights **Public offer**: a communication in any form and by any means addressed to natural persons or legal entities which contains sufficient information on the terms of the offer and the securities offered to allow an investor to decide whether to buy or subscribe the securities and which is made by the UCITS, the person entitled to transfer the securities or on this person's behalf
Directive 2004/39/EC	Act on status and supervision of Investment Firms of 6 April 1995 (*Wet van 6 april 1995 inzake het statuut van en het toezicht op de beleggingsondernemingen/ Loi du 6 avril 1995 relative au statut et au contrôle des entreprises d'investissement,* **Investment Firms Act**)	Amongst others: *Investment based and lending based:* Art. 47 (requirement to obtain a license)	Investment services and/or activities may be provided in Belgium only by investment firms and credit institutions. A credit institution may provide all kinds of investment services, including the placement of financial instruments and the exploitation of a Multilateral Trading Facility (MTF), without any additional license being required. A firm which engages only in the placement of financial instruments must obtain a license as investment firm. A firm which also exploits a MTF must obtain an additional, specific license with the Belgian National Bank.	**Investment services**: amongst others, the following services when provided in relation to financial instruments: a. reception and transmission of orders, including the bringing together of two or more investors making thereby possible the entering into a transaction between these investors; b. execution of orders on behalf of clients; c. investment advice d. operation of a multilateral trading facility (MTF) **Financial instruments**: included are, amongst others: - securities (including shares, participations, share certificates) - bonds and other debt instruments or certificates relating thereto

Belgium

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
A prospectus must be published unless the crowdfunding exemption of the Prospectus Act is respected i.e., maximum Eur 1,000 per INVESTOR and maximum Eur 300,000 per public offer If the crowdfunding exemption is respected, the prohibition on intermediary services (other than by a credit institution or specified financial institution) does not apply The prohibition on the receipt of deposits or other repayable funds does not apply if the public offer benefits from an exemption under the Prospectus Act. If no exemption is available, the prohibition will apply, unless the funds collected by the PLATFORM may only be used for the following purposes: (i) transfer to the PROJECT OWNER; or (ii) reimbursement to the INVESTOR	Any non compliance with the provisions of the Prospectus Act may result in criminal sanctions (including imprisonment and fines) being imposed. In addition, administrative sanctions and fines may be imposed by the Belgian Authority for the Financial Markets (FSMA). Finally, the PLATFORM may be held liable under civil law for any damages caused by the failure to respect the provisions of the Prospectus Act	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER	X	X	X	N / A
Generally, a PLATFORM will not be subject to the AIFM Act However, if the PLATFORM actively manages the investment (for instance via an investment vehicle), the PLATFORM could fall within the AIFM Act. If the AIFM Act applies, the PLATFORM will be able to benefit from the *de minimis* exception if it manages less than 100 mio in assets	Any non compliance with the provisions of the AIFM Act may result in criminal sanctions (including imprisonment and fines) being imposed. In addition, administrative sanctions and fines may be imposed by the Belgian Authority for the Financial Markets (FSMA). Finally, the PLATFORM may be held liable under civil law for any damages caused by the failure to respect the provisions of the AIFM Act.	N/A	Not relevant	X	X	N / A	N / A
If the INVESTORS have no say in the way their funds will be invested, the entity investing the funds (whether the PLATFORM or an intermediate company) may qualify as a UCITS and must be registered with the FSMA.	Any non compliance with the provisions of the UCITS Act may result in criminal sanctions (including imprisonment and fines) being imposed. In addition, administrative sanctions and fines may be imposed by the Belgian Authority for the Financial Markets (FSMA). Any damages will be deemed to have been caused by the failure to respect the provisions of the UCITS Act.	N/A	Not relevant	X	X	N / A	N / A
The marketing and distribution of securities in Belgium generally entail the provision of investment services, i.e. the placing of financial instruments. The FSMA generally considers that the following elements constitute the placing of financial instruments: a. the existence of an agreement between the issuer and the intermediary whereby the intermediary provides placement services for the issuer; b. a consideration paid by the issuer to the intermediary Generally speaking, the PLATFORM will be deemed to provide placement services and will therefore need to obtain a licence If, after the offer, the PLATFORM organises a market where the financial instruments can be exchanged, the PLATFORM may be deemed to be a Multilateral Trading Platform and will therefore need to obtain a licence with the Belgian National Bank Note that the Investment Act will not apply if the securities placed are not deemed to be "financial instruments" for instance loans.	Any non compliance with the provisions of the Investment Firms Act may result in criminal sanctions (including imprisonment and fines) being imposed. In addition, administrative sanctions and fines may be imposed by the Belgian Authority for the Financial Markets (FSMA) or the Belgian National Bank. Finally, the PLATFORM may be held liable under civil law for any damages caused by the failure to respect the provisions of the Investment Firms Act.	N/A	N/A	X	X	N / A	N / A

Belgium

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
Payment Services Directive (Directive 2007/64/EC) (and in the future PSD II (Directive proposal COM/2013/0547))	Act on status of payment institutions and e-money institutions of 21 December 2009 (*Wet betreffende het statuut van de betalingsinstellingen, de toegang tot het bedrijf van betalingsdienstaanbieder en de toegang tot betalingssystemen/Loi relative au statut des établissements de paiement et des établissements de monnaie électronique, à l'accès à l'activité de prestataire de services de paiement, à l'activité d'émission de monnaie électronique et à l'accès aux systèmes de paiement,* **Payment Institutions Act**)	Amongst others: *All types of crowdfunding:* Art. 7 (requirement of licence for Belgian payment providers)	Payment services may only be provided in Belgium by, mainly, credit institutions, electronic money institutions and payment institutions which have obtained a license from the Belgian National Bank.	**Payment services**: include money transfers **Money transfe**r: a payment service whereby, without opening a payment account in the name of the payer or the beneficiary, funds are received from the payer which are solely intended to be transferred to the beneficiary or a payment services provider acting on behalf of the beneficiary, and/or where the funds are received on behalf of the beneficiary and are put at the disposal of the beneficiary
Consumer Credit Directive (Directive 2008/48/EC)	Book VII of the Economic Law Code (**Act on Consumer Credit**)	Amongst others: *Lending based* : Art. VII.64-66 (publicity for consumer credits) Art. VII.69-74 (information obligations) Art. VII.83 (right of consumer to withdraw from the credit agreement)	The Consumer Credit Act provides that it is prohibited to extend credits to consumers in Belgium without being registered with the Belgian FSMA. The Consumer Credit Act furthermore contains a set of mandatory provisions concerning the marketing of consumer credit and the entering into, the content, the performance and the termination of a consumer credit contract.	**Consumer**: a natural person acting for a purpose which is not related to his/her business or professional activities **Credit Provider**: a natural or legal person who grants credit in the course of its business or profession **Consumer Credit**: an agreement following which a credit provider extends credit to a consumer by means of a postponement of payment terms, a loan or any other similar facility **Credit intermediary**: a natural or legal person which does not act as credit provider and which in its professional capacity and for compensation provides one of the following services: - offer of credit agreements to consumers; -assistance to consumers with the preparation of the entry into a credit agreement; - entering into a credit agreement with a consumer on behalf of the credit provider
Directive 1999/93/EC on a Community framework for electronic signatures (to be replaced by EC Regulation 910/2014 as of 1 July 2016)	Act of 20 October 2000 (to be replaced by EC Regulation 910/2014 as of 1 July 2016) (*Wet Elektronische Handtekening/ Loi introduisant de moyens de télécommunication et la signature électronique dans la procédure judiciaire et extra judiciaire* , Electronic Signature Act Act of 9 July 2001 (to be replaced by EC Regulation 910/2014 as of 1 July 2016) ("the Certification Act")	*All types of crowdfunding* : Art. 1322 Civil Code	Both acts facilitate the use of electronic signatures, which are under certain circumstances fully equal to traditional (handwritten) signatures. The acts allow parties to conclude agreements by electronic means, and such in a legally valid manner The Certification Act also provides for the possibility to link electronic certificates to electronic signatures, which makes it possible to identify individuals online on a legally secure manner The Electronic Signature Act amends article 1322 of the Civil Code, specifying that, for the purposes of proof, the electronic signature is equal to a handwritten signature	**Electronic signature**: data in electronic form, attached to or associated to other electronic data, which are used as a means of authentication **Certificate**: an electronic confirmation which links the details for the verification of a signature to a natural or legal person and confirms the identity of such person
Directive 2000/31/EC (E-Commerce Directive)	Book I of the Economic Law Code ("**Definitions**") Book XII of the Economic Law Code ("**E-Commerce Act**")	*All types of crowdfunding* : Art I.18 Art XII.1 - Art XII.23	The E-Commerce Act contains a heterogeneous set of rules relating to the information society, such as the basic freedom of establishment and online services, the information obligations of online service providers (amongst others, identity and address service provider, details of supervisory authority), obligations of online advertising and rights and obligations in the conclusion of online contracts. The E-Commerce Act also contains a specific system of liability for certain online service providers.	**Service of an information society ("dienst van een informatiemaatschappij"):** Any service provided for remuneration, by electronic means, at a distance and at the individual request of the recipient of the service **Service provider:** Any natural or legal person providing an information society service

Belgium

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
The FSMA considers that when the PLATFORM intervenes in the transfer of funds between the INVESTORS and the PROJECT OWNER (for instance, if the money transits through the PLATFORM's bank account) there could be a payment transaction and therefore only a payment service provider may provide this service The Payment Institutions Act does not apply if the INVESTORS transfer funds directly to the PROJECT OWNER's bank account Alternatively, the PLATFORM may contract with a third party payment provider for the processing of payments	Any non compliance with the provisions of the Payment Institutions Act may result in criminal sanctions (including imprisonment and fines) being imposed. In addition, administrative sanctions and fines may be imposed by the Belgian National Bank. Finally, the PLATFORM may be held liable under civil law for any damages caused by the failure to respect the provisions of the Payment Institutions Act.	N/A	N/A	X	X	X	X
To the extent the PLATFORM is considered a credit provider or a credit intermediary, it should comply with the provisions of the Consumer Credit Act The Consumer Credit Act is only applicable if the PROJECT OWNER is a consumer	Criminal sanctions (emprisonment or penalties) apply in case the PLATFORM acts as credit provider or credit intermediary for consumer credits without registration with FSMA A consumer credit agreement which does not comply with the provisions of the Consumer Credit Act may be annulled or the obligations of the consumer thereunder may be reduced	N/A	N/A	X	X	N/A	N/A
An electronic signature can be equal to a handwritten signature and can have the same evidential value, provided that the electronic signature is advanced and is based on a qualified certificate. To the extent the PLATFORM does not use certified advanced electronic signatures, the INVESTOR may not be bound to the contract with the PLATFORM, for lack of sufficient evidence of the existence of such contract (depending on the monetary value of such contract and the capacity of the INVESTOR (being a consumer or a legal entity)).	Counterparty (INVESTOR or PROJECT OWNER) may not be bound by the document or agreement which was electronically signed without qualified certificate.	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER	X	X	X	X
Services of the PLATFORM generally qualify as services of an information society (being an "online" service). The PLATFORM, in its capacity of service provider, needs to comply with the requirements set forth in these articles of the Economic Law Code.	Civil law measures can be taken by INVESTORS or by each party that is adversely affected by the infringement. Under limited circumstances the PLATFORM, in its capacity as service provider under Book XII, cannot be held responsible for information from a third party (such as the PROJECT OWNER) if it is merely passed on by the PLATFORM	N/A	N/A	X	X	N/A	N/A

Belgium

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
Regulation 2006/2004	Book I of the Economic Law Code ("Definitions") Book XVII of the Economic Law Code ("Special legal procedures")	*All types of crowdfunding:* Article I.20 Article XVII.35-article XVII.69 Article XVII.26 – article XVII.31	Irrespective of the investor's individual rights to commence proceedings against the PLATFORM and/or the PROJECT OWNER, the INVESTORS can, if certain conditions are met, jointly commence a class action, represented by an authorized association for the defense of the collective interest of consumers. Such associations have legal personality and are approved by the Minister competent for the protection of consumers. In case of an infringement which originates in Belgium and which has effects in another member state, each competent authority in that other member state can, if certain conditions are met, file a complaint before the president of the court of commerce of Brussels, in order to stop the infringement.	N/A
Unfair Commercial Practices Directive 2005/29/EC Distance Marketing of Financial Services Directive (Directive) 2002/65/EC) Unfair Contracts Terms Directive (93/13/EEC) Directive 2006/114/EC concerning misleading and comparative advertising (consolidates Directives 84/450/EC and 97/55/EC) Consumer Rights Directive (Directive 2011/83/EU)	Book VI of the Economic Law Code	Art. I.1 Art. I.8 Art. VI.2-Art.36 Art. VI.37-Art. VI.91 Art.VI.92-Art. VI.117	Book VI of the Economic Law Code sets out general conduct of business rules applicable to the offer of goods and services and the conclusion of contracts between companies and consumers. The main objective of Book VI is to ensure the fairness of commercial transactions in the interest of both the companies and the consumers. Title 2 of Book VI imposes on the company the obligation to provide certain information (such as the total price of the product, the term of the agreement, the general terms and conditions,…) to the consumer before the consumer is bound by any agreement. The information must be provided in a clear and comprehensible manner. Title 2 also sets out the rules for comparative advertising. Title 3 of Book VI relates to the agreements concluded with consumers, such as the agreements on distance (both agreements relating to financial services and agreements not relating to financial services), the off-premises contracts and the right to withdraw for the customers and the information obligations for the companies. Title 4 of Book VI deals with prohibited practices. As a general provision in the B2C relation, article VI.93 states that a commercial practice is unfair if it is contrary to the requirements of professional diligence, and if it materially distorts or is likely to materially distort consumers' economic behaviour. Examples of such unfair commercial practices can be misleading commercial practices or aggressive commercial practices. As for the B2B relation, article V.104 prihibits each commercial practice which damages or which could damage the professional interests of one or more other companies (such as misleading or derogatory advertising).	**Company:** any natural or legal person who in a sustained manner pursues an economic objective, as well as its associations **Consumer:** Any natural person who is acting for purposes which are outside his or her trade, business or profession **Service:** Each performance carried out by a company in the framework of its professional activity or in implementation of its statutory purpose **Advertising:** any communication directly or indirectly for the purpose to promote the sale of products, regardless of the place or the used means of communication **Comparative advertising:** any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor **Agreement on distance:** Any agreement between the company and the consumer which is entered into in the framework of an organized system for distance sales or services without the simultaneous physical presence of the company and the consumer, and for which, up to and including the moment at which the contract is concluded, only use is made of one or more means of distance communication **Financial service:** Any service of a banking, credit, insurance, personal pension, investment or payment nature
Rome I Regulation (Regulation no. 593/2008)	Direct effect	Belgian international private law rules in relation to contracts. Rome I determines applicable laws in case of cross border claims based on contracts.	N/A	The PLATFORM can include a choice of law clause in the agreement which generally determines laws applicable to the contractual relationship. If the counterparty is a consumer, however, special attention should be paid to Article 7 of Rome I
Rome II Regulation (Regulation no. 864/2007)	Direct effect	Belgian international private law rules in relation to other legal grounds. Rome II determines applicable laws in case of cross border claims based on other legal grounds than contracts, including unlawful acts.	N/A	Rome II determines the applicable laws
N/A	Act regarding the financing of small and medium-sized enterprises (*Wet betreffende diverse bepalingen inzake de financiering voor kleine en middelgrote ondernemingen/ Loi portant des dispositions fiscales et financières diverses* , **SME Financing Act**)	*Lending based:* Art. 3 (territorial scope) Art. 4 (Due care obligation) Art. 5 - 7 (Information obligations) Art. 15 (Supervision by FSMA)	The SME Financing Act imposes obligations in relation to the entering into, the content and the termination of a credit to a small and medium-sized company	**Credit agreement**: a contract pursuant to which a lender extends or undertakes to extend credit to an enterprise by means of a loan or similar facility (other than a consumer credit or a mortgage) **Small or medium-sized company**: an enterprise or a professional which exceeds at least one of the criteria as stated in Art. 15 of the Belgian Company Code, i.e.: a. more than 50 employees on average annual basis; or b. the yearly turnover exceeds Eur 7,300,000; or c. the total balance sheet exceeds Eur 3,650,000

Belgium

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
To the extent the PLATFORM can be summoned in legal proceedings, it may be confronted with a collective claim initiated by an authorized association representing the similar interests of INVESTORS jointly	N/A	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER	N/A	X	X	X	X
If and to the extent that the PLATFORM is considered to be a company, being an entity which in a sustained manner pursues an economic objective, the PLATFORM must ensure that it complies with the provisions of Book VI	In the event of a breach of the provisions of Book VI (or any other provision of the Economic Law Code), any interested party can ask the president of the court of commerce to order the immediate suspension of such breach ("*stakingsvordering* ") The president of the court of commerce can impose a penalty for each day the breach continues and can order the publication of his decision in, for instance, the national or regional press. However, the president of the court commerce cannot grant any damages. Any claim for damages resulting from a breach of Book VI must be initiated before the competent court, in a "regular" procedure.	If and to the extent that the PROJECT OWNER is considered to be a company, being an entity or person who in a sustained manner pursues an economic objective, the PROJECT OWNER must ensure that it complies with the provisions of Book VI.	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER	X	X	X	?
Not relevant	Please see PLATFORM. Applies *mutatis mutandis* to the PROJECT OWNER.	Not relevant		X	X	X	X
Not relevant	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER.	Not relevant		X	X	X	X
The SME Financing Act will only apply if both the lender and the PROJECT OWNER are acting in a commercial or professional capacity The SME Financing Act will only apply in case of lending based crowdfunding if the INVESTOR grants a credit in the context of its usual commercial or professional activities, or if the PLATFORM or an intermediate company grants a loan (out of the funds collected from INVESTORS), in all cases to a PROJECT OWNER which is a small or medium-sized company	Provisions of the credit agreement which are in violation of the provisions of the SME Financing Act may be declared null and void. A court may also order that the credit is to be converted in another credit which is deemed more appropriate. Finally, the amount of the indemnity losses may be reduced	The SME Financing Act will only apply if both the INVESTOR and the PROJECT OWNER are acting in a commercial or professional capacity The provisions of the SME Financing Act will not apply to loans granted by an INVESTOR private person (consumer) or by an INVESTOR other than in the context of its usual commercial or professional activities If the INVESTOR acting in its commercial or professional capacity, or the PLATFORM grants a loan to the PROJECT OWNER which is a small or medium-sized company, the provisions of the SME Financing Act will apply	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER	N/A	N/A	N/A	N/A

Belgium

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
N/A	Civil Code	Article 1135	Agreements not only bind to what is expressly provided therein, but also to all the effects which are granted to the agreement, according to its nature, by fairness ("*billijkheid*"/"*équité*"), customs or the law.	N/A
N/A	Civil Code	Art. 1146 Art. 1184	A party confronted with a breach of a contractual obligation has the choice to either compel its counterparty to perform the obligation, or to demand or invoke the dissolution of the agreement, both with payment of possible damages Moreover, generally, the underlying agreement can be terminated ("*ontbinden*"/"*résolution*") in whole or in part by the claimant (generally by court order). Termination has a retroactive effect The dissolution of the agreement can be invoked by a party when the counterparty does not fulfil its obligations under the agreement. In order to dissolve the agreement, the breach of the agreement needs to be serious and important ("*zwaarwichtig*"/"*grave*") Moreover, the party invoking the dissolution must expressly inform the counterparty in advance of its intention to dissolve, and such by formal notice of default (unless such notice of default has no use) In general, an agreement is dissolved by court order. However, an agreement can be dissolved by simple declaration of the claimant addressed to the non performing party. In such case, the court can asses a posteriori whether or not such out-of-court dissolution was legitimate	N/A
N/A	Civil Code	Article 1382	Liability arising from a tortious act ("*onrechtmatige daad*"/"*faute*"). Before a claim for damages on this basis can be successful, the claimant generally has the burden of evidencing that (i) the defendant has performed an unlawful act (by acting or by omission), (ii) that such unlawful act was attributable to such person, (iii) that the claimant suffered damages and (iv) that there is a causal link (*causaal verband/lien causal)* between the damages suffered and the unlawful act A contract party shall only liable based on article 1382 if the alleged breach is not only a breach of its contractual obligations, but also a breach of the general principle of good faith and if and to the extent that the damage is caused by such breach of the general principle of good faith	N/A
N/A	Civil Code	Art 6 Art 1108 Art 1133	Any legal act with an unlawful object shall be void. A legal act has an unlawful object if the terms of such agreement oblige to a performance which is prohibited by law or by public order or which is contrary to good morals. The scope of these articles is relatively broad as the notions of public order and good morals refer to terms of unwritten law which are deemed to be fundamental in a specific social or public situation. The assessment of whether an agreement is contrary public order or good morals resides with the courts Moreover, based on Belgian legal doctrine, an obligation under an agreement should not violate mandatory provisions of law	N/A
N/A	Civil Code	Art. 1109	A legal act can be annulled if entered into under the influence of violence ("*geweld*"/"*violance*"), deceit (*"bedrog"/"dol")* or error *("dwaling"/"erreur").*	N/A

Belgium

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
Any agreement to which the PLATFORM is a party can be supplemented by rules arising from fairness, customs or the law	N/A	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER	N/A	X	X	X	X
The PLATFORM must perform its contractual obligations.	The PLATFORM can be held liable for damages if the failure to perform can be attributed to the PLATFORM. Such failure could also lead to a dissolution of the agreement.	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER	X	X	X	X
The PLATFORM should not perform any unlawful act. The PLATFORM must comply with its legal obligations and ensure, to the best of its abilities, that the business on its online platform shall be conducted in a lawful manner. As such, the PLATFORM may not only be confronted with a claim on the basis of this tort law provision in respect of its own acts (or omissions) but also in respect of any acts (or omissions) by the PROJECT OWNER on the online platform and otherwise via the interference with the PLATFORM to the extent any such wrongdoing (or omission) of the PROJECT OWNER can be attributed to the PLATFORM. As no contractual relationship between the claimant and the defendant is needed for succesfully invoking an unlawful act under article 1382, the PLATFORM can be confronted with claims from INVESTORS as well the PROJECT OWNER but also from third parties.	The PLATFORM can be held liable for monetary damages if the unlawful act (including an omission) can be attributed to it, subject to the claimant being able to prove each of components of this tort law provision under Belgian law (unlawfulness, attributable to defendant, damages and causal link)	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER	X	X	X	X
The PLATFORM should ensure that the agreements (and other legal acts) are not violating good morals or public order Recommended to include a partial invalidity clause: if part of the agreement appears to be invalid, this clause ensures the legal validity of the remainder of the agreement irrespective of such partial invalidity	Any agreement, which is contrary to the principles of good morals and public order, shall be null and void ("*nietig* ") and is deemed not to have existed at all. Such nullity can be invoked by either party and ex officio by the courts In case of a breach of a mandatory provision, only the party adversely affected by such breach can invoke the nullity of the agreement	Please see PLATFORM. Applies *mutatis mutandis* to the PROJECT OWNER	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER	X	X	X	X
The PLATFORM must refrain from making any threats or deceiving any counterparty. The PLATFORM must provide information that forms a correct and complete representation of the facts.	In case of violence, deceit or error, the agreement can be declared null and void by a court. In such case, parties are brought back in the (legal) positions they were in as if there was no agreement from the outset. This may result in a claim for repayment of any payment made and the redelivery of any rewards granted, products delivered, etc. Moreover, if the conditions for such claims are fulfilled, a claim for damages can be made on the basis of an unlawful act (art. 1382 Civil Code)	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER	X	X	X	X

Belgium

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
N/A	Civil Code	Art. 1134 3rd par.	Agreements must be carried out in good faith ("*goede trouw* "/"*bonne foi* ") Article 1134 third paragraph of the Civil Code is one of the basic principle of Belgian civil law. The principle of good faith refers to the objective requirements of reasonableness and fairness. A party does not comply with such standards of reasonableness and fairness if he does not behave as a normal careful and thoughtful party ("*goede huisvader* "/"*bon père de famille* ").	N/A
N/A	Civil Code	Art. 1167 1st par.	Any creditor can intinitate proceedings against any acts of its debtor which result in prejudicing the rights of such creditor ("*pauliaanse vordering* "/"*action paulienne* ").	N/A

[1] Following a draft Law, this limit is to be increased to Eur 5,000

Belgium

Applicability and compliance recommendations **PLATFORM** (assumed to be a business)	**Sanctions for breach** **PLATFORM**	**Applicability and compliance recommendations** **PROJECT OWNER** (assumed to be a business)	**Sanctions for breach** **PROJECT OWNER**	**Relevant for type of Crowdfunding**			
				Investment based	**Lending based**	**Reward based**	**Donations based**
The PLATFORM should take into account the principles of reasonableness and fairness in conducting its activities.	Any terms contrary to the principles of good faith, are unenforceable. Any activity which conflictswith the principle of good faith, can lead to damages being payable.	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER	**X**	**X**	**X**	**X**
Provided that the PLATFORM does not enter in to any debt obligation itself, this clause is not relevant for the PLATFORM However, given that the PLATFORM deals with the INVESTORS and the PROJECT OWNER, it is recommended that the PLATFORM ensures, as much as possible, that none of these parties acts in violation of this clause when entering into a legal act	N/A	The PROJECT OWNER should not enter into any legal act which could prejudice his creditors.	The legal act will not be opposable to the creditor that was prejudiced by such legal act and therefore is deemed not to exist in with retroactive effect in respect of such specific creditor.	**X**	**X**	**X**	**X**

Estonia

EU legislation forming basis for national legislation	National legislation (excluding lower rules and regulations)	Main sections / chapters national legislation	Brief summary national legislation	Main definitions used in this part of national legislation relevant for crowdfunding
Amongst others: *Investment based:* MiFID (Directive 2004/39/EC; Regulation no. 1287/2006 and Directive 2006/73/EC) (and in the future: MiFID II (Directive 2014/65/EU) and MiFIR (Regulation no. 600/2014) Prospectus Directive (Directive 2010/73/EC amending Directive 2003/71/EC) Prospectus Regulation (Regulation no. 809/2004) AIFMD (Directive 2011/61/EC) *Lending based:* Consumer Credit Directive (Directive 2008/48/EC) Mortgage Credit Directive (Directive 2014/17/EU) *Potentially all tyes of crowdfunding:* Payment Services Directive (Directive 2007/64/EC) (and in the future PSD II (Directive proposal COM/2013/0547))	Amongst others: *Investment based:* Estonian Securities Market Act (**SMA**) *(väärtpaberituru seadus)* Estonian Investment Funds Act (**IFA**) *(investeerimisfondide seadus)* *Lending based:* Estonian Credit Institutions Act (**CIA**) *(krediidiasutuste seadus)* Estonian Creditors and Credit Intermediaries Act *(krediidiandjate ja -vahendajate seadus)* (**CCIA**) *Potentially all tyes of crowdfunding:* Payment Institutions and E-money Institutions Act (**PIEIA**) *(makseasutuste ja e-raha asutuste seadus)* Estonian Financial Supervision Authority Act *(finantsinspektsiooni seadus)* (**FSAA**) Estonian Administrative Procedure Act *(haldusmenetluse seadus)* (**APA**)	Section 48 of SMA (investment firm activity licence) Section 14' of SMA (prospectus obligation) Section 12 of IFA (management company activity licence) Section 4 of CIA (receipt of deposits from public) Section 15 of PIEIA (payment institution and e-money institution activity licence)	In Estonia, the regulatory framework of financial services are divided in different legal acts, depending on the finance sector. SMA regulates public offer of securities and their admittance to trading on regulated securities markets, the activities of investment firms, the provision of investment services, the operations of regulated securities markets and securities settlement systems as well as the exercising of supervision over the securities market and the participants therein. CIA regulates the foundation, activities, dissolution, liabilities and supervision of credit institutions. The provisions of APA apply to administrative proceedings prescribed in CIA, taking account of the specifications provided for in CIA and FSAA. PIEIA regulates the provision of payment services and e-money services, the activities and liability of payment institutions and e-money institutions and supervision over payment institutions and e-money institutions. The provisions of APA apply to administrative proceedings prescribed in PIEIA, taking account of the specifications provided for in PIEIA and FSAA. Depending factors are (among others): - type of crowdfunding (investment based, lending based, reward based or donation based) - the identity of the investor (consumer or not) - the exact role and activities of actor (investor, platform, project owner)	**Consumer** *(tarbija)* means a natural person who concludes a transaction not related to independent economic or professional activities **Financial institution** *(finantseerimisasutus)* means a company other than a credit institution, the principal and permanent activity of which is to acquire holdings or provide financial services. **Financial services** *(finantsteenused)* means services to third parties rendered by a person in the course of professional or economic activities which consist of the conclusion of the transactions and acts provided in section 6-1 of CIA. **Intermediation of credit** *(krediidi vahendamine)* means (i) intermediating the granting of credit or indicating the possibility to enter into a credit agreement to a consumer for a charge; (ii) assisting consumers in acts preliminary to entering into a credit agreement or in entering into the agreement and any other activities related thereto; (iii) in the interests of and for the benefit of the creditor, negotiating or entering into agreements on behalf and on the account of the creditor independently and on a permanent basis. **Security** *(väärtpaber)* means each of the following proprietary right or obligation or contract transferred on the basis of at least unilateral expression of will: (i) a share or other similar tradable right; (ii) a bond, convertible security or other tradable debt obligation issued which is not a money market instrument; (iii) a subscription right or other tradable right granting the right to acquire securities specified in (i) and (ii) above; (iv) an investment fund unit; (v) a money market instrument; (vi) a derivative security or a derivative contract; (vii) a tradable depositary receipt. **Securities market participant** *(väärtpaberituru osaline)* means issuer, bidder, investor, client or professional securities market participant. **Issuer** *(emitent)* means a legal person who has issued **securities** or has assumed an obligation to issue securities. **Offeror** *(pakkuja)* means a person who offers the securities to the public. **Investor** *(investor)* means a person who owns a security or who has assumed an obligation to acquire securities. **Offer of Securities** *(väärtpaberite pakkumine)* means a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe to these securities. **Payment services** *(makseteenused)* mean services provided by a person for the purposes of economic or professional activities provided in section 3-1 of PIEIA. **Payment institution** *(makseasutus)* means a company the permanent activity of which is the provision of payment services. A payment institution is a financial institution. **Investment fund** *(investeerimisfond)* means a pool of assets established for collective investment or a public limited company founded for collective investment on the basis of IFA, which is or the assets of which are managed on the principle of risk-spreading by a management company. **Investment firm** *(investeerimisühing)* is a public limited company whose permanent activity is the provision of one or more investment services to third parties or the performance of one or more investment activities on a professional basis. An investment firm is a financial institution
Directive 1999/93/EC on a Community framework for electronic signatures	Estonian General Part of the Civil Code Act *(tsiviilseadustiku üldosa seadus)* (**GPCCA**) Estonian Digital Signatures Act *(digitaalallkirja seadus)* (**DSA**)	Section 80-3 of GPCCA Section 3-1 of DSA	An electronic signature shall be given in a manner which allows the signature to be associated with the content of the transaction, the person entering into the transaction and the time of entry into the transaction.	**Certificate** *(sertifikaat)* means a document which is issued in order to enable a digital signature or digital seal to be given and verified and in which a public key is uniquely linked to the certificate holder. **Digital signature** *(digitaalallkiri)* means a data unit, created using a system of technical and organisational means, which is used by a signatory to indicate his or her link to a document. **Digital seal** *(digitaalne tempel)* means a data unit created by a system of technical and organisational means which the holder of the digital seal certificate uses to certify the integrity of a digital document and to link the certificate holder to such document. **Certificate holder** *(sertifikaadi omanik)* means a natural person in the case of a digital signature and either a natural or a legal person in the case of a digital seal, to whose data the public key contained in the certificate is linked in the same certificate.

Estonia

Applicability and compliance recommendations PLATFORM (assumed to be a business)	**Sanctions for breach PLATFORM**	**Applicability and compliance recommendations PROJECT OWNER** (assumed to be a business)	**Sanctions for breach PROJECT OWNER**	**Relevant for type of crowdfunding**			
				Investment based	**Lending based**	**Reward based**	**Donations based**
If and to the extent the PLATFORM falls within the scope of the act regulating a specific type of financial services, the rules and the regulations are applicable to the PLATFORM. Recommended to obtain local law advice in relation to any entrance rules and regulations under the regulatory framework as early as possible in the structuring phase. Recommended to obtain local law advice on a continuing basis in relation to the ongoing rules and regulations applicable after having entered the crowdfunding market. Depending on the type of crowdfunding, the PLATFORM may be subject to specific ongoing obligations such as information requirements, KYC requirements, conducting a suitability test with investors etc.	Economic activities without an activity licence may result in criminal sanctions in Estonia. According to section 371 of Estonian Penal Code, activities without an activity licence if committed in the field related to provision of credit, insurance or financial services, is punishable by a pecuniary punishment or up to three years' imprisonment. A failure to make public or submit to the Financial Supervision Authority a mandatory report, document, explanation or other data in a timely manner, or submission of an inaccurate or misleading information or publication thereof, is punishable with a fine. Violation of the requirement to register prospectus or to make prospectus public is punishable with a fine. Non-compliance with the regulatory regime may also lead to civil law sanctions, such as declaring the contract null and void or cancellation of the contract. It could also result with claim for damages.	The PROJECT OWNER may be also subject to the regulatory framework.	See PLATFORM. However, fines in case of natural persons are generally lower.	X	X	X	X
A digital signature has the same legal consequences as a hand-written signature if these consequences are not restricted by law and if it is proved that the digital signature and the system of using the digital signature complies with the requirements set forth in DSA.	If the requirements for the digital signature and the system of using the digital signature set forth in DSA are not fulfilled, or if it is proved that the private key was used for giving the signature without the consent of the holder of the corresponding certificate,the signature does not have legal consequences.	Please see PLATFORM; applies mutatis mutandis to PROJECT OWNER	Please see PLATFORM; applies mutatis mutandis to PROJECT OWNER	X	X	X	X

Estonia

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
Directive 2000/31/EC (E-Commerce Directive)	Information Society Services Act *(infoühiskonna teenuse seadus)* (**ISSA**)	Sections 1 and 4 of ISSA	ISSA provides the requirements for information society service providers, the organisation of supervision and liability for violation of ISSA. Information society services provided through a place of business located in Estonia shall meet the requirements arising from Estonian law regardless of the Member State of the EU or Member State of the EEA in which the service is provided. ISSA provides restricted liability upon temporary storage of information in cache memory and upon provision of information storage service.	I**nformation society services** *(infoühiskonna teenus)* are services provided in the form of economic or professional activities at the direct request of a recipient of the services, without the parties being simultaneously present at the same location, and such services involve the processing, storage or transmission of information by electronic means intended for the digital processing and storage of data. Information society services must be entirely transmitted, conveyed and received by electronic means of communication. Services provided by means of fax or telephone call and television or radio services are not information society services.
N/A	GPCCA	Section 85 and 86 of GPCCA	A transaction which is contrary to good morals or public order is void. A transaction is contrary to good morals, *inter alia* , if a party knows or must know at the time of entry into the transaction that the other party enters into the transaction arising from his or her exceptional need, relationship of dependency, inexperience or other similar circumstances, and if (i) the transaction has been entered into under conditions which are extremely unfavourable for the other party or (ii) the value of mutual obligations arising for the parties is out of proportion contrary to good morals. If any suspensive condition contained in a transaction is contrary to law, good morals or public order, the transaction is void. Moreover, if extinguishment of the rights or obligations specified by a transaction is made contingent on a condition which is contrary to law, public order or good morals, the transaction is deemed to be entered into without such condition. The nullity of a part of a transaction does not render the other parts void if the transaction is divisible and it may be presumed that the transaction would have been entered into also without the void part.	N/A
N/A	N/A	N/A	An obligation under the agreement may not violate a mandatory statutory provision. Under Estonian laws, mandatory rules may be expressed either as a direct prohibition to agree otherwise or it may be interpreted from the content of a provision.	N/A
N/A	GPCCA	Section 90 of GPCCA	A transaction entered into under the influence of a relevant mistake, fraud, threat or violence may be cancelled pursuant to the procedure provided by law. If a transaction is cancelled, the transaction is invalid from inception. That which is received on the basis of a cancelled transaction shall be returned pursuant to the provisions concerning unjust enrichment unless otherwise provided by law.	N/A
N/A	Estonian Bankruptcy Act *(pankrotiseadus)* (BA)	Sections 109 - 119 of BA	*Actio pauliana.* A debtor shall not conclude transactions or perform other acts which damage the interests of the creditors before the declaration of bankruptcy . If a transaction subject to recovery is concluded or any other act subject to recovery is performed during the period from the appointment of an interim trustee until declaration of bankruptcy, the transaction or act is deemed to damage the interests of the creditors.	N/A
Regulation 2006/2004 Directive 98/27/EC on injunctions for the protection of consumers' interests	Estonian Code of Civil Procedure *(tsiviilkohtumenetluse seadus)* (**CCP**)	Section 207 of CCP	Estonian laws do not allow the submission of collective claims, class actions, actions by representative bodies or other forms of public interest litigation. However, submission of a joint action by several plaintiffs is allowed. In such cases the plaintiffs may authorise one plaintiff to represent the others in the court proceedings. Notwithstanding this every plaintiff remains independent in the proceedings with regard to the other side and the award will be made individually to every plaintiff.	N/A
N/A	Estonian Law of Obligations Act (**LOA**)	Section 7 of LOA	An obligation under the agreement shall not be unacceptable according to standards of reasonableness. With regard to an obligation, reasonableness is to be judged by what persons acting in good faith would ordinarily consider to be reasonable in the same situation. In assessing what is reasonable, the nature of the obligation, the purpose of the transaction, the usages and practices in the fields of activity or professions involved and other circumstances shall be taken into account.	N/A

Estonia

Applicability and compliance recommendations PLATFORM (assumed to be a business)	**Sanctions for breach PLATFORM**	**Applicability and compliance recommendations PROJECT OWNER** (assumed to be a business)	**Sanctions for breach PROJECT OWNER**	**Relevant for type of crowdfunding**			
				Investment based	**Lending based**	**Reward based**	**Donations based**
Services of PLATFORM generally qualify as services of an information society. PLATFORM needs to comply with these minimum information requirements when setting up the website and in relation to each project posted on the website.	The provision of information society services which do not conform to the requirements provided for in ISSA for information that must be provided concerning service providers, for commercial communications or transmission thereof is punishable with a fine. State supervision over compliance with the requirements is exercised by Estonian Technical Surveillance Authority.	Services of PLATFORM generally qualify as services of an information society. PLATFORM needs to comply with these minimum information requirements when setting up the website and in relation to each project posted on the website.	The provision of information society services which do not conform to the requirements provided for in ISSA for information that must be provided concerning service providers, for commercial communications or transmission thereof is punishable with a fine.	**X**	**X**	**X**	**X**
PLATFORM should ensure that the agreements (and other legal acts) are not violating good morals or public order. It is recommended to include a partial validity clause.	The transaction (or a part of it) in contrary to good morals or public order is null and void. When the transaction is null and void, it is deemed to have not existed at all.	Please see PLATFORM; applies mutatis mutandis if the PROJECT OWNER prepares its own agreements (and other legal acts).	Please see PLATFORM; applies mutatis mutandis to the PROJECT OWNER.	**X**	**X**	**X**	**X**
PLATFORM should ensure that the agreements, terms and conditions and other legal acts do not violate mandatory statutory provisions.	The transaction (or a part of it) violating a mandatory provision is null and void. When the transaction is null and void, it is deemed to have not existed at all.	Please see PLATFORM; applies mutatis mutandis if the PROJECT OWNER prepares its own agreements and other legal acts.	Please see PLATFORM; applies mutatis mutandis to the PROJECT OWNER.	**X**	**X**	**X**	**X**
The PLATFORM must refrain from making any fraud, threat or violance and shall not intentionally inform the party inaccurately or incompletly.	A transaction shall not be cancelled after three years from entry into the transaction. If the basis for cancellation of a transaction is fraud or violence, the term is ten years. After cancellation of the contract, parties are back in the legal positions they were in as if there was no agreement. This may result in a claim for damages, repayment of any payments made on the basis of undue payments and the redelivery of any rewards granted, products delivered, or debt instruments or securities issued by a project owner, etc.	Please see PLATFORM; applies mutatis mutandis to the PROJECT OWNER	Please see PLATFORM; applies mutatis mutandis to the PROJECT OWNER	**X**	**X**	**X**	**X**
Provided that the PLATFORM does not enter into any debt obligation by itself, the clause is not relevant to the PLATFORM. However, as the PLATFORM deals with the investors and the project owner, it is recommended that the PLATFORM ensures that none of these parties acts in violation of this Article when entering into a legal act.	N/A	The PROJECT OWNER should not enter into transactions that would damage the interests of the creditors before the declaration of bankruptcy.	A court may revoke transactions which were concluded or other acts which were performed by the debtor before the declaration of bancruptcy and which damage the interests of the creditors.	**X**	**X**	**X**	**X**
To the extent the PLATFORM may be addressed in legal proceedings, submission of a joint action by several plaintiffs may be possible.	N/A	Please see PLATFORM; applies mutatis mutandis to the PROJECT OWNER	N/A	**x**	**x**	**x**	**x**
The PLATFORM must follow the principle of reasonableness in its activities.	Unreasonable terms may be unenforceable.	Please see PLATFORM; applies mutatis mutandis to the PROJECT OWNER	Please see PLATFORM; applies mutatis mutandis to the PROJECT OWNER	**X**	**X**	**X**	**X**

Estonia

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
N/A	LOA	Section 100 of LOA; Section 237 of LOA	A failure to perform a contractual obligation results in liability for damages. An obligor shall be liable for the failure to perform a contractual obligation unless it is excused. The claimant must generally notify the non-performing party of the default and offer the non-performing party a reasonable period in which it can still perform its obligation. This is however generally dispositive provision under Estonian law, i.e. the parties may deviate from this rule by contract.	N/A
N/A	LOA	Sections 1043 - 1055 of LOA (chapter 53 of LOA); Section 127 of LOA	Liability arising from unlawful causing of damage *(kahju õigusvastane tekitamine*). Before a claim for damages on this basis can be successful, the claimant generally has the burden of evidencing that (i) the defendant has performed an unlawful act, (ii) that such unlawful act was attributable to such person, (iii) that the claimant suffered damages, (iv) that there is a causal link between the suffered damages and the unlawful act, and (v) that the standard breached has the purpose of protecting the damages as suffered by the claimant. Compensation for damage arising from the violation of contractual obligations shall not be claimed on the bases of unlawful causing of damage (chapter 53 of LOA). However, compensation for damage arising from the violation of contractual obligations may be claimed on the bases of unlawful causing of damage if the objective of the violated contractual obligation was other than to prevent the damage for which compensation is claimed. Moreover, if the death, bodily injury or damage to the health of a person is caused as a result of the violation of a contractual obligation, the tortfeasor shall be liable for such damage also on the basis of unlawful causing of damage.	**Unlawfulness of causing damage** *(kahju tekitamise õigusvastasus)* means, above all, the damage which caused by (i) causing the death of the victim; (ii) causing bodily injury to or damage to the health of the victim; (iii) deprivation of the liberty of the victim; (iv) violation of a personality right of the victim; (v) violation of the right of ownership or a similar right or right of possession of the victim; (vi) interference with the economic or professional activities of a person; (vii) behaviour which violates a duty arising from law; (viii) intentional behaviour contrary to good morals.
Unfair Commercial Practices Directive 2005/29/EC	Estonian Consumer Protection Act (**CPA**)	Chapters 1 and 2 of CPA	The Unfair Commercial Practices Directive has been implemented in CPA. The use of unfair commercial practices is prohibited before, during and after making a commercial transaction related to goods or services. Commercial practices are unfair if they mislead consumers or are aggressive with respect to consumers. A commercial practice shall be unfair if it is contrary to the requirements for professional diligence to be applied by a trader in the economic or professional activities thereof, and it materially distorts or is likely to materially distort the economic behaviour with regard to the product or service of the average consumer whom it reaches or to whom it is addressed. Violation of the prohibition on the use of unfair commercial practices does not result, in itself, in the nullity of the transaction.	**Consumer** *(tarbija)* means a natural person to whom goods or services are offered or who acquires or uses goods or services for purposes not related to their business or professional activities. **Trader** *(kaupleja)* means a person who offers and sells, or markets in any other manner, goods or provides services to consumers within the scope of the person's business or professional activities. **Goods** *(kaup)* mean a thing or right offered, sold, or marketed in any other manner, by a trader. **Service** *(teenus)* means a benefit which is offered, sold, or marketed in any other manner, by a trader and which is not goods **Misleading commercial practice** *(eksitav kauplemisvõte)* means a commercial practice that contains false information or if presentation of factually correct information deceives or is likely to deceive the average consumer and as a result of it the average consumer makes or is likely to make a transactional decision that he or she would not have made otherwise. **Professional diligence** *(majandus- või kutsetegevuses järgitav hoolsus)* means an activity or a trader in the economic or professional activities in standard of such skills and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice and the principle of good faith shall be taken as the basis. **Agressive commercial practice** *(agressiivne kauplemisvõte)* means a commercial practice by harassment, coercion, including the use of physical force, or undue influence, it significantly impairs or is likely to significantly impair the average consumer's freedom of choice or conduct with regard to goods or services and thereby causes or is likely to cause the consumer to make a transactional decision that the consumer would not have made otherwise.
Directive 2006/114/EC concerning misleading and comparative advertising (consolidates Directives 84/450/EC and 97/55/EC)	Estonian Advertisement Act *(reklaamiseadus)* (**AA**)	Section 4 of AA	It is prohibited to use advertising methods which in any way mislead or is likely to mislead the persons to whom it is directed or whom it reaches and which is likely to affect their economic behaviour or may injure a competitor of the person placing advertising. Comparison may be used in advertisements only when the comparison is based on one or several relevant, material and verifiable features of the compared goods or services (it may also include price).	N/A

Estonia

Applicability and compliance recommendations PLATFORM (assumed to be a business)	**Sanctions for breach PLATFORM**	**Applicability and compliance recommendations PROJECT OWNER** (assumed to be a business)	**Sanctions for breach PROJECT OWNER**	**Relevant for type of crowdfunding**			
				Investment based	**Lending based**	**Reward based**	**Donations based**
The PLATFORM must perform its contractual obligations. If the PLATFORM represents the interests of the investors in dealing with the PROJECT OWNER (i.e. acting as an intermediary), it would be recommendable to include a clause in the agreement that no prior default notice is required in order for the non performing party to be in default.	The PLATFORM can be held liable for damages if the failure to perform can be attributed to the PLATFORM. Damages can be based on delay in performance and to offer an alternative compensation for performance of the obligation. Moreover, generally, the underlying agreement can be terminated in whole or in part by the claimant (either by an out of court declaration by the claimant to the non performing party or by court order). Termination does not have retroactive effect.	The PROJECT OWNER must perform its obligations.	Please see PLATFORM; applies mutatis mutandis to the PROJECT OWNER	**X**	**X**	**X**	**X**
The PLATFORM should not conduct any unlawful act. The PLATFORM must adhere to its duties imposed by Estonian laws and ensure, to the best of its abilities, that the business on its online platform shall be conducted in a lawful manner. As such, the PLATFORM could not only be confronted with a claim on the basis of this tort law provision under Estonian law in respect of its own acting (or omission) but also in respect of any acting (or omission) by the PROJECT OWNER on the online platform and otherwise via the interference with the PLATFORM to the extent any such wrongdoing (or omission) of the PROJECT OWNER can be attributed to the PLATFORM.	The PLATFORM can be held liable for monetary damages if the unlawful act or omission can be attributed to it, subject to the claimant being able to prove each of components of this tort law provision under Estonian law. Compensation for damage arising from the violation of contractual obligations between claimant and defendant shall generally not be claimed on the bases of tort law provisions.	The PROJECT OWNER shall not conduct any unlawful acts.	Please see PLATFORM; applies mutatis mutandis to the PROJECT OWNER	**X**	**X**	**X**	**X**
A PLATFORM will, most probably, be considered a trader and must ensure that any of his commercial practices are fair and in any event not misleading nor agressive. The very basic (but not exhaustive) rules to comply with in respect of the provision of information is that: - any information provided must be complete, accurate, comprehensible and not misleading; - information provided to consumers shall be in Estonian; - its commercial character should be made explicit to the consumer; - any material information should be provided in a transparent and timely fashion; and - compliance with any applicable marketing restrictions.	The PLATFORM acts illegimately towards customers if the commercial practice of the PLATFORM is considered to be unfair (section 12 of CPA) and in such cases the consumer may file a suit against the PLATFORM. The burden of proof in respect of material accuracy and completeness of information provided lays generally on the PLATFORM. The PLATFORM will not be liable when it is able to prove that the unlawful act is not attributable to it. The PLATFORM may be confronted with claims from INVESTORS and the PROJECT OWNER as well as from the third parties under the provisions of tort law. Violation of the prohibition on the use of unfair commercial practices does not result, in itself, in the nullity of the transaction (section 12-2 of CPA). The consumer has a right to demand compensation for any patrimonial or non-patrimonial damage (section 3-5 of CPA).	If and to the extent that the PROJECT OWNER is considered to be a trader, the same as set out in relation to the PLATFORM applies mutatis mutandis to the PROJECT OWNER.	Violation by a trader of the prohibition to use unfair commercial practices is punishable with a fine.	**X**	**X**	**X**	**X**
The PLATFORM must ensure that it does not make any misleading publication and that it does not use any impermissible comparative advertising either by itself or on the behalf of a PROJECT OWNER.	The PLATFORM acts illegimately when publishing misleading announcements or impermissable comparative advertising. The PLATFORM will not be liable when it can prove that the unlawful act is not attributable to it. A claimant can request the court to prohibit the publication of any misleading announcement or impermissible comparative advertising . The PLATFORM may be confronted with claims from INVESTORS and the PROJECT OWNER as well as from the third parties under the provisions of tort law.	Any misleading publications or impermissible comparative advertising by the PROJECT OWNER itself, or by the PLATFORM at the request of the PROJECT OWNER, result in an unlawful act of the PROJECT OWNER towards an investor or third party acting in the course of its business or profession.	Please see PLATFORM; applies mutatis mutandis to the PROJECT OWNER.	**X**	**X**	**X**	**X**

Estonia

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
N/A	GPCCA	Section 90, 92 and 99 of GPCCA	A transaction entered into under the influence of a relevant mistake *(eksimus)* may be cancelled. A transaction is entered into under the influence of a relevant mistake if upon entry into the transaction the mistake was of such importance that a reasonable person similar to the person who entered into the transaction would not have entered into the transaction in the same situation or would have entered into the transaction under materially different conditions. A person who entered into a transaction under the influence of a relevant mistake may cancel the transaction if: (i) the mistake was caused by circumstances disclosed by the other party to the transaction, or non-disclosure of circumstances by the other party if disclosure of the circumstances was required pursuant to the principle of good faith; (ii) the other party knew or should have known of the mistake and leaving the mistaken party in error was contrary to the principle of good faith; (iii) the other party to the transaction entered into the transaction on the basis of the same erroneous circumstances, except if the other party could have presumed, having the correct perception of the circumstances, that the mistaken party would have entered into the transaction even if it had known about the mistake.	**Mistake** *(eksimus)* means an erroneous assumption relating to existing facts.
Consumer Rights Directive (Directive 2011/83/EU) Distance Marketing of Financial Services Directive (Directive) 2002/65/EC)	LOA	Section 54' and 56 of LOA	Section 54'-1 provides the pre-contractual information to consumer in case of financial service contract. A consumer may withdraw from a distance contract within 14 days without giving any reason. In the case of a contract for provision of financial services, the term for withdrawal shall begin from the day of the entry into the contract or from provding the pre-contractual information and the terms of contract if this takes place after entry into contract. In case of communication by telephone, the name of the provider of the financial service and the commercial purpose of the telephone call shall be made clearly known to the consumer at the beginning of the conversation.	**Trader** *(ettevõtja)* means a person, including a legal person in public law, who concludes a transaction which is related to independent economic or professional activities (please note that a different definition of trader is used is used in CPA). **Consumer** *(tarbija)* means a natural person who concludes a transaction not related to independent economic or professional activities (please note that a different definition of consumer is used is used in CPA
Unfair Contract Terms Directive (93/13/EEC)	LOA	Section 42 of LOA	A standard term is void if the term causes unfair harm to the other party, particularly if it causes a significant imbalance in the parties' rights and obligations. Unfair harm is presumed if a standard term derogates from a fundamental principle of law or restricts the rights and obligations arising for the other party from the nature of the contract such that it becomes questionable as to whether the purpose of the contract can be achieved.	N/A
Consumer Credit Directive (Directive 2008/48/EC)	LOA CCIA	Chapter 22, division 2 (sections 402-421) of the LOA	This division includes specific provisions applicable to consumer credit agreements. These specific provisions stipuate, among others, the requirement of pre-contractual infomation, the implementation of principle of responsible lending, information concerning interest rate. These provisions cannot be deviated to the detriment of the consumer.	**Consumer credit contract** *(tarbijakrediidileping)* means a credit contract by which a creditor, in the course of the economic or professional activities thereof, grants or undertakes to grant credit or a loan to a consumer. **Consumer** (*tarbija)* means a natural person who concludes a transaction not related to independent economic or professional activities. **Creditor** *(krediidiandja)* means a person who undertakes to transfer a sum of money (the credit) to the disposal of another person (the debtor). Please note that under CCIA creditor means an undertaking whose economic or professional activities include the granting of credit to a consumer. **Credit broker** *(krediidivahendaja)* means a person who undertakes to arrange, for a charge, for credit to be granted to consumers in the course of the economic or professional activities of the credit broker or to indicate the possibility to enter into a credit contract or undertakes, in the interests of and for the benefit of the creditor, to negotiate or enter into contracts in the name and on account of the creditor independently and on a permanent basis. Please note that under CCIA credit intermediary [credit broker] means a natural or legal person that is not operating as a creditor and whose economic or professional activities include intermediating credit to a consumer.
Payment Services Directive (Directive 2007/64/EC)	PIEIA	PIEIA	Payment Institutions and E-money Institutions are also required to comply with detailed conduct of business requirements set out in PIEIA.	Falls out of the scope of this research to include in detail. Reference is made to the Payment Services Directive which is generally implemented in Estonian law on a harmonised basis.

Estonia

Applicability and compliance recommendations PLATFORM (assumed to be a business)	**Sanctions for breach PLATFORM**	**Applicability and compliance recommendations PROJECT OWNER** (assumed to be a business)	**Sanctions for breach PROJECT OWNER**	**Relevant for type of crowdfunding**			
				Investment based	**Lending based**	**Reward based**	**Donations based**
The PLATFORM must provide information that forms correct and complete representation of the facts.	The transaction may be cancelled.If a transaction is cancelled on the bases and pursuant to the procedure provided by law, the transaction is invalid from inception. In case of mistake, a transaction may be cancelled within six months of discovery of mistake and regardless of the discovery of mistake, a transaction shall not be cancelled after three years have passed from entry into the transaction.	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER.	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER.	**X**	**X**	**X**	**X**
The PLATFORM is considered a trader and should take notice of these provisions.	Where a consumer withdraws from a contract for the provision of financial services, the provider of the financial service shall reimburse the consumer, immediately upon receipt of the application for withdrawal but not later than 30 days after it, for all payments received from the consumer under the contract.	The PROJECT OWNER is generally considered to be a trader and should take notice of these provisions.	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER.	**X**	**X**	**X**	**X**
The PLATFORM shall take notice of these provisions when drafting its standard terms.	A standard term is void when it causes unfair harm to other party and standard terms are not applicable when the PLATFORM did not make the terms available to the other party before enty into contract.	To the extent the PROJECT OWNER has any standard terms, it should take notice of these provisions when drafting its standard terms and it has to make the standard terms available to the other party before the conclusion of the contract	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER to the extent the PROJECT OWNER has any standard terms	**X**	**X**	**X**	**X**
To the extent the PLATFORM is considered a credit provider or a credit intermediary should adhere to the specific provisions as laid down in LOA and CCIA.	Agreements which derogate from the provisions of this division to the detriment of the consumer are void. The provisions of this division also apply if an attempt is made to avoid application of the provisions by different wording of agreements, in particular upon division of the credit amount between several contracts.	N/A	N/A	**N/A**	**X**	**N/A**	**N/A**
Under certain circumstances the PLATFORM could be considered a payment services provider, PIEIA is applicable		N/A	N/A	**x**	**x**	**x**	**x**

Estonia

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
Rome I Regulation (Regulation no. 593/2008)	Direct effect; Estonian Private International Law *(rahvusvahelise eraõiguse seadus)* (**PIL**)	Part 6, Chapter 1, Division 1 of PIL	Rome I Regulation determines applicable laws in case of cross border claims based on contracts.	N/A
Rome II Regulation (Regulation no. 864/2007)	Direct effect; PIL	Part 6, Chapter 2	Rome II determines applicable laws in case of cross border claims based on other legal grounds than contracts, including unlawful acts. The provisions of PIL shall apply only insofar as not provided otherwise by Rome II Regulation.	N/A

Notes:

(1) The information above is a brief summary of the civil law legal grounds and liability risks potentially applicable to parties involved in crowdfunding outside insolvency proceedings. It is not definitive legal advice and should not be treated as such.

(2) The information is provided in an environment where laws and their interpretation may change relatively rapidly. There may also be situations where the law is ambiguous and/or where its consequences or implications are unclear. In these circumstances, our advice is, and can only be, based on our current understanding of the law and our reasonable professional judgment.

(3) Not all legal issues can be covered, for example this does not extend to data protection rules on direct marketing, or IT law around the use of cookies. We have covered the major issues likely to be of concern to a party involved in

(4) The references to legislation and legislation section numbers in this chart are not exhaustive; we have made reference to only some of the most critical pieces of law.

Estonia

Applicability and compliance recommendations PLATFORM (assumed to be a business)	**Sanctions for breach PLATFORM**	**Applicability and compliance recommendations PROJECT OWNER** (assumed to be a business)	**Sanctions for breach PROJECT OWNER**	**Relevant for type of crowdfunding**			
				Investment based	**Lending based**	**Reward based**	**Donations based**
The PLATFORM may include a choice of law clause in the agreement which would determine the laws applicable to the contractual relationship.	Not relevant	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER.	Not relevant	x	x	x	x
PIL and Rome II Regulation determine applicable law.	Not relevant	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER.	Not relevant	x	x	x	x

Finland

EU legislation forming basis for national legislation	National legislation (excluding lower rules and regulations)	Main sections / chapters national legislation	Brief summary national legislation	Main definitions used in this part of national legislation relevant for crowdfunding
MiFID (Directive 2004/39/EC; Regulation no. 1287/2006 and Directive 2006/73/EC) (and in the future: MiFID II (Directive 2014/65/EU) and MiFIR (Regulation no. 600/2014)	The Finnish Act on Investment Services (in Finnish: *sijoituspalvelulaki* , 747/2012, the "**ISA**") At present, there is no coherent regulatory regime specifically adapted to crowdfunding in Finland. Thus, the regulatory treatment of a crowdfunding platform is dependent on how the service of the platform and the product it offers are constructed. This also has an effect on what types of possibilities an investor would have when claiming for damages. Especially the "investment based crowdfunding" model is subject to heavy regulation, as the general financial market legislation becomes applicable, including the ISA. However, as there is currently no specific legislation applicable to crowdfunding projects, there are no legal definitions for "investment based crowdfunding" model or "lending based crowdfunding" model under Finnish law. In general, the provision of services relating to financial instruments (including transferabe securities) is considered to constitute an investment service under Finnish law. A license in accordance with the ISA is required for the provision of investment services. Therefore, in general, Finnish law qualifies securities-based platforms (including securities-based lending platforms) as "investment based crowdfunding". A license in accordance with the ISA is not required for platforms providing peer-to-peer lending opportunities since individual loan agreements do not constitute regulated financial instruments. Thus, in general, the lending of funds to a company from the crowd through individual loan agreements (and not through financial instruments) is considered as "lending-based crowdfunding" in Finland.	Chapter 2 of the ISA (authorisation requirement for the provision of investment services) Chapter 1, section 11 of the ISA (investment services) Chapter, section 10 of the ISA (financial instruments)	The ISA governs the provision of investment services in Finland. Such investment services include, among others, reception and transmission of orders, exectution of orders, investment advice and placing of financial instruments. According to chapter 1, section 11, subsection 1(1) of the ISA, reception and transmission of orders in relation to one or more financial instruments is regarded as an investment service. Pursuant to the Finnish Financial Supervisory Authority's (the "**FIN-FSA**") interpretation, such transmission of orders is considered to include a service the purpose of which is to bring together parties to a business transaction related to a financial instrument in the manner that enables execution of a transaction between these parties. Consequently, transmission of orders also includes acting as a place of subscription, where the service provider – for instance, in connection with a share issue – receives subscriptions from the public and transmits them further to the organiser of the issue. If the service provider executes an order for the account of a client, the activity is considered an execution of order, as defined in Chapter 1, section 11, subsection 1(2) of the ISA. Authorisation for investment advice according to Chapter 1, section 11, subsection 1(5) of the ISA will be needed if the investor is provided with individual recommendations (advice) tailored for the investor's needs in connection with a business transaction, such as a purchase or sale, related to a certain financial instrument. Activity in which the service provider offers an issuer of a financial instrument a service for the purpose of acquiring investors is considered to constitute the placing of financial instruments without a firm commitment basis, as defined in the ISA (chapter 1, section 11, subsection 1(7) of the ISA).	**Financial instrument** Financial instruments within the meaning of the ISA include transferable securities (i.e. shares and bonds or other forms of securitised debt) and other financial instruments. The definition of a financial instrument is based on Annex I of the MiFID. **Investment service** (the qualification of an activity as investment service under the ISA is based on Annex I of the MiFID. The only exception is that according to the ISA also safekeeping of financial instruments under the Finnish Act on Securities Accounts (in Finnish: *laki arvopaperitileistä,* 2012/750) and acting as account operator/custodian in the Finnish book-entry system constitute an actual investment service that is a licensable activity. Other types of safekeeping and administration of securities only constitute ancillary services as provided in the MiFID)
AIFMD (Directive 2011/61/EU)	The Finnish Act on Alternative Investment Fund Managers (in Finnish: *laki vaihtoehtorahastojen hoitajista*, 162/2014, the "**AFMA**").	Chapter 3, section 1 of the AFMA (authorisation/registration requirement for a fund manager) Chapter 2, section 1 of the AFMA (definition of an alternative investment fund ("AIF")) Chapter 2, section 2 of the AFMA (definition of an alternative investment fund manager ("AIFM"))	The AFMA governs the management and marketing of AIFs. An AIF is a collective investment undertaking (other than UCITS) that raises capital from a number of investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors. The legal form of the AIF is not restricted. An AIF is typically a limited partnership or a limited liability company, but can also be a cooperative or even established by a contractual arrangement. In practice, the AFMA governs managing and marketing of all non-UCITS funds, whether open-ended or closed-ended. Due to the broad definition of an AIF, a wide range of investment vehicles previously exempted in private placements or, alternatively, unregulated by default, were brought into the scope of financial regulation and supervision in Finland by the entry into force of the AFMA in 2014.	**Alternative investment fund (AIF):** The AFMA sets the following criteria for an AIF which must all be fulfilled in order for an undertaking to be qualified as an AIF: (i) acquires funds or receives capital from (ii) several investors, (iii) invests in accordance with a defined investment policy (iv) for the benefit of the investors, and (v) the undertaking is not a UCITS fund

Finland

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
If the PLATFORM falls within the scope of the ISA, the PLATFORM shall comply with all the requirements of the ISA starting from the authorisation requirement. The provision of investment services requires either an authorisation in Finland or a notification in accordance with the MiFID passporting regime. When providing investment services, the PLATFORM is required to comply with specific pre-investment requirements, such as know-your-customer requirement, pre-investment disclosure requirement and the suitability/appropriateness assessment requirement. Before commencing any operations (that might fall within the scope of the ISA) in Finland, local law advice in relation to Finnish rules and regulations shall be obtained. It is recommended to obtain such local advice already in the structuring phase in order to avoid any pitfalls. After having entered the crowdfunding market, it is also recommended to obtain local law advice on a continuing basis in relation to the ongoing rules and regulations applicable to investment service providers.	**Damages** Pursuant to the Chapter 16, section 1 of the ISA, an investment firm shall be liable to compensate any damage it has caused to a client or to another person willfully or through negligence with a procedure in violation of the ISA, the provisions or orders issued thereunder, EU regulations issued under the MIFID, Regulation (EU) No 575/2013, or EU regulations issued under the CRD IV regime. The adjustment of damages and the allocation of liability among two or more persons liable for the damages shall be governed by the provisions of Chapters 2 and 6 of the Finnish Tort Liability Act (in Finnish: *vahingonkorvauslaki* 412/1974, the "**Tort Liability Act**"). **Administrative sanctions** The FIN-FSA may impose administrative sanctions, including administrative fines, public warnings and penalty payments for failures to comply with or violations of the provisions of the ISA. Furthermore, intentional or grossly negligent provision of investment services without a proper authorisation constitutes a criminal offence in Finland.	The rules of the ISA are not applicable to the PROJECT OWNER. However, the PROJECT OWNER might be liable for the drawing up and publication of a prospectus (in case of a public offering of securities) or an information memorandum (in case of a private placement of securities).	Not applicable, as the rules of the ISA are not applicable to the PROJECT OWNER.	X			
If the funding activity is conducted in the form of an AIF (i.e. all the qualifications of an AIF are met), the PLATFORM falls within the scope of the AFMA. Consequently, the PLATFORM shall comply with all the requirements of the AFMA starting from the authorisation requirement (i.e. either the PLATFORM must be authorised as an AIFM or a separate AIFM must be designated to manage the AIF). When managing an AIF, the AIFM is required to comply with specific pre-investment requirements, such as know-your-customer requirement and pre-investment disclosure requirements. As a starting point, shares/interests in an AIF may only be offered to professional clients in Finland. Before commencing any operations that might fall within the scope of the AFMA, local law advice in relation to Finnish rules and regulations shall be obtained. After having entered the crowdfunding market, it is also recommended to obtain local law advice on a continuing basis in relation to the ongoing rules and regulations applicable to alternative investment fund managers.	**Damages** Pursuant to the Chapter 22, section 8 of the AFMA, an AIFM (a Finnish AIFM as well as an EEA AIFM) shall be liable to compensate any damage it has caused to an investor or to another person willfully or through negligence with a procedure in violation of the AFMA, the provisions or orders issued thereunder, or EU regulations issued under the AIFMD (Directive 2011/61/EU). The adjustment of damages and the allocation of liability among two or more persons liable for the damages shall be governed by the provisions of Chapters 2 and 6 of the Tort Liability Act (412/1974). **Administrative sanctions** The FIN-FSA may impose administrative sanctions, including administrative fines, public warnings and penalty payments for failures to comply with or violations of the provisions of the AFMA. Pursuant ot Chapter 22, section 5 of the AFMA, a person that intentionally or due to gross negligence manages or markets AIFs without authorization faces criminal charges and sanctions.	N/A	N/A	X	X		

Finland

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
Prospectus Directive (Directive 2010/73/EU amending Directive 2003/71/EC) Prospectus Regulation (Regulation no. 809/2004)	The Finnish Securities Markets Act (in Finnish: *arvopaperimarkkinalaki* , 746/2012, the "**SMA**")	Chapter 1, Sections 2-4 of the SMA (the general principles of the SMA that shall always be complied with when marketing/offering securities in Finland) Chapter 4 of the SMA (the obligation to publish a prospectus and the exemptions to this obligation)	The SMA sets out rules for, *inter alia* , the obligation to publish a prospectus relating to transferable securities. The SMA also regulates the ongoing and periodic disclosure obligations of issuers. Furthermore, especially concerning so called private placements (i.e. securities offerings where there is no requirement to publish a prospectus), the SMA sets out certain general principles that shall always be complied with when marketing/offering securities in Finland. Pursuant to these general principles: a) it is prohibited to act contrary to good practice in the securities markets. b) securities shall not be marketed by giving false or misleading information. Such information, which is found to have been misleading or false after its presentation and which may be of material importance to an investor shall, without delay, be corrected or supplemented in a sufficient manner. c) anyone who offers securities shall be liable to keep sufficient information on factors that may have a material effect on the value of the security equally available to the investors. This requirement is specially set with a view to a case in which there is no requirement to publish a prospectus.	**Security** means a security which is negotiable and issued or meant to be issued to the public together with several other securities with similar rights. This may, for example, be: 1) a share in a limited-liability company or a corresponding share of another entity as well as a depositary receipt in respect of such right; 2) a bond or other securitised debt as well as a depositary receipt in respect of such right; 3) any other security giving the right to acquire or sell a security referred to in paragraph 1 or 2 or a security giving rise to a cash settlement determined by reference to a security, currency, interest rate or yield, commodity or other index or measure; 4) a unit in a fund referred to in the Act on Common Funds (48/1999), or a unit issued by a collective investment undertaking comparable thereto. **Financial instrument** (the definition of a financial instrument is based on MifiD) **Issuer** means a Finnish or a foreign entity that has issued a security **Offer to the public** means a communication to persons presenting or intended to present sufficient information on the terms of the offer and the security offered, so as to enable to decide to purchase or subscribe to the security.
Consumer Credit Directive (2008/48/EC)	The Consumer Protection Act (in Finnish: *kuluttajansuojalaki* , 38/1978, the "**CPA**"). The Act on Registration of Certain Providers of Credit (in Finnish: *Laki eräiden luotonantajien rekisteröimisestä*, 747/2010, the "**ARCPC**").	Chapter 7 of the CPA (consumer credits) Section 2 of the ARCPC (registration requirement for consumer credit providers)	Chapter 7 of the CPA sets out detailed requirements for the provision of consumer credits. The CPA sets out rules regarding e.g. the price of the credit, the marketing of consumer credits, pre-contractual disclosure requirements, distance selling requirements, creditworthiness assessment, content of the credit agreement, consumer's right to withdraw from the credit agreement and consumer's right to repay the credit early at any time etc. With respect to the price of the credit, there is a provision regarding the annual percentage rate cap (the APR cap) that set limits to the price of the credit. Also credit intermediaries are required to comply with certain obligations of Chapter 7 of the CPA. Pursuant to the ARCPC, a grantor of a consumer credit must be registered in a list maintained by the Regional State Administrative Agency for Southern Finland ("**RSAA**"). By this registration, a consumer credit provider becomes subject to RSAA's supervision.	**Consumer** is defined as a natural person who acquires consumer goods and services primarily for a use other than business or trade. **Business** is defined as a natural person or a private or public legal person who, in order to obtain income or other economic benefit, deals in, sells or otherwise offers consumer goods or services on a professional basis and for consideration. **Consumer credit** means credit that, by agreement, is granted or promised to a consumer by a business in the form of a loan, deferred payment or another corresponding financial arrangement. **Credit intermediary** means a business who is not acting as a creditor and who, in the course of his trade, business or profession: (i) presents or offers credit agreements to consumers; (ii) assists consumers by undertaking preparatory work in respect of credit agreements other than as referred to in (i); or (iii) concludes credit agreements.

Finland

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
Public offerings An obligation to publish a prospectus arises when securities are offered to the public and none of the private placement exemptions of the SMA apply. Although it is the issuer who is primarily responsible for the drawing up and publication of the prospectus, also the PLATFORM could be held liable if securities are being offered to the public through the PLATFORM without a proper prospectus. **Private placements** Pursuant to Chapter 1, section 4 of the SMA, anyone who, by himself or on the basis of an assignment, offers securities..., shall be liable to keep sufficient information on factors that may have a material effect on the value of the security equally available to the investors. Thus, if there is no requirement to publish a prospectus, all investors shall in any case be provided with sufficient infromation on the factors that may have a material effect on the value of the security. Although it is the issuer who is primarily responsible for making sufficient information available to the investors, also the PLATFORM could be held liable if securities are offerred to investors in such manner that sufficient information has not been made available to the investors. **Rules regarding the marketing of securities** Any who markets securities in Finland shall comply with all the rules regarding the marketing of securities. Thus, when designing the PLATFORM, it should be assessed whether the marketing that takes palce on the PLATFORM complies with the requirements of the SMA and the regulations issued thereunder. It is recommended to obtain local law advice in relation to Finnish rules and regulations governing the marketing of securities.	**Damages** According to Chapter 16, section 1 of the SMA, anyone who wilfully or through negligence causes damage to another person through conduct in violation of the SMA, the provisions or regulations issued thereunder or of the regulations or decision of the European Commission issued under the Transparency Directive, the Prospectus Directive or the Market Abuse Directive shall be liable to compensate a damage caused by him. Conduct violating the SMA can result in damages for parties that are in a contractual relationship with the party having caused damages as well as damages for parties that are not in a contractual relationship with such a party (however, in order for a damage claim to succeed, the damages that have occurred must have been a causal connection to the conduct violating the SMA). Pursuant to the general principles of the SMA, it is, *inter alia*, always prohibited to provide false or misleading information in the marketing and exchange of securities or other financial instruments and, consequently, anyone who markets securities or other financial instruments in Finland shall comply with this requirement. It is possible that both the PLATFORM and the PROJECT OWNER are carrying out marketing activities in relation to the securities offered through the PLATFORM, in which case both of them must take into account the general marketing rules of the SMA. Depending on how the service of the PLATFORM and the product it offers are constructed, both the PLATFORM and the PROJECT OWNER could be held liable for economic loss suffered by investors if securities are offered or marketed in a manner that violates the SMA. The adjustment of damages and the allocation of liability among two or more persons liable for the damages shall be governed by the provisions of Chapters 2 and 6 of the Tort Liability Act (412/1974). **Administrative sanctions** The FIN-FSA may impose administrative sanctions, including administrative fines, public warnings and penalty payments for failures to comply with or violations of the provisions of the SMA.	**Public offerings** An obligation to publish a prospectus arises when securities are offered to the public and none of the private placement exemptions of the SMA apply. In such case, the PROJECT OWNER shall draw up and publish a prospectus. **Private placements** Pursuant to Chapter 1, section 4 of the SMA, anyone who, by himself or on the basis of an assignment, offers securities..., shall be liable to keep sufficient information on factors that may have a material effect on the value of the security equally available to the investors. Thus, if there is no requirement to publish a prospectus, all investors shall in any case be provided with sufficient infromation on the factors that may have a material effect on the value of the security. Thus, the PROJECT OWNER is responsible for making sufficient information equally available to the investors. **Rules regarding the marketing of securities** Any who markets securities in Finland shall comply with all the rules regarding the marketing of securities. It is recommended to obtain local law advice in relation to Finnish rules and regulations governing the marketing of securities.	**Damages** According to Chapter 16, section 1 of the SMA, anyone who wilfully or through negligence causes damage to another person through conduct in violation of the SMA, the provisions or regulations issued thereunder or of the regulations or decision of the European Commission issued under the Transparency Directive, the Prospectus Directive or the Market Abuse Directive shall be liable to compensate a damage caused by him. Conduct violating the SMA can result in damages for parties that are in a contractual relationship with the party having caused damages as well as damages for parties that are not in a contractual relationship with such a party (however, in order for a damage claim to succeed, the damages that have occurred must have been a causal connection to the conduct violating the SMA). Pursuant to the general principles of the SMA, it is, *inter alia*, always prohibited to provide false or misleading information in the marketing and exchange of securities or other financial instruments and, consequently, anyone who markets securities or other financial instruments in Finland shall comply with this requirement. It is possible that both the PLATFORM and the PROJECT OWNER are carrying out marketing activities in relation to the securities offered through the PLATFORM, in which case both of them must take into account the general marketing rules of the SMA. Depending on how the service of the PLATFORM and the product it offers are constructed, both the PLATFORM and the PROJECT OWNER could be held liable for economic loss suffered by investors if securities are offered or marketed in a manner that violates the SMA. The adjustment of damages and the allocation of liability among two or more persons liable for the damages shall be governed by the provisions of Chapters 2 and 6 of the Tort Liability Act (412/1974). **Administrative sanctions** The FIN-FSA may impose administrative sanctions, including administrative fines, public warnings and penalty payments for failures to comply with or violations of the provisions of the SMA.	X			
If the PLATFORM is considered a credit intemediary, it shall comply with the obligations applicable to credit intermediaries, as set out in Chapter 7 of the CPA. It is important to note that pursuant to an interpretation issued by the Consumer Ombudsman (in Finnish: *kuluttaja-asiamies*), under certain conditions a PLATFORM could be considered to qualify as the actual grantor of consumer credit (instead of being just a credit intermediary). Especially if the lender/investor and the person obtaining credit (being a consumer) are anonymous to each other and the PLATFORM has the actual decision making powers in matters relating to the provision of credit (the PLATFORM e.g. makes the credit granting decisions and takes care of the debt collection), the PLATFORM could be considered to qualify as the actual grantor of credit, in which case the PLATFORM should comply with all the requirements applicable to grantors of consumer credit (including the requirements set out in Chapter 7 of the CPA and the requirement to register with the RSAA).	Pursuant to Chapter 7, section 50 of the CPA, a credit provider and a credit intermediary may be prohibited from continuing or repeating practices that violate the obligations in the legislation.The prohibition may be reinforced through a conditional fine.	Not applicable	Not applicable		X		

Finland

EU legislation forming basis for national legislation	National legislation (excluding lower rules and regulations)	Main sections / chapters national legislation	Brief summary national legislation	Main definitions used in this part of national legislation relevant for crowdfunding
Directive 2013/36/EU (CRD IV)	The Finnish Act on Credit Institutions (in Finnish: *laki luottolaitostoiminnasta*, 610/2014, the "**ACI**")	Chapter 2, section 1 of the ACI (authorisation requirement) Chapter 1, section 5 of the ACI (definition of credit insitution activity)	The ACI is applicable to all credit institutions. The ACI governs, inter alia, the establishment and management of a credit institution as well as the capital and liquidity requirements of a credit institution. The ACI also sets out the conduct of business rules for credit institutions. Pursuant to Chapter 2, section 1 of the ACI, credit institution activity cannot be carried on without an authorisation in accordance with the ACI. According to Chapter 1, section 5 of the ACI, credit institution activity means business operations where repayable funds are received from the public as well as where credit and other financing is offered for own account.	**Credit institution** is an undertaking authorised in accordance with the ACI to carry on credit institution activity. A credit institution may be a deposit bank or a credit society. A deposit bank is a credit institution which may receive deposits from the public, whereas a credit society is a credit institution which may receive from the public other repayable funds than deposits. **Credit institution activity** means business operations where repayable funds [including deposits] are received from the public as well as where credit and other financing is offered for own account. **Repayable funds** means funds borrowed in the course of business operations. **Deposit** means the deposit referred to in Chapter 1, section 3(11) of the Finnish Act on the Financial Stability Authority (in Finnish: *laki rahoitusvakausviranomaisesta*, 2014/1195, i.e. a deposit account is an account that is protected by the deposit guarantee)
N/A	The Finnish Money Collection Act (in Finnish: *rahankeräyslaki*, 255/2006, the "**MCA**")	Section 5 (requirement for a money collection permit)	In other parts of the world, crowdfunding has been widely used to raise finance for charity targets and to support arts projects. In Finland, the decision of the National Police Board restricts the use of the donations model: collecting money without consideration and for charity requires a money collection permit granted by the authorities. According to the MCA, a money collection permit may be issued for an association or foundation which is registered in Finland and if the sole purpose of the association is to work for public good. Furthermore, according to the MCA, money can be collected only for charitable purposes. The money collection permit may not be issued for an individual.	**Money collection** means an activity in which money is collected without compensation by appealing to the public. **Money collection permit** Money collections may not be arranged without a permit granted by the authorities (money collection permit).
Directive 1999/93/EC on a Community framework for electronic signatures	Act on Strong Electronic Identification and Electronic Signatures (in Finnish: *laki vahvasta sähköisestä tunnistamisesta ja sähköisistä allekirjoituksista*, 617/2009, the "**ASEIES**")	Chapter 2 of the ASEIES (the legal effects of electronic signatures and the processing of personal data)	Pursuant to Chapter 2, section 5 of the ASEIES, at least advanced electronic signatures which are based on a qualified certificate and which are created by a secure-signature-creation device satisfy the legal requirements of a signature. On the other hand, according to the same section of the ASEIES, an electronic signature is not denied legal effectiveness and admissibility as evidence in legal proceedings solely on the grounds that it is: — in electronic form, or — not based upon a qualified certificate, or — not based upon a qualified certificate issued by an accredited certification-service-provider, or — not created by a secure signature-creation device. Therefore, in practice all kinds of electronic signatures are widely accepted and effective.	E**lectronic signature** means data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication. **Advanced electronic signature** means an electronic signature which meets the following requirements: (a) it is uniquely linked to the signatory; (b) it is capable of identifying the signatory; (c) it is created using means that the signatory can maintain under his sole control; and (d) it is linked to the data to which it relates in such a manner that any subsequent change of the data is detectable;

Finland

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
If the PLATFORM receives repayable funds, as defined in the ACI, and grants credit or provides other financing out of such funds for its own account (i.e. engages in credit institution activity), the PLATFORM might fall within the scope of the ACI and, consequently, the PLATFORM shall comply with all the requirements of the ACI starting from the authorisation requirement. In general, it should be quite rare that a PLATFORM would be engaging in credit institution activity. Before commencing any operations (that might fall within the scope of the ACI) in Finland, local law advice in relation to Finnish rules and regulations shall be obtained. It is recommended to obtain such local advice already in the structuring phase. After having entered the crowdfunding market, it is also recommended to obtain local law advice on a continuing basis in relation to the ongoing rules and regulations applicable to credit institutions.	**Damages** Pursuant to the Chapter 21, section 2 of the ACI, the founder of a credit institution, a member of its Board of Governors or Board of Directors and its managing director shall be liable to compensate any damage or loss he has caused to the credit institution in his duties either intentionally or negligently. Furthermore, the founder of a credit institution, a member of its Board of Governors or Board of Directors and its managing director shall also be liable to compensate damage or loss he has caused in his duties to a shareholder, member, holder of a participation or basic fund certificate or other person intentionally or negligently through a violation of the Capital Requirements Regulation, Regulations or decisions of the Commission laid down by virtue of Capital Requirements Regulation or the Credit Institution Directive, this Act or a Decree issued by virtue thereof, or a regulation of the Financial Supervisory Authority,... or the Articles of Association or the by-laws of the credit institution. The adjustment of damages and the allocation of liability among two or more persons liable for the damages shall be governed by the provisions of Chapters 2 and 6 of the Tort Liability Act (412/1974). **Administrative sanctions** The FIN-FSA may impose administrative sanctions, including administrative fines, public warnings and penalty payments for failures to comply with or violations of the provisions of the ACI. It is a criminal offence to carry on credit institution activity without an authorisation. It is also a criminal offence to use the term "deposit" (in Finnish "*talletus*") in marketing for other repayable funds than those covered by an appropriate deposit guarantee scheme.	The rules of the ACI are not applicable to the PROJECT OWNER.	Not applicable		X		
The PLATFORM should make sure that a money collection permit is acquired before the project can be entered in the PLATFORM. Funds raised through collection must be used for the purpose laid down in the money collection permit.	**Right of prohibition and conditional fine** Pursuant to section 22 of the MCA, the authority that has granted the permit may prohibit continuation of the arrangement of a money collection and use of funds raised through the money collection if it is suspected that the arrangement of the money collection or the use of the funds raised through the money collection is proceeding or has proceeded incorrectly or if matters have come to the attention of the authority that are likely to lead to cancellation of the money collection permit. A permit authority may impose a conditional fine to enforce prohibition. **Cancellation of money collection permit and written warning** According to section 23 of the MCA, a money collection permit may be cancelled if the permit holder or the practical arranger of the money collection has violated the provisions of the MCA. A permit authority may, instead of cancelling the permit, give the permit holder or the practical arranger of the money collection a written warning were it unreasonable to cancel the permit considering the circumstances. **Money collection offence** It is a criminal offence to arrange the collection of money without the permit referred to in the MCA.	The PROJECT OWNER should make sure that a money collection permit is acquired before arranging the collection of money. Funds raised through the money collection must be used for the purpose laid down in the money collection permit. Furthermore, pursuant to section 21 of the MCA, an account must be submitted to the authority that has granted the permit within six months of the termination of the permit period and the authority must audit and approve this account.	**Right of prohibition and conditional fine** Pursuant to section 22 of the MCA, the authority that has granted the permit may prohibit continuation of the arrangement of a money collection and use of funds raised through the money collection if it is suspected that the arrangement of the money collection or the use of the funds raised through the money collection is proceeding or has proceeded incorrectly or if matters have come to the attention of the authority that are likely to lead to cancellation of the money collection permit. A permit authority may impose a conditional fine to enforce prohibition. **Cancellation of money collection permit and written warning** According to section 23 of the MCA, a money collection permit may be cancelled if the permit holder or the practical arranger of the money collection has violated the provisions of the MCA. A permit authority may, instead of cancelling the permit, give the permit holder or the practical arranger of the money collection a written warning were it unreasonable to cancel the permit considering the circumstances. **Money collection offence** It is a criminal offence to arrange the collection of money without the permit referred to in the MCA.			X	X
In practice all kinds of electronic signatures are widely accepted and effective. However, specific requirements in relation to the customer identification and verification may derive from the general AML and KYC -obligations.	According to the Finnish Contracts Act (in Finnish: *laki varallisuusoikeudellisista oikeustoimista*, 228/1929), a contract is formed in accordance with the classical contract theory. The necessary components for forming a contract are an offer and a response to such offer. In accordance with the principle of freedom of contract and subject to an approving offer, a contract can be formed between two parties acting under free will. As a general rule, there are no other formal requirements for constituting a contract in its most simple form. Therefore, if there is no valid signature, this does not automaticlly mean that a contract has not been formed (although the absence of a valid siganture might make it more difficult to prove the formation of a contract).	Please see PLATFORM; applies mutatis mutandis to PROJECT OWNER	Please see PLATFORM; applies mutatis mutandis to PROJECT OWNER	X	X	X	X

Finland

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
Payment Services Directive (2007/64/EC) and in the future PSD II (Directive proposal COM/2013/0547	The Finnish Act on Payment Services (in Finnish: *maksupalvelulaki*, 2010/290, the "**APS**") The Finnish Act on Payment Institutions (in Finnish: *maksulaitoslaki*, 297/2010, the "**API**") Act on the Operation of a Foreign Payment Institution in Finland (in Finnish: *laki ulkomaisen maksulaitoksen toiminnasta Suomessa*, 2010/298, the "**OFPI**")	Chapter 1 of the APS (the payment services that fall within the scope of the APS) Chapter 2 of the API (the right to provide payment services) Chapter 2 of the OFPI (the right of an EEA payment institution to provide payment services in Finland)	Payment service providers must comply with the conduct of business requirements set out in the API and with the rules of the APS concerning transparency of conditions and information requirements for payment services, and the respective rights and obligations of payment service users and payment service providers.	**Payment services** Pursuant to Chapter 1, section 1 of the APS, payment services means the services listed in Annex of the Payment Services Directive (2007/64/EC). **Payment institution** means a legal person that has been granted authorisation in accordance with API to provide payment services **Payment service provider** means a natural or legal person providing payment services.
Directive 2000/31/EC (E-Commerce Directive)	The Finnish Information Society Code (in Finnish: *tietoyhteiskuntakaari*, 917/2014, "**FISC**")	Chapter 22 of the the FISC (the provision of information society services)	The FISC sets out requirements for providers of information society services. According to Chapter 22, section 176 of the FISC, information society service providers must have at least the following general information easily, immediately and continuously available to the recipients of the services and to the authorities: 1) the service provider's name, geographical address in the state of establishment, email address and other contact information through which the service provider may be contacted quickly, directly and effectively; 2) trade register or any other corresponding public register where the service provider has possibly been entered and the service provider's company and corporate ID or any other corresponding identification in said register; 3) contact information for the appropriate supervising authority if pursuit of the operations requires a licence or registration; and 4) VAT identification if the service provider is pursuing operations subject to VAT. Furthermore, Chapter 22, section 177 of the FISC sets out what information needs to provided to the recipient of the service prior to an order being placed by the recipient.	**Information society service** means any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.
Directive 2006/114/EC concerning misleading and comparative advertising	Unfair Business Practices Act (in Finnish: *laki sopimattomasta menettelystä elinkeinotoiminnassa*, 1061/1978)	Chapter 2 and 2a of Unfair Business Practices Act	The Unfair Business Practices Act sets forth that good business practice may not be violated nor may practices that are otherwise unfair to other entrepreneurs be used in business. A false or misleading expression concerning one's own business or the business of another may not be used in business if the said expression is likely to affect the demand for or supply of a product or harm the business of another. The Unfair Business Practices Act allows "comparisons" to competitors in marketing practices only in situations where i.e. the information provided is accurate and not misleading, is objective, does not cause confusion, does not attempt to undermine a competitor's product and does not infringe or otherwise damage a competitor's trademark.	Not applicable.

Finland

Applicability and compliance recommendations **PLATFORM** (assumed to be a business)	**Sanctions for breach** **PLATFORM**	**Applicability and compliance recommendations** **PROJECT OWNER** (assumed to be a business)	**Sanctions for breach** **PROJECT OWNER**	**Relevant for type of Crowdfunding**			
				Investment based	**Lending based**	**Reward based**	**Donations based**
If the PLATFORM operator receives funds from investors, this may be considered money remittance in accordance with the API. In order to provide payment services, service providers must either acquire authorisation for their business in line with the API or, in case of smaller scale activities, submit a notification of intention to provide payment services without authorisation. This requires that the service provider fulfills the requirements stipulated in the API applicable to the provision of payment services without authorisation. There are good reasons to argue that transfer of funds through the PLATFORM operator's customer deposit account does not constitute a money remittance service and that the operators would be able to rely on the exemption of commercial agents on the basis that they have authorisation to negotiate or conclude contracts on behalf of the funder and the funding seeker. However, this interpretation has not been tested and the PLATFORM provider may be required to acquire authorisation or make a notification. To avoid the license requirements the PLATFORM provider may also use an external authorised payment service provider to process the payments.	**Damages** Pursuant to the Chapter 8, section 48 of the API, anyone who causes damage to another person through conduct in violation of the API, or the provisions or regulations issued thereunder, shall be liable to compensate a damage caused by him. The adjustment of damages and the allocation of liability among two or more persons liable for the damages shall be governed by the provisions of Chapters 2 and 6 of the Tort Liability Act (412/1974). **Administrative sanctions** The FIN-FSA may impose administrative sanctions, including administrative fines, public warnings and penalty payments for failures to comply with or violations of the provisions of the API. Furthermore, intentional provision of payment services without a proper authorisation constitutes a criminal offence in Finland.	N/A	N/A	X	X	X	X
Services of PLATFORM generally qualify as services of an information society. PLATFORM needs to comply with the minimum information requirements of the FISC when setting up the website and in relation to each project posted on the website.	The FISC does not set forth any sanctions for the breach of Section 176. In theory, a party that has caused damages by breaching its obligations under Section 176 of the FISC could be liable for such damages under the Tort Liability Act (412/1974). Such liability can only arise when there is no contractual relationship. It should be noted that under Chapter 5 of the Tort Liability Act, compensation for economic loss that is not connected to personal injury or damage to property requires that the injury or damage has been caused by an act punishable by law or in the exercise of public authority, or especially weighty reasons.	Not applicable	Not applicable	X	X	X	X
The PLATFORM will need to ensure that it does not resort to prohitibed (comparative) marketing practices as set out in the Unfair Business Practices Act when marketing its services.	Pursuant to Section 6 of Unfair Business Practices Act, an entrepreneur may be prohibited from continuing or repeating practices that violate the obligations in the legislation.The prohibition may be reinforced through a conditional fine, unless this is unnecessary for a special reason. The prohibition shall be imposed by the Market Court. Section 1 of the Tort Liability Act explicitly sets forth that "the Act does not apply to liability for damages under contract". It can therefore vice versa be stated that non-contractual relationships (in most cases and when no other law is applicable) fall under the scope of the Tort Liability Act. Therefore and in addition to a possible prohibition, a party that has caused damages by breaching its obligations under the Unfair Business Practices Act could be liable for such damages under the Tort Liability Act (412/1974) to a party that it is not in a contractual relationship with. It should be noted that under Chapter 5 of the Tort Liability Act, compensation for economic loss that is not connected to personal injury or damage to property requires that the injury or damage has been caused by an act punishable by law or in the exercise of public authority, or wespecially weighty reasons. This can potentially have a substantial effect when evaluating situations relating to crowdfunding. If an investor is not in a contractual relationship with the party that has caused damage, it might in some situations be difficult to claim for financial losses under the Tort Liability Act.	Please see PLATFORM; applies mutatis mutandis to PROJECT OWNER	Please see PLATFORM; applies mutatis mutandis to PROJECT OWNER	X	X	X	X

Finland

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
Unfair Commercial Practices Directive 2005/29/EC	The Consumer Protection Act (in Finnish: *kuluttajansuojalaki* , 38/1978, the "**CPA**")	Chapter 2 of the CPA (marketing rules and the conduct of business obligations)	The Finnish rules on consumer protection provided in the CPA always apply when services or products are offered, sold or otherwise marketed to Finnish consumers (i.e. these rules apply to a business-to-consumer situations only). Pursuant to Chapter 2 of the CPA, marketing shall not be inappropriate or otherwise unfair (as further defined in the CPA) from the consumer point of view. Marketing shall clearly show its commercial purpose and on whose behalf marketing is conducted. Comparative advertising or other marketing shall not cause risk of confusion between the advertiser's and competitor's trademarks, trade names or other distinctive signs nor products if it is liable to result in that a consumer makes a purchase decision or another decision concerning the product which she/he had not done without aforementioned marketing. Also, the CPA contains provisions concerning false and misleading information. Furthermore, when conducting marketing activities, material information relevant in the factual context which a consumer needs to make a purchase decision or another decision concerning the product, shall be given. In addition, the CPA prohibits aggressive commercial practices.	**Consumer** is defined as a natural person who acquires consumer goods and services primarily for a use other than business or trade. B**usiness** is defined as a natural person or a private or public legal person who, in order to obtain income or other economic benefit, deals in, sells or otherwise offers consumer goods or services on a professional basis and for consideration. C**onsumer goods and services** are defined as goods, services and other merchandise and benefits that are offered to natural persons or which such persons acquire, to an essential extent, for their private households. (Also transferable securities fall within the scope of Chapter 2 the CPA)
Directive 98/27/EC on injunctions for the protection of consumers' interests	The Act on Cross-Border Injunction Proceedings (in Finnish: *laki rajat ylittävästä kieltomenettelystä,* 1189/2000, the "**ACBIP**") Also amendments to various other Finnish acts.	Section 1 of the ACBIP Section 4 of the ACBIP	The ACBIP provides means to bring action for the cessation of infringements of consumer rights granted by EU law as enumerated in the Annex to the Directive 98/27/EC (the "**Directive**"). The Directive (and the ACBIP) allows Finnish "qualified entities" to seek an injunction in another Member State where the infringement originated. Pursuant to section 4 of the ACBIP, the Finnish qualified entities are: the Consumer Ombudsman, the Finnish Medicines Agency, the National Supervisory Authority for Welfare and Health, the Finnish Competition and Consumer Authority, the Finnish Communications Regulatory Authority and the Finnish Financial Supervisory Authority.	

Finland

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
The PLATFORM will most likely be considered a business and must ensure that all of its commercial practices comply with the consumer protection rules provided in the CPA.	**Violation of the consumer protection rules of the CPA** With regard to Chapter 2 of the CPA and if deemed necessary in respect of consumer protection, an injunction may be issued against a business ordering or carrying out a marketing operation, forbidding it to continue marketing in violation of the provisions of this chapter or of provisions or regulations issued on the basis thereof, or forbidding it to repeat such or comparable marketing. The injunction shall be reinforced by a threat of a fine unless this is for a specific reason deemed unnecessary. **Breach of contract** A party to a contract (a consumer) can always make a damage claim based on a breach of contract. The damages incurred must in some way have been foreseeable. When evaluating this requirement, it is common to take into consideration different types of general interests usually relating to similar contracts, as well as special intentions of the creditor that have come to the knowledge of the debtor when forming the contracts. It is important to note that under Finnish law and with regard to contractual damage claims, a breach of contract is assumed to have occurred unless the party that has allegedly breached the contract can prove that it has acted with due care. False information given to a consumer (or non-compliance with mandatory laws in relation thereto) can also, in theory, give rise for a possibility to declare a contract (or a contractual provision) null and void. **Declaring a contract null or void** Declaring a legal act invalid should not be confused with declaring a legal act null and void. The nullity of legal acts does not require that a contractual party claims that a certain legal act is null and void (i.e. courts must consider this ex officio). The nullity of legal acts can be at hand in e.g. situations where a party has clearly acted against mandatory legislation.The legal rules governing the invalidity and adjustment of legal acts are incorporated in Chapter 3 of the Finnish Contracts Act. According to the main rules, a transaction can be declared invalid or it can be adjusted in a situation of duress, fraudulent inducement, and in a case where someone is taking advantage of one's distress, lack of understanding, imprudence or position of dependence. The Finnish Contracts Act also includes a general clause stating that a transaction that would other-wise be binding shall not be enforceable if it was entered into under circumstances that would make it incompatible with honor and good faith for anyone knowing of those circumstances to invoke the transaction, providing that the person to whom the transaction is directed is presumed to have known said circumstances. **Non-contractual damages** In general and pursuant to Chapter 12 of the CPA, the CPA does not restrict the right of the injured party to claim damages on the basis of the Tort Liability Act, the Product Liability Act or any other Act. In other words and when operating outside a contractual relationship, a party that has caused damages by breaching its obligations under the CPA could be liable for such damages under the Tort Liability Act (412/1974).	If and to the extent that the PROJECT OWNER is considered to be a business the same as set out in relation to the PLATFORM applies mutatis mutandis to the PROJECT OWNER. This does not apply if the PROJECT OWNER is considered to be a consumer itself.	If and to the extent that the PROJECT OWNER is considered to be a business the same as set out in relation to the PLATFORM applies mutatis mutandis to the PROJECT OWNER. It should be noted that, under Finnish law, it may in certain situations be possible that a PROJECT OWNER would be directly liable to the consumer on grounds of contractual liability (even though an explicit contract has not been entered into) if grounds for breaking the privity contract doctrine are at hand. Otherwise the Tort Liability Act is applicable.	**X**	**X**	**X**	X
If the PLATFORM infringes consumer rights granted by EU law (as enumerated in the Annex to the Directive), the Finnish qualified entities may seek an injunction against the PLATFORM.	If the PLATFORM infringes consumer rights granted by EU law (as enumerated in the Annex to the Directive), the Finnish qualified entities may seek an injunction against the PLATFORM.	Please see PLATFORM; applies mutatis mutandis to PROJECT OWNER	Please see PLATFORM; applies mutatis mutandis to PROJECT OWNER	**X**	**X**	**X**	**X**

Finland

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
Distance Marketing of Financial Services Directive (2002/65/EC) Consumer Rights Directive (2011/83/EU)	The Consumer Protection Act (in Finnish: *kuluttajansuojalaki* , 38/1978, the "**CPA**")	Chapters 2, 5 and 6a of the CPA	Chapter 2, section 8a of the CPA sets out the information requirements for contracts other than distance or off-premises contracts. These requirements are based on Article 5 of Directive 2011/83/EU. Chapter 6a of the CPA governs distance selling of financial services and instruments and sets forth obligations regarding the need to provide information concerning the financial service provider as well as the financial services provided prior to the conclusion of a contract. Chapter 5 of the CPA governs the delivery of the goods and the passing of risk. For the sake of clarity, it should be noted that servies do no not fall under the scope of provisions under Chapter 5 of the CPA. The provisions of Chapter 5 of the CPA could, in theory, be applicable in situations where the investor would receive actual "goods" as defined in the CPA as renumeration for the investment made. If this is the case and pursuant to Chapter 5 of the CPA goods sold must correspond with can be deemed to have been agreed. The goods shall in their characteristics conform to the requirements set by law, decree or official decision, unless the buyer intended to use the goods for a purpose where the said requirement is of no significance. The goods are defective also if they do not conform to the information given by the seller or by a person other than the seller either at a previous level of the supply chain or on behalf of the seller on the characteristics or the use of the goods when marketing the goods or otherwise before the conclusion of the sale.	**Consumer** is defined as a natural person who acquires consumer goods and services primarily for a use other than business or trade. **Business** is defined as a natural person or a private or public legal person who, in order to obtain income or other economic benefit, deals in, sells or otherwise offers consumer goods or services on a professional basis and for consideration. **Distance selling** means the provision of financial services to the consumer with the aid of a distance sales-provision scheme run by a business in which the conclusion of a contract and the preceding marketing effort are carried out exclusively through one or more means of distance communication. **Distance offering** is defined as a method of marketing or selling so arranged that its primary purpose may be deemed to be the conclusion of contracts through a means of distance communication. **Means of distance communication** is defined as telephones, postal services, televisions, information networks or other instruments which may be used to conclude contracts without the simultaneous physical presence of the parties.
Unfair Contracts Terms Directive (93/13/EEC)	The Consumer Protection Act (in Finnish: *kuluttajansuojalaki* , 38/1978, the "**CPA**")	Chapters 3 and 4 of the CPA	Pursuant to Chapter 3 of the CPA, a business offering consumer goods or services shall not make use of a contract term which, considering the price of the good or service and the other relevant circumstances, is to be deemed unfair from the point of view of consumers.	**Consumer** is defined as a natural person who acquires consumer goods and services primarily for a use other than business or trade. **Business** is defined as a natural person or a private or public legal person who, in order to obtain income or other economic benefit, deals in, sells or otherwise offers consumer goods or services on a professional basis and for consideration.
Rome I Regulation (Regulation no. 593/2008)	Direct effect	Direct effect	Direct effect	Direct effect
Rome II Regulation (Regulation no. 864/2007)	Direct effect	Direct effect	Direct effect	Direct effect

Notes:
(1) The information above is a brief summary of the civil law legal grounds and liability risks potentially applicable to parties involved in crowdfunding outside insolvency proceedings. It is not definitive legal advice and should not be
(2) The information is provided in an environment where laws and their interpretation may change relatively rapidly. There may also be situations where the law is ambiguous and/or where its consequences or implications are unclear.
(3) Not all legal issues can be covered, for example this does not extend to data protection rules on direct marketing, or IT law around the use of cookies. We have covered the major issues likely to be of concern to a party involved in crowdfunding.
(4) The references to legislation and legislation section numbers in this chart are not exhaustive; we have made reference to only some of the most critical pieces of law.

Finland

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
The PLATFORM will most likely be considered a business and must ensure that all of its commercial practices comply with the consumer protection rules provided in the CPA.	With regard to Chapter 2 of the CPA please refer to above. Under the applicability of Chapter 6a of the CPA, the consumer shall have the right to withdraw from a contract by notifying the business of this within 14 days after the conclusion of the contract or a later date on which the consumer received the prior information and the contractual terms in a permanent manner. The late delivery of information therefore postpones the time period for withdrawing from a contract. The business shall, without undue delay and within 30 days after receiving the notification of withdrawal, return all sums he or she has received from the consumer according to the contract. Finally, it should be noted that any contractual terms that are against Chapter 6a of the CPA will be deemed null and void. In general and pursuant to Chapter 12 of the CPA, the CPA does not restrict the right of the injured party to claim damages on the basis of the Tort Liability Act, the Product Liability Act or any other Act. In other words and when operating outside a contractual relationship, a party that has caused damages by breaching its obligations under the CPA could be liable for such damages under the Tort Liability Act (412/1974). It should be noted that under Chapter 5 of the Tort Liability Act, compensation for economic loss that is not connected to personal injury or damage to property requires that the injury or damage has been caused by an act punishable by law or in the exercise of public authority, or especially weighty reasons. Finally and should Chapter 5 of the CPA be applicable to a contractual relationship, the buyer shall be entitled to compensation for loss that he/she suffers because of a defect in the goods in accordance with Chapter 5 (Section 20) of the CPA. Pursuant to Chapter 5 (Section 31) of the CPA, the buyer shall have the right to direct his/her claims based on a defect in the goods also at a business who at an earlier level of the supply chain has supplied the goods for resale. It should be noted that services do no not fall under the scope of provisions under Chapter 5 of the CPA. The Finnish judicial system does not recognize class actions in its traditional meaning. However, under certain circumstances, there is a possibility to raise class action lawsuits in Finland. Class action lawsuits can be possible provided that the claim is filed by the Consumer Ombudsman (in Finnish: *kuluttaja-asiamies*) and relates to certain types of disputes between consumers and entrepreneurs.The Class Action Act is applicable in relations between consumers and entrepreneurs and it is possible in disputes concerning a defective consumer good or the interpretation of contract terms governing relationships between consumers and entrepreneurs. The Finnish class action system allows that only the Consumer Ombudsman can file a class action lawsuit and represent the plaintiffs. In addition to a class action lawsuit, another possible analogous remedy is a group complaint, where the Consumer Ombudsman submits an application concerning the case to the Consumer Disputes Board (in Finnish: *Kuluttajariitalautakunta*). The Consumer Complaint Board is authorized to give recommendations after which the Consumer Ombudsman would assist members of the group to act on based on this recommendation. If a recommendation in response to a group complaint is not complied with, the Consumer Ombudsman has the option to take the matter to court as a class action lawsuit.	If and to the extent that the PROJECT OWNER is considered to be a business the same as set out in relation to the PLATFORM applies mutatis mutandis to the PROJECT OWNER. This does not apply if the PROJECT OWNER is considered to be a consumer itself.	If and to the extent that the PROJECT OWNER is considered to be a business the same as set out in relation to the PLATFORM applies mutatis mutandis to the PROJECT OWNER. It should be noted that, under Finnish law, it may in certain situations be possible that a PROJECT OWNER would be directly liable to the consumer on grounds of contractual liability (even though an explicit contract has not been entered into) if grounds for breaking the privity contract doctrine are at hand. Otherwise the Tort Liability Act is applicable.	X	X	X	X
The PLATFORM will most likely be considered a business and must ensure that all of its commercial practices comply with the consumer protection rules provided in the CPA.	Where necessary in respect of consumer protection, a business may be enjoined from continuing the use of an unfair contract term or repeating the use of such a term or a comparable term. Pursuant to Chapter 4 of the CPA, if a term in a contract is unreasonable from the point of view of the consumer or if an unreasonable result would ensue from its application, the term may be adjusted or it may be disregarded (also a commitment as to consideration shall be deemed a contract term). If the contract term subject to the adjustment is of such nature that it cannot reasonably be required that the rest of the contract remain in force unaltered after the adjustment of the term, the contract may, unless otherwise provided in be adjusted also in other respects or be ordered to lapse. Furthermore, if a term in a contract has been drafted in advance without the consumer having been able to influence its contents and if uncertainty arises as to the significance of the term, the term shall be interpreted in favour of the consumer.	If and to the extent that the PROJECT OWNER is considered to be a business the same as set out in relation to the PLATFORM applies mutatis mutandis to the PROJECT OWNER. This does not apply if the PROJECT OWNER is considered to be a consumer itself.	If and to the extent that the PROJECT OWNER is considered to be a trader the same as set out in relation to the PLATFORM applies mutatis mutandis to the PROJECT OWNER.	X	X	X	X
Direct effect	Not relevant.	Direct effect	Not relevant.	X	X	X	X
Direct effect	Not relevant.	Direct effect	Not relevant.	X	X	X	X

France

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
Amongst others: *Investment based*: MiFID (Directive 2004/39/EC; Regulation no. 1287/2006 and Directive 2006/73/EC) (and in the future: MiFID II (Directive 2014/65/EU) and MiFIR (Regulation no. 600/2014) Prospectus Directive (Directive 2010/73/EC amending Directive 2003/71/EC) Prospectus Regulation (Regulation no. 809/2004) AIFMD (Directive 2011/61/EC)	The Act enabling the Government to simplified and secure companies' activity no.2014-1 and dated 2 January 2014 Ordinance no. 2014-559 dated 30th May 2014. Decree no. 2014-1053 dated 16th September 2014 and coming into force on 30th Octobre 2014.	**CMF** L. 547-1 et seq. L. 321-1 D. 321-1 D. 547-1 to D. 547-2 **RG AMF** 325-32 et seq.	The new regulation created the **CIP status** applicable to plateforms offering ordinary shares and bonds with fixed interest. Pure domestic status (no passport). CIP are placed under the supervision of the AMF. CIPs shall (i) be registered with the ORIAS (ii) present certain moral guarantees, (iii) be members of an AMF accredited association which controls their activities (if the association is not accredited- which is the case as of 1st January 2016 specific control procedures are implemented by AMF in compliance with the AMF General Regulation and (iv) subscribe specific insurance policies (minimum guaranteed amount to be set out by a decree, this being mandatory as from 1 July 2016). They shall also (v) comply with the good conduct rules set forth in the Ordinance and the AMF General Regulations and (vi) ensure that their clients' interests are protected and that they receive the adequate level of information to appreciate the risks connected to their investment. Conflict of interest prevention: CIP are not authorized to receive securities from issuing companies. The new regulation created also an **exemption to prospectus requirements** for those CIP or PSI which offers ordinary shares or fixed interest bonds on their website for offering lower than 1m per issuer over a 12- month period. An adequate level of information (simple, clear, balanced) must however be made available to the prospective investors. Pursuant to the provisions of articles L217-1 and 314-106 AMF General Regulations, CIPs or authorised PSIs offering such securities on their websites are bound to provide the investors (CIPs) /their clients (PSIs) with detailed information meant to assess the risks associated with the investment, to permit a better understanding of the organisation and management of the beneficiary of the investment.	**AMF** (Autorité des Marchés Financier): the French capital Market Authority. **CIP** (*Conseil en investissement participatif)*: provides investment services in equity securities and certain debt securities on an internet website complying with specifications set forth by the AMF General Regulations. **CMF:** Monetary and Financial Code, **ORIAS:** official register for intermediaries in banking operations and payment services **PSI** (*Prestataire de services en investissemen)* : investment firms which have been authorized to provide investment services. They are legal entities, which provides investments services in the nomrla course of their business.
Lending based:Consumer Credit Directive (Directive 2008/48/EC) Mortgage Credit Directive (Directive 2014/17/EU)	*Ibid.*	**CMF** L. 511-6 L. 548-1 et seq. D. 548-1 to D. 548-10 L. 546-1 to L. 546-4	Since 1st October 2014, online fundraising platforms which propose projet financing under the lending model, i.e. loans bearing interest or not, may register as intermédiaires en financement partipatif or IFPs. IFPS are legal entities putting in contact, through their online platform, project owners and individuals or companies willing to fund such projects by of way loans or donations, within conditions and limits set forth in Article D.548-1 CMF regarding loan regulation. IFPs may also be banking or credit institutions, payment institutions, electronic currency establishments, PSIs and CIPs. To qualify as IFPs, a platform shall (i) be registered with the ORIAS, (ii) present certain moral guarantees, (iii) subsribe specific insurance policies, and (iv) abide by a good conduct code. If IFPs wishes to implement transfer of funds between lenders and borrowers, and thus acting as payment establishments, they would then need to be authorized to do so by the ACPR and holding a licence as payment institution (prestataire de services de paiement) under a simplified regime. French regulation usually provides for a banking monopoly. **IFPs are exceptions to this banking monopoly.** Under such exception, individuals can lend money to project owners, subject to duration and amount limitations. A project owner cannot raise more than EUR 1 million per project on a crowdfunding platform. Interest-free loans are capped at EUR 4,000 per year, per project and per lender, with no term restriction, while interest-bearing loans are capped at EUR 1,000 per year, per project and per lender. they shall be of a maximum of seven (7) years.	**ACPR :** French regulator which monitors the activities of banks and insurance companies in France. It operates under the jurisdiction of of the French central Bank. **Credit institutions :** legal entities having as their customary activity the carrying oiut of banking transactions, as provided for in Article L. 511-1 of the CMF **IFP :** legal entities putting in contact, through their online platform, project owners and individuals or companies willing to fund such projects by of way loans or donations, **Payment institutions :** legan entities , other than credit institutions, which , in the normal course of their business, provide payment services, such as cash transfers, administration of a payment account, debits, and/or credits.

France

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
French new regulation set a new compliance framework for crowdfunding activities and brings clarity as to platforms' duty of care. Setting appropriate criteria and due diligence process for project selection (as well as capping individual investment per project) is also a proper way to limit crowdfunder's exposition to potential claims.	**Art. L. 573-12 CMF:** Shall be punished by five years' imprisonment and a fine of EUR 375,000: - the exercice of CIPs' activities without compliance with the provisions set forth in Art. L. 547-1 to L. 547-3 CMF; and - receiving as a CIP, funds from clients in breach of the restrictions set forth in Art. L. 541-6 CMF, **Art. L. 573-13 CMF:** Individuals declared guiilty under the provisions of Art. L. 573-12 above, may also be sentenced with the following penalties: - prohibition of the civil, family and citizen rights, under the provisions set forth in Article 131-29 of of the French Criminal Code. - prohibition from the exercise of any public employment or professional activity related to the disputed activity , for a 5-year term or more; - publicity of the sentence. **Art. L. 573-14 CMF:** Moral entities deemed guitly under the provisions of Art. L. 573-12 above, may also be sentenced with the following penalties: - dissolution; - prohibition of professional activities for a 5-year term or more; - legal custody; - publicity of the sentence - prohibition from receiving any public subsidies for a 5-year term; - prohibition from issuing checks;... Civil liability	**Art. L. 411-2 CMF:** the new regulation provides for a prospectus exception as for crowdfunding projects. Recommendation: not minimizing the impact generated by a high number of shareholders for further rounds of fundraising with VCs or PE.	Civil liability Potentially criminal liability (fraud) as well as potential criminal liabilty for joint-stock companies *(société par actions simplifiée)* breaching the prohibition for such companies to publicily offer securities (appart from the exception provided for in the new crowdfunding regulation) Administrative sentences from the AMF in case of breach of securities regulation	X	X	N / A	N / A
French new regulation set a new compliance framework for crowdfunding activities and brings clarity as to platforms' duty of care. Setting appropriate criteria and due diligence process for project selection is a proper way to limit crowdfunder's exposition to potential claims.	**Art. L. 573-15 CMF:** Shall be punished by five years' imprisonment and a fine of EUR 375,000, the exercise of IFPs' activities without compliance with the provisions set forth in Articles L. 548-1 to L. 548-4 CMF. **Art. L. 573-16 CMF:** Individuals declared guiilty under the provisions of Art. L. 573-15 above, may also be sentenced with the following penalties: - prohibition of the civil, family and citizen rights, under the provisions set forth in Article 131-29 of of the French Criminal Code. - prohibition from the exercise of any public employment or professional activity related to the disputed activity , for a 5-year term or more; - publicity of the sentence. **Art. L. 573-17 CMF:** Moral entities deemed guitly under the provisions of Art. L. 573-15 above, may also be sentenced with the following penalties: - dissolution; - prohibition of professional activities for a 5-year term or more; - legal custody; - publicity of the sentence - prohibition from receiving any public subsidies for a 5-year term; - prohibition from issuing checks;... Civil liability	**Art. L. 511-6 CM**F: banking monopoly exception for individuals who lend money in accordance with the new set of regulation. Recommendation: be aware and carefull as to excessive indebtness and high interest rate.	Civil liability Potentially criminal liability (fraud, qualified breach of banking monopoly).	N / A	X	X	X

France

EU legislation forming basis for national legislation	National legislation (excluding lower rules and regulations)	Main sections / chapters national legislation	Brief summary national legislation	Main definitions used in this part of national legislation relevant for crowdfunding
Potentially all types of crowdfunding: Payment Services Directive (Directive 2007/64/EC) (and in the future PSD II (Directive proposal COM/2013/0547))	The Economic Modernisation Act no. 2008-776 dated 4 Aug. 2008 Ordinance no. 2009-866 dated 15 July 2009 Decree dated 29 July 2009 on the relations between payment service providers and their clients regarding the information of financial services users Decree no. 2009-934 dated 29 July 2009Ordinance no. 2009-866 of 15 July 2009	CMF, in particular Livres III and IV	CIP cannot receive funds from investors (except for their remuneration) . CIPs cannot have other activities except those of IFP (see above), in which case, although they will be IFPs, they shall not provide payment services. The national regulations set out (i) the conditions for the execution of a payment transaction (ii) the liability scheme in the event of operations improperly executed (iii) the costs resulting from a payment incident (iv) the rules applicable to small retail payments.	
Consumer Credit Directive (Directive 2008/48/EC)	Act no. 2010-737 dated 1 July 2010 on consumer credit Decree no. 2010-1462 dated 30 Nov. 2010 Decree no. 2011-135 dated 1 Feb. 2011 Decree no. 2011-136 dated 1 Feb. 2011	Consumer code	The aim of the Act is to promote the idea of "reasonable credit", notably by regulating advertising concerning credit agreements, activities relating to mortgage repurchase, credit consolidation and revolving credit, and by requiring lenders to assess the creditworthiness of a borrower.	
Regulation 2006/2004 Directive 98/27/EC on injunctions for the protection of consumers' interests Directive 2006/114/EC concerning misleading and comparative advertising (consolidates Directives 84/450/EC and 97/55/EC)	Ordinance no. 2001-741 dated 23 Aug. 2001	Article L.120-1 et seq of the consumer code	The ordinance modifies the rules applicable to comparative advertising and introduces a list of information that must appear in agreements concluded with consumers.	
Directive 1999/93/EC on a Community framework for electronic signatures (to be replaced by EC Regulation 910/2014 as of 1 July 2016)	Act No. 2000-230 of March 13, 2000 adapting the law of evidence to information technology and regarding electronic signature Decree no. 2001-272 dated 30 March 2001 Decree no. 2002-535 dated 18 April 2002 Decree no. 2003-659	Civil code	The 2000 Act introduced into French Law the electronic signature as acceptable evidence and expand the concept of a written proof to electronic documents.	
Directive 2000/31/EC (E-Commerce Directive)	Act no. 2004-575 dated 21 June 2004 regarding confidence in the digital economy (« LCEN ») Decree no. 2005-137 dated 16 Feb. 2005 Ordinance no. 2005-674 dated 16 June 2005	Criminal code Criminal procedure code Intellectual Property code Civil code Consumer code Monetary and Financial code	This Act requires online service provider to inform consumers and imposes a general rule of transparency. It also creates two distinct regimes of liability applicable to hosting providers and content editor.	
Unfair Commercial Practices Directive 2005/29/EC	Act 2008-3 dated 3 January 2008 on promoting competition for the benefit of consumers ("loi Chatel")	Commercial code Social Security code Labour code Consumer code	The "loi Chatel" regulates the relationship between service providers and consumers, notably in the insurance and telephony fields	
Distance Marketing of Financial Services Directive (Directive) 2002/65/EC)	Decree no. 2005-1450 dated 25 Nov. 2005	Consumer code Insurance code Social Security code Monetary and Financial code	The Decree n°2005-1450 regulates pre-contractual information given by a professional who intend to conclude distance contracts for financial services with consumers, and organises the consumer right of withdrawal	
Unfair Contracts Terms Directive (93/13/EEC)	Act no. 95-96 dated 1 Feb. 1995 on unfair terms / Ordinance no. 2001-741 dated 23 Aug. 2001	Consumer code Civil code	The Act introduces into French Law a list of terms presumed to be unfair and creates the Unfair Terms Commission which role is to assess the possible unfairness of contract terms.	
Consumer Rights Directive (Directive 2011/83/EU)	The Consumer Affairs Act no. 2014-344 dated 17 March 2014 ("loi Hamon")	Consumer code	The Act introduced a class action for consumers into French Law, strengthens the powers of the Directorate-General for Competition, Consumer Affairs and Prevention of Fraud (DGCCRF), introduces provisions to the fight against excessive debt, and reinforces the traceability of agriculture and agri-food products.	
Rome I Regulation (Regulation no. 593/2008)		N/A	This Regulation aims to determine the law applicable to contractual obligations in civil and commercial matters, in situations involving a conflict of laws.	

France

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
See above	Criminal sanctions for breaching payment services regulation Civil liability for payment services provider, which services are offered the platform,						

France

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
Rome II Regulation (Regulation no. 864/2007)		N/A	This Regulation aims to determine the law applicable to non-contractual obligations in civil and commercial matters, in situation involving a conflict of laws.	
	Civil code	Art. 1109 et seq.	Misrepresentation (*dol*l), violence or material mistake in the formation of the contract are causes of nullity on the ground of vitiated consent, when the schemes and devices used by one of the parties are such that is clear that without them the other party would not have entered into the agreement.	
	Civil code	Art. 1134 Art. 1135	Agreements mutually agreed upon are binding over the parties and must be entered into and performed in good faith by both parties. An agreement cannot be unilaterally amended and the agreement may be terminated either on a mutual basis or unilaterally, which may lead to trigger the contractual liabilty of the breaching party.	
N/A	Civil code	Art 1142	Where the obligor-debtor does not perform its obligation either to do or not to do, the obligor-debtor shall pay damages in compensation of such non-performance	
N/A	Civil code	Art. 1147 Art 1149 Art 1150 Art. 1151	A debtor shall be ordered to pay damages, in the propoer circumstances, either on account of the non-performance of the obligation, or on account of the delay in performing, whenever he cannot extablish that the non-performance was due to an external cause that cannot be imputed to him provided, moreover, there is no bad faith on his part. Damages owed to a creditor are, in general, for the loss he sustained and for the profit of which he was deprived, subject to certain exceptions. Additional damages may be allocated to claim if contract cancellation does not cover the entire loss suffered. Based on Article 1147 of the Civil code, French courts have delevopped three man features for intermediaries' duties of care: a duty of information, a duty of advice and a duty to warn.	
N/A	Code civil	Art. 1382 Art. 1383 Art. 1384	This can apply solely to third party not having a contractual relationship with the platform or project owners, as the case may be. Every act whatsoever of man that causes damages to another, obliges him by whose fault it occured to repair it. Under French law, individuals are liable not only for the damage resulting from its personal act but also by mere negligence or imprudence. Additionally, individuals are liable for damages caused by the acts of persons under their custody. The nature of the fault (intentional or negligent) has no impact on the existence of the liability of the author of the fault. As long as there is a fault, the author will be held liable (whatever the nature of the fault). However, if the nature of the fault is not taken into consideration to determine the existence of one's liability, courts tend to take such nature into consideration to set the amount of damages (even though French law does not recognize punitive damages). To be indemnified under French tort law, a damage (material loss, body and moral injury) shall be direct, certain and legitimate. French law does not indemnify indirect damages.	

France

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
The PLATFORM shall enter into and performed its agreement in good faith	Vitiated consent may lead to the nullification of the agreement,	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER	X	X	X	X
The PLATFORM shall perform its duties in good faith and shall not unilaterally modify the terms and conditions of the agreements entered into with project owners	The PLATFORM can be held liable for monetary damages	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER				
The PLATFORM shall comply with its contractual obligations	The PLATFORM can be held liable for monetary damages where the PLATFORM does not perform its contractual obligations	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER	X	X	X	X
The PLATFORM shall comply with its contractual obligations.	The PLATFORM can be held liable for monetary damages if the PLATFORM does not comply, either by not-performing or by delaying its contractual obligations. Art. 1147 of the French Civil Code is the main ground for seeking contractual liability. To qualify such liaibily, the claimant shall demonstrate that the followings criterion are met: (i) whether there was a contractual relationship, (ii) whether there has been a specific injury, (iii) whether there has been a breach of a duty of care and (iv) whether there was a chain of causation between the injury and the breach. Under French law, CIPs and IFPs may be considered by French courts as "intermediaries". Under Article 1147, Intermediaries bear three duties: (i) duty of information, (ii) duty of advice and (iii) a duty of warning. Should the PLATFORM breach on of these duties, the PLATFORM may be held liable for damages under such Article 1147.	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER	X	X	X	
Limited exposure	The PLATFORM may be held liable under Articles 1382, 1383 or 1384 whenever the PLATFORM causes harm to a third party by its fault, negligence, or imprudence. In such casesn the PLATFORM shall compensate the harm. Under French law, tortious liability may be sought if the alleged breach meet the following criteria: (i) there must be a breach, either under a specific piece of legislation (i.e. any breach related to CIPs or IFPs statuses) or pursuant to a misconduct, (ii) an injury, either material, moral or physical, and (iii) a chain of causation between the injury and the breach. As a matter of fact, the PLATFORM shall be held liable under the tortious liability theory whenever it performs an unlawful act. Additionally, since there is no requrement to provide any contractual relationship between the defendant and the claimant, the PLATFORMS can face claims either from any investors or from any third parties.	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER	X	X	X	X

Germany

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
/	Investment Products Act (*Vermögensanlagengesetz*) ("**VermAnlG**") - as recently amended by the Retail Investors' Protection Act (*Kleinanlegerschutzgesetz*) ("**KASG**") (applicable if investments are offered that do not constitute a security under MiFiD)	section 1 VermAnlG section 2a VermAnlG section 6 VermAnlG	The VermAnlG consitutes the legal framework for investment products (*Vermögensanlage*) and especially for publishing a prospectus when offering investment products to the public. The KASG which entererd into force on 10 July 2015 provides for the following most relevant changes of the VermAnlG: - subordinated profit-participating loans (*partiarische Nachrangdarlehen*) qualify as investment products (*Vermögensanlagen*) and – as a rule – trigger a prospectus requirement under the VermAnlG -increased regulation for all investment products (*Vermögensanlagen*) – such as silent partnerships (*stille Beteiligungen*), participation rights (*Genussrechte*) and (now also) subordinated profit-participating loans (*partiarische Nachrangdarlehen*): – extended requirements for prospectus – extended obligation to publish addenda to a prospectus – "ad-hoc" notifications – strict rules for marketing of investment products (*Vermögensanlagen*) - especially rules regarding duties to publish specific warning notices with any advertising – three-page fact sheet (*Vermögensanlagen-Informationsblatt* – "**VIB**") – which must contain a highlighted warning notice – exception from VermAnlG for cooperatives (*Genossenschaften*) is narrowed – extended powers for the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht* - "**BaFin**") -exception from most requirements under the VermAnlG explicitly tailored to fit financing by means of Crowdfunding ("**Crowdfunding Exception**") – only applicable when offering profit participating loans (*partiarische Darlehen*), subordinated loans (*Nachrangdarlehen*) or commercially comparable investments (*wirtschaftlich vergleichbare Anlagen*) – no prospectus requirement up to a threshold of EUR 2.5 million per project – total investment amount for each investor is limited to a maximum of EUR 10,000; if exceeding a threshold of EUR 1,000 investors must comply with further requirements, i.e. self-exploration on wealth or income – corporations (*Kapitalgesellschaften*) are not limited to the absolute maximum investment of EUR 10,000 per investor – online platforms need a licence under the German Trade, Commerce and Industry Regulation Act (*Gewerbeordnung*) ("**GewO**") (see below for detailed information), under the German Banking Act (*Kreditwesengesetz*) ("**KWG**") or the German Securities Trading Act (*Wertpapierhandelsgesetz*) ("**WpHG**") – mandatory right of withdrawal (*Widerrufsrecht*) from investment for investors – (electronic) confirmation of warning notice included in fact sheet (VIB) – no combination of Crowdfunding Exception with other exceptions under VermAnlG (ban of combination - *Kombinationsverbot*)	**investment products** (*Vermögensanlagen*) within the meaning of the VermAnlG comprise - inter alia - shares in other legal entities than stock corporations (such as limited liability companies, limited partnerships, civil law partnerships), (*stille Beteiligungen*), participation rights (*Genussrechte*) with regard to profits in those legal entities, shares in trust assets and registered bonds. Since the lates changes also subordinated profit-participating loans (*partiarische Nachrangdarlehen*) qualify as investment products (*Vermögensanlagen*). In a nutshell - all shares / participation rights that are not securitized classify as investment products (*Vermögensanlagen*). **issuer** (*Anbieter*) within the meaning of the VermAnlG means any person or company whose investment products are issued on the basis of a public offering in Germany. **profit participation loan** (*partiarisches Darlehen*), means that individuals lend money to a company in return for repayment of the loan and interest on their investment. The interest is linked to the profit. **subordinated loan** (*Nachrangdarlehen*), means that if the PROJECT OWNER becomes insolvent, the investor's claim is not repaid until the claims of all of the company's creditors are satisfied. The investor's claim ranks prior to or pari passu with shareholders' claims for the repayment of their capital. In case of qualified subordination (*qualifizierter Nachrang*), which are required to satisfy BaFin's demands regarding the subordination of loans, the parties agree that the investor's claims will not be satisfied if repayment would create grounds for insolvency. **commercially comparable investments** (*wirtschaftlich vergleichbare Anlagen*), means other investments which grant a claim for interest and repayment or - in exchange to the temporary transfer of money - confer a claim aimed at cash settlement.

Germany

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
By extending the scope of section 1 subsection 2 VermAnlG to profit participation loans, subordinated loans and commercially comparable investments, also these investments are classified as financial instruments (*Finanzinstumente*) within the meaning of the KWG (see below for details). In the event that the PLATFORMs facilitates the offering of financial instruments (*Finanzinstumente*), the operator of the PLATFORM provides financial services within the meaning of KWG and therefore, as a general rile, requires a licence from BaFin. But in most cases, the activities of the PLATFORMs are limited to investment broking (*Anlagevermittlung*) and (less frequently) investment advice (*Anlageberatung*) between investor and issuer. In this case the PLATFORM can benefit from a statutory exception to the licensing requirement. The PLATFORMs only need a - relatively straightforward - license under the German Trade, Commerce and Industry Act GewO (section 34f GewO). Regarding Peer-to-Peer-Lending BaFin published a letter in autumn 2015 setting out its opinion on questions regarding the interpretation of Peer-to-Peer Lending. During the legislative procedure it remained unclear, whether Peer-to-Peer Lending PLATFORMs should be governed by the KASG regulation. BaFin now expressed the opinion that the currently existing models should – as a rule – fall within the regulation of the KASG. As a result, also Peer-to-Peer Lending PLATFORMs are forced to use an exception from regulation (in particular the Crowdfunding Exception with the aforementioned prerequisites).	In case of a breach, the PLATFORM generaly faces three different consequences from: - BaFin - competitors - investors (see below cells for details) BaFin has the following regulatory decision-making powers: -written warnings -administrative fines (up to EUR 500.000) - rulings regarding reversed transaction of all brokered contracts - close down of business A sanction in a broader sense can be that BaFin may refuse a future application for a licence since the applicant may not have sufficient reliability (*Zuverlässigkeit*) due to a former breach of regulatory provisions, which is generally required for obtaining a licence with BaFin. Besides, competitors might bring actions against the PLATFORM operators. In case of infringements the PLATFORM operators are liable for cease and desist and removal, in accordance with section 8 subsection 1 UWG. In accordance with section 9 UWG they further can be liable to compensations, if the illegal commercial practice was permitted with intent or negligently. In an important jugdment of autumn 2011 (so called "*Lieferheldentscheidung*"), the Cologne district court ruled a violation of sections 4 Nr. 11, 8 UWG in connection with section 8 subsection 1 ZAG by the PLATFORM "lieferheld.de". The court decided that the collection of money on a commecial basis for the purpose of transfering it to a third party, constitutes a payment service within the meaning of the ZAG which requires a licence under the ZAG. This was the first time a German court decided that the violation of regulatory provisions could result in an unfair commercial practice with regard to competitors (see below for details regarding unfair commercial practices)	As a general rule, PROJECT OWNERs must prepare and publish a prospectus unless they fulfil the requirements of the Crowdfunding-Exception in accordance with section 2a VermAnlG (see left). Regardless of the requirements of the Crowdfunding-Exception, PROJECT OWNERs are obliged to publish a VIB with essential information about the investment and must provide for warning notices within the VIB and when marketing their investment products.	See PLATFORM. In addition to the possible sanctions of the PLATFORM, the PROJECT OWNERs also face the conviction by a court. A court may convict the (natural) persons that acted on behalf of the PROJECT OWNERs, e. g. in case the PROJECT OWNER does not assert that the annual report was prepared properly (section 28 VermAnlG)	X	X	X	X

Germany

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
AIFMD (Directive 2011/61/EC) UCITSD (Directive 2009/65/EC)	Capital Investment Code (*Kapitalanlagegesetzbuch*) ("**KAGB**")	section 1 subsection 1 KAGB	PROJECT OWNERs seeking funding by means of a PLATFORM (e. g. RES or real estate projects) by means of equity might constitute an AIF within the meaning of the KAGB (which implements the AIFMD in Germany).	**AIF** (*Investmentvermögen*) within the meaning of the KAGB means a collective investment undertaking which: - raises capital from a number of investors; - with a view to investing it in accordance with a defined investment policy for the benefit of those investors; - is not an operating company conducting business outside the financial sector; and - does not require authorisation pursuant to Article 5 of UCITSD. **AIFM** (*Kapitalverwaltungsgesellschaft*) within the meaning of the KAGB means any undertaking whose registered office as stipulated in its articles of association and head office are in Germany and whose business primarily involves managing investment funds. Management of an investment fund shall be deemed to exist if at least portfolio management or risk management is performed for one or more investment funds.

Germany

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
In general, due to the fact that an operator of a crowdfunding PLATFORM does not raise capital from investors for its own business, it should not qualify as an AIF. Further, there are sound arguments to state that the crowdfunding PLATFORM does not "manage" the underlying investment, but merely arranges investments into PROJECT OWNERs. Hence, the operator of a crowdfunding PLATFORM should not be qualified as an AIF or an AIFM.	Due to the fact, that crowdfunding PLATFORMS should not be qualified as an AIF or an AIFM consequently a breach of the KAGB by means of a crowdfunding PLATFORM may not occur.	German AIFMD regulation does not apply to operating PROJECT OWNERs outside the financial sector which do not invest in accordance with a defined investment policy. Depending on the crowdfunding model KAGB may apply to PROJECT OWNERs: **Equity Model**: BaFin clarifies in its interpretation guideline on the "Scope of application of KAGB / Interpretation of the term collective investment undertaking" that companies are operating companies if they operate the facility or production themselves within their day-to-day business. However, BaFin states that an operating company can make use of the service of an intra-group company or an external service provider, as long as the day-to-day discretion remains at the company. In general, the "typical" PROJECT OWNER (e. g. start-up or developing company) seeking funding for its general commercial business by means of a crowdfunding PLATFORM should qualify as an "operating company" and therefore fall outside the scope of the German AIFMD regulation. However, especially renewable energy sources ("**RES**") projects or real estate projects may often not qualify as an operating company. This is due to the fact that RES Projects / real erstate projects are often simply “project companies” that are established to finance a single project such as a wind farm or a solar park and do not operate the facility or production themselves or by means of an outsourcing company leaving the day-to-day discretion to another company. Those “project companies” (often structured as so called "two-tiered structures") cannot qualify as operating companies within the meaning of the KAGB and therefore constitute an AIF within the meaning of the German AIFMD. **Lending Model**: Investments by means of subordinated loans (*Nachrangdarlehen*) can generally be structured as non-AIF investments since the investors do not share liability for any losses – and therefore do not invest in a *collective investment* undertaking. Due to the fact that the Crowdfunding Exception requires that the investments are made by means of subordinated loans (*Nachrangdarlehen*), profit-participating loans (*partiarische Darlehen*) or commercially comparable investments (*wirtschaftlich vergleichbare Anlagen*) anyway, most projects of PROJECT OWNERs that benefit from the Crowdfunding Exception are excluded from any possible regulation under the AIFMD. **Rewards/Donations Model:** Some projects of PROJECT OWNERs do not offer any kind of revenue but instead (often small) non-financial rewards in return (Donations or Rewards Model). In the latter case (e.g. if the promised reward is electricity at a reduced price or a film regarding the activities of a project) it can be argued that the funds are not invested for the benefit of those investors and the funding therefore contains no collective investment undertaking and no AIF. However, BaFin has not yet commented on a possible application of the AIFMD regime to rewards based Crowdfunding.	In case of a breach, the PROJECT OWNER generally faces 4 different consequences (from): - conviction by a court - BaFin - competitors - investors (see below cells for details) A court may convict the (natural) persons that acted on behalf of the PROJECT OWNER, e. g. in case the PROJECT OWNER carries out activities that are regulated by the KAGB (manages an AIF) without the required licence from BaFin (section 339 KAGB) BaFin has all regulatory decision-making powers listed above. Besides, competitors might bring actions against the PROJECT OWNERS (for details see above).	X	X	-	-

Germany

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
Prospectus Directive (Directive 2010/73/EC amending Directive 2003/71/EC)	Securities Prospectus Act (*Wertpapierprospektgesetz*) ("**WpPG**") Securities Trading Act (*Wertpapierhandelsgesetz*) ("**WpHG**")	sections 1, 2 and 3 WpPG sections 1, 2, 31 WpHG	The WpPG consitutes the legal framework for the drawing up, approval and publishing of a prospectus for securities to be offered to the public or admitted to trading on an organised market. The WpHG sets out legal requirements for investment services undertakings which provide investment services in relation to securities, i. a. extensive regulation regarding rules of conduct, etc.	**securities** (*Wertpapiere*) within the meaning of WpPG and WpHG means transferable securities which can be traded on a market, i. a. - shares and other securities equivalent to stocks or shares in stock companies or other legal entities - debt securities, in particular bonds and certificates - any other securities giving a right to acquire or dispose of such securities or resulting in a cash payment **investment services** (*Wertpapierdienstleistungen*) within the meaning of the WpHG means i. a. principal broking business (*Finanzkommissionsgeschäft*), trading for own account (*Eigenhandel*), contract broking (*Abschlussvermittlung*), investment broking (*Anlagevermittlung*), investment advice (*Anlageberatung*), etc. in relation to securities **investment services undertaking** (*Wertpapierdienstleister*) within the meaning of the WpHG means credit institutions, financial services institutions, etc. which provide investment services exclusively or toghether with ancillary investment services commercially or on a scale requiring a commercially organised business.
MiFID (Directive 2004/39/EC; Regulation no. 1287/2006 and Directive 2006/73/EC) (and in the future: MiFID II (Directive 2014/65/EU) and MiFIR (Regulation no. 600/2014)	Banking Act (*Kreditwesengesetz*) ("**KWG**")	sections 1 and 32 KWG	The KWG is the central German legislation with regard to the regulation of banks and financial services institutions.	**investment broking** (*Anlagevermittlung*) within the meaning of the KWG means the broking transactions involving the purchase and sale of financial instruments. **investment advice** (*Anlageberatung*) within the meaning of the KWG means the provision of personal recommendations regarding transactions in specified financial instruments to customers or their representatives, provided that such recommendations are based on an examination of the investor's personal circumstances or presented as being suitable for the investor and are not exclusively announced through information distibution channels or to the public. **financial instruments** within the meaning of the KWG include i. a. - securities (*Wertpapiere*), - investment products (*Vermögensanlagen*) and - shares in collective investment undertakings (*Investmentvermögen)*. **financial services** within the meaning of the KWG include i. a. investment broking, the purchase and sale of financial instruments in the name of and for the account of others (contract broking) and the investment advice with regard to financial instruments. **financial services institution** within the meaning of the KWG means any undertaking, which is not a credit institution, that provides financial services to others commercially or on a scale that requires a commercially organised business.
-	Trade, Commerce and Industry Regulation Act (*Gewerbeordnung*) ("**GewO**")	section 34f GewO	The GewO is the central trading regulation and i. a. regulates brokering of loans (§ 34c GewO) as well as financial investments (*Finanzanlagen*) (§ 34f GewO). Businesses that intend to broker financial investments must apply for a licence with the local Chamber of Commerce (*Industrie- und Handelskammer*) / local authority (e. g. Berlin district authority (*Bezirksamt*)) and then must comply with the requirements set out in the GewO and Ordinations decreed pursuant to the GewO.	**financial investments** (*Finanzanlagen*) within the meaning of the GewO means - shares in an investment fund pursuant to the KAGB - investment products within the meaning of the VermAnlG **investment broking** (*Anlagevermittlung*) within the meaning of the GewO means the broking transactions involving the purchase and sale of financial instruments **investment advice** (*Anlageberatung*) witihin the meaning of the GewO means the provision of personal recommendations regarding transactions in specified financial instruments to customers or their representatives, provided that such recommendations are based on an examination of the investor's personal circumstances or presented as being suitable for the investor and are not exclusively announced through information distibution channels or to the public **financial investment broker** (*Finanzanlagenvermittler*) means every (natural or legal) person that provides investment broking or investment advice with regard to financial investments within the scope of section 2 subsection 6 sentence 1 no. 8 KWG

Germany

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
Crowdfunding PLATFORMs in Germany usually do not offer securities to the public and are therefore not obligated to publish a prospectus pursuant to the WpPG. If the crowdfunding PLATFORM operates businesses that include investment services (e. g. investment broking of securities) the regulation of the WpHG might be applicable to the PLATFORM. This especially comprises the rules of conduct stipulated in sections 31 ff. WpHG, that i. a. contain appropriateness assessments, etc. There is currently no (relevant) crowdfunding PLATFORM in Germany that brokers securities.	In case of a breach, the PLATFORM generally faces four different consequences (from): - conviction by a court - BaFin - competitors - investors (see below cells for details) A court may convict the (natural) persons that acted on behalf of the PLATFORM, e. g. in case the PLATFORM provides financial services without the required licence from BaFin (section 38 WpHG) BaFin has all regulatory decision-making powers listed above. Besides, competitors might bring actions against the Plaform operators (for details see above).	PROJECT OWNERs issuing securities to investors can be subject to a prospectus requirement pursuant to section 3 of the WpPG. The general prospectus requirement regarding securities does – inter alia – not apply where the offering of securities meets the following requirements: - sales price does not exceed EUR 100,000 within a time period of 12 months; - offer addresses not more than 150 investors per country in the European Economic Area or - price per share amounts to minimum EUR 100,000 per investor	See PLATFORM.	X	X	-	-
Pursuant to the KWG, anyone intending to provide financial services in Germany commercially or on a scale which requires a commercially organised business undertaking requires a written licence according to section 32 KWG from BaFin. Where an online crowdfunding PLATFORM facilitates the offering of securities, investment products (*Vermögensanlagen*) or shares in collective investment undertakings (*Investmentvermögen*), the operator of the PLATFORM provides financial services within the meaning of the KWG and therefore, as a general rule, requires a license by BaFin. Most German crowdfunding platforms offer subordinated profit-participating loans (*partiarische Nachrangdarlehen*) and can therefore benefit from a statutory exception to the license requirement (also under the new Crowdfunding Exception). The following requirements must be met: - only investment broking and contract broking are conducted, - only investment products (*Vermögensanlagen*) within the meaning of the VermAnlG or shares in collective investment undertakings (*Investmentvermögen*) are offered; - no acquiring of ownership or possession with regard to funds or shares of customers (unless a specific licence to do so has been obtained). Where these requirements are met, the operator only needs a licence under the GewO (see below for details). Compared to a licence under the KWG this is a relatively straightforward matter.	In case of a breach, the PLATFORM generally faces four different consequences (from): - conviction by a court - BaFin - competitors - investors (see below cells for details) A court may convict the (natural) persons that acted on behalf of the PLATFORM, e. g. in case the PLATFORM provides financial services without the required licence from BaFin (section 54 KWG) BaFin has all regulatory decision-making powers listed above. Besides, competitors might bring actions against the Plaform operators (for details see above).	See PLATFORM. Usually PROJECT OWNERs will not fall under the regulation of the KWG since they do not provide financial services within the meaning of the KWG.	See PLATFORM.	X	X	-	-
Since 1 January 2016 (at the latest) PLATFORMs must have applied for a licence pursuant to section 34f GewO. Pursuant to obtaining this licence they have to comply with additional requirements resulting from the Financial Investments Brokering Regulation (*Finanzanlagenvermittlungsverordnung*) ("**FinVermV**"). The FinVermV mainly constitutes - besides organisational provisions - two requirements for PLATFORMs: - information of investors about brokered financial investments regarding the status of the PLATFORM as well as associated risks, costs and possible conflicts of interests - suitability test of brokered financial investment which requires that the PLATFORM asks investors for information of knowledge and experience regarding kind, extent and frequency of transactions of financial investments	In case of a breach of provisions of GewO or its subordinated Ordinations, the PLATFORM generaly faces three different consequences from: - regulator (Chamber of Commerce or local authority) - competitors (see above) - investors (see below for details) In case of a breach of provisions of the GewO the PLATFORM commits an administrative offence (*Ordnungswidrigkeit*) which is punishable by the responsible regulator with a fine up to a maximum amount of EUR 5.000. A sanction in a broader sense can be that the responsible regulator may refuse a future application for a licence since the applicant may not have sufficient reliability (*Zuverlässigkeit*) due to a former breach of regulatory provisions, which is generally required for obtaining a licence with BaFin. Besides, competitors might bring actions against the PLATFORM operators (for details see above).	As PROJECT OWNERs usually do not broker financial investments (*Finanzanlagen*) they do not have to comply with section 34f GewO and its subordinated Ordinations.	-	X	X	X	-

Germany

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
Payment Services Directive (Directive 2007/64/EC) (and in the future PSD II (Directive proposal COM/2013/0547)	Payment Services Supervision Act (*Zahlungsdiensteaufsichtsgesetz*) ("**ZAG**")	sections 1 and 8 ZAG	Pursuant to the ZAG any undertaking providing payment services within the meaning of the ZAG constitutes a payment services provider (*Zahlungsdienstleister*) and must obtain a licence pursuant to section 8 ZAG	**money remittance services** (*Finanztransfergeschäft*) within the meaning of the ZAG means a payment service where funds are received from a payer, without any payment accounts being created in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee, and/or where such funds are received on behalf of and made available to the payee. **payment service** (*Zahlungsdienst*) within the meaning of the ZAG means any services stipulated in section 1 subsection 2 ZAG, i. a. money remittance services. **payment service provider** (*Zahlungsdienstleister*)within the meaning of the ZAG means i. a. any credit institution, e-money-institutions, public bodies and undertakings that provide payment services commercially or on a scale requiring a commercially organised business.
-	Civil Code (Bürgerliches Gesetzbuch) ("**BGB**") - prospect liability according to civil law (*zivilrechtliche Prospekthaftung*)	sections 280, 241, 311 BGB	In Germany, there are two prospect liabilities for persons involved in offering investments - the so called **statutory prospect liability** (*spezialgesetzliche Prospekthaftung*), e. g. pursuant to the WpPG (see above) and the **prospect liability according to civil law** (*zivilrechtliche Prospekthaftung*). The latter often applies to capital investments that are not covered by a statutory prospect liability. This lack of prospect liability inspired several German courts to "invent" a prospect liability according to civil law. This liability is based on *culpa in contrahendo* which means the liability of a person that is based on the trust someone else has in that person (*Vertrauenshaftung*). The prospect liability according to civil law arises from sections 280, 241, 311 BGB and several decisions of the Federal Supreme Court (*Bundesgerichtshof* - **BGH**) and - with regard to the addressees - can be divided into - particular prospect liability (*Prospekthaftung im engeren Sinne*) and - general prospect liability (*Prospekthaftung im weiteren Sinne*). Both liabilites only apply if it can be proved that the liable person is guilty of intent (*Vorsatz*) or negligence (*Fahrlässigkeit*), i. e. default (*Verschulden*). The particular prospect liability applies to initiators, founders, management and other persons of the issuing company that have particular influence on the issuing company. These persons have participated in providing the prospect in a way that is externally recognisable for others. It is characteristic that these persons make use of typified confidence in the issuing company. The general prospect liability in contrast applies to persons that are not connected to the issuing company, but personally involved in providing the prospect, e. g. persons that adopt the prospect as their own. These persons often are obligated to provide certain information to the investors and in order to fulfill their obligation they sometimes adopt parts of the prospectus. A general prospect liability may i. a. arise only in case one of the following requirement is met - particular personal trust of the liable person or - direct economic interests regarding the conclusion of the contract (The payment of commissions to the person is not sufficient, the acting person must - in an economic sense - act on their own account, e. g. because their own existence is connected to the prosperity of the company)	**prospect** means any market related statements that - contain the relevant information or give the impression of completeness to evaluate an investment and - are the basis for the decision of the investor. For further definitions see on the left.
-	BGB	section 280 BGB	Liability arising from breach of duty of contractual obligation. If the obligor breaches a duty arising from the obligation, the obligee may demand damages for the damage caused thereby. This does not apply if the obligor is not responsible for the breach of duty.	**Breach of duty** (*Pflichtverletzung*) means every behaviour which deviates from the contractual obligations. This could take the form of a non-performance of obligations as well as breach of an accessory obligation.

Germany

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
Any transfer of funds through the operator of a crowdfunding PLATFORM generally constitutes money remittance services within the meaning of the ZAG. Such transfer of funds could occur if the investors pay their investment amounts to the operator of the crowdfunding PLATFORM which then passes the funds to the entrepreneur. In this context BaFin has decided that operators of internet platforms (such as crowdfunding platforms) in general are not covered by the exemption for commercial agents. In order to avoid such licencing requirements the operator of a crowdfunding PLATFORM may cooperate with a bank or a licenced payment institution for the handling of payments rather than acting as an intermediary itself. However, the structure of this cooperation must meet detailed requirements by BaFin. Another possible solution would be that the PROJECT OWNERs collect the funds from the investors on their own bank account. The power of disposal (*Verfügungsbefugnis*) over the funds collected could be restricted until the respective crowdfunding PLATFORM agrees.	In case of a breach, the PLATFORM generally faces four different consequences (from): - conviction by a court - BaFin - competitors - investors (see below cells for details) A court may convict the (natural) persons that acted on behalf of the PLATFORM, e. g. in case the PLATFORM provides payment services without the required licence from BaFin (section 31 ZAG) BaFin has all regulatory decision-making powers listed above. Besides, competitors might bring actions against the Plaform operators (for details see above).	The PROJECT OWNER normally constitutes the recipient of the funds collected by means of the PLATFORM. Therefore, as a general rule the PROJECT OWNER should not provide money remittance services and should therefore often fall outside the regulation pursuant to the ZAG. For more details see PLATFORM.	See PLATFORM.	X	X	X	X
PLATFORMs usually are not the initiators, founders, management or any other person that has particular influence on or control over the issuing company. Therefore, the PLATFORM would not be subject of the particular prospect liability within the aforementioned meaning. Furthermore, the PLATFORM generally may not be involved in the creation of the prospect in a way that is externally recognisable. Rather, the PLATFORM usually disclaims any liability for the preparation or provision of any information presented by the PROJECT OWNER on the PLATFORM website. However, PLATFORMs that provide investment broking of subordinated profit-participating loans (i. e. investment products pursuant to VermAnlG) may be subject to a general prospect liability. It cannot be completely excluded that PLATFORMs may take a particular personal trust (e. g. if they assess PROJECT OWNERs before presenting on their website in the course of e. g. a due diligence). Moreover, the PLATFORM may not act with direct economic interests regarding the conclusion of the contracts. This is due to the fact that the payment of the commissions of the PLATFORM is not sufficient for a general prospect liability (see left). However, one German legal scholar claims that PLATFORMs may act on their own accounts (and therefore with direct economic interest) since their business model is exclusively designed to earn commissions. This argument would connect the economic existence of the PLATFORM to the PROJECT OWNERS that are presented on the website of the PLATFORM. In the end this would lead to an "acting on own accounts". As a consequence the PLATFORM could be subject to a general prospect liability. However, there is no jurisdiction in Germany regarding PLATFORMs that provide investment broking and may be subject to prospect liabilities in the abovementioned sense.	In the (unlikely) event that the general prospect liability applies to the PLATFORM the operators are liable to make compensation to investors - if the investors can prove that the PLATFORM acted intentionally or negligent.	Other than the PLATFORMs, PROJECT OWNERs and the (natural) persons involved in preparing a prospectus are subject to the particular prospect liability as well as the general prospect liability. PROJECT OWNERs have influence on the information published on the website of the PLATFORM. Consequently they are liable for any incorrectness of the information published. PROJECT OWNERs also are highly personally involved, make use of particular personal trust and have direct economic interests when publishing information regarding their project (funding of their project).	In case the PROJECT OWNERs commited the particular / general prospect liability intentionally or negligently they are liable to make compensations to investors. This also may include the cancellation and reversed transaction of the concluded contracts with the investors.	X	X	X	X
N/A	In case of breach of duty of contractual obligation the PLATFORM operators can be liable to compensation.			X	X	X	X

Germany

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
-	BGB	section 823 BGB	Liability arising from unlawful act A person who, intentionally or negligently, unlawfully injures the life, body, health, freedom, property or another right of another person is liable to make compensation to the other party for the damage arising from this. Further in accordance with undersection 2 a liability arises if a person commits a breach of a statute that is intended to protect another person.	**Statute** (*Schutzgesetz*) means any legal norm with the aim to protect the legal interests of individuals.
Consumer Credit Directive (Directive 2008/48/EC)	BGB	Sections 491 - 505 BGB	The provisions 491 - 505 BGB apply to nongratuitous loan contracts between an entrepreneur as lender and a consumer as borrower (consumer credit agreement) with the aim of consumer protection. The consumer credit agreement is void if written form is not complied with at all or if any of the items of information specified in Article 247 sections 6 and 9 to 13 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuch*) ("**EGBGB**") for the consumer credit agreement is lacking. These specific provisions include provisions relating to the provision of precontractual information and content requirements of the credit agreement. (Section 491a BGB). In the case of a consumer credit agreement, the borrower has a right of withdrawal pursuant to section 355 BGB.	**Consumer** (*Verbraucher*) means any natural person who is acting for purposes which are outside his business or profession. **Consumer Credit agreement** (*Verbaucherkreditvertrag*) means an agreement whereby a credit provider grants or promises to grant to a consumer credit in the form of a deferred payment, loan or other similar financial accommodation, except for agreements for the provision on a continuing basis of services or for the supply of goods of the same kind, where the consumer pays for such services or goods for the duration of their provision by means of instalments **Entrepreneur, Credit provider** (*Kreditgeber, Unternehmer*) means a natural or legal person who grants or promises to grant credit in the course of his business or profession.
Directive 2000/31/EC (E-Commerce Directive) Distance Marketing of Financial Services Directive (Directive) 2002/65/EC) Consumer Rights Directive (Directive 2011/83/EU)	BGB EGBGB	sections 312b, 312c, 312d BGB Art. 246 a-c EGBGB	In connection with contracts for distance and off-premises contracts the German Civil Code (BGB) requires a number of certain information obligations, which affect the procedure of the conclusion of the contract as well as references to terms and conditions, instructions regarding to the right of withdrawal and general informations on the mandatory contact and the business. These Obligations are defined in the Articles 246a and 246c EGBGB. In the case of off-premises contracts and of distance contracts for financial services, the trader is obliged, in derogation from subsection, the Art. 246b EGBGB determines certain information duties, which are more extensive than the above mentioned obligations.	**Consumer** (*Verbraucher*) means any natural person who is acting for purposes which are outside his business or profession **Entrepreneur** (*Unternehmer*) means a natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its trade, business or profession. **Distance contracts** (*Fernabsatzverträge*) are contracts for which the trader, or a person acting in the trader's name or on his behalf, and the consumer exclusively avail themselves of means of distance communication in negotiating and concluding the contract, except where the conclusion of the contract does not take place in the context of a sales or service-provision scheme organised for distance sales. **Means of distance communication** (*Fernkommunikationsmittel*) are all means of communication which can be used to initiate or to conclude a contract, without requiring the simultaneous physical presence of the parties to the contract, such as letters, catalogues, telephone calls, faxes, emails, text messages sent via the mobile telephone service (SMS) as well as messages broadcast and sent via teleservices.
Directive 1999/93/EC on a Community framework for electronic signatures	Law for electronic signatures (Gesetz über Rahmenbedingungen für elektronische Signaturen) (SigG); BGB	section 126a BGB	Subject to certain conditions, an electronic signature is legally recognised and has the same legal validity as a handwritten signature . Examples of electronic signatures are digital signatures (i.e. an encrypted hash value), biometric signatures, pdf copies of written signatures, pin codes, digital identification numbers, electronical payment codes, etc. An e-mail address is not an electronic signature.	**Electronic signature** (*Elektonische Signatur*) under German law is a signature consisting of electronical data which are attached to or logically associated with other electronic data and which serve as a method of authentication.

Germany

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
The PLATFORM should take notice of these provisions.	In case of violating one of the aforementioned legal interests the PLATFORM operators are liable to make compensation.	See PLATFORM.	See PLATFORM.	X	X	X	X
To the extent the PLATFORM is considered a credit provider or a credit intermediary it should adhere to the specific provisions as laid down in the BGB.	Non-inclusion of standard information in any promotion material for credit agreement by a credit provider and non compliance in respect of certain other information requirements are each deemed to be an unfair commercial practice within the meaning of the provisions of the UWG. In case of breach of these provisions a fine can be imposed. This fine concludes a claim for damages as well as attorney's fees and a desist declaration with penalty clause. In case of violating the desist declaration a contractual penalty shall further be payable.	N/A	N/A	X	X	X	X
To fulfill their information requirements in accordance with Art. 246a EGBGB PLATFORM operators must provide informations about mandatory contact and business information (Company name and legal form, Geographic address, Names of the company's legal representatives, E-Mail address, Telephone number...). PLATFORM operators must provide clear reference to terms and conditions and to instructions on the exercise of the right of withdrawal is present before final purchase. Therefore model instructions as set out in Annex I of the CRD are being used. In case the trader did not provide the consumer with the information the right of withdrawal expires 12 months after the day defined above or 14 days after the consumer received this information. Prices and costs must be provided clearly and unambiguously. Main characteristics of the services. The price information must include the total price of the goods or services (inclusive of VAT and other taxes) and potential costs that may incur in the future. In accordance with Art. 246c EGBGB consumers must be informed about the technical steps required to conclude the contract (e.g. breadcrumbs) and must be able to spot and correct errors (e.g. “go back” and “edit” buttons). Further no preselected checkboxes for additionally charged services and extras (guarantee agreements, etc.) may be given.	In case of a breach of any information obligation the PLATFORM operators can be liable for cease and desist in accordance to the sections 3 and 3a of the law against unfair competition (Gesetz gegen den unlauteren Wettbewerb) ("UWG"). The sanctions are the same as referenced before.	See PLATFORM.	See PLATFORM.	X	X	X	X
Applicable to PLATFORMs.	An electronic signature can be legally recognised if the authentication method used is sufficiently reliable taken the purpose of the electronical data which are forming part of the electronic signature and all other circumstances of the case at hand. The authentication method is deemed to be reliable if the electronic signature is based on a qualifying certificate and is generated using safe means for creating electronic signatures (i.e. configurated software or hardware used to implement the data for creating electronic signatures). The requirements for determining whether the PLATFORM can rely on such presumption of reliability is determined by the Decree on Electronic Signatures.	See PLATFORM.	See PLATFORM.	X	X	X	X

Germany

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
Unfair Contracts Terms Directive (93/13/EEC) Consumer Rights Directive (Directive 2011/83/EU)	BGB	Sections 305 -309 BGB	A stipulation in general terms and conditions may not be unreasonably onerous to the counterparty and must be brought to the attention fo the counterparty. The sections 308 and 309 BGB include a list of stipulations in general terms and conditions that are ineffective.	**Standard business terms** (Allgemeine Geschäftsbedingungen) are all contract terms pre-formulated for more than two contracts which one party to the contract (the user) presents to the other party upon the entering into of the contract. It is irrelevant whether the provisions take the form of a physically separate part of a contract or are made part of the contractual document itself, what their volume is, what typeface or font is used for them and what form the contract takes. Contract terms do not become standard business terms to the extent that they have been negotiated in detail between the parties.
REGULATION (EU) No 524/2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR)	-		The EU directive 524/2013 regulates an online dispute settlement on consumers affairs. This directive statues an off-court dispute settlement and obligates entrepreneurs which are established in a member state of the European Union to publish a link which leads the costumer directly to the PLATFORM. The obligation is not yet effective, but is expected to become effective in 2017. Therefore we recommend to consider this regulation already.	N/A
Unfair Commercial Practices Directive (2005/29/EC) Directive 2006/114/EC concerning misleading and comparative advertising (consolidates Directives 84/450/EC and 97/55/EC)	Act against Unfair Competition (*Gesetz gegen den unlauteren Wettbewerb*) ("**UWG**")	Sections 3, 3a, 4a, 5 and 5a UWG	This Act shall serve the purpose of protecting competitors, consumers and other market participants against unfair commercial practices. At the same time, it shall protect the interests of the public in undistorted competition. The provisions of the Act against Unfair Competition (UWG) regulate the relations between competitors in the market and to other market participants. The UWG shall especially prevent an impediment to effective competition and to single market participants and further create transparency. The act further stipulates in section 3a that an unfair competition is given, in case of violating a provision which is intended to regulate the market conduct in the interests of market participants. Therefore a breach of law can also be given in case of violating Consumer protection rules in accordance to the BGB. Moreover, the act prohibits in its section 5 and 5a such commercial practices, which are suitable to be misleading. Also a commercial practice is particularly unfair if a trader performs an aggressive commercial practice within the meaning of the relevant provisions of the UWG.	**Commercial practice** (*Geschäftliche Handlung*) shall mean any conduct by a person for the benefit of that person's or a third party's business before, during, or after, the conclusion of a business transaction, which conduct is objectively connected with promoting the sale or the procurement of goods or services, or with the conclusion or the performance of a contract concerning goods or services; "goods" shall be deemed to include immovable property as well, and "services" also rights and obligations. **Competitor** (*Mitbewerber*) shall mean any person who has a concrete competitive relationship with one or more entrepreneurs supplying or demanding goods or services. **Unfair commercial practices** (U*nlautere Handlung*) shall be illegal if they are suited to tangible impairment of the interests of competitors, consumers or other market participants. **Entrepreneur** (*Unternehmer*) shall mean any natural or legal person engaging in commercial practices within the framework of his or its trade, business, craft or profession and anyone acting in the name of, or on behalf of, such person (see below) **Misleading** (*Irreführend*): a commercial practice is misleading if information is provided that is factually inaccurate or that misleads or can mislead an average consumer either by the general presentation of the information or otherwise , including for example the use of confusing comparative advertising, as a consequence of which the average consumer takes or could take a decision in respect of an agreement which he would not have taken otherwise. A commercial practice can also be misleading in case of a misleading omission.
Rome I Regulation (Regulation no. 593/2008) on the law applicable to contractual obligations	Direct effect, Code of Civil Procedure (*Zivilprozessordnung* - **ZPO**) and EGBGB	Direct effect of Rome I	German international private law rules in relation to contracts. Rome I determines applicable laws in case of cross border claims based on contracts.	Not relevant.
Rome II Regulation (Regulation no. 864/2007) on the law applicable to non-contractual obligations	Direct effect, ZPO and EGBGB	Direct effect of Rome II	German international private law rules in relation to other legal grounds, including unlawful acts. Rome II determines applicable laws in case of cross border claims based on other legal grounds than contracts, including unlawful acts.	Not relevant.

Germany

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
The PLATFORM should take notice of these provisions when drafting its general terms and conditions.	As consequence the respective term will be invalid in case of violation one of the before mentioned provisions. Further the above mentioned sanctions can arise, because such terms and conditions that violate consumers rights are an unfair commercial practice in accordance to the sections 3 and 3a UWG.	Also the PROJECTOWNER should take notice of these provisions as the (investment) contracts between PROJECT OWNER and investor also constitute Standard Business terms	As consequence the respective term will be invalid in case of violation one of the before mentioned provisions. Further the above mentioned sanctions can arise, because such terms and conditions that violate consumers rights are an unfair commercial practice in accordance to the sections 3 and 3a UWG.	X	X	X	X
To the extent the PLATFORM can also be addressed in legal proceedings.	N/A	N/A	N/A	X	X	X	X
A PLATFORM will, most probably, be considered a entrepreneur and must ensure that any of its commercial practices are fair and in any event not misleading nor agressive. The very basic (but not exhaustive!) rules to comply with in respect of the provision of information is that: - any information provided must be complete, accurate, comprehensible and not misleading (nor misleading by omission); - its commercial character should be made explicit to the consumer; - any material information should be provided in a transparent and timely fashion; and - compliance with any applicable marketing restrictions.	In case of infringements the PLATFORM operators are liable for cease and desist and removal, in accordance to section 8 subsection 1 UWG. In accordance to section 9 UWG they can further be liable to compensations, if the illegal commercial practice was permitted with intent or negligently. The sanctions are the same as referenced before. In an important jugdment of autumn 2011 (so called "Lieferheldentscheidung") , the Cologne district court constituted a violation of §§ 3, 4 Nr. 11, 8 UWG in connection with 8 Abs. 1 ZAG by the e-commerce PLATFORM "lieferheld.de". The court decided that the professional collection of money for the purpose of transfering it to a third party, constitutes money remittance services (*Finanztransfergeschäft*) which is a payment service withing the meaning of the ZAG. The provision of such payment services requires applying for a licence with BaFin. This was the first time a German court decided that the violation of regulatory provisions could result in an unfair commercial practice with regard to competitors.	See PLATFORM.	See PLATFORM.	X	X	X	X
The PLATFORM can include a choice of law clause in the agreement which generally determines laws applicable to the contractual relationship. If the counterparty is a consumer, however, special notice should be given to Article 7 of Rome I.	Not relevant	See PLATFORM.	See PLATFORM.	X	X	X	X
ROME II determines applicable law with regard to cross border claims based on other legal grounds than contracts (especially tort law).	Not relevant	See PLATFORM.	See PLATFORM.	X	X	X	X

The Netherlands

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
Amongst others: *Investment based* : MiFID (Directive 2004/39/EC; Regulation no. 1287/2006 and Directive 2006/73/EC) (and in the future: MiFID II (Directive 2014/65/EU) and MiFIR (Regulation no. 600/2014) Prospectus Directive (Directive 2010/73/EC amending Directive 2003/71/EC), to be replaced by a new Prospectus Regulation (COM (2015) 583) Prospectus Regulation (Regulation no. 809/2004) AIFMD (Directive 2011/61/EC) *Lending based:* Consumer Credit Directive (Directive 2008/48/EC) Mortgage Credit Directive (Directive 2014/17/EU) *Potentially all tyes of crowdfunding* : Payment Services Directive (Directive 2007/64/EC) (and in the future PSD II (Directive proposal COM/2013/0547))	Dutch Financial Supervision Act (Wet op het financieel toezicht **(DFSA)**	Amongst others: *Investment based* : 2:96 DFSA (license investment firm) 2:65 DFSA (license invesment fund (manager)) 5:2 DFSA (prospectus obligation) *Lending based:* 2:60 DFSA (license consumer credit offeror) 3:5 DFSA (prohibition to attract redeemable funds from the public) 4:3 DFSA (prohibition to intermediate in relation to redeemable funds) *Potentially all tyes of crowdfunding:* 2:3a DFSA (license payment services provider)	The DFSA provides the regulatory framework for any type of services provided in relation to the financial sector. The parties involved in crowdfunding may be subject to the regulatory framework resulting in a license requirement, regulatory prohibitions and similar rules and regulations to which each of the parties needs to comply. Each of the parties has its own responsibility to ensure that it complies in full to any applicable Dutch rules and regulations. Depending factors are, amongst others: - type of crowdfunding (investment based, lending based, reward based or donations based) - the identity of the investor (consumer or not) - the exact role and activities of actor (investor, platform, project owner)	**Consumer** (*consument*) means a natural person who does not act in the course of his business or profession to whom a financial undertaking provides its financial service **financial undertaking** (*financiële onderneming*) means, amongst others, a investment fund, an investment firm, a payment servicer provider and a financial servicer provider **financial product** (*financieel product*) means, among other things, a financial instrument and credit **financial instrument** (*financieel instrument*) means, among other things, a security and a participation right in an investment fund other than a security **security** (*effect*) means (i) a tradeable / negotiable share or comparable tradeable instrument or right, (ii) a tradeable / negotiable bond or comparable debt obligation or (iii) any other tradeable/negotiable instrument issued by a legal entity which can be settled in monies or pursuant to which the holder is entitled to a security as referred to under (i) or (ii) above in case of exercise or conversion of such instrument **financial service** (*financiële dienst*) means, among other things to offer, to advise in respect of financial products other than financial instruments, to manage an investment institution, to intermediate, to provide investment services and to deploy investment activities **to offer** (*aanbieden*) means (i)(a) in the course of a business or profession, (in)directly making a sufficiently concrete proposal to enter into an agreement with a consumer as a counterparty in relation to a financial product which does not qualify as a financial instrument, or (b) in the course of a business or profession entering into, managing or executing such an agreement, or (ii) (in)directly making a sufficiently concrete proposal to enter - as a counterparty - into an agreement with a consumer in relation to participation right in an investment fund **to intermediate (***bemiddelen*) means in the course of a business or profession conducting any activities aimed at, as an intermediator, creating an agreement in re+E5lation to a financial product which does not qualify as a financial instrument between the offeror and the consumer, including, in relation to credit only, assisting in the management and execution of such an agreement; **to advise** (*adviseren*) means in the course of a business or profession recommending one or more specific financial products other than a financial instrument to a specific consumer **credit** (*krediet*) means, among other things, the provision of an amount of money to a consumer in respect whereof the consumer is required to make one or more payments **redeemable funds** (*opvorderbare gelden*) means deposits or other repayable funds **payment services provider** (*betaaldienstverlener*) means the person who makes its business of providing payment services **financial services provider** (*financiëledienstverlener*) means, among other things, the person who offers, advises on or intermediates in relation to financial products other than financial instruments **investment firm** (*beleggingsonderneming*) means the person who provides investment services or who deploys investment activities **investment institution** (*beleggingsinstelling*) has the meaning ascribed to it in Article 4, section 1, part a of the AIFMD in the form of an investment fund or an investment company **investment fund** (*beleggingsfonds*) means assets that are not placed with an investment company which contains monies or other goods that have been requested or obtained with the aim of making collective investments intended to have the participants sharing in the proceeds of the investments **investment company** (*beleggingsmaatschappij*) means a legal entity that requests or obtains monies or other goods with hte aim of making collective investments intended to have the participant sharing in the proceeds of the investments other than an UCITS (being an undertaking for the collective investment in securities) **to provide investment services** (*verlenen van beleggingsdiensten*) means, among other things, in the course of a business or profession (i) receiving and passing on orders in relation to financial instruments, (ii) executing orders in relation to financial instruments for the account of the client, (iii) advising in respect of financial instruments or (iv) taking over or allocating/placing securities in the event of an offering thereof by an issuer with or without placement guarantee **to deploy investment activities** (*verrichten van beleggingsactiviteiten*) means in the course of a business or profession (i) trading for your own account, and (ii) exploitation of a multilateral trading facility **issuer** (*uitgevende instelling*) means anyone who has issued or contemplates to issue securities

The Netherlands

Applicability and compliance recommendations **PLATFORM** (assumed to be a business)	**Sanctions for breach** **PLATFORM**	**Applicability and compliance recommendations** **PROJECT OWNER** (assumed to be a business)	**Sanctions for breach** **PROJECT OWNER**	**Relevant for type of Crowdfunding**			
				Investment based	**Lending based**	**Reward based**	**Donations based**
If and to the extent the PLATFORM falls within the scope of the DFSA, the rules and regulations applicable to the PLATFORM need to be complied with. Recommended to obtain local law advice in relation to any entrance rules and regulations under the regulatory framework as early as possible in the structuring phase. Recommended to obtain local law advice on a continuing basis in relation to the ongoing rules and regulations applicable after having entered the crowdfunding market. Depending on the type of crowdfunding, the PLATFORM may be subject to specific ongoing obligations such as information requirements, KYC requirements, conducting a suitability test with investors etc.	Any non compliance of these rules will generally be sanctioned via administrative law measures by the regulators (the Netherlands Authority for the Financial Markets (*Stichting Autoriteit Financiële Markten* (**AFM**) and the Dutch Central Bank (*De Nederlandsche Bank* (**DNB**)). Administrative law measures available to the regulators are: (i) an instruction *(aanwijzing)* to adhere to a particular line of conduct within a reasonable term issued by one of the regulators (Art. 1:75 DFSA); (ii) appointment of one or more persons as a trustee *(curator)* (Art. 1:76 DFSA); (iii) imposing a cease and desist order *(last onder dwangsom*) on the PLATFORM (Art. 1:79 DFSA); (iv)imposing an administrative fine *(bestuurlijke boete)* (Art. 1:80 DFSA); and (v) in extremis a breach of DFSA can lead to de-licensing or withdrawal of the provided dispensation. In addition, certain measures are also made public (Art. 1:97 DFSA). Certain breaches of the DFSA may result in criminal sanctions. A failure to comply with the DFSA may constitute a criminal offence which can be prosecuted as such by the Public Ministry through the Dutch Economic Offences Act (*Wet economische delicten* (**WED**)). Last but not least, non compliance with the regulatory regime triggers civil law sanctions, such as declaring the agreement with the PLATFORM null and void (*nietig*) or voidable (*vernietigbaar*), it could lead to a claim for damages on the basis of default (*wanpretatie*) of an agreement (e.g. because of breach of representations) and/or on the basis of tort (*onrechtmatige daad*).	Under circumstances the PROJECT OWNER may be subjected to the regulatory framework as well. See PLATFORM.	See PLATFORM.	Generally applicable	Applicable only if platform falls within the scope of the DFSA	Applicable only if platform falls within the scope of the DFSA (generally not, except in case of payment services provider)	Applicable only if platform falls within the scope of the DFSA (generally not, except in case of payment services provider)

The Netherlands

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
N/A	Dutch Financial Supervision Act (Wet op het financieel toezicht (**DFSA**)	Article 1:23	Except for situations in which it is explicitly dealt with differently in the DFSA, the mere fact that civil law legal acts have been entered into in violation of the DFSA or the rules promulgated thereunder does not in itself affect the legal validity of those legal acts. Exceptions (explicitly dealt with differently in the DFSA) are amongst others: - acting in violation of rules in relation to having a restrained remuneration policy; - acting in violation of information requirements applicable to a payment services provider pursuant to Title 3 of the Payment Services Directive; and - legal acts deployed by an intermediator in credit in violation of the prohibition to receive commission from another party that the credit offeror. In case of violation of the above mentioned rules under the DFSA, Article 1:23 DFSA does not prevent that the legal validity of the legal acts entered into in violation ot these rules can be affected and as such that a claim for annulment or declaring the legal act null and void can be made on the basis of Article 3:40 DCC (see below).	N/A
Directive 1999/93/EC on a Community framework for electronic signatures	Dutch Civil Code (**DCC**) Telecommunication Act	3:15a-c DCC 6:227a-6:227c DCC 1.1 Telecommunication Act	Subject to certain conditions, an electronic signature is legally recognised and has the same legal validity as a handwritten signature . Examples of electronic signatures are digital signatures (i.e. an encrypted hash value), biometric signatures, pdf copies of written signatures, pin codes, digital identification numbers, electronical payment codes, etc. An e-mail address is not an electronic signature.	**Electronic signature** under Dutch law is a signature consisting of electronical data which are attached to or logically associated with other electronic data and which serve as a method of authentication.
Directive 2000/31/EC (**E-Commerce Directive**)	DCC DFSA	3:15d-3:15f DCC; 6:196c DCC	Requirements applicable to 'service of an information society' providers. General information requirements aiming at making available the required information in an easy, direct and permanent manner to the recipients of the service (regarding a.o. identity and address service provicer, contact details, number of registration with trade register, if applicable, details of supervisory authority, VAT number). Requirements in relation to commercial communications (clearly identifiability of natural or legal person on whose behalf the commercial communication is made, its commercial nature, any conditions in relation to commercial communication should be easily accessible and be presented clearly and unambiguously. Unsolicited commercial communication by electronic mail must be identifiable clearly and unambiguously as such as soon immediately at the moment of receipt by the recipient.	**Service of an information society** (*dienst van een informatiemaatschappij*) is any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services without the parties being simultaneously present at the same place. By electronic means means that the service is entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means, using electronic equipment for the processing (including digital compression) and storage of data (in line with the E-Commerce Directive and, as such, Directive 98/34/EC as amended by Directive 98/48/EC). This means that generally all online economical activities including online sales, but also online information or commercial communication etc. fall within the scope of these provisions.

The Netherlands

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
Not relevant	Not relevant	Not relevant	Not relevant	Generally applicable	Applicable only if platform falls within the scope of the DFSA	Applicable only if platform falls within the scope of the DFSA (generally not, except in case of payment services provider)	Applicable only if platform falls within the scope of the DFSA (generally not, except in case of payment services provider)
An electronic signature can be legally recognised if the authentication method used is sufficiently reliable taken the purpose of the electronical data which are forming part of the electronic signature and all other circumstances of the case at hand. The authentication method is deemed to be reliable if the electronic signature is based on a qualifying certificate and is generated using safe means for creating electronic signatures (i.e. configurated software or hardware used to implement the data for creating electronic signatures). The requirements for determining whether the Platform can rely on such presumption of reliability is determined by the Decree on Electronic Signatures.	No legal recognition of electronic signature, potentially resulting in: - counterparty not bound by document or statement which was electronically signed; - no evidencial consquences attached to the electronic signature; - legal formality requirement (*wettelijk vormvoorschrift*) not complied with. Parties can mutually agree differently and deviate from the above by agreeing that their agreed manner of electronically signing any documents shall be given legal affect. A Dutch court could, in that case, still waive any such contractual agreement if this was in violation of the principle of reasonableness and fairness (*redelijkheid en billijkheid*), for example in case of inclusion of this 'mutual agreement' in general terms and conditions of the Platform when this stipulation can be held unreasonably burdensome (*onredelijk bezwarend*). Please see [...] for an explanation of unreasonably burdensome terms and conditions.	Please see PLATFORM; applies mutatis mutandis to PROJECT OWNER	Please see PLATFORM; applies mutatis mutandis to PROJECT OWNER	X	X	X	X
Services of PLATFORM generally qualify as services of an information society. PLATFORM needs to comply with these minimum information requirements when setting up the website and in relation to each project posted on the website.	Civil law measures could be taken by investors. Art. 6:196c DCC provides for some exceptions of liability applicable to information society. Under limited circumstances, the PLATFORM, in its capacity as information society only (please see note below), cannot be held liable for information from a third party (such as the PROJECT OWNER) that is merely passed on by the PLATFORM. We note that the PLATFORM may be exposed to similar liabilty risks on the basis of other grounds. Its potentional exceptional position under Art. 6:196c DCC does not mean, as a general rule, that the PLATFORM cannot be held liable for information provided by the PROJECT OWNER. For example, on the basis of regulatory regulations, the PLATFORM Is generally believed to have a duty of care to some extent in this respect to ensure that the informatoin provided by the PROJECT OWNER is accurate, complete and not misleading. Although outside the scope of this research: it should be noted that PLATFORM also faces criminal and administrative law sanctions in case of violation of these requirements under the Dutch Economic Offences Act and the Consumer Protection (Enforcement) Act respectively. Administrative measures could be taken by the Netherlands Authority for Consumers & Markets (*Autoriteit Consument & Markt*)	N/A	N/A	X	X	X	X

The Netherlands

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
N/A	DCC	Art. 3:40 (1)	Any legal act (*rechtshandeling*) may not by its content or its object/scope be contrary to good morals or public policy. The scope of this Article is relatively broad as both terms refer to norms of unwritten law which are deemed to be fundamental in a specific social or public situation.	N/A
N/A	DCC	Art. 3:40 (2)	An obligation under the agreement should not violate a mandatory statutory provision. Under Dutch contract law, the provisons are generally *not* mandatory; parties generally have the possibility to deviate from the provisions if mutually agreed. However, when dealing as a legal entity with a consumer, Dutch law does include mandatory statutory provisions of which the parties cannot deviate and in any event not deviate to the detriment of the consumer.	N/A
N/A	DCC	Art. 3:44	A legal act can be annulled if entered into under threat, deceit or undue influence	N/A
N/A	DCC	Art. 3:45	Fraudulent preference (*actio pauliana*) outside insolvency. A debtor cannot enter into any not obligatory legal act with the (deemed) knowledge that this will result in prejudicing the remedies of one or more of his creditors	N/A
Regulation 2006/2004 Directive 2009/22/EC on injunctions for the protection of consumers' interests	DCC Dutch Code of Civil Procedure	Art. 3:305a Art. 7:907-910 Art. 1013-1018	Irrespective of an investor's individual rights to commence proceedings against the PLATFORM and/or the PROJECT OWNER, the investors can jointly commence a class action, represented by a duly authorised separate entity. A foundation or association will only be admissimable in legal proceedings to the extent any claim aims to protect the similar interests of other persons whose interests the legal entity purports to represent according to its articles of association. The representive legal entity can bring almost any claim, except for a claim for monetary damages. Usually, the foundation will request the court to declare that the defendant has acted unlawfully / in tort, followed by separate proceedings in which investors claim damages. Alternatively, the entity can request a court to declare a settlement agreement entered into between the representative entity and the PLATFORM and/or PROJECT OWNER universally binding to the benefit of all investors the legal entity represents. There are detailed rules in respect of such settlement agreement which need to be complied with in order for a judge to be able to declare such settlement agreement universally binding.	N/A
N/A	DCC	Art. 6:2(2) and 6:248(2)	An obligation under the agreement may not be unacceptable according to standards of reasonableness and fairness (*redelijkheid en billijkheid*).	N/A

The Netherlands

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
PLATFORM should ensure that the agreements (and other legal acts) are not violating good morals or public policy. Recommended to include a partial invalidity clause: if part of the agreement appears to be invalid, this clause ensures the legal validity of the remainder of the agreement irrespective of such partial invalidity.	The legal act (such as (a part of) an agreement) is null and void (*nietig*) and therefore is deemed to have not existed at all.	Please see PLATFORM; applies mutatis mutandis if the PROJECT OWNER prepares its own agreements (and other legal acts). PROJECT OWNER has a responsibility to ensure that the (template) agreements provided by the PLATFORM and to which it becomes a party is not violating good morals or public policy.	Please see PLATFORM; applies mutatis mutandis if the PROJECT OWNER.	X	X	X	X
PLATFORM should ensure that the agreements, terms and conditions and other legal acts do not violate mandatory statutory provisions. Recommended to include a partial invalidity clause: if part of the agreement appears to be invalid, this clause ensures the legal validity of the remainder of the agreement irrespective of such partial invalidity.	The legal act (such as (a part of) an agreement) is null and void (*nietig*) and therefore is deemed to have existed at all. However, if the mandatory statutory provision is intended solely for the protection of one of the parties to a multilateral legal act, the act may only be annulled (*vernietigen*) and therefore is deemed not to exist with retroactive effect.	Please see PLATFORM; applies mutatis mutandis if the PROJECT OWNER prepares its own agreements and other legal acts. PROJECT OWNER has a responsibility to ensure that the (template) agreements provided by the PLATFORM and to which it becomes a party is not violating mandatory statutory provisions.	Please see PLATFORM; applies mutatis mutandis if the PROJECT OWNER	X	X	X	X
PLATFORM must refrain from making any threats, deceiving or undue influencing any counterparty. In particular, it should be noted that intentionally informing a party inaccurately or not completely, the PLATFORM is deemed to deceive the counterparty.	The legal act can be annulled (vernietigen) and therefore is deemed not to exist with retroactive effect. Annulment can be effectuated either by an ou-of-court statement to that effect or by court order. The statute of limitations of annullment generally is three years. Parties are brought back in the (legal) positions they were in as if there was no agreement from the outset. This (may) result in a claim for repayment of any payments made on the basis of undue payments (onverschuldigde betaling) and the redelivery of any rewards granted, products delivered, or debt instruments or securities issued by a project owner, etc. A claim for damages can generally only be made on the basis of an unlawful act (Art. 6:162 DCC).	Please see PLATFORM, applies mutatis mutandies to the PROJECT OWNER	Please see PLATFORM, applies mutatis mutandies to the PROJECT OWNER	X	X	X	X
Provided that the PLATFORM does not enter into any debt obligation itself, this clause is not relevant for the PLATFORM. However, as the PLATFORM deals with the investors and the project owner, it is recommended that the PLATFORM ensures that none of these parties acts in violation of this Article when entering into a legal act.	Generally not applicable	The PROJECT OWNER should not enter into any legal act which could prejudice his creditors.	The legal act can be annulled (vernietigen) by the creditor that was prejudiced by such legal act and therefore is deemed not to exist with retroactive effect in respect of such specific creditor only and only to the extent necessary to lift any such prejudice in respect of that specific creditor.	Generally not applicable	X	Generally not applicable	Could be applicable if the donating party makes a donation in detriment to his creditors
To the extent the PLATFORM can be addressed in legal proceedings, it could also be confronted with a mass claim initiated by a legal entity representing the similar interests of investors jointly.	N/A	Please see PLATFORM; applies mutatis mutandis to PROJECT OWNER	N/A	X	X	X	X
The PLATFORM should take into account this typical Dutch legal principle of reasonableness and fairness in any of its activities, especially when dealing with consumers.	Any such terms, if and to the extent that they are unreasonable, are unenforceable. Money paid under an obligation that is unenforceable or void is liable to be refunded.	See PLATFORM. Applies mutatis mutandis to the PROJECT OWNER.	See PLATFORM. Applies mutatis mutandis to the PROJECT OWNER.	X	X	X	Although applicability may be limited due to nature of this type of crowdfunding)

The Netherlands

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
N/A	DCC	Art. 6:74	An attributable failure to perform a contractual obligation results in liability for damages. The claimant must generally notify the non performing party of the default and offer the non performing party a reasonable period in which it can still perform its obligation. Under circumstances no such prior default notice is required and moreover, parties can have deviated from these clauses by agreement.	N/A
N/A	DCC	Art. 6:162	Liability arising from an attributable unlawful act (*onrechtmatige daad*). Before a claim for damages on this basis can be successful, the claimant generally has the burden of evidencing that (i) the defendant has performed an unlawful act, (ii) that such unlawful act was attributable to such person, (iii) that the claimant suffered damages, (iv) that there is a causal link (*causaal verband*) between the suffered damages and the unlawful act and (v) that the standard breached has the purpose of protecting the damages as suffered by the claimant. Due to the nature of this provision, the consequences of a specific unlawful act could also be dealt with in other provisions or, alternatively, the violation of any other provisions may trigger a claim for damages on the basis of this provision of tort law. Except in limited circumstances, under Dutch law, the claimant can invoke the legal consequences of each provision on a cumulative basis (*cumulatie*) in case of concurrence (*samenloop*) of such provisions.	**Attributability** : an unlawful act can be attributed to a (natural or legal) person if it is due to such person (*culpa*) or if it is due to a cause for which such person is accountable pursuant to the law or according to generally accepted standards (de in het verkeer geldende opvattingen). **Unlawful act** : except where there are grounds for justification, the following are deemed to be unlawful acts: the violation of a right and an act or omission breaching a duty imposed by law or a rule of unwritten law pertaining to proper social conduct.
Unfair Commercial Practices Directive 2005/29/EC	DCC	Book 6, Title 3, Part 3A (193a-193j) DCC	The Unfair Commercial Practices Directive was implemented in the Dutch Civil Code as lex specialis of the unlawful act (as referred to above Art. 6:162 DCC). This results in a reversal of the burden of proof from the claimant to the defendant in respect of the material accuracy and completeness of the information provided by such trader if such reversal of the burden of proof seems to be appropriate in the particular case and taking into account the legitimate interests of both the trader and any other person involved in the proceedings. A trader acts unlawful towards a consumer if it conducts an unfair commercial practice. A commercial practice is particularly unfair if a trader performs a misleading or an agressive commercial practice within the meaning of the relevant provisions of the DCC. The relevant provisions of the DCC provide for an extensive list of (potential) unfair (including misleading and agressive) commercial practices. It is not intended to give an exhaustive overview herein. Moreover, specific commercial practices as specified in the blacklist of Art. 6:193g DCC shall at all times be deemed to be misleading. The same applies in respect of agressive commercial practices as specified in the blacklist of Art. 6:193i DCC. It falls outside the scope of this research to list each such misleading and agressive commercial practices. **NB These rules apply to a business-to-consumer situation only. For comparable rules applicble to a business-to-business situation also, please see Art. 6:194 DCC below.**	**Trader** (*handelaar*) means a natural or legal person who acts in the course of his business or profession or a person who acts on his behalf **Consumer** (*consument*) means a natural person who does not act in the course of his business or profession **Average consumer** (*gemiddelde consument*) means the average member of a particular group to whom the trader is directed **Commercial practice** (*handelspraktijk*) means any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader,directly connected with the promotion, sale or supply of a product to consumers **Product** (*product*) means a good (*goed*), including electricity or a service (*dienst*) **Professional diligence** (*professionele toewijding*) means the standard level of special skill and care which a trader may reasonably be expected to exercise towards consumers, in accordance with his responsibilities pursuant to the professional standardsand honest market practice applicable to that trader. **Unfair** (*oneerlijk*): a commcercial practice is deemed to be unfair if the trader acts in violation of the requirements of professional diligence *and* it noticably limits or could limit the capabilitis of an average consumer to take an informed decision, as a consequence of which the average consumer takes or could take a decision in respect of an agreement which he would not have taken otherwise. **Agressive** (*agressief*): a commercial practice is agressive in its factual context if, taking into account all its features and circumstances, by harassment (*intimidatie*), coercion (*dwang*), including the use of physical force, or undue influence, it significantly impairs or is likely to significantly impair the average consumer's freedom of choice or conduct with regard to the product as a consequence of which the average consumer takes or could take a decision in respect of an agreement which he would not have taken otherwise. **Misleading** (*misleidend*): a commercial practice is misleading if information is provided that is factually inaccurate or that misleads or can mislead an average consumer either by the general presentation of the information or otherwise , including for example the use of confusing comparative advertising, as a consequence of which the average consumer takes or could take a decision in respect of an agreement which he would not have taken otherwise. A commercial practice can also be misleading in case of a misleading omission. **Misleading omission** (*misleidende omissie*): any commercial practice in which material information is omitted which the average consumer needs to be able to take an informed decision in respect of a transaction, as a consequence of which the average consumer takes or could take a decision in respect of an agreement which he would not have taken otherwise. **Material information** includes in any event the main characteristics of the product in an appropriate manner, contact details of the trader and, if applicable, of the trader who he represents, the price of the product (including taxes) or, if applicable, the manner in which the price shall be calculated and any additional costs to be incurred by the consumer, manner of payment, delivery, execution and complaints procedure (if different from the requirements set by the professional diligence) and, if applicable, the right to withdraw or cancel for a consumer.

The Netherlands

Applicability and compliance recommendations **PLATFORM** (assumed to be a business)	**Sanctions for breach** **PLATFORM**	**Applicability and compliance recommendations** **PROJECT OWNER** (assumed to be a business)	**Sanctions for breach** **PROJECT OWNER**	**Relevant for type of Crowdfunding**			
				Investment based	**Lending based**	**Reward based**	**Donations based**
The PLATFORM must perform its contractual obligations. If the PLATFORM represents the interests of the investors in dealing with the PROJECT OWNER (i.e. acting as an intermediary), it would be recommendable to include a clause in the agreement that no prior default notice is required in order for the non performing party to be in default.	The PLATFORM can be held liable for damages if the failure to perform can be attributed to the PLATFORM. Damages can be based on delay in performance and to offer an alternative compensation for performance of the obligation. Moreover, generally, the underlying agreement can be terminated (*ontbinden*) in whole or in part by the claimant (either by an out of court declaration by the claimant to the non performing party or by court order). Termination does not have retroactive effect.	The PROJECT OWNER must perform its obligations.	See PLATFORM. Applies *mutatis mutandis* to the PROJECT OWNER.	X	X	X	**Limited applicability** (only applicable if either of the PLATFORM and/or the PROJECT OWNER accepts an obligations against a counterparty)
Naturally, the PLATFORM should not conduct any unlawful act. The PLATFORM must adhere to its duties imposed by law, in particular the DFSA , and ensure, to the best of its abilities, that the business on its online platform shall be conducted in a lawful manner. As such, the PLATFORM could not only be confronted with a claim on the basis of this tort law provision under Dutch law in respect of its own acting (or omission) but also in respect of any acting (or omission) by the PROJECT OWNER on the online platform and otherwise via the interference with the PLATFORM to the extent any such wrongdoing (or omission) of the PROJECT OWNER can be attributed to the PLATFORM. Please see below in respect of the information and other requirements that follow from lex specialis of this basic tort law provision.	The PLATFORM can be held liable for monetary damages if the unlawful act (including an omission) can be attributed to it, subject to the claimant being able to prove each of components of this tort law provision under Dutch law (unlawfulness, attributable to defendant, damages, causal link and relativity). A claimant can also request an injunction from the civil law court. As no contractual relationship between the claimant and the defendant is needed for succesfully invoking an unlawful act such as this one, the PLATFORM can be confronted with claims from INVESTORS as well the PROJECT OWNER but also from third parties.	The PROJECT OWNER should not conduct any unlawful act either. Fraud is a clear unlawful act for which a PROJECT OWNER could be held liable. Please see below in respect of the information requirements that follow from lex specialis of this basic tort law provision.	See PLATFORM. Applies *mutatis mutandis* to the PROJECT OWNER.	X	X	X	X
A PLATFORM will, most probably, be considered a trader and must ensure that any of his commercial practices are fair and in any event not misleading nor agressive. The very basic (but not exhaustive!) rules to comply with in respect of the provision of information is that: - any information provided must be complete, accurate, comprehensible and not misleading (nor misleading by omission); - its commercial character should be made explicit to the consumer; - any material information should be provided in a transparent and timely fashion; and - compliance with any applicable marketing restrictions.	The PLATFORM acts wrongfully towards the consumer if his commercial practices are considered to be unfair (Art. 6:193b DCC) and in such cases the consumer may file a suit against the PLATFORM. Other than in case of Art. 6:162 DCC, the burden of proof in respect of the material accuracy and completeness of the information provided will generally shift to the PLATFORM instead of the consumer, making it easier for the consumer to get injunctions and compensation. Only if the PLATFORM can prove that the unlawful act is not attributable to it nor that the PLATFORM can be held accountable on other grounds, the PLATFORM will not be liable. As no contractual relationship between the claimant and the defendant is needed for succesfully invoking an unlawful act such as this one, the PLATFORM can be confronted with claims from INVESTORS as well the PROJECT OWNER but also from third parties. An agreement entered into on the basis of an unfair commercial practice can be annulled (*vernietigen*).	If and to the extent that the PROJECT OWNER is considered to be a trader the same as set out in relation to the PLATFORM applies *mutatis mutandis* to the PROJECT OWNER. This does not apply if the PROJECT OWNER is considered to be a consumer itself.	If and to the extent that the PROJECT OWNER is considered to be a trader the same as set out in relation to the PLATFORM applies mutatis mutandis to the PROJECT OWNER.	X	X	X	X

The Netherlands

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
Directive 2006/114/EC concerning misleading and comparative advertising (consolidates Directives 84/450/EC and 97/55/EC)	DCC	Book 6, Title 3, Part 4 (Art. 6:194-6:196) DCC	A person who publishes (or causes to be published) misleading information with respect to goods or services offered by himself or his principal, acts unlawfully towards a counterparty acting in the course of a business or profession. Comparative advertising may also trigger a claim on this basis if such comparative advertising is misleading or is a misleading commercial practice as referred to above. Only under limited circumstances comparative advertising could be permissible. This prohibition is also a lex specialis of the unlawful act / Dutch basic tort law provision (Art. 6:162 DCC). Generally, the burden of proof will shift from the claimant to the defendant in respect of the accuracy and completeness of the facts included in or suggested by the accouncement information and on which the alleged misleading character of the announcement is based or, alternatively, on which the impermissibility of of the comparative advertising is based. **NB This is the business-to-business equivalent of the rules in relation to unfair commercial practices as referred to above. Normally, both provisions should lead to the same result.**	N/A
N/A	DCC	Art. 6:228	An agreement entered into under the influence of error (*dwaling*) which would not have been entered into in case of a correct or complete representation of the facts can generally be annulled (*vernietigen*). This is considered a vitiated consent (*wilsgebrek*) under Dutch law, like a threat, deceit or undue influence as referred to above (Art. 3:44 DCC).	N/A
Consumer Rights Directive (Directive 2011/83/EU) Distance Marketing of Financial Services Directive (Directive) 2002/65/EC)	DCC	Book 6, Title 5, Part 2B, paragraphs 1 and 6 (Art. 6:230g-230i and Art. 6:230w-230z)	Paragraph 6 of Part 2B provides provisions to be complied with in agreements in relation to financial products and financial services entered into between traders and consumers and which cannot be deviated from to the detriment of the consumer (Art. 6:230i DCC). These provisions relate to, among other things and to the extent relevant for crowdfunding, the right of the consumer to terminate the agreement without cause within 14 days after entering into the agreement or, if later, 14 days after the date of receipt of the information that the trader must provide on the basis of the DFSA and without a fine being payable (Art. 6:230x DCC). Some exceptions apply to this right to terminate, including for example credit agreements secured by a right of mortgage. It is prohibited for a consumer credit offeror or consumer credit intermediary to make any cold callings for consumer credit (Art. 6:230z DCC). Moreover a trader is prohibited to offer any agreement to the consumer in respect of which the trader knows or reasonably must suspect that the obligations of a consumer arising from such agreement are not in line with the consumer's economic and financial standing.	**Trader** (*handelaar*) means any natural person or any legal person who is acting, including through any other person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession. NB Please note the different definition used for trader in respect of Book 6, Title 3, Part 3A (193a-193j) DCC. **Consumer** (*consument*) means any natural person who is acting for purposes which are outside his business or profession
Unfair Contracts Terms Directive (93/13/EEC)	DCC	Art. 6:231 , 6:233; 6:236; 6:237	A stipulation in general terms and conditions may not be unreasonably onerous to the counterparty and must be brought to the attention fo the counterparty (please also see above). Art. 6:236 DCC includes a list of stipulations (*zwarte lijst*) in general terms and conditions that are deemed unreasonably onerous. Art. 6:237 DCC includes a list of stipulations (*grijze lijst*) in general terms and conditions that are presumed to be unreasonably onerous.	N/A

The Netherlands

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
Also when dealing with other businesses (or in any event persons who act in the course or their profession or business), the PLATFORM must ensure that it does not make any misleading publication and that it does not use any impermissible comparative advertising either by itself or on behalf of a PROJECT OWNER.	The PLATFORM acts unlawfully vis-à-vis third parties acting in the course of a business or profession (i.e. non-consumers) by publishing misleading announcements or impermissible comparative advertising. Only if the PLATFORM can prove that the unlawful act is not attributable to its culpa nor that the PLATFORM can be held accountable on other grounds, the PLATFORM will not be liable. A claimant can request the court to prohibit the publication of any misleading announcement or impermissible comparative advertising. A claimant can also request the court to require a rectification. As no contractual relationship between the claimant and the defendant is needed for succesfully invoking an unlawful act such as this one, the PLATFORM can be confronted with claims from INVESTORS as well the PROJECT OWNER but also from third parties.	Any misleading publications or impermissible comparative advertising by the PROJECT OWNER itself, or by the PLATFORM at the request of the PROJECT OWNER, result in an unlawful act of the PROJECT OWNER towards an investor or third party acting in the courts of its business or profession.	Please see PLATFORM; applies *mutatis mutandis* to the PROJECT OWNER.	X	X	X	Presumably only limited applicability, if at all, due to the nature of this type of crowdfunding
The PLATFORM must provide information that forms a correct and complete representation of the facts.	The agreement can be annulled *(vernietigen)* and therefore is deemed not to exist with retroactive effect. Annulment can be effectuated either by an ou-of-court statement to that effect or by court order. The statute of limitations of annullment generally is three years. Parties are brought back in the (legal) positions they were in as is there was not agreement from the outset. This (may) result in a claim for repayment of any payments made on the basis of undue payments (onverschuldigde betaling) and the redelivery of any rewards granted, products delivered, or debt instruments or securities issued by a project owner, etc. A claim for damages can only be made on the basis of an unlawful act (Art. 6:162 DCC).	Please see PLATFORM. Applies *mutatis mutandis* to the PROJECT OWNER.	Please see PLATFORM. Applies *mutatis mutandis* to the PROJECT OWNER.	X	X	X	To the extent there is a legal act underlying the donation
The PLATFORM is considered a trader within the meaning of this paragraph and should take notice of these provisions.	Termination of the agreement. Within 30 days of termination of the agreement, the consumer must be repaid in full with the mere reduction of some limited pre-announced and reasonable fees. Any credit agreement entered into on the basis of cold calling can be annulled by the consumer only. Other than in case of undue influence (please see 3:44 DCC above), the statute of limitations is limited to one year after the trader has notified the consumer in writing of the possibility to annull the credit agreement. Any clause requiring a consumer to anything or taking away the consumer's right to reclaim any payments made in case of annulment of the agreement, are null and void (*nietig*).	The PROJECT OWNER is generally considered to be a trader within the meaning of this paragraph and should take notice of these provisions.	Please see PLATFORM. Applies *mutatis mutandis* to the PROJECT OWNER. Under Dutch law, the PROJECT OWNER will, however, generally not be considered a consumer credit offeror or consumer credit intermediary.	X	X	X	X
The PLATFORM should take notice of these provisions when drafting its general terms and conditions	The stipulation can be annulled (*vernietigen*) if these are unreasonably onerous or if the counterparty has not been offered a reasonable possibility to take notice of the general terms and conditions.	To the extent the PROJECT OWNER has any general terms and conditions, it should take notice of these provisions when drafting its general terms and conditions	Please see PLATFORM. Applies mutatis mutandis to the PROJECT OWNER to the extent the PROJECT OWNER has any general terms and conditions.	X	X	X	X

The Netherlands

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
Consumer Credit Directive (Directive 2008/48/EC)	DCC Consumer Credit Act (*Wet op het Consumentenkrediet*) (**CCA**)	Book 7, Title 2A	This title includes specific provisions applicable to consumer credit agreements only (albeit that strictly taken the CCA is not limited to consumer credit only due to the broader scope of the definition of credit transaction as used in the CCA). These specific provisions include provisions relating to the provision of precontractual information, content requirements of the credit agreement, ongoing information requirements, the statutory reflection period of the consumer of 14 day and other termination rights of the consumer. These provisions cannot be deviated from to the detriment of the consumer (Art. 7:73 DCC)	**Consumer** (*consument*) means any natural person who is acting for purposes which are outside his business or profession **Credit provider** (*kredietgever*) means a natural or legal person who grants or promises to grant credit in the course of his business or profession **Credit intermediary** means a natural or legal person who is not acting as a credit providor and who, in the course of his business or profession, for a fee, which may take a pecuniary form or any other agreed form of financial consideration: (i) presents or offers credit agreements to consumers; (ii) assists consumers by undertaking preparatory work in respect of credit agreements other than as referred to in (i); or (iii) concludes credit agreements with consumers on behalf of the credit providor **Credit agreement** (*kredietovereenkomst*) means an agreement whereby a credit provider grants or promises to grant to a consumer credit in the form of a deferred payment, loan or other similar financial accommodation, except for agreements for the provision on a continuing basis of services or for the supply of goods of the same kind, where the consumer pays for such services or goods for the duration of their provision by means of instalments **NB** Please note that these definitions in the DCC are not aligned with the definitions used in the DFSA. The scope of these civil law provisions are broader than the scope of the regulatory requirements under the DFSA. Moreover, the CCA provides yet another definition for credit transaction (*krediettransactie*) and is strictly taken not limited to consumer credit. It falls out of the scope of this research to go into detail in this respect.
N/A	DCC	Book 7, Title 7	This title includes specific provisions in relation to the engagement (*opdracht*) and as such generally applies to the relationship between the PLATFORM as the engaged party (*opdrachtnemer*) and the PROJECT OWNER as the client (*opdrachtgever).* There are special provisions relating to mandates (*lastgeving*) where the engaged party enters into legal acts at the account of the client, as well relating to intermediation agreements (*bemiddelingsovereenkomst*).	N/A
Payment Services Directive (Directive 2007/64/EC)	DCC	Book 7, Title 7B	Payment services providers are also required to comply with detailed conduct of business requirements set out in the DCC. The payment services provider cannot deviate from these requriements to the detriment of the payment service user.	Falls out of the scope of this research to include in detail. Reference is made to the Payment Services Directive which is generally implemented in Dutch law on a harmonised basis.
Rome I Regulation (Regulation no. 593/2008)	Direct effect and DCC	Book 10, title 13 DCC	Dutch international private law rules in relation to contracts. Rome I determines applicable laws in case of cross border claims based on contracts.	N/A
Rome II Regulation (Regulation no. 864/2007)	Direct effect and DCC	Book 10, title 14 DCC	Dutch international private law rules in relation to other legal gounds, including unlawful acts (Rome II is applied to international private law questions in respect of unlawful acts in the Netherlands as well). Rome II determines applicable laws in case of cross border claims based on other legal grounds than contracts, including unlawful acts.	N/A

Notes:

(1) The information above is a brief summary of the civil law legal grounds and liability risks potentially applicable to parties involved in crowdfunding outside insolvency proceedings. It is not definitive legal advice and should not be treated as such.

(2) It is valid as per 1 December 2015. The laws and regulatory requirements in this area can change quickly.
(3) Not all legal issues can be covered, for example this does not extend to privacy and data protection , rules on direct marketing, or IT law around the use of cookies.
(4) The references to legislation and legislation section numbers in this chart are not exhaustive; we have made reference to only some of the most critical pieces of law.

The Netherlands

Applicability and compliance recommendations **PLATFORM** (assumed to be a business)	**Sanctions for breach** **PLATFORM**	**Applicability and compliance recommendations** **PROJECT OWNER** (assumed to be a business)	**Sanctions for breach** **PROJECT OWNER**	**Relevant for type of Crowdfunding**			
				Investment based	**Lending based**	**Reward based**	**Donations based**
To the extent the PLATFORM is considered a credit provider or a credit intermediary should adhere to the specific provisions as laid down in the DCC and CCA.	Non-inclusion of standard information in any promotion material for credit agreement by a credit provider and non compliance in respect of certain other infromation requirements are each deemed to be an unfair commercial practice within the meaning of Art. 6:193b DCC (see above).	N/A	N/A	**N/A**	In case of consumer credit only	**N/A**	**N/A**
The PLATFORM has a duty of care towards the PROJECT OWNER as its client.	See above in respect of general legal action to be taken against defaults and/or unlawful acts etc.	The PROJECT OWNER has right to terminate the engagement at any time.	See above in respect of general legal action to be taken against defaults and/or unlawful acts etc.	**X**	**X**	**X**	**X**
Under certain circumstances the PLATFORM could be considered a payment services provider as a consequence of which not only regulatory rules apply pursuant to the DFSA but also specific civil law pursuant to the DCC.	Breach of DCC provisions, would give the consumer more protections when filing a suit against the creditor. Breach of pre-contract disclosure requirements renders the contract cancellable for an indefinite period.	N/A	N/A	Potentially applicable, although the general approach in the Netherlands so far has been that the platform does not qualify as a payment services provider			
The PLATFORM can include a choice of law clause in the agreement which generally determines laws applicable to the contractual relationship. If the counterparty is a consumer, however, special notice should be given to Article 7 of Rome I.	Not relevant	Please see PLATFORM. Applies *mutatis mutandis* to the PROJECT OWNER.	Not relevant	**X**	**X**	**X**	**X**
ROME II determines applicable law	Not relevant	Please see PLATFORM. Applies *mutatis mutandis* to the PROJECT OWNER.	Not relevant	**X**	**X**	**X**	**X**

Poland

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
Some sections implement: Consumer Rights Directive (2011/83/EU) E-Commerce Directive 2000/31/EC) Unfair Contracts Terms Directive (93/13/EEC) Defective Product Liability Directive (85/37/EEC)	Civil Code (*kodeks cywilny*)	Book One: Title IV (legal acts, their invalidity & defects of declarations of intents) Title VI (general statute of limitations) Book Three: *general* Titles I-III (general rules for perfomance of obligations) Title V (unjustified enrichment claims) Title VI (tort liability) Title VI^{1} (hazardous product liability) Title VII (perfomance of contractual obligations and liability) *specific* Title IX, Division II-III (liability for defects in contract of sale) Title XIX (loan contract) Title XXXI (partnership contract) Title XXXIII (contract of donation)	The Civil Code is the backbone of civil liability regime in Poland, regulating the conclusion and expiration of contracts as well as civil claims arising both on the basis of contracts and outside of them. The respective claims which can be based on Civil Code's provisions have been described in detail below.	**consumer** (*konsument*) - a natural person who performs a legal transaction with a business, and such transaction is not directly connected with that person's business or professional activity **business** (*przedsiębiorca*) - a natural person, a legal person and an organizational unit referred to in art. 33^{1} of the Civil Code, that carries on economic or professional activity on their own behalf **declaration of intent** (*oświadczenie woli*) - barring the exceptions provided for by statutory law, the will of a person performing a legal act may be expressed by any behaviour of that person which manifests that intention sufficiently, including the fact of revealing this intention in electronic form
N/A	Civil Code	art. 58	A legal act (*czynność prawna*), such as a contract, cannot be contrary to statutory law, cannot seek to circumvent it, and cannot be contrary to the principles of the community life (*zasady współżycia społecznego*).	N/A
N/A	Civil Code	art. 82 *et seq.*	A declaration of intent (*oświadczenie woli*) is defective if: (i) made in a state that precludes a person from making a conscious or free decision and a declaration of intent; (ii) made to another party with its approval for the sake of appearance; (iii) made in error as to the contents of the legal act; the error must be significant (i.e., a person that was not influenced by an error and reasonably judged the matter would not have made a declaration); if the declaration was made to another person and does not relate to a gratuitous legal act, then additionally: (a) the error must have been caused by that other person, even without fault, or (b) the other person was aware of the error or could have easily noticed it; (iv) made in error that was deceitfully caused by the other party, even if the error was not significant or did not relate to the contents of the legal act; (v) made under illegal threat.	N/A
N/A	Civil Code	art. 388	Exploitation claim. A party to a contract can demand a reduction in their own performance, an increase in the other party's performance, or if both are excessively difficult, that the contract be declared null and void. The claimant must prove that: (i) he is in a difficult situation, infirm or inexperienced; (ii) the other party took advantange of the above circumstances to demand a performance (for themselves or a third party) that is strikingly disproportionate with the claimant's (at the time of concluding the contract).	N/A

Poland

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
The Civil Code applies to all PLATFORMS as well as PROJECT OWNERS. In general, to avoid civil liability PLATFORMS and PROJECT OWNERS should observe their contractual obligations, employ due care in their performance, and ensure that their terms of service/contract forms are compliant with statutory law as well as the principles of the community life. Taking advantage of legal counsel is highly recommended to identify the fields especially relevant to a particular PLATFORM'S/PROJECT OWNER's business model.	Among others: **Invalidity** Legal acts, including contracts, that are contrary to statutory law or the principles of the community life are null and void, unless the law provides otherwise. **Defective declarations of intent** Declarations of intent made in a state that precludes a person from making a conscious or free decision and a declaration of intent is null and void by law. A person may declare that he evades the legal effects of his declaration of intent if it was made in error, due to deceit or under illegal threat. **Claims for damages** A person that incurred damages due to another's actions can demand their reimbursement. The claims can be raised on numerous grounds, in particular, under tort liability, contractual liability or hazardous product liability. **Claims for contract performance** A party to a contract may demand that the other party perform its obligations. The Civil Code introduces specific claims for distinct contract types that may be relevant for particular forms of crowdfunding, for example the contract of sale (statutory warranty for defects) in case of rewards-based crowdfunding or donation (revocation claims) in case of donation-based crowdfunding. **Withdrawal from a contract** In certain circumstances the party to a contract is allowed to withdraw from the contract and demand the return of his performance, provided that he returns the performance of the other party.	See the column on PLATFORMS.	See the column on PLATFORMS.	X	X	X	X
PLATFORMS & PROJECT OWNERS should ensure that their contracts (and other legal acts) do not violate statutory law, seek to circumvent it, or violate the principles of the community life, regardless of whether they draft their own contracts or use templates. They should consider including a severability clause to specify what happens if part of a contract is declared null and void.	A legal act that is contrary to statutory law, or seeks to circumvent it, is null and void, unless the provisions of the law envisage a different effect, in particular the replacement of null and void provisions of a legal act. Typical examples of such violations include lack of prescribed contract form, violation of mandatory contract law provisions (most are voluntary), and violation of consumer protection provisions, especially abusive contract clauses. A legal act that is contrary to the principles of the community life is null and void. This typically involves an evaluation of legal acts from a moral standpoint, e.g., in cases where the stronger party grossly abuses its position. If only a part of a legal act is null and void, the remaining part stays valid unless it follows from the circumstances that the legal act would not be performed without the provisions that are null and void.	See the column on PLATFORMS.	See the column on PLATFORMS.	X	X	X	X
PLATFORMS & PROJECT OWNERS should ensure that investors are made aware of the point in time and the manner in which they express their consent to contract terms, as well as of their rights and obligations under these terms. To this end, they should also clearly distinguish the legal relationships between all the parties participating in crowdfunding.	A defective declaration of intent is either null and void or its effects can be evaded by the declaring party. In both cases the practical outcome is the termination of contract, which cannot exist without at least two unanimous declarations of intent. A declaration of intent is null and void if made: (i) in a state that precludes a person from making a conscious or free decision and a declaration of intent; (ii) for the sake of appearance. The effects of a declaration of intent can be evaded if it is made: (i) in error; (ii) due to deceit; (iii) under illegal threat.	See the column on PLATFORMS.	See the column on PLATFORMS.	X	X	X	X
PLATFORMS and PROJECT OWNERS should ensure that their contracts provide for a fair balance of rights and obligations of both parties and do not exploit vulnerable investors.	If an exploitation claim is succesful, the PLATFORM/PROJECT OWNER will either have to return a part of investor's performance (payment), increase its own performance (e.g., provide additional goods or services), or, in the worst case, return all perfomances received under the contract if it is declared null and void.	See the column on PLATFORMS.	See the column on PLATFORMS.	X	X	X	X

Poland

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
N/A	Civil Code	art. 471 *et seq.*	Contractual liability. A party to a contract has a claim for damages if the other party fails to perform their contractual obligations or performs them improperly. The claimant must prove: (i) that he suffered damage; (ii) that an action against the contract has occured (it is presumed that the other party is responsible for the action); (iii) that a causal link between the damage and contract violation exists.	N/A
N/A	Civil Code	art. 415 *et seq.*	Tort liability. A person has a claim for damages against another person liable for tort. The claimant must prove: (i) that he suffered damage; (ii) that an unlawful action has occured and the law makes another person responsible for that action; (iii) that a causal link between the damage and unlawful action exists.	N/A
Defective Product Liability Directive (85/37/EEC)	Civil Code	art. 449[1] *et seq.*	Hazardous product liability. A person has a claim for damages against the manufacturer of hazardous product (and a person presents himself as the manufacturer by putting his business name, trade mark or other distinctive designation on the product). The claimant must prove: (i) that he suffered damage; (ii) that the damage occured during normal use of a product; (iii) that a causal link between the damage and normal use of the product exist. The claimant does not have to indicate the specific features that makes the product dangerous. It is also presumed that a hazardous product that caused damage was produced and introduced to trade within the scope of the manufacturer's economic activity (otherwise he is not liable).	**hazardous product** (*produkt niebezpieczny*) - a product that does not provide safety one may expect while using such product in a normal way. Circumstances of the introduction of a product to trade, in particular the way of presenting it to the market and information offered to a consumer on properties of the product shall decide whether the product is hazardous. One may not maintain that a product does not provide safety merely because a similar product in an improved form has been introduced to trade.
E-Commerce Directive (2000/31/EC)	Electronic Services Act (*ustawa o świadczeniu usług drogą elektroniczną)*	Chapter 3 (intermediary liability limitations)	The Electronic Services Act imposes some basic requirements on providers of electronic services (the counterpart of EU's information society services), such as informational obligations, rules on commercial communications, or data protection principles. Given the character of this report, however, the most important aspect of the Act are the exemptions from liability for so-called 'intermediaries'. If an intermediary satisfies certain conditions, he is exempt from liability related to third-party content he helps proliferate, including civil liability.	**electronic service** (or more accurately **electronic provision of services,** *świadczenie usługi drogą elektroniczną*) - provision of service without the simultaneous presence of the parties (at a distance), through transmission of data at the individual request of a recipient of services, sent and received by means of electronic equipment for the processing (including digital compression) and storage, that is entirely sent, received or transmitted through a telecommunications network in the meaning of Telecommunications Law **service provider** (*usługodawca*) - a natural person, legal person or organizational unit without legal personality that, in carrying on economic or professional activity, even subsidiarily, provides electronic services **service recipient** (*usługobiorca*) - a natural person, legal person or organizational unit without legal personality that makes use of an electronic service

Poland

Applicability and compliance recommendations **PLATFORM** (assumed to be a business)	**Sanctions for breach** **PLATFORM**	**Applicability and compliance recommendations** **PROJECT OWNER** (assumed to be a business)	**Sanctions for breach** **PROJECT OWNER**	**Relevant for type of Crowdfunding**			
				Investment based	**Lending based**	**Reward based**	**Donations based**
PLATFORMS should perform their contractual obligations with due care.	If a claim under contractual liability is succesful, the PLATFORM is liable for payment of damages. Additonally, in case of mutual contracts an investor can declare that he withdraws from the contract if the other party is in default and does not perform within a time limit indicated by the investor. Upon withdrawal the investor can claim not only the return of everything performed under the contract, but also the damages for non-perfomance.	PROJECT OWNERS should perform their contractual obligations with due care. They are advised to specify a time limit for their performance in contracts so that investors do not demand it prematurely.	If a claim under contractual liability is succesful, the PROJECT OWNER is liable for payment of damages. Additonally, in case of mutual contracts an investor can declare that he withdraws from the contract if the other party is in default and does not perform within a time limit indicated by the investor. Upon withdrawal the investor can claim not only the return of everything performed under the contract, but also the damages for non-perfomance.	**X**	**X**	**X**	**X**
PLATFORMS and PROJECT OWNERS should act with due care and avoid infringing the legally-protected interests of other persons.	If a claim under tort liability is succesful, the PLATFORM/PROJECT OWNER is liable for payment of damages.	See the column on PLATFORMS.	See the column on PLATFORMS.	**X**	**X**	**X**	**X**
N/A	N/A	If a PROJECT OWNER supplies investors with a product, even manufactured by a third party, he should carefully explain its features and characteristics and provide instructions on the proper use of the product.	If a claim under hazardous product liability is succesful, the PROJECT OWNER is liable for payment of damages. He is liable for: (i) damage to a person - in full; (ii) damage to property if it is equal to at least 500 EUR, but only in regard to items which are commonly utilised for personal use and were used as such by the injured party. However, he is not liable for: (i) damage to the product itself, or; (ii) loss of benefits that might have been derived from the use of the product.	**N / A**	**N / A**	**X**	**X**
The PLATFORM'S activities should be qualified as electronic services. Therefore, the PLATFORM, as a service provider, should fulfill the requirements of the Electronic Services Act, primarily the informational requirements. These obligations must be fulfilled towards both consumers and businesses. Furthermore, the PLATFORM may attempt to take advantage of the intermediary liability exemptions to avoid liability for third party content, for example, content provided by PROJECT OWNER. The most relevant exemption is the limitation for hosting providers. To rely on it, the PLATFORM must take on a passive role and: (i) provide a service that consist of making available the resources of an IT system in order to store service recipient's data; (ii) must not have knowledge of unlawful nature of the data or activity related to the data; (iii) must block access to the data without undue delay upon obtaining knowledge of its unlawful nature (or related activity's) through an official notification or a credible message; (iv) must notify the service recipient prior to blocking of his data if knowledge of its unlawful nature was obtained through a credible message.	Failure to provide information required by the Electronic Services Act may be considered an act of unfair competition or an unfair commercial practice.	We believe that in most of the cases the PROJECT OWNER'S activities should not be qualified as electronic services. Therefore, the PROJECT OWNER should not fulfill the requirements of the Electronic Services Act. The obligations regarding electronic services would apply only in case the PROJECT OWNER'S service towards contributors is qualified as electronic service and the PROJECT OWNERS'S itself is qualified as service provider.	Failure to provide information required by the Electronic Services Act (if this act at all applies to the PROJECT OWNERS) may be considered an act of unfair competition or an unfair commercial practice.	**X**	**X**	**X**	**X**

Poland

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
Consumer Rights Directive (2011/83/EU) Distance Marketing of Financial Services Directive (2002/65/EC)	Consumer Rights Act (*ustawa o prawach konsumenta*)	Chapter 3 (informational obligations in distance contracts) Chapter 4 (right of withdrawal) Chapter 5 (distance contracts for financial services)	The Consumer Rights Act is the most general piece of legislation on consumer protection and obliges businesses to provide consumers with numerous mandatory pieces of information. The act also gives consumers the right to withdraw from a contract, though some types of goods and services are not covered, e.g., instant online delivery of digital content at consumer's request.	**distance contract** (*umowa zawarta na odległość*) - a contract concluded with a consumer under an organised scheme for concluding distance contracts, without the simultaneous physical presence of the parties, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded **durable medium** (*trwały nośnik)* - a material or device that enables the consumer or the business to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored **digital content** (*treść cyfrowa*) - data which are produced and supplied in digital form
Unfair Commercial Practices Directive (2005/29/EC)	Unfair Commercial Practices Act (*ustawa o przeciwdziałaniu nieuczciwym praktykom rynkowym*)		The Unfair Commercial Practices Act is a piece of legislation aimed at protecting consumers by forbidding certain business practices which are deemed harmful to their interests. Under the act, a commercial practice is unfair if it is contrary to good customs and it materially distorts (or is likely to) the economic behaviour of the average consumer before, during or after the conclusion of contract related to a good or service. Apart from that, the act also distinguishes several named types of practices, such as misleading and aggressive commercial practices, and lists numerous examples. Consumers can raise several types of claims against a business that pursues unfair commercial practices (see column on sactions).	**businesses** (*przedsiębiorcy*) - natural persons, legal persons and an organizational units without legal personality, that carry on economic or professional activity, even if the activity is not continuous and organized, as well as persons acting on their behalf or in their interest **consumer** (*konsument*) - a consumer in the meaning of the Civil Code **product** (*produkt*) - any goods or service, including real estate as well as rights and obligations arising from civil law relationships **commercial practice** (*praktyka rynkowa*) - any act, omission, course of conduct, declaration or commercial communication (in particular, advertising and marketing) by a business directly connected with the promotion or purchase of a product by a consumer **invitation to purchase a product** (*propozycja nabycia produktu*) - a commercial communication which indicates characteristics of the product and the price in a way appropriate to the means of the commercial communication, that directly influences or may influence the consumer's decision regarding the contract **decision regarding the contract** (*decyzja dotycząca umowy*) - any decision taken by a consumer concerning whether, how and on what terms to purchase, make payment in whole or in part for, retain or dispose of a product or to exercise a contractual right in relation to the product, whether the consumer decides to act or to refrain from acting **average consumer** (*przeciętny konsument*) - a consumer that is reasonably well-informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors and whether the consumer belong to a particular consumer group, understood as a clearly identifiable group of consumers who are particularly vulnerable to the practice or the underlying product because of their particular characteristics, such as age or physical or mental disability
Directive 2006/114/EC concerning misleading and comparative advertising (consolidates Directives 84/450/EC and 97/55/EC)	Unfair Competition Act (*ustawa o zwalczaniu nieuczciwej konkurencji*)		The Unfair Competition Act is essentially the business-to-business equivalent of the Unfair Commercial Practices Act. The legislation forbids unfair competition acts and allows business whose interests were endangered or infringed as a result of such to raise several types of claims (see column on sanctions). Several examples of unfair competition acts are given in the legislation, such as circulation of false or misleading information about own business or another business in order to gain a benefit or cause harm, or an extensive list of potentially forbidden forms of advertising.	**unfair competition act** (*czyn nieuczciwej konkurencji*) - an action contrary to law or good customs that endangers or infringes the interest of another business or a client **businesses** (*przedsiębiorcy*) - natural persons, legal persons and organizational units without legal personality that participate in economic activity by carrying on profit-making or professional activity, even subsidiarily

Poland

Applicability and compliance recommendations **PLATFORM** (assumed to be a business)	**Sanctions for breach** **PLATFORM**	**Applicability and compliance recommendations** **PROJECT OWNER** (assumed to be a business)	**Sanctions for breach** **PROJECT OWNER**	**Relevant for type of Crowdfunding**			
				Investment based	**Lending based**	**Reward based**	**Donations based**
The Consumer Rights Act applies to PLATFORMS and PROJECT OWNERS that deal with consumers. Therefore, as a first order of business the PLATFORM/PROJECT OWNER should consider whether their business model involves consumers. If it does, the PLATFORM/PROJECT OWNER should take care to provide all the mandatory pieces of information as well as ensure that consumers can easily take advantage of the right of withdrawal (if applicable).	Among others: Failure to adequately inform the consumer about the right of withdrawal results in a significant extension of withdrawal period. Failure to perform the informational obligations may be deemed an unfair commercial practice (especially misleading), subject to sanctions described in the relevant section below.	See the column on PLATFORMS.	See the column on PLATFORMS.	**X**	**X**	**X**	**X**
The Unfair Commercial Practices Act applies to PLATFORMS and PROJECT OWNERS that deal with consumers. Therefore, as a first order of business the PLATFORM/PROJECT OWNER should consider whether their business model involves consumers. If it does, the PLATFORM/PROJECT OWNER should take care to ensure that no element of their business model constitutes an unfair commercial practice, in particular by providing adequate information to consumer. Taking advantage of legal counsel is highly recommended to identify the commercial practices which may be potentially considered unfair given the PLATFORM'S/PROJECT OWNER'S business model.	The consumer has several claims under the Unfair Commercial Practices Act. He can demand: (i) the cessation of the practice; (ii) removal of its effects; (iii) the making of a statement of appropriate content and in appropriate form; (iv) damages according to general principles and (v) payment of a specific sum of money to a specified public purpose related to supporting Polish culture, protection of national heritage or protection of consumers.	See the column on PLATFORMS.	See the column on PLATFORMS.	**X**	**X**	**X**	**X**
The Unfair Competition Act applies to PLATFORMS and PROJECT OWNERS. Given the scope of this report, the act's grounds for claims are relevant for those INVESTORS that are businesses. To avoid claims, PLATFORMS and PROJECT OWNERS should review their business model and eliminate elements that may be potentially considered unfair competition acts. Taking advantage of legal counsel to do so is highly recommended.	The business has several claims under the Unfair Competition Act. He can demand: (i) the cessation of the unfair competition act; (ii) removal of its effects; (iii) the making of a single statement (or numerous statements) of appropriate content and in appropriate form; (iv) damages according to general principles; (v) surrender of the unlawful gains according to general principles and (vi) only if the act was culpable - payment of a specific sum of money to a specified public purpose related to supporting Polish culture or protection of national heritage.	See the column on PLATFORMS.	See the column on PLATFORMS.	**X**	**X**	**X**	**X**

Poland

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
Payment Services Directive (2007/64/EC) (and in the future PSD II - Directive proposal COM/2013/0547)	Payment Services Act (*ustawa o usługach płatniczych*)	art. 3&4 (definitions of payment services and payment service providers) art. 6 (exemptions) Divisions II & III (informational and contractual obligations) Division IV & VI (payment institution licence, regulatory supervision) Division V (crossborder provision of services, licence passporting) Division IX (civil and criminal liability)	The Payment Services Act provides the regulatory framework for providing payment services in Poland, such as licencing requirements, supervision, informational and contractual obligations of payment service providers, crossborder activities as well as civil and criminal liability.	Falls out of the scope of this research to include in detail.
Consumer Credit Directive (2008/48/EC)	Consumer Credit Act (*ustawa o kredycie konsumenckim*)		The rules of the Consumer Credit Act, which applies to consumer credit contracts concluded between a business and a consumer, are primarily devoted to precontractual obligations, mandatory provisions of consumer credit contracts as well as specific rights of a consumer, in particular the right of withdrawal. A recent amendment also introduced special requirements for non-bank lenders, called credit institutions (*instytucje pożyczkowe*), concerning capital requirements and legal form of business vehicle.	**consumer credit contract** (*umowa o kredyt konsumencki*) - a contract for credit not exceeding PLN 255,550 or its equivalent in another currency, which is granted or promised to consumer by a lender in the scope of the latters activity. The following are in particular considered a consumer credit contract: (i) loan contract; (ii) credit contract in the meaning of banking law; (iii) contract on deferrence of monetary payment, if the consumer is obliged to bear any costs of such; (iv) credit contract where the lender takes an obligation towards a third party and the consumer is obliged to return the rendered performance to the lender; (v) renewable credit contract **consumer** (*konsument*) - consumer in the meaning of the Civil Code **lender** (*kredytodawca*) - a business in the meaning of the Civil Code that grants or promises to grant credit to a consumer within the scope of its economic or professional activity **credit intermediary** (*pośrednik kredytowy*) - a business in the meaning of the Civil Code, other than the lender, that, in the scope of its economic or professional activity, attains financial gains (in particular, remuneration from the consumer) by conducting the factual or legal actions related to preparing, offering or conluding a credit contract
Rome I Regulation (593/2008)	The Regulation, although directly effective, is supplemented by the Private International Law (*prawo prywatne międzynarodowe*)		Rome I resolves conflicts of laws related to contracts, including determining the law applicable to claims arising from those contracts.	N/A
Rome II Regulation (864/2007)	The Regulation, although directly effective, is supplemented by the Private International Law (*prawo prywatne międzynarodowe*)		Rome II resolves conflicts of laws related to non-contractual obligations, such as delicts or product liability obligations.	N/A

Notes:
The information above is a subjective summary of potential grounds for civil law claims which an investor may raise against crowdfunding platforms and project owners, outside insolvency proceedings. It is not an exhaustive description of all claims or other legal issues which may be relevant to an investor, platform or project owner. It is accurate as of the date of publication. It does not constitute binding legal advice and should not be the basis for business decisions.

Poland

Applicability and compliance recommendations **PLATFORM** (assumed to be a business)	**Sanctions for breach** **PLATFORM**	**Applicability and compliance recommendations** **PROJECT OWNER** (assumed to be a business)	**Sanctions for breach** **PROJECT OWNER**	**Relevant for type of Crowdfunding**			
				Investment based	**Lending based**	**Reward based**	**Donations based**
The PLATFORMS' services would usually be qualified as payment services. However, most platforms should be able to rely on the exemptions given in the Payment Services Act to avoid the need for obtaining a payment institution licence and complying with the act's requirements.	Among others: Failure to fulfill some of the informational obligations may result in an extension of the period during which unauthorised transactions can be reported by the payment service user (i.e., INVESTOR). In general, contractual clauses less advantageous to the payment service user than the provisions of Payment Services Act are considered to be invalid and are replaced by the relevant provisions of the Act. Failure to execute a payment transaction (or its defective execution) makes the payment service provider liable for a full refund.	N/A	N/A	**X**	**X**	**X**	**X**
To the extent the PLATFORM or the PROJECT OWNER is considered a lender or a credit intermediary, they should adhere to the provisions of the Consumer Credit Act. The PLATFORM/PROJECT OWNER should bear in mind that the Act only applies to business-to-consumer credit contracts. For example, it would apply if the INVESTORS were business granting loans to the PROJECT OWNER as a consumer.	Failure to comply with the Consumer Credit Act is likely to be considered an unfair commercial practice. The Act itself also provides for specific sanctions. For example, violation of several of its provisions result in the free credit sanction - the consumer is only obliged to return the capital, without interest or costs.	See the column on PLATFORMS.	See the column on PLATFORMS.	**N/A**	**X**	**N/A**	**N/A**
The PLATFORM/PROJECT OWNER can include a choice of law clause in the contract which generally determines laws applicable to the contractual relationship. If the counterparty is a consumer, however, the choice of law cannot deprive him of the protections granted by laws in his place of residence.	Not relevant	See the column on PLATFORMS.	Not relevant	**X**	**X**	**X**	**X**
As a rule, the applicable law is detemined solely by the provisions of Rome II. The PLATFORM/PROJECT OWNER can choose applicable only in two cases: (i) if all parties involved are pursuing a commercial activity or (ii) after the event giving rise to damage occurs.	Not relevant	See the column on PLATFORMS.	Not relevant	**X**	**X**	**X**	**X**

Spain

EU legislation forming basis for national legislation	National legislation (excluding lower rules and regulations)	Main sections / chapters national legislation	Brief summary national legislation	Main definitions used in this part of national legislation relevant for crowdfunding
	Law 5/2015, of 27 April Promoting Corporate Financing (**Law 5/2015**)	Art. 46 to 93 of Law 5/2015.	Law 5/2015 provides the regulatory framework for any model of crowdfunding in which a financial return is involved. Crowdfunding models subject to supervision are those implemented via (i) the issue or subscription of transferable securities when a prospectus is not required in accordance with the Securities Market Act (Royal Legislative Decree 4/2015); (ii) the issue or subscription of shares in a limited liability company; and (iii) loan applications, including subordinated profit-participating loans. That said, donations, rewards and interest-free loans models are not regulated activities and, therefore, not subject to Law 5/2015. Law 5/2015 covers the legal framework governing crowdfunding platforms: (i) authorisation and registry procedures before the Spanish National Stock Exchange Commission (*Comisión Nacional del Mercado de Valores - CNMV*) to become a duly authorised platform; (ii) regulations applicable for each of the three sides involved in the financing channel, i.e., the project owner (mainly transparency requirements regarding the project and certain temporal/quantitative limits to the project); the potential investor or contributor (mainly limits to investment for accredited and non-accredited investors) and the platform; and (iii) restrictions on permitted activities, limits to projects' investment and rules to protect non-qualified investors. Crowdfunding platforms may not render any services reserved for credit institutions, investment firms or payment institutions. This is relevant since crowdfunding platforms will have to apply for the relevant authorisation as a payment institution in case they intend to execute any payment transactions between the project owner and the potential investor. Please note that the funds provided by the lenders by means of crowdfunding platforms do not constitute a deposit nor other repayable funds received from the public within the meaning of the legislation applicable to credit institutions.	**1. Crowdfunding project**: For a project to be considered a valid crowdfunding project it shall comply with the following requirements: (i) be offered to several natural or legal persons expecting a financial return and (ii) be issued by a project owner ("*promotor*") seeking financing on its own account. It shall be taken into account that the entire amount invested shall be applied exclusively to a determined project of the project owner, which shall not involve, under any circumstances (i) professionally granting loans or credits or any other form of financing; (ii) the subscription or acquisition of shares, bonds or any other financial instruments admitted to trade on a regulated market or multilateral system; or (iii) the subscription or acquisition of shares of collective investment schemes, their management companies, venture capital entities or any type of closed-end entities. **2. Accredited investor**: Those natural or legal persons that fall under the definition of professional investors provided by Annex II, paragraph I (1), (3) and (4) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments. Furthermore, Law 5/2015 also considers accredited investors: - Those undertakings which, individually, meet two of the following requirements: (i) a balance sheet of at least EUR 1,000,000; (ii) a net turnover of at least EUR 2,000,000; or (iii) own funds of at least EUR 300,000; - Those investors who are natural persons and do not meet the abovementioned requirements who request to be treated as a professional client as long as he/she proves an annual income of at least EUR 50,000 or financial assets of at least EUR 100,000; - SMEs and legal persons who request to be treated as a professional client; and - Legal and natural persons not complying with the abovementioned requirements but who have requested financial advice over the financing instruments offered in the platform from a duly authorised investment firm. **3. Consumer**: For the definition of consumer, Law 5/2015 turns to Royal Legislative Decree 1/2007 of November 16th, by means of which the Consolidated Text of the General Law for the Protection of Consumers and Users and other supplementary laws are approved. As opposed to other European countries, both (i) natural persons acting with a purpose different from their commercial or business activity, office or profession, and (ii) legal persons acting on a non-profit basis in a sphere that falls outside a commercial or business activity are included under the definition of consumer. Please note that this is a particularity of Spanish legislation, since in most European jurisdictions only natural persons can be considered consumers. **4. Payment services**: (i) Services enabling the deposit in a payment account and all the operations required for operating a payment account; (ii) services enabling the withdrawal of cash from a payment account and all the operations required for operating a payment account; (iii) the execution of payment transactions, including the transfer of funds through a payment account opened at a payment services provider; (iv) issuing and/or acquiring payment instruments; and (v) money remittance.
Payment Services Directive (Directive 2007/64/EC)	Law 16/2009 of November 13, on payment services ("**Law 16/2009**")and Royal Decree 712/2010, of 24 May, developing Law 16/2009.		Payment services providers (including crowdfunding platforms which intend to render payment services) must submit an application for authorisation as hybrid payment institutions to the Ministry of Economy, upon consultation to the Bank of Spain and the Executive Service of the Comission for the Prevention of Money Laundering and Monetary Offences. Thus, any platform that intends to receive funds on behalf of the investors or the entrepeneurs and conduct any payment service between them must previously obtain a licence as a hybrid payment institution.	**Hybrid payment institution:**Payment institutions which pursue not only the rendering of payment services but also other economic activities.

Spain

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
As mentioned, previous authorisation granted by the Spanish National Stock Exchange Commission is required to act as a crowdfunding platform in Spain. Also, the Bank of Spain shall issue a binding report in case of platforms publishing projects implemented via loan applications. Therefore, we recommend obtaining expert regulatory advice to fulfil the registration procedures as early as possible. We also recommend requesting expert regulatory advice on an on-going basis to comply with regulatory provisions.	For **very serious infringements**, as defined in article 92 of Law 5/2015, the Spanish National Stock Exchange Commission (Comisión Nacional del Mercado de Valores - CNMV) may impose one or more of the following sanctions: (i) fine amounting between (A) three and five-times the amount of the profit derived from the infringement, (provided that such profit can be determined); or (B) 5 and 10% of the total annual turnover of the legal entity; or (C) EUR 75,000 and EUR 200,000; and/or (ii) withdrawal of the authorisation; and/or (iii) prohibition to apply for a crowdfunding platform license for a period between 1 and 5 years; and/or (iv) removal of the infringer from the crowdfunding platform's management body or from his or her directorship post, and his or her disqualification from holding management or directorship duties in any crowdfunding platform for up to a 10 year period. For **serious infringements**, as defined in article 92.2 of Law5/2015, the CNMV may impose one or more of the following sanctions: (i) fine amounting between (A) two and three-times the amount of the profit derived from the infringement (provided that such profit can be determined); or (B) 3 and 5% of the total annual turnover of the legal entity; or (C) EUR 50,000 and EUR 100,000; and/or (ii) suspension of the authorisation to act as a crowdfunding platform for a maximum period of one year; and/or (iii) suspension from the exercise of the infringer's management or directorship duties in a crowdfunding platform for up to a one year period. Additionally, sanctions for serious and very serious infringements will be published in the official website of the CNMV and in the Official Gazette of the Commercial Registry (BORME).	Project owners may be either legal persons validly registered in Spain or any other EU Member State or natural persons having their tax residence in Spain or in any other EU Member State. No previous licences or authorisations are required to become a project owner (*promotor*) in Spain. Neither the project owner (or the shareholders of a project owner in case it is a legal persons) nor its directors can be under any cause of disqualification as defined by Law 22/2003, 9th July, on Insolvency (or any other equivalent act of any EU Member State) nor may they be serving sentence for committing crimes or offenses against property, the socioeconomic order, the Treasury and the Social Security or those related to money laundering activities. Also, Project owners shall not publish, simultaneously, more than one project at a time in the same platform. Project owners shall disclose in their projects all the information required by Law 5/2015, which varies for each model of crowdfunding. Please note that project owners are responsible for the veracity of the content of the information disclosed.	N/A Since no previous authorisation is required, neither the CNMV nor the Bank of Spain have any supervisory capacity regarding project owners.	X	X	N/A	N/A
As mentioned, prior authorisation granted by the Ministry of Economy is required.Therefore, we recommend obtaining expert regulatory advice to fulfil the registration proceedings as early as possible in the structuring phase. We also recommend requesting expert regulatory advice on an on-going basis to comply with regulatory provisions.	Payment Institutions are subject to the penalty regime of credit institutions established by Law 10/2014, of 26th June, on supervision and solvency of credit entities. Under such Law, rendering reserved activities without having obtained the prior authorisation is considered a serious infringment. For serious infringment the following sanctions may be imposed: (i) A fine of between two-times and three-times the amount of the profit derived from the infringement (provided that such profit can be determined);or between 3 and 5% of the total annual turnover of the legal person or between EUR 2,000,000 and EUR 5,000,000 if that percentage were less than these figures and (ii) public reprimand published in the BORME.	N/A	N/A	X	X	N/A	N/A

Spain

EU legislation forming basis for national legislation	National legislation (excluding lower rules and regulations)	Main sections / chapters national legislation	Brief summary national legislation	Main definitions used in this part of national legislation relevant for crowdfunding
Consumer Rights Directive (Directive 2011/83/EU)	Law 3/2014, of 27 March, approving the revised text of the Royal Legislative Decree 1/2007, the General Act on Protection of Consumers and Users ("**Consumer Protection Act**").		The Consumer Protection Act is the most relevant Spanish law concerning consumer protection. The Consumer Protection Act applies to the relationships and contracts entered into between consumers and businessmen or companies. Any commercial practice is subject to this Law. Please also note that the different Autonomous Communities in Spain may enact laws and regulations on consumer protection developing and complementing the State regulation. Therefore, regional legislation shall also be taken into account, specially since regional authorities are entitled to control the application of the regulations and impose penalties in case of infringments.	Please see definition of "Consumer" above. "**Commercial Practices**": those acts, omissions, behaviors, conducts, representations, or commercial communications that are directly related to the promotion, the sale, or the delivery and supply of goods or services to consumers and users, advertisement and marketing included, carried out prior, during, or after a commercial transaction
	Law 2/2009, of 31st March, on mortgage credits and loans with consumers and credit intermediation ("**Law 2/2009**").	Art. 19 to 22 of Law 2/2009 and article 86 of Law 5/2015.	Although according to Law 5/2015 crowdfunding projects implemented via loan applications shall not incorporate a mortgage, Law 2/2009 also establishes the legal regime for the transparency of credit intermediation contracts, whether they incorporate a mortgage or not. In this sense, article 86 of Law 5/2015 expressly establishes that crowdfunding platforms when dealing with project owners qualified as consumers will be subject to provisions set forth in Law 2/2009. This Law basically establishes the information to be included in commercial communications and advertising; pre-contractual information to be provided to the consumer at least 15 days prior to the signing of the contract; and the right of withdrawal from the intermediation contract within 14 calendar days following the conclusion of the contract, without penalty.	**Credit intermediaries**: companies which, without maintaining any contractual relationship with banks or companies marketing credits, offer independent, professional and impartial advice to those who request their intervention to obtain a loan or credit.
Directive 2008/48/EC on credit agreements for consumers.	Law 16/2011, of 24 June, on Consumer Credit Contracts ("**Law 16/2001**").	Art. 33 of Law 16/2001	Law 16/2001 applies to any agreement whereby the creditor grants or undertakes to grant a credit in the form of deferred payment, loan, credit facility or any other equivalent way of financing in favour of a consumer provided that the amount granted is more than EUR 200. This Law establishes requirements that must be fulfilled by the contract as well as certain pre-contractual obligations, along with certain obligations imposed to credit intermediaries.	Please see definition of "Consumer" above.
	Articles 29 and 30 of Law 44/2002, of 22nd november, on Reform Measures of the Financial System, ("**Law 44/2002**") developed by Order ECO/734/2004 of 11 March on financial institution customer care departments and services.		Establishes the obligation for financial institutions to attend to and resolve any complaints submitted by their customers. For that purpose, entities shall have a customer service department and appoint an ombudsman to deal with and rule on complaints. Additionally, the Bank of Spain and the Spanish National Stock Exchange Commission have a special commission in charge of consumer claims (*Departamento de Conducta de Mercado y Reclamaciones del Banco de España* and *Servicio de Reclamaciones de la CNMV*).	**Customer Service Department:** Shall attend and resolve complaints or claims submitted by the entity's clients provided such complaints or claims relate to legally recognised interests and rights arising from contracts, transparency and customer protection regulations. The Customer Care Service acts autonomously and independently and is separate from the organization's commercial or operative services. Decisions in favour of the claimant will be binding for the entity. Nevertheless, clients will still be entitled to seek the protection of the courts or other mechanisms for resolution of disputes, including seeking administrative protection.
Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.	Act 15/1999, of 13 December, on Personal Data Protection ("**DPA**") and Royal Decree 1720/2007, of 21 December, approving the Regulations implementing the DPA ("**Regulations of the DPA**")		Spain is well known for having one of the most restrictive data protection regimes in the European Union. Spanish legislation establishes high penalties (fines are up to EUR600,000 per infringement). Protection of personal data is achieved by allocating specific duties to both the data controllers (i.e. those individuals or legal persons who decide on the content, purpose and use of the personal data) and the data processors (i.e. those individuals or legal persons who process personal data on behalf of the data controller, due to the existence of a legal relation binding them and delimiting the scope of their action for the provision of a service). The DPA and the Regulations of the DPA apply to any personal data concerning individuals but a reinforced protection regarding solvency and credit data and advertising campaigns data is established, among others. It is also important to note that transfers of personal data from Spain to entities located outside the Economic European Area (EEA), which do not offer an equivalent level of data protection to that in the EEA, should comply with specific requirements.	**Personal Data** is any information relating to an identified or identifiable individual. More specifically, according to the Regulation of the DPA, personal data is any alphanumeric, graphic, photographic, acoustic or any other kind of information relating to an identified or identifiable individual. An **identified individual** is one who is identified by the data concerning him/her (e.g. his/her name, image, etc.). In other words, no other information is necessary to identify the data subject. An **identifiable individual** is one who may be directly or indirectly identified through one or more elements specific to his/her physical, physiological, mental, economic, cultural or social identity. However, an individual is not regarded as "identifiable" if such identification requires disproportionate efforts, in terms of time or activities.

Spain

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
When dealing with consumers (project owners or potencial investors) platforms shall comply with these provisions. Notwithstanding this, please take into account that Law 5/2015 establishes certain particularities for the aplication of Law 3/2014 in the context of crowdfunding. In this sense, please remember the definition of consumer given by Spanish legislation, which includes, in certain cases, legal persons.	The Consumer Protection Act establishes that infringments to its provisions shall be sanctioned with a fine according to the following scale: - For minor offenses, EUR 3,005.06 . - For serious offenses, between EUR 3,005.07 and EUR 15,025.30 . This latter amount may be exceeded up to five times the value of the goods or services covered by the infringement. - For very serious offenses, between EUR 15,025.31 and EUR 601,012.10 euros. This latter amount may be exceeded up to five times the value of the goods or services covered by the infringement. In case of very serious infringements, competent public authorities may agree on the temporary closure of the establishment, facility or service for a period up to five years. Under certain circumstances, the publicity of the sanction may also be imposed.	When dealing with investors qualified as consumers, project owners shall comply with the provisions of the Consumer Protection Act. Notwithstanding this, please take into account that Law 5/2015 establishes certain particularities for the aplication of such Law in the context of crowdfunding.	Please see PLATFORM.	X	X	N / A	N / A
Article 86 of Law 5/2015 expressly establishes that crowdfunding platforms when dealing with project owners qualified as consumers will be subject to provisions set forth in Law 2/2009. Therefore, we recommend obtaining expert regulatory advice on this subject.	Infringement of the provisions of this act are considered a violation in matter of consumer protection. Thus, the provisions of the general penalty regime established under the Consumer Protection Act are applicable.	N/A	N/A	N / A	X	N / A	N / A
According to article 86 of Law 5/2015, provisions set forth in Law 16/2001 are applicable to crowdfunding platforms with the particularities established in said article. Obligations basically refer to pre contractual and contractual information that must be delivered to the client. We recommend obtaining expert regulatory advice on this subject.	Failure to comply with the provisions of Law 16/2011 will be sanctioned as an infringment in the field of consumer protection, subject to the general penalty regime for the protection of consumers and users provided in the Consumer Protection Act. (See above).			X	X	N / A	N / A
Platforms shall have a Customer Service Department.	In this point, no specific penalty regime is established neither by Law 44/2002 nor by Order ECO/734/2004. Therefore, infringements to these obligations would be subject to the general provisions of Royal Legislative Decree 4/2015, by means of which the consolidated text of the Securities Market Act is passed.	N/A	N/A	X	X	N / A	N / A
As long as the platform acts as data controller or data processor, it is subject to the provisions of the DPA and the Regulation of the DPA. Therefore, we recommend obtaining expert regulatory advice on this matter. Please note that even when dealing exclusively with legal persons, some personal data will always be used (e.g. personal data identifying the representatives of the company). Depending on the type of personal data being processed and the data processing purposes, this personal data may be also covered by the provisions of the DPA and the Regulations of the DPA.	**Minor infringements** are punished with fines from EUR 900 to EUR 40,000. **Serious infringements** are punished with fines from EUR 40,001 to EUR 300,000. **Very serious infringements** are sanctioned with fines from EUR 300,001 and EUR 600,000.	As long as the project owner acts as data controller or data processor it is subject to the provisions of the DPA and the Regulations of the DPA. Therefore, we recommend obtaining expert regulatory advice on this matter.	Please see PLATFORM.	X	X	X	X

Spain

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.	Law 10/2010, of 28 April, on prevention of money laundering and terrorism financing ("**AML Law**") and Royal Decree 304/2014 of 5 May, implementing Law 10/2010 ("**AML Royal Decree**")		Spanish legislation is based on EU Directives and, therefore, its provisions are aligned with those contained in EU regulations. In general terms, obliged entities shall detect, analyse and report to the Executive Service of the Commission (SEPBLAC) any transaction that may be related to money laundering or terrorist financing. This obligation applies to managers, employees and agents. Amongst obligations imposed on entities the following are worth being mentioned: (i) rejecting any transaction that may be linked to money laundering or terrorist financing, (ii) complying with due diligence measures regarding proper identification of the clients, (iii) keeping all documents obtained or generated during the due diligence process, (iv) ensuring high ethical standards in the recruitment of managers, employees or agents, (v) approving in writing and implementing adequate policies and procedures for the prevention of money laundering and terrorist financing , (vi) approving a handbook for the prevention of money laundering and terrorist financing, (vii) appointing a representative to the Executive Service of the Commission (SEPBLAC), (viii) establishing an internal control committee for the implementation of procedures for the prevention of money laundering and terrorist financing, (ix) conducting a review (by an external expert) describing and assessing the internal control measures of the entity and (x) approving and implementing an annual training plan on prevention of money laundering and terrorist financing.	According to Article 2.1.k of the AML Law, any natural or legal person that professionally carries out the activity of intermediation in credit or loans is considered an obliged entity in the meaning of anti-money laundering legislation.

Spain

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
We recommend obtaining expert regulatory advice on this subject matter.	**In case of very serious infringements** the following sanctions may be imposed**:** a) Public reprimand. b) Fine between EUR 150,000 and the greater of the following: 5% of the net assets of the entity, twice the economic content of the transaction, or EUR 1,500,000 . c) In case of entities subject to administrative authorization to operate, the revocation of the authorization. In addition, managers or directors of sanctioned entities can also be subject to the following sanctions if they are held responsible for the infringement: a) A fine between EUR 60,000 and EUR 600,000. b) Removal from their office, with disqualification to hold management or directorship positions in the same or another company subject to this Law for a maximum period of ten years. In case of **serious infringements**, the following sanctions may be imposed: a) Private warning. b) Public reprimand. c) Fine between EUR 60,001 and the greater of the following : 1% of the net assets of the entity, the amount of the economic content of the transaction plus 50%, or EUR 150,000 . In addition, managers or directors of sanctioned entities can also be subject to the following sanctions, if they are held responsible for the infringement: a) Private warning. b) Public reprimand. c) A fine between EUR 3,000 and EUR 60,000 . d) One year suspension from their office. **In case of minor infringements,** the following sanctions may be imposed**:** a) Private warning. b) Fine of up to EUR 60,000	N/A	N/A	**X**	**X**	**N / A**	**N / A**

Sweden

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**s**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
Investment based MiFID (Directive 2004/39/EC; Regulation no. 1287/2006 and Directive 2006/73/EC) (and in the future: MiFID II (Directive 2014/65/EU) and MiFIR (Regulation no. 600/2014)	The Securities Market Act (Lag (2007:528) om värdepappersmarknaden) Regulation no. 1287/2006 is directly applicable in Sweden, while Directive 2206/73/EC has been implemented by regultations of Sweden's financial supervisory authority.	Ch. 2 section 1 (license requirement) Ch. 2 section 5 (exemptions from license requrement), Ch 3 (Swedish companies), Ch 4 (foreign companies) Ch. 25 (intervention)	*Investment based (equity) crowdfunding* The Swedish Securities Market Act regulates financial trading of securities, including investment brokering, financial advising and prospectus rules. License to conduct financial services is required for marketplaces and is issued by Sweden's financial supervisory authority (the S-FSA).	**Regulated market** *(reglerad marknad)* means a multilateral system within EEA which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments - in the system and in accordance with its non-discretionary rules - in a way that results in a contract. **Financial instruments** *(finansiella instrument)* means transferable securities, money market instruments, UCITS, and financial derivative instruments; **Transferable securities** (*överllåtbara värdepapper)* means such securities, with the exception of instruments of payment, which are traded on the capital market. **Securities exchange** *(börs)* means a Swedish limited company or a Swedish co-operative association which is authorised pursuant to this Act to operate one or more regulated markets; and **Securities business** *(värdepappersrörelse)* means business which consists of the professional provision of investment services or the conduct of investment operations.
	Certain Financial Operations (Reporting Duty) Act (lagen (1996:1006) om anmälningsplikt avseende viss finansiell verksamhet)	Section 2 (reporting duty) Scetion 4 (measures against money laundering and terrorist financing) Sections 5-6 (consumer protection) Sections 8-11 (intervention)	A natural person or legal person intending to engage in currency exchange on a significant scale or other financial operations shall notify the FSA of such operations.	**"other financial operations"** *(annan finansiell verksamhet)* means professional activities which primarily consist of conducting one or more of the operations set forth in Chapter 7, section 1, second paragraph, subsections 2, 3 and 5–12 of the Banking and Financing Business Act; and **"financial institution"** *(finaniellt institut)* means a natural or legal person engaged in currency exchange or other financial operations.
	Income Tax Act (inkomstskattelagen (1999:1229))	Ch. 42 section 15 (income from capital) , Ch. 43 sections 21-22 (investor tax deduction)		N/A
Investment based Prospectus Directive (Directive 2010/73/EC amending Directive 2003/71/EC) and the Prospectus Regulation (Regulation no. 809/2004)	The Swedish Financial Instruments Trading Act (lag (1991:980) om handel med finansiella instrument)	Ch. 2 section 1 (obligation to prepare a prospectus) Ch. 2 sections 2-7 (exceptions to the duty to prepare a prospectus)	A prospectus shall be prepared when transferable securities are offered to the general public or admitted for trading on a regulated marketplace unless any exemptions apply. In order to facilitate for smaller companies, exemptions have been made where the offering does not exceed EUR 2 500 000 within a period of twelve months.	**Offer securities to the public** *(erbjudande om värdepapper till allmänheten)* does not have a set definition. The following definition from the Prospectus Directive is to be guiding in determining whether the offer is public: a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe to these securities. **The public** *(allmänheten)* means when securities are offered to more than 200 persons/investors according to the Swedish Companies Act.
Investment based AIFMD (Directive 2011/61/EC)	The Alternative Investment Fund Managers Act (lag (2013:561) om förvaltare av alternativa investeringsfonder)	Ch. 1 section 1 (scope) Ch. 2 sections 1-3 (registration under certain treshhold values) Ch. 3 section 1 (license requirement)	The act regulates license for and registration and supervision of AIF-managers (AIFM), and their business conduct. An AIFM needs a license issued by the S-FSA. A Swedish AIFM whose total assets do not exceed 100 000 000 EUR and for AIFMs that manage only unleveraged AIFs that do not grant investors redemption rights during a period of 5 years where the cumulative AIFs under management fall below a threshold of EUR 500 million can apply for registration with the S-FSA instead of a license. A registrered AIFM may not, as a main rule, manage funds directed towards retail investors and it can only be marketed and managed nationally. There is an exception where the AIFM may manage funds directed towards retail investors who pledge to invest an amount equivalent to at least 100 000 EUR, if the funds have no redemption rights during at least five years from the initial investment.	**Alternative Investment Fund ("AIF")** (*alternativ investeringsfond*) means a collective investment undertaking which raise capital from a number of investors in accordance with a defined investment policy for the benefit of those investors. **AIF-manager ("AIFM")** (*AIF-förvaltare*) means legal persons whose regular business is managing one or more AIFs.

Sweden

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM (assumed to be a business)	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER (assumed to be a business)	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
Shares are transferable securities pursuant to ch. 1. section 4 p. 2 a, and therefore covered by the scope of the Act. The platform is thus required to obtain license from the FSA, provided that the Platform's activities consist of receiving and forwarding orders for financial instruments and on behalf of their customers and thus constitutes a securities business. Additionally, a platform is not a stock exchange in a legal sense if the platform does not provide a regulated market for the trading of the shares (Ch. 1 section 5 p. 3 and 20), but merely a tool for private companies to issue new shares. Important to note is that this Act only becomes applicable if the platform is actually handling the transmission of shares in the form of an intermediary. If the transaction takes place directly between the entrepreneur and financier, the criteria of the Act are not met, so no permit needs to be obtained by the platform.	The FSA shall intervene if obligations pursuant to this Act have been breached. The FSA shall then issue an order to, within a specific time, limit or reduce the risks of the operations in some respect, limit or preclude in full payment of dividends or interest, or take another measure in order to rectify the situation, issue an injunction against executing resolutions, or issue an adverse remark. Where the infringement is serious, the undertaking's licence shall be revoked or, where sufficient, a warning shall be issued. The FSA may also decide that the undertaking must pay a punitive fine, which shall accrue to the State.	N/A	N/A	X	N/A	N/A	N/A
If the Securities Market Act does not apply on platform and registration with the FSA is not required, due to reasons described above, the platform needs to notify its activites according to the reporting obligation under the Act. The platform's activites are within the definition "other financial operations".	Where a natural or legal person engaged in an operation subject to reporting fails to provide notification, the FSAshall order the person to provide notification. If the person fails to comply with the order, the FSA shall order such person to cease operations. Where it is uncertain whether a certain operation is subject to reporting, the FSA may order the person to provide such information concerning the operation as is necessary to assess whether notification is required.	N/A	N/A	X	X	N/A	N/A
N/A	N/A	A shareholders' contribution is not an income and should therefore not be subject to taxation of the project owner. For the consumer/investor, a capital profit is taxable when the shares have been sold and for the dividend, if any. A natural person has the opportunity to receive an investment deduction for a new issue in a small sized company. The deduction must however be reversed if the investor sells the shares within the five tax years following the year of payment.	N/A	X	N/A	N/A	N/A
The platforms usually have internal terms of use that contains requirements that the project owners provide information regarding the company, project etc before the campaign can be published. Also, the projects usually do not exceed the threshold of EUR 2 500 000, so the prospectus requirements do not apply mainly to the crowdfunding platforms.	N/A	See Platforms.	N/A	X	X	N/A	N/A
The current platforms do not constitute AIF's as they do not raise the capital themselves. However it is possible a future crowdfunding platform that raise the capital themselves and thereafter act as a representative for the investors towards the project company, and during the project, would fall within the scope of the AIFMD. Such service is yet to be launched in Sweden.	N/A	The S-FSA has published regulations in which they state that a limited liability company seeking funding to conduct a "normal" business (supply of goods/services, production etc.) shall not constitute an AIF. A project company should therefore as a general rule not be considered as an AIF, although certain exemptions could be possible depending on the project company's intended business.	N/A	N/A	N/A	N/A	N/A

Sweden

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**s**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
Lending based Consumer Credit Directive (Directive 2008/48/EC)	Consumer Credit Act (Konsumentkreditlag (2010:1846))	Section 1 (applicability) Section 5 (protection of cunsumers) Section 6 (sound lending practices) Section 48 (certain obligations for credit intermediaries) Section 52 (sanctions)	This Act shall apply to credit which an undertaking grants or offers a consumer. The Act shall also apply to credit which is granted or offered a consumer by a person other than an undertaking, where the credit is mediated by an undertaking as agent for the creditor. The Act also contains provisions regarding certain obligations for credit intermediaries (section 48). If the credits are provided to the consumer at the request of the consumer, the act is not applicable.	**Consumer** (*konsument*) means a natural person who is acting primarily for non-business purposes. **Undertaking** *(näringsidkare)* means a natural or legal person who is acting for purposes which have a connection with his or her own business, **Creditor** *(kreditgivare)* means a person who grants credit or assumes the original creditor's claim, **Credit agreements** *(kreditavtal)* means an agreement for a loan, overdraft facility, deferred payments or suchlike.
	Act on Limitation (Preskriptionslag (SFS 1981:130)	Section 2 (period of limitation) Section 5 (interruption of the period of limitation)	This Act governs time limits for claims, save where otherwise specifically prescribed in any legislative provision.	N/A
	Rights of Priority Act (Förmånrättslag (SFS 1970:979))	Section 1 -2 (applicability) Section 18 (claims without any right of priority)	Creditors' rights of priority in the event of execution of a debt or bankruptcy or insolvent liquidation are governed by this Act. Provisions which prescribe that creditors shall have equal rights to payment mean that each creditor shall be entitled to payment in proportion to his claim.	N/A
	Income Tax Act (inkomstskattelagen (1999:1229))	Ch. 16 section 1 (deduction from income of business activities), Ch. 42 section 1 (included and deducted as profit of capital)	N/A	N/A
Mortgage Credit Directive (Directive 2014/17/EU)	Draft bill concerning creditors and credit intermediaries of mortgages and 9 amendments in acts. (Förslag till lag (2016:000) om kreditgivare och kreditförmedlare av bostadskrediter och 9 st ändringar i lag)	Swedish Government Official Report (2015:40) concerning effective consumer protection on the mortgage market, ch. 1, section 1 (description the draft bill).	This act contains provisions on professional activities of lending, credit intermediation and advice in respect of mortgage loans to consumers. Specific provisions on mortgage loans is also found in the Consumer Credit Act (2010: 1846).	Definitions as above (consumer credit act) and, **Credit intermediation** *(kreditförmedling)* means activity which involves a trador, other than a creditor, under compensation; 1. offers a credit agreement, 2. assists a consumer before entering a credit agreement, or 3. enters into a credit agreement as an agent of the creditor.
Payment Services Directive (Directive 2007/64/EC) (and in the future PSD II (Directive proposal COM/2013/0547))	The Swedish Payment Services Act (Lag (2010:751) om betaltjänster)	Ch 2. section 1 (license requirement) Ch 2. sections 2-3 (exemptions from license requirement)	The provision of payment services is subject to license requirement. The license is issued by the S-FSA. A Swedish payment service provider must be a Swedish limited liability company or economic association to be granted license. Natural or legal persons may apply to be exempt from the license requirement. Exceptions will be made if the total amount of payment transactions during the last 12 months do not exceed an amount equivalent to 3 000 000 EURO per month, if the company meets certain requirements regarding the company's board and business activities. Those exempt from the license requirement will be registered with the S-FSA.	**payment service** (*betaltjänst*) means among other things, services that make it possible to make cash deposits and withdrawals, execution of payment transactions and money transfers. Activities where funds are received and kept separate, for example through funds deposited in a trust account, and then transferred to a borrower or back to a lender, constitutes a payment service. **payment institution** (*betalningsinstitut*) means a limited liability company or economic association with license to provide payment services. **registered payment service provider** (*registrerad betaltjänstleverantör*) means payment service providers who are exempt from the license requirement and thus are instead registered with the S-FSA.

Sweden

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM (assumed to be a business)	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER (assumed to be a business)	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
If the platform acts as a credit intermediary for the credit provider, the act will apply to the platform when the credit is provided to consumers. The Act is not applicable to the intermediary if the debtor is an undertaking and the creditor is a consumer.	The punitive fine shall be set at not less than SEK 5,000 and not more than SEK 10,000,000. The fine may not exceed 10 percent of the undertaking's turnover for the immediately preceding financial year. If the violation occurred during the trader's first year of business or if information concerning the turnover is otherwise not available or is incomplete, the turnover may be estimated. When determining the amount of the fine, particular consideration shall be given to the gravity of the violation which occasioned the warning. The fine may be waived, in whole or in part, where special cause exists.	N/A if the project owner is a business.	N/A	N/A	X	N/A	N/A
N/A	N/A	Due to the fact that the creditors are consumers, the limitation act is applicable on the lending based crowdfunding. The limitation period for claims is ten years, according to the Act.	N/A	N/A	X	N/A	N/A
N/A	N/A	An investor's claim is without any priority in the event that the project owner is declared bankrupt, because the investor does not often possess security on the property of the project owner. However, some platforms require that the project owners lodge a security for the loan, such as a pledge or that someone becomes a personal guarantee for the loan. No such requirement exists in the Act but platforms may require this in their internal terms of use.	N/A	N/A	X	N/A	N/A
N/A	A loan does not constitute an income and therefore should not be subject to taxation for the project owner. However, the project owner is entitled to deduct interest expenses. Interest income shall be included in the capital profit for the investor/consumer and is taxable for the investor.	N/A	N/A	X	N/A	N/A	N/A
This act concerns the housing mortage market. The platforms are not focused on crowdfunding on housing and real estates, which is why this act most likely will not be applicable to the crowdfunding platforms.	N/A	N/A	N/A	N/A	X	N/A	N/A
This Act does not apply to platforms. Financial transactions always take place, but the platform often use a third party payment services, to manage the transactions. As long as the platform is not handling the payments itself, the Act is not applicable to the Platform's activities. Instead, it is the external third party, who provides payment service, that shall adhere to the Act. However, if any transfer of funds goes through the platform i.e. the platform receives all investments and then passes the funds to the project owner, it would constitute a service regulated by the Swedish Payment Services Act.	Ch. 8 section 8 If a payment institution is in breach of its obligations under this act, (or regulation 924/2009 or 260/2012) the S-FSA will issue an order for the institution to limit activities in some respect, reduce the risks of the activities or take any other action to manage the situation; a prohibition to execute decisions or a remark. Ch. 8 section 11 A warning will be issued if the breach is serious. A warning can also be issued if the payment institution has been issued a license based on misleading information, among other things. Ch. 8 section 14 If a payment institution is issued with a warning, the S-FSA can decide that the insitution must pay a penalty (ranging from 5 000 SEK to 50 000 000 SEK).	N/A	N/A	X	X	X	X

Sweden

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**s**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
EC Directive 1999/93/ on a Community framework for electronic signatures	Act concerning qualified electronic signatures (lag (2000:832) om kvalificerade elektroniska signaturer)	Section 1 (scope and applicability) Section 3 (secure signature creation device) Section 6 (requirements for qualified certificates) Section 14 (damage)	The Act contains regulations on secure signature creation devices, qualified certificates for electronic signatures and the issuing of such certificates. The Act applies to issuers established in Sweden who issue qualified certificates to the public. A signature creation device declared to be secure must ensure that the signature is adequately protected against forgery. The device must also ensure that signature creation data can only occur once, with reasonable certainty not be traced, and be adequately protected by the signatory from the access or usage of others. A qualified certificate must meet certain formal requirements.	**electronic signature** (*elektronisk signatur*) means data in electronic form which are attached to or logically tied to other electronic data and used to verify that the content originates from the issuer and that it has not been corrupted. **advanced electronic signature** (*avancerad elektronisk signatur*) means an electronic signature tied exclusively to a signatory, or which makes it possible to identify the signatory, or produced with means controlled only by the signatory. **qualified electronic signature** (*kvalificerad elektronisk signatur*) means an advanced electronic signature which is based on a qualified certificate and produced by a secure signature creation device. **qualified certificate** (*kvalificerat certificate*) means an electronic certificate which links signature verification data to a signatory, confirming his identity.
Directive 2000/31/EC (E-Commerce Directive)	Act concerning electronic commerce and other services of an information society (lag (2002:562) om elektronisk handel och andra informationssamhällets tjänster)	Section 1 (scope and applicability) Sections 8-9 (general information requirements) Section 10 (requirements in conjunction with orders)	The act applies to services of an information society. When providing services of an informations society the service provider must supply information about his name, address in the state of establishment, e-mail address, among other things. Price of goods and services must be specified clarly and unambiguosly. The service provider must supply appropriate and effective assistive technology enabling a service recipient to discover and correct any keying errors before placing an order.	**services of an information society** *(informationssamhällets tjänster*) means services which are normally performed in exchange for compensation and provided at a distance, electronically and on the indivual request of a service recipient. The "exchange" requirement does not mean that the service must be paid by the recipient. The requirement is that the service in question normally is of economic valure. **service provider** (*tjänsteleverantör*) means a natural or legal person who provides services of an information society. The term applies to businesses offering goods or services online, and server owners. **service recipient** (*tjänstemottagare*) means a natural or legal person who utilizes any service of an information society. The term applies to someone who makes information available on open networks or seeks information in such a network.
Directive 98/27/EC on injunctions for the protection of consumers' interests Directive 09/22/EC on injunctions for the protection of consumers' interests (codified version)	Act concerning the right to litigate for certain foreign consumer authorities and consumer organizations (lag (2000:1175) om talerätt för vissa utländska konsumentmyndigheter och konsumentorganisationer)	Section 1 (applicability) Sections 2-5 (approved institutions and courts)	The purpose of this Act is to regulate injunctions to infringements of the provisions protecting consumers' interests that affect consumers in another state party in the EEA than Sweden.	N/A
Regulation 2006/2004 Unfair Commercial Practices Directive 2005/29/EC Directive 2006/114/EC concerning misleading and comparative advertising	The Marketing Act (marknadsföringslag (2008:486))	Section 1 (aim) and section 2 (applicability) sections 23-33 (injunctions, penalty, damages)	The purpose of this Act is to promote the interests of consumers and trade and industry in conjunction with the marketing of goods and to counteract marketing practices which are unfair to consumers and traders.	**Generally accepted marketing practices** *(god marknadsföringssed)* means generally-accepted business practices or other accepted norms, the purpose of which are to protect consumers and traders in the context of the marketing of products; **Marketing practice** *(marknadsföring)* means advertising and other measures in commercial activities which are intended to promote the turn-over of, and access to, products, including a trader's acts, omissions, or other measure or behaviour before, during or after the sale or delivery of products to consumers or traders; **Products** *(produkter)* means goods, services, real property, employment vacancies and other commodities.

Sweden

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM (assumed to be a business)	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER (assumed to be a business)	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
The platform is not a certificate issuer - therefore the act does not apply. The certificate issuer is a third party.	N/A	The project owner is not a certificate issuer - therefore the act does not apply.	N/A	N/A	N/A	N/A	N/A
Services provided by a platform generally qualify as services of an information society. The platform must therefore adhere to the information requirements.	Section 15 If a service provider (platform) does not supply information in compliance with sections 8-9 or does not provide assistive technology in compliance with section 10, the Marketing Act will be applicable. This means that the service provider can be ordered to provide missing information or assistive tecnology, in conjunction with penalty if not unnecessary (Swedish marketing act sections 24-26). If failing to comply with the order, either with intent or due to negligence, the service provider must compensate damage caused to a consumer or business (Marketing Act section 37).	N/A	N/A	X	X	X	X
N/A	N/A	This Act is applicable on the project owner because the contractual relationship is between the the project owner and a consumer in another EEA country.	If a provision under this Act is breached, and the applicant has tried to get the other party to terminate the alleged infringement and the infringement is not terminated within two weeks after the request for consultations, these measures may apply: 1. prohibitions or obligations in accordance with sections 23, 24, 26 and 27 Marketing Act or the prohibitions under sections 3 and 6 in Consumer Contracts Act, and can be combined with a penalty 2. to pay a special fine to the Swedish State referred to in Chapter 17 sections 5 and 6 Radio and Television Act	X	X	X	X
The Marketing Act applies to crowdfunding platforms because the platforms market products as part of their business.	**Section 28:** In cases of breach under the provisions of the act, which are less severe, the business can be granted prohibition injunction, information injunction or obligation to provide assistive technology. The injunctions can to be combined with a penalty. S**ections 29-30**: A trader may be ordered to pay a special *fine for disruptive marketing practices* where the trader, or any person acting on behalf of the trader, intentionally or negligently breaches: – Sections 7-10, 12–18, 20 in this Act; or – any of the provisions of Annex I to Directive 2005/29/EC. – Sections 14 and 14 a of the Tobacco Act (SFS 1993:581); – Ch. 7, section 3 of the Alcohol Act (SFS 2010:1622); – Ch. 8, section 7 and Ch 15, section 4 of the Radio and Television Act (SFS 2010:696); – Section 11 of the Consumer Guarantee Act (SFS 1995:1571) or section 8 of the Lending Operations Act (SFS 2004:199) The fine shall accrue to the state and cannot be combined with an injunction and penalty.	The project owner shall also obey and conduct the marketing in accordance with the act. section	The injunctions may also be granted to an 1. an employee of the business, 2. another person acting on behalf of the business, and 3. everyone who otherwise has materially contributed to the marketing. The provisions of section 29 shall also apply when a trader intentionally or negligently has materially contributed to the violation.	X	X	X	X

Sweden

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**s**	**Brief summary national legislation**	**Main definitions used in this part of national legislation relevant for crowdfunding**
Consumer Rights Directive (Directive 2011/83/EU)	Implemented by amendments in: - Consumer Contracts Act (lag (1994:1512) om avtalsvillkor i konsumentförhållanden) - Securities Market Act (lag (2007:528) om värdepappersmarknaden) - Marketing Act (marknadsföringslagen (2008:486)) - The Distance and Off-Premises Contracts Act (lag (2005:59) om distansavtal och avtal utanför affärslokaler) - Commercial Agency Act (lag (1991:351) om handelsagentur) - Consumer Credit Act (konsumentkreditlagen (2010:1846)) - Consumer Sales Act (konsumentköplagen (1990:932)) - Tax Procedures Act (skatteförfarandelag (2011:1244)) - Consumer Services Act (konsumenttjänstlagen (SFS 1985:716))	N/A	These Acts contains protection provisions for consumers and regulates the contractual relationship between a consumer and an enterprise, such as a 14 days right of withdrawal, provided that the value of the funding is not less than SEK 400. Further, there is no duty to investigate the goods/service for the consumer and the risk is transfered to the financier/consumer when the goods are handed over to the consumer.	**Consumer** *(konsument)* means a natural person who trades primarily for use outside of the course of business operation; **Undertaking** *(näringsidkare)* means a natural person or legal entity who trades for purposes in connection with its business operations.
Lending based platforms. Distance Marketing of Financial Services Directive (Directive) 2002/65/EC)	The Distance and Off-Premises Contracts Act (Lag (2005:59) om distansavtal och avtal utanför affärslokaler)	Ch. 1 section 4 (minimum protection) Ch. 2 section 1 (applicability), sections 2-5 (information to e provided), sections 6-7 (sanctions), section 10-15 (consumer's right of withdrawal and exceptions to the right) Ch. 3. section 1 para 1. (applicability)	This Act contains provisions regarding consumer protection in conjunction with distance contracts and off-premises contracts. The Act provides the consumer with a minimum protiection, such as a 14 days right of withdrawal, provided that the value of the funding is not less than SEK 400. Any contracts containing less favourable terms than what is stated in the Act shal be unenforceable against such customer.	**Distance contract** *(distansavtal)* means any contract concluded in the context of the trader's organised distance sales scheme, where communications take place exclusively at a distance; **Off-premises contract** *(avtal utanför affärslokaler)* means any contract concluded: – with the simultaneous presence of the trader and the consumer in a place which is not the fixed or mobile business premises of the trader or after the consumer has made an offer at such place; – when the trader and the consumer are at the trader's business premises or, with the assistance of a means for distance communication, immediately after the consumer is contacted by the trader at any other place where they are simultaneously present; or – during an excursion organised by the trader for marketing or sales purposes;
Rome I Regulation (Regulation no. 593/2008)	Direct effect and, Amendments in e.g.: 1. Applicable Law, International Sale of Goods Act (SFS 1964:528) (lag (2014:1450) om ändring i lagen (1964:528) om tillämplig lag beträffande internationella köp av lösa saker), 2. Act re. electronic commerce and other information society services (lag (2014:1454) om ändring i lagen (2002:562) om elektronisk handel och andra informationssamhällets tjänster), 3. lag (2014:1456) om ändring i konkurslagen (1987:672).	1. Section 1, p. 4 and para 3, 2. Section 7 3. Ch. 3 section 2	Rome I determines applicable laws in case of cross border claims based on contracts.	N/A
Rome II Regulation (Regulation no. 864/2007)	Direct effect	NA	Rome II determines applicable laws in case of cross border claims based on other legal grounds than contracts, including unlawful acts.	N/A
Unfair Contracts Terms Directive (93/13/EEC)	Amendments in Consumer Contracts Act (Lag (1994:1512) om avtalsvillkor i konsumentförhållanden)	Sections 3, 7 and 10-14	This Act applies to contractual terms which traders use when offering goods, services or other utilities to consumers and to contractual terms which traders use to convey such offers from one trader or any other.The Act includes provisions within marketing law and civil law. The Act includes provisions that prohibit the use of unfair contract terms and the annulment of such terms for the protection of the consumer.	**Consumer** *(konsument)* means a natural person acting primarily for purposes outside business, **Business** *(näringsidkare)* means a natural or legal person who is acting for purposes relating to his business activites, whether it is public or private.

Sweden

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM (assumed to be a business)	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER (assumed to be a business)	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
A platform is considered to conduct business within consumer relationship if it's acting as an intermediary between an undertaking and a funder (ch. 1 section 2 Consumer Sales Act). The platforms shall therefore adhere to the Acts whereas consumers are participting as funders/investors to the projects. The platforms need to fulfill the requirements under the Acts to provide consumer protection by establishing applicable contracts for each funding and suitable terms of use for the consumers.	Annulment of funding.	The project owners need to comply to the Acts when dealing with consumers as investors. The contracts shall not contain unfair terms and must be in accordance with te Acts.	In the event of delay on the part of the project owner the buyer may withhold payment pursuant. He may elect either to demand that the seller complete the sale, or to terminate the contract. In addition, the buyer may also claim damages. If the goods/services are defective, the buyer may, demand rectification, delivery of replacement goods/service, a reduction in price or compensation in order to rectify the defect, or he may terminate the contract. The buyer may, in addition, claim damages.	X	X	X	X
Once the campaign period has expired, the platform drafts a loan agreement with the terms, interest rates and security specified in the campaign ad between the project owner and each investor (mainly private persons). Due to the investors' right of withdrawal according to the Act, the platform should simplify the funding for the consumers by designing the funding process so that the consumer's 14-day withdrawal period are included in the campaign financing process.	Where the platform fails to reach the information requirements in accordance with sections 2–5, the Marketing Practices Act (SFS 2008:486) shall apply, with the exception of the provisions of sections 29–36 regarding market disruption fees. Such information shall be deemed material and significant.	Same as for platforms.	Same as for platforms.	X	X	X	X
The platform can include a choice of law clause in the agreement which generally determines laws applicable to the contractual relationship. If the counterparty is a consumer, however, special notice should be given to Article 7 of Rome I.	N/A	Same as for platforms.	N/A	X	X	X	X
Rome II determines applicable law.	N/A	Same as for platforms.	**N/A**	X	X	X	X
The platforms do not enter into contracts with any consumers, however most of the platforms convey and require that project owners and investors enters into different types of funding or/and purchase contracts etc. The platform shall therefore comply with the rules of the Act and avoid unfair contract terms.	**Section 3:** If a contract, with regard to price or other circumstances, is unfair for the consumer, the Market Court may prohibit the trader in the future in similar cases to use the same or substantially the same terms, whether the prohibition is made for the public's interest or for the consumers' or competitors' interests. The prohibition shall be combined with a fine, unless it is deemed unnecessary for specific reasons. . Consumer Ombudsman can prohibit unfair conditions in cases that are not of great significance, by an injunction. **Sections 10-14**: invalidity of the terms	The Act is highly applicable on the project owner, which is the party who shall enter into these contracts with the different stakeholders, funders, donors, lenders etc, who may be consumners.	The sanctions of annulment and prohibition are applicable on the project owner and may also include employees of the trader and others acting on the trader's behalf.	X	X	X	X

Sweden

EU legislation forming basis for national legislation	National legislation (excluding lower rules and regulations)	s	Brief summary national legislation	Main definitions used in this part of national legislation relevant for crowdfunding
	Amendments in Contracts Act (Avtalslagen (SFS 1915:218))	Ch. 3, section 36, para. 4. (invalidity of certain contracts)	The Act regulates the contractual relationship of parties, the legal binding elemets of contracts etc. The amendments contains a referral in the section of a contract's invalidity, to the Consumer Contracts Act section 11.	N/A
	The Companies Act (Aktiebolagslag (2005:551))	Ch. 1, section 2 (private and public companies) Ch. 1, sections 5 and 14 (share capital) Ch. 1, section 7 (prohibition of distribution of securities in a private liability company) Ch. 1, section 8 (prohibition of organized trade) Ch. 5, section 1 (share register) Ch. 13 (new issues of shares)	The Swedish Companies Act contains regulations for two different types of limited liability companies – "public" or "private". A private company is allowed to have a lower share capital (50 000 SEK). It may not through advertising attempt to spread shares or subscription rights, nor through any other means make such attempts directed towards more than 200 investors. Securitiy offerings in a private liability company directed to less than 200 investors are allowed (as it does not constitute a "public" offering). Such securities may not be subject to trade on a regulated market or other organized marketplace.	**public limited liability company** (*publikt aktiebolag*) means a company with shares that are traded on a regulated marketplace or a comparable marketplace outside the European Economic Area. **private limited liability company** (*privat aktiebolag*) means a company with shares that cannot be traded on a regulated market place. A private limited company may not distribute shares, share subscription rights, debt securities, or share option rights by advertisement for more than 200 people. **(equity) security** (*värdepapper*) is a common term used for shares, debenture, options, etc. **regulated market** (*reglerad marknad*) means a multilateral system within EES which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments - in the system and in accordance with its non-discretionary rules - in a way that results in a contract. **organized marketplace** (*organiserad marknadsplats*) does not have a uniform definition. A company that is licensed to operate with the aim to establish a regular trade, such as a Multilateral trading facility (MTF), is an example of an organized marketplace.
	Act concerning certain activities on consumer credit (Lag (2014:275) om viss verksamhet med konsumentkrediter)	Section 1 (applicability) Section 4 (license requirement) Section 16 (supervision)	The Act applies to certain professional activities of consumer credits that consist of providing or intermediating credits for consumers. This includes (peer-to-peer) lending based crowdfunding, but not other types of crowdfunding. The Act applies to companies behind the platform that provide or intermediate credits for consumers without first receiving any investment. Lending based crowdfunding between private persons is subject to license requirement, issued by Sweden's financial supervisory authority (FSA, Finansinspektionen). License can olny be issued to Swedish limited liability companies, a Swedish economic associations or equivalent foreign companies and associations.	N/A
	Contracts Act (Avtalslagen (SFS 1915:218)), Sale of Goods Act, Consumer Sale Act, The Gift Act	Ch. 3 section 30 (invalidity of certain contracts)	The Act regulates the contractual relationship of parties, the legal binding elemets of contracts etc.	N/A

Notes: The concept of crowdfunding is still new in Sweden and it is yet not codified in Sweden. On July 30, 2015 the Swedish Government commissioned the FSA to investigate and analyze the crowdfunding market with a focus on equity and loan funding. The aim is to increase knowledge about the form of financing and the conditions for healthy and sustainable development. On December 15, 2015, the FSA will publish their report.

Sweden

Applicability and compliance recommendations PLATFORM (assumed to be a business)	Sanctions for breach PLATFORM (assumed to be a business)	Applicability and compliance recommendations PROJECT OWNER (assumed to be a business)	Sanctions for breach PROJECT OWNER (assumed to be a business)	Relevant for type of Crowdfunding			
				Investment based	Lending based	Reward based	Donations based
Applicable on platforms that enters into contractual relationship with consumers.	Invalidity of contract.	Applicable on project owners that enters into contractual relationship with consumers.	Invalidity of contract.	X	X	X	X
The platform is a company in accordance with the Act and intermediates transactions between businesses and cosnumers. Thus, the provisions of the Act must apply. A very critical area of the Act that affects the business activites of the crowdfunding platforms is the prohibitation of distribution of securities in private limited companies (ch. 1 section 7). This poses a problem when the very concept of crowdfunding, is the wide distribution to the people. To circumvent this, the platforms often require registration for investors before they can invest, or even in orde to take part of campaign. Furthermore, it is the investor who initate and express an interest to participate in a share subscription.	Breach or attempt to breach the the prohibitation of distribution is sanctioned with a fine or imprisonment. This inhibits the existence and the development of crowdfunding in Sweden. The FSA has been commissioned by the Government to investigate a legislation for crowdfunding. The report will be published on December 15, 2015.	The project owner needs to comply with the company provisions in the Act such as drafting a correct share register with the new founders and observe the minority shareholders right to request dividend (ch. 18. section 11), or redemption of shares (ch. 22. section 1), and thus defeat the purpose of bringing in external funding. This can be especially important to take into account when the company is in an expansion or growth phase.	NA	X	X	N / A	N / A
If the platform intermediates credits to consumers, the platform needs a license by the FSA as a consumer credit institute.	If the platforms violates what stated in this Act, the FSA shall issue an order that will limit the business within a certain period of time, mitigate risks or take any other action to address the situation. If the violation is serious, the license may be revoked, or notice a warning if it is deemed sufficient. FSA may refrain from intervention if a breach is minor or excusable, if the violation is recitified or if another agency has taken action against the platform and these measures are deemed sufficient.	N/A	N/A	N / A	X	N / A	N / A
N/A	N/A	The Act is applicable on the project owner of a donation based project. In the event a project owner uses the funded money to another project than what was marketed on the campaign ad, the poject owner can be accused for betrayal of good faith. The contract will be deemed invalid and the fund will be returned to the consummer. Important that a contract is entered.	The project owner can be sued for fraud in according to the Penal Code Ch. 9 section 1.	X	X	X	X

United Kingdom

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**
N/A (although influenced by various Directives, such as MiFID and AIFMD)	Financial Services and Markets Act 2000 ("FSMA")	s19 - general prohibition on carrying out Regulated Activities covered by FSMA unless authorised (by the Financial Conduct Authority ("FCA")) or exempt).	Regulated Activities are defined in FSMA and the FSMA (Regulated Activities) Order 2001 ("RAO") and include activities defined in European legislation (such as investment activities from MiFID) and UK-specific activities (such as 'operating an electronic platform in relation to lending').
MiFID/AIFMD	RAO	Regulated Activities associated with investment crowdfunding include: Art 25(1) - bringing about transactions in securities issued by the party seeking funding (similar to reception and transmission of orders); Art 25(2) - making arrangements with a view to transactions in securities; Art 40 - safeguarding and administering securities. It is also possible that the platform operator becomes involved in: Arts 14 & 21 - dealing in securities; Art 37 - managing securities; Art 53 - advising on securities. A collective investment schemes ("CIS") and alternative investment funds ("AIF"), may exist where party seeking funding does not issue shares in a company (an AIF can be a company, but a CIS is not), or where pooling of profits/investor contributions prior to distribution to the investor (AIF)): Arts 51ZC and 51ZE - operating a CIS and managing an AIF are regulated activities	The RAO specifies a number of Regulated Activities, the most relevant of which securities-based crowdfunding are listed.
MiFID/AIFMD	RAO	Designated Investments associated with securities include: Art 76 - shares; Art 77 - debentures; Art 79 - Instruments giving entitlements to investments (e.g. warrants) Art 81 - units; Art 83 - options to acquire or dispose of a security	Regulated Activities associated with crowdfunding generally pertain to a designated investment, so for example, arranging deals in real estate is not a regulated activity because direct ownership of real estate is not a Designated Investment.
NA	RAO	Art 36H - operating an electronic system in relation to lending is a regulated activity; Art 53 - advising on an Article 36H Agreement (anticipated activity will be added in March)	This new regulated activity was created recently specifically for Peer to Peer ("P2P") lending. The system must be capable of determining which Article 36H loans will be made available to lenders and borrowers. Either the lender or the borrower must be an individual or small partnership (max 3 partners) to constitute an 'Article 36H Agreement'.
NA	FSMA and FSMA (Exemptions) Order 2001	Section 39 FMSA - the Appointed Representative of an authorised firm is exempt from the requirement to be authorsed to conduct certain regulated activities (a tied agent under MiFID also falls within the exemption).	There must be a contract between the authorised firm and the Appointed Representative pursuant to which the authorised firm assumes regulatory responsibility for the actions of the Appointed Representative. Appointed Representatives can conduct regulated activities under articles 25, 36H and 53 of the RAO. they cannot conduct activities under articles 14, 21, 37, 40, 51ZC or 51ZE.

United Kingdom

Main definitions used in this part of national legislation relevant for crowdfunding	Applicability and compliance recommendations	Sanctions for breach	Relevant for type of crowdfunding	
			Securities based	Lending based
"*Exempt Person*" - a person who is not required to be authorised to conduct that activity, which includes tied agents and appointed representatives of authorised firms and is defined in FSMA (Exemptions) Order 2001 "*Operating an electronic platform in relation to lending*" - now a Regulated Activity under the RAO, the activity only applies to loans where either: (1) the lender is an individual; or (2) the borrower is an individual and either: (a) the loan is £25,000 or less; or (b) the individual is not borrowing for business reasons. In this context, "*individual*" includes a partnership with two or three partners. "*Regulated Activity*" - defined extensively in the RAO	Platform operators need to consider whether they conduct Regulated Activities in the UK and whether to become authorised to do so or seek appointment as an Appointed Representative/Tied Agent of an authorised firm.	Breach of the general prohibition means: (1) a person is guity of a criminal offence - max conviction on indictment - sentence is 2 years' imprisonment and an unlimited fine (s23(1) FSMA); and (2) if a person describes or holds himself out to be authorised or exempt that person is liable on summary conviction to imprisonment max 6 months or a level 5 fine (i.e. max 20% of revenue) (s24 (3) FSMA); (3) an agreement made by an unauthorised person may be unenforceable and voidable by the innocent party. That innocent party is also entitled to recover the amount paid/transferred under the agreement and recover compensation for loss sustained as a result (Ss 26, 26A & 27 FSMA) .	X	X
"*Regulated Activity*" - an activity falling under the general prohibition in s19 FSMA, and specified in FSMA RAO, which requires PRA or FCA authorisation, or for an exemption (contained within RAO to apply).	Platform operators need to obtain separate "permissions" from the FCA in respect of each regulated activity they conduct. Sometimes the platform operator works in conjunction with other authorised firms, such as custodians or advisers, which have complementary permissions that entail a different compliance regime/liability profile. The regulatory responsibilities between the parties should be specified in a written contract.	FCA has powers to remove authorisation for firms which breach their authorisation. These powers are derived from FSMA and effected via the FCA handbook. See in particular DEPP, below.	X	
"*Designated Investement*" - a security or a contractually-based investment (other than a funeral plan contract and a right to or interest in a funeral plan contract), that falls within certain investments specified in Part III of the RAO.	See previous section	See previous section; See also COBS (below), which permits an action for damages under S138D FSMA following a contravention of any COBS rule ensuring that transactions in Designated Investments are not effected with the benefit of unpublished information that, if made public, would be likely to affect the price of that Designated Investment.	X	
"*Article 36H Agreement*" - as defined in Aricle 36H FSMA RAO - operating an electronic system which enables the operator to facilitate persons becoming the lender and borrower under an article 36H agreement, is a specified kind of activity. "*Operating an electronic system in relation to lending*" -(as above)	Article 36H captures a number of activities associated with operating the platform, such as collecting and distributing sums due and debt collection.	The implications of non-authorisation are the same for any regulated activity.		X
"*Appointed Representative*" - a person who conducts regulated activities and acts on behalf of a firm directly authorised by the FCA or the PRA. An appointed representative is exempt from the s19 general prohibition. "*Principal*" (the authorised firm that appoints the appointed representative). "*Tied Agent*" - a person who acts for and under the responsibility of a MiFID investment firm (or a third country investment firm) in respect of MiFID business (or the equivalent business of the third country investment firm).	Often-used exemption from regulation, particularly for new platform operators working with a third party hosting service (for a fee). Many of the regulatory requirements that apply to firms do not apply to Appointed Representatives/Tied Agents, such as requirement to maintain regulatory capital. Although the Principal assumes regulatory responsibility for the Appointed Representative's actions to the FCA, it generally seeks an indemnity from the Appointed Representative in respect of any breach of regulatory requirement.	Section 39 provides that the Principal firm must assume responsibility for the Appointed Representative's actions as if it had conducted the activity directly.	X	X

United Kingdom

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**
NA (although MiFID and AIFMD are relevant)	FSMA and FSMA (Financial Promotion) Order 2005 ("FPO"); Alternative Investment Fund Managers Regulations ("AIFMRs")	Section 21 FSMA - Financial Promotion - communicating an invitation or inducement to Engage in Investment Activity is restricted to: communication or approval by an FCA authorised firm (or exempt person); or communication to certain classes of eligible recipient (set out in FPO). Sections 238 & 240 FSMA - Restrictions on authorised firms promoting Collective Investment Schemes to the public. Art 54 AIFMRs - Approval of FCA to marketing AIF by full scope AIFM.	Crowdfunding, as a Retail Investment Activity, generally relies on promotion by a regulated firm or Appointed Representative, rather than reliance on FPO exemptions. CISs not generally used in crowdfunding and full scope AIFMs not yet involved.
NA (but MiFID relevant)	FCA Conduct of Business rules ("COBS") Chapter 4	Authorised firms must ensure financial promotions are clear, fair and not misleading. COBS 4.7.7 and 4.7.8 - if exemption to financial promotion authorisation is not applicable, the contents of the website's financial promotions must comply with Chapter 4 to ensure contents of promotion are clear, fair and not misleading.	Securities promotions generally require investor certifications and Appropriateness Assessment, whilst P2P do not. The contents of all written promotions including social media and banner ads, need to contatin risk warnings.
Prospectus Directive	FSMA	Part 6 sets out the basic requirements for a prospectus, exemptions and the process for approving a prospectus	Requires prospectus to be prepared and approved if transferable securities are offered to the public
N/A	The Companies Act 2006 ("CA06")	*Investment based:* s755 - prohibition on offering shares in a private company to the public	Prohibits the offer of shares in a private limited company to the public
Payment Services Directive	Payment Services Regulations 2009 (as amended) ("PSRs")	Payment services covered by the PSRs relating to crowdfunding: Schedule 1, Part 1(c) - '*Credit Transfers*' Schedule 1, Part 1(f) - '*Money Remittance*' Part 2(b) - '*Commercial Agents*' exemption	Firms providing payment services are required to be authorised by the FCA.

United Kingdom

Main definitions used in this part of national legislation relevant for crowdfunding	Applicability and compliance recommendations	Sanctions for breach	Relevant for type of crowdfunding	
			Securities based	Lending based
"Alternative Investment Fund"- 'collective investment undertaking' that is not subject to the UCITS regime, and includes hedge funds, private equity funds, retail investment funds, investment companies and real estate funds, among others. "*Collective Investment Scheme*"- a fund that several people contribute to. Can be regulated ("CIS") or unregualted ("UCIS"); *"Engaging in investment activity"* means (a) entering or offering to enter into an agreement the making or performance of which by either party constitutes a controlled activity; or (b) exercising any rights conferred by a controlled investment to acquire, dispose of, underwrite or convert a controlled investment. *"Financial Promotion"* - a communication that is an invitation or inducement to engage in investment activity, involving an element of persuasion, with an intention to lead to an agreement to engage in that investment activity. *"Retail Investment Activity"* - covers the following: (a) advising on investments; (b) arranging (bringing about) deals in investments; (c) making arrangements with a view to transactions in investments; or (d) advising on conversion or transfer of pension benefits;	***Investment based***: **s21 -** only allows for the promotion of "*non-readily realisable securities*" to particular categories of investors, including professional clients, high net-worth individuals, sophisticated investors (certified or self-certified investors), restricted investors; or if the customer is classified as a 'corporate finance contact' or a "venture capital contact". **s85(1)** requires a prospectus to be published where transferable securities are offered to the public. However, most offers fall within an exemption of offers worth less than 5m EUROS in a period of 12 months.	S25(1) FSMA - A person who contravenes s21 FSMA is guilty of an offence - max conviction on indictment - 2 years' imprisonment and/or a fine. S30(2) FSMA - If in consequence of an unlawful communication which contravenes s21(1) FSMA, a person enters into a controlled agreement or investment it will be unenforceable against the innocent party who may recover the relevant amount paid/transferred by him and compensation for loss sustained as a result.	X	X
"Appropriateness Assessment"- the firm must ask the client to provide , and the firm must subsequently consider, information regarding the client's knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded, so that the firm can assess whether a service or product is appropriate for the client. *"High net worth investor" - a* person who meets the requirements set out in article 21 of the Promotion of Collective Investment Schemes Order, in article 48 of the Financial Promotions Order or in COBS 4.12.6 R. *"Non-readily realisable securities"* -a security which is not any of the following: (a) a readily realisable security; (b) a packaged product; (c) a non-mainstream pooled investment; (d) a mutual society share. *"Restricted Investor"* - an individual who has signed, within the period of twelve months ending with the day on which the communication is made, a statement in the terms contained in COBS 4.7.10. *"Sophisticated investor"* - a person who meets the requirements set out in article 23A of the Promotion of Collective Investment Schemes Order, in article 50A of the Financial Promotions Order or in COBS 4.12.8 R	P2P promotions cannot confuse loans with deposits.	S138D FSMA which permits an action for damages if the fair clear and not misleading provision in COBS 4.2.1 is contravened in relation to financial promotions.	X	X
"Offer to the public" - definition for the purposes of FSMA contained within s 102B FSMA - a communication to any person which presents sufficient information on the securities being offered and the terms of the offer to enable an investor to decide to buy or subscribe for the securities in question.	Most offers fall within an exemption of offers worth less than EUR 5m in a period of 12 months (suject to review by European Commission)	Unlimited fine for breach of prospectus rules by issuer or promoter Responsible persons personally liable to investors for untrue, misleading or omitted statements	X	
"Offer to the public" (different from prospectus definition) - defnition contained within s756 of CA06. s 756 CA06 states that an *offer to the public* includes any offer to any section fo the publilc, however selected. An offer is not regarded as an *offer to the public* if it can properly be regrded, in all the circumstances as, not being calculated to result, directly or indirectly, in securities of the company becoming available to persons other than those receiving the offer, or otherwise being a private concern of the person receiving it and the person making it.	Platforms generally rely on analysis that their closed memberships do not constitute the general public . This restriction does not apply to public companies or non-UK companies.	Offers voidable by investors.	X	
"Commercial Agents" - a key activity regulated under the PSRs is does not constitute "payment services" if it is carried out through a Commercial Agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or payee. *"Credit Transfer"* -a key activity for the purposes of the Regulations -includes standing orders *"Money Remittance"* - a key activity for the purposes of the Regulations - means a service for the transmission of money (or any representation of monetary value), without any payment accounts being created in the name of the payer or the payee, where (a) funds are received from a payer for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee; or (b) funds are received on behalf of, and made available to, the payee;	FCA guidance indicates operating a Client Money account for investment purposes does not involve the platform operator in providing payment services.	The FCA can impose penalties and censures for breaches of the PSRs (policy contained in DEPP- below). It can also instigate criminal proceedings. The FCA can additionally order a firm to provide restitution to customers; cancel or restrict a firm's authorisation. Complaints arising from a breach of the PSR can be sent to the Financial Ombudsman.	X	X

United Kingdom

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**
Consumer Credit Directive Mortgage Credit Directive	Consumer Credit Act ("CCA"); RAD	Art 25A RAD - Arranging mortgages Art 36A - Credit broking Art 39F RAD - Debt [collecting] Art 39G RAD - Debt [administration] Art 60 RAO - Consumer credit lending Art 61 RAD - Mortgage lending	P2P can involve the platform or business lenders in conducting Regulated Activities. Ancillary consumer credit activities (not lending) are included in Art 36H, but involve compliance with CONC (see below).
Anti-Money Laundering Directive	UK Money Laundering Regulations ("MLRs") Proceeds of Crime Act 2002 ("POCA")	Part 1, Art 3 - Application Part 2 MLRs - Customer Due Diligence Part 3 MLRs - Record keeping procedures and training Part 7 POCA - Disclosure of suspicious transactions	FCA authorised fims and their appointed representatives who conduct MiFID activities or credit broking activities are subject to the MLRs.
NA (but MiFID relevant)	FCA Conduct of Business rules ("COBS")	*Lending based:* FCA regulated firms must comply with FCA's comply with COBS. In particular: •general conduct of business (COBS 2); •client categorisation (COBS 3); •communicating with clients, including financial promotions (COBS 4); •distance communications (COBS 5); •providing information about the firm, its services and remuneration (COBS 6); •client agreements (COBS 8); •providing product information to clients (COBS 14); •cancellation (COBS 15); •reporting information to clients (COBS 16)	FCA regulation of conduct of business requirements is extremely broad and detailed - beyond the scope of this note to set out in full.
NA(Although MiFID is relevant)	Client Asset Sourcebook ("CASS")	CASS 6 - (Client Assets). Applies to firms when they are safeguarding and administering securities. CASS 7 - Organisational arrangement to protect Client Money.	Sets out the FCA's regulatory framework for firms that hold money on behalf of clients or investments in connection with Regulated Activities.
NA Approval of SUP11 - controllers (shareholders) of firms	Supervision Manual ("SUP")	SUP 10 - Approved Persons (eg directors, compliance officer). SUP 12 - Supervison of Appointed Representatives and tried agents. SUP 15 - Notifications. SUP 16 - Requirements to FCA in respect of specific events. Periodic reporting requirements.	Events like changes in controllers (usually 20% shareholders) and directors require prior approval by the FCA before they can happen, whilst other events (anything the FCA would want to know about) require timely notification.
NA	Systems and Controls ("SYSC")	SYSC 3.2.6 - Effective systems and controls in relation to compliance, financial crime and money laundering. SYSC 4.1 - Firms must take reasonable measures to ensure that existing loan agreements relating to the platform will continue to be administered and managed in accordance with the terms of the contract if the firm has to cease operating the platform.	There are specific rules that apply to P2P firms, known as "living wills" to ensure lenders will be protected in event of the operators unsolvency.

United Kingdom

Main definitions used in this part of national legislation relevant for crowdfunding	Applicability and compliance recommendations	Sanctions for breach	Relevant for type of crowdfunding	
			Securities based	Lending based
"Consumer Credit Agreement" - definition within s8 of the CCA and means an agreement between an individual ("the debtor") and any other person ("the creditor) by which the creditor provides the debtor with credit of any amount. This includes Consumer Credit Agreements which have been cancelled under s69 of the CCA, or becomes subject to s69(2) fo the CCA - (a debtor-creditor supplier agreement for restricted-use credit financing). *"Individual"* - includes a partnership consisting of two or three persons not all of whom are bodies corporate; and an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership. *"Regulated Mortgage Contract"* - now includes (since 21 March 2016) second charge as well as first charge mortgage lending where the contract is one where a lender provides credit to an individual or trustees (the 'borrower'); the contract provides for the obligation of the borrower to repay to be secured by a mortgage on land in the EEA; and at least 40% of that land is used, or is intended to be used, as or in connection with a dwelling. *"Small Partnership"* - included within the defintion of *""Individual"* for the purposes of the CCA - a partnership having three partners or less	***Lending based*** : Many firms conducting consumer credit activities have interim permissions from the FCA, which means they cannot yet act as principal to an Appointed Representative.	Breach of the CCA renders the loan agreement unenforceable. FCA has powers to remove authorisation for firms which breach their authorisation. These powers are derived from FSMA and effected via the FCA handbook. See in particular DEPP, below.		X
"Money Laundering Reporting Officer" ("MLRO") - in accordance with the MLRs and POCA, firms that are regulated by the MLRs must appoint an MLRO whose role it is to over see that the firm protects itself from money laudnering risks. The MLRO should be notified of suspicious activities in the business that might be linked to money laundering or terrorist financing, and if necessary report it.	Applies to both mainstream consumer credit activities and to operating a P2P platform. Those looking to establish or run a crowdfunding platform must put in place suitable anti-money laundering, terrorist financing and anti-sanctions breaking controls, including having an MLRO and staff training.	Art 45 MLRs - breach of the MLRs is a criminal offence subject to 2 years imprisonment and an unlimited fine. There are several further offences for active involvement in money laundering under POCA.	X	X
"Person" - any person, including a body of persons corporate or unincorporate (that is, a natural person, a legal person and, for example, a partnership). *"Private Person"* - a natural person	The application of COBS is highly specific to the type of business and being conducted and not all provisions apply to all types of crowdfudning. P2P reputation is generally seen lower than for securities regulation.	Section 138D FSMA Contravention of the rules in COBS by an authorised person is generally actionable for damages by a *PrivatePerson* who suffers loss as a result. Any person has a right of action against the firm for attempting to exclude or restrict an obligation they owe under COBS. FCA's powers in respect of breach set out in DEPP (see below).	X	X
"Client Assets" - see CASS 6 *"Client Money"* - money belonging to a client that a firm receives or holds on behalf of that client. *"Private Person"* - a natural person. *"Safe Custody Assets"*- means: (a) in relation to MiFID business, a financial instrument; (b) in relation to safeguarding and administering investments that is not MiFID business and/or acting as trustee or depositary of a UCITS, a safe custody investment; (c) when acting as trustee or depositary of an AIF, an AIF custodial asset ; or (d) in relation to excluded custody activities carried on by a small AIFM, a safe custody investment.	Securities based crowdfunding platforms typically use third party custodiens to hold client investments. Client Money requirements entail holding the accounts on trust to ensure they are not available to directors of the firm itself (and the same principle applies to client investments).	A Private Person can generally bring an action for a breach of the CASS under s 138D FSMA, if he suffers loss as a result of the contravention.	X	X
"Approved Person" - an approved person in relation to whom the FCA has given its approval under section 59 of the Act (Approval for particular arrangements) for the performance of an FCA controlled function. *"Appointed Representative"* - a person who conducts Regulated Activities and acts on behalf of a firm directly authorised by the FCA or the PRA. *"Controller"* - a Person (as defined above) with control over a UK domestic firm as specifically defined in the FCA handbook.	Approved Persons are subject to personal responsibility for the discharge of their functions and can be made personally liable under DEPP.	A Private Person can generally bring an action for a breach of the SUP rules under s 138D FSMA if he suffers loss as a result of the contravention	X	X
NA	Living will arrangeemnts can involve appointing a third party debt administration.	A damages claim under S138D FSMA is not permitted following a breach of SYSC.	X	X

United Kingdom

EU legislation forming basis for national legislation	**National legislation** (excluding lower rules and regulations)	**Main sections / chapters national legislation**	**Brief summary national legislation**
Consumer Credit Directive	Consumer Credit Sourcebook ("CONC")	CONC 3 - Financial Promotions to lenders. CONC 4 - Application to consumer credit lending - pre-contractual disclosure. CONC 5 - Responsible lending. CONC 5A - Cost cap for high short-term credit. CONC 6 - Post contractual requirements. CONC 7 - Arrears, default and recovery (including repossessions).	***Lending based*** : Applies to both mainstream consumer credit activities and to operating a P2P platform with certain consumer borrowers.
Capital Requirements Directive	Interim Prudential Sourcebook for Investment Businesses ("IPRU-INV")	Chapter 12 - FCA rules apply for platforms established as Appointed Representatives of authorised firms to benefit from their regulatory permissions. Chapter 12 builds on Principle 4 of the Principles for Businesses, which requires a firm to maintain adequate financial resources, by setting out appropriate requirements for a firm according to what type of firm it is.	Sets out the prudential and specific notification requirements for crowdfunding firms.
N/A	FCA Decision Procedures and Penalities manual ("DEPP")	DEPP contains the FCA's decision making procedures relating to its issuing of satutory notices; its policy regarding the imposition and amount of penalties; and sets-out the conduct of interviews. DEPP 2 - Statutory notices and the allocation of decision making DEPP 3 - The nature and procedure of the Regulatory Decisions Committee DEPP 4 - Decisions by FCA staff under executive procedures DEPP 6 - Penalties DEPP 6A - Power to impose a suspension or restriction DEPP 7 - Policy on interviews conducted on behalf of overseas and EEA regulators	Following a breach of FSMA, the FCA has powers to disgorge profits; impose fines; remove individual and firm authorisation and restrict and suspend firms and individuals from carrying out regulated activities. DEPP details the extent of those powers.
	Dispute resolution: complaints ("DISP")	2.7 - Financial Ombudsman - eligible complainants 3.7 - A financial award by the Ombudsman will be one that the Ombudsman considers fair compensation Interest and cost awards may also be issued if considered fair by the Ombudsman. 2.8.2R - Six months time limit - from receiving final determination response from respondent and more than 6 years after the event complained of.	DISP sets out the detailed requirements for handling consumer complaints against firms. Information regarding referring matters to the Financial Ombudsman Service is also set out in DISP. DISP contains rules and guidance relating to: *handling of complaints;* *time limits within which firms must deal with complaints;* *reporting requirements regarding complaints.*

United Kingdom

Main definitions used in this part of national legislation relevant for crowdfunding	Applicability and compliance recommendations	Sanctions for breach	Relevant for type of crowdfunding	
			Securities based	Lending based
"*Credit -Related Regulated Activities*" - the activities specified in Part 2 or 3A of the Regulated Activities Order (Specified Activities): "*Individual" and "Small Partnership"*- application to P2P platforms greatly reduced where the borrower is not either of these. "*Private Person*" - a natural person. *"P2P Agreement*" -covers credit agreements where only the borrower is an individual or relevant person.	Provides enhanced protection only for borrowers only Requires P2P platforms to:: •provide adequate explanations to borrowers; •assess a borrower's creditworthiness; •adhere to rules relating to financial promotions; •provide the borrower with 14 days to withdraw from the agreement; •provide post-contract information to a borrower in arrears or default. Does not apply to business borrowers borrowing more than £25,000. the consmer credit protections apply to different types of borrower depending on whether regulated firm is acting as lender or as as PZP platform operator.	A Private Person can generally bring an action for a breach of the CONC under s 138D FSMA, if he suffers loss as a result of the contravention.		X
"Operatingan electronic platform in relation to lending" - as defined above.	Platforms carrying on the Regulated Activity of 'operating an electronic platform in relation to lending' must maintain a certain amount of regulatory capital (the higher of: a percentage of loaned funds, or a fixed minimum of £50,000) . Note: the fixed minimum is lower until April 2017 to enable platforms to adjust to this new regime. To ensure that such firms hold the correct amount of regulatory capital, notifications must be made to the FCA if changes are made to the total value of loans outstanding.	NA - Part of Prudential Standards guidance within FCA handbook. Contains rules and guidance to assist FCA in settinig risk management standards and enforce financial and prudential standards.		X
NA	The FCA can supervise and respond to crowdfuning breaches by exercising its powers as set out in DEPP.	The FCA can restrict the carrying out of crowdfunding related activities. Part of Regulatory Process within FCA handbook. Sets out FCA's decision-making procedure and policies relating to breaches by a firm .	X	X
"Micro-Enterprise" - fewer than 10 people/ turnover not exceeding 2m EUROS "*Consumer*" - natural persons "*Eligible Complainant*" - a person eligible to have a complaint considered under the Financial Ombudsman Service, as defined in DISP 2.7 (Is the complainant eligible?). The minimum requirement is that the complainant is a person that is either a Consumer; a Micro-Enterprise ; a charity (with an annual income of less than £1 milllion); or a trustee of a trust (with a net asset value of less than £1 million).	A complaint may be made by a consumer or a Micro-Enterprise to the Financial Ombudsman within the time limit. The Financial Ombudsman has jurisdiction to pay fair compensation of up to £150,000 per claim. If it is considered fair compensation exceeds this amount, the ombudsman can tell a business to pay an additional amount. The £150,000 limit applied to the total amount (including any amount already offered by the respondent). Interest may be payable on the compensation, outside the jurisdiction of the £150,000 limit.	NA - Part of Redress sourcebook within FCA handbook. Sets out rules and guidance for managing breaches/handling certain complaints. Also provides some guidance to complainants.	X	X

FG LAWYERS

TRANSACTIONS – ADVICE – LITIGATION

CrowdfundingHub