

IV. Luxembourg

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1. Overview of crowdfunding and its manifestations in Luxembourg

Rather than opting for a traditional financing through banks for example, the idea of crowdfunding is to democratise the financing of a project by allowing many diverse and varied players to participate in it, for amounts that can be either modest or high. Particularly appreciated by start-ups as well as small and medium-sized companies, this type of financing is growing. In order to attract donors, in most cases projects are presented on platforms specially designed for this purpose. The first crowdfunding platforms were created at the end of the 2000s and have since grown considerably. In Luxembourg, however, the market is still relatively small compared to other countries.

Usually, crowdfunding is categorised into four types:

- Donation-based Crowdfunding (“**Crowddonating**”);
- Reward-based Crowdfunding (“**Reward-based Crowdfunding**”);
- Credit-based Crowdfunding (“**Crowdlending**”) and
- Equity-based Crowdfunding (“**Crowdinvesting**”).

In Luxembourg, Crowddonating platforms (aimed at financing social or charitable projects), Crowdlending platforms (particularly popular in real estate) and Crowdinvesting platforms are the most popular. This third category allows the lender to receive a share of the future

⁹ With reference to the donation and reward crowdfunding in Italy, the latest public data (shown in the 7th Italian Crowdinvesting Report) are from March 2021 and count 25 active portals and a funding of €52.2 million.

¹⁰ With the kind collaboration of Thomas Göricke.

profits of the financed project. If the investment is linked to securities investments, the investor can also receive shares.

Currently, no Luxembourg-based crowdfunding platforms have yet received a licence from the *Commission de Surveillance du Secteur Financier* (the "**CSSF**"). To date, none of them appear in the register of European crowdfunding service providers ("**ECSP**") maintained by the European Securities and Markets Authority ("**ESMA**").¹¹ However, Luxembourg consumers like some of these platforms and use foreign platforms too.

As an example, a foreign Crowdlending platform offers the possibility for individuals and professionals to lend to real estate developers, thus giving access to investment opportunities previously reserved for institutional investors. Crowdlending has been used to finance the construction of projects and the purchase of land in Luxembourg (i.e., three residences in a business district, seven apartments on the outskirts, a day care centre and two town houses). More recently, Crowdlending has allowed the financing of four new residential properties in the North of the country.¹²

2. The legal framework in Luxembourg

To support the development of crowdfunding platforms in the European Union, the European Commission adopted Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for businesses and amending Regulation (EU) 2017/1129 as well as Directive (EU) 2019/1937 (the "**Crowdfunding Regulation**").

The Crowdfunding Regulation created a new legal status for ECSP which allows them to apply for a European passport, based on a single set of rules.¹³ This harmonisation and these new rules should increase the availability of this innovative form of financing, which will consequently help companies seeking alternatives to bank financing. Thanks to the Crowdfunding Regulation, investors on crowdfunding platforms also benefit from a reinforced protection regime based on clear rules concerning, in particular, the disclosure of information by project holders and crowdfunding platforms, in the form of a key investment information sheet.¹⁴ It should be noted that project owners looking for funds on crowdfunding platforms are exempt from the scope of the Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, as amended from time to time (the "**Prospectus Regulation**"). As one of the main interests of crowdfunding is to give start-ups and small and medium-sized companies easier access to finance and in order to avoid any inconvenience

¹¹ Accessible on ESMA's website at <https://www.esma.europa.eu/document/register-crowdfunding-services-providers>.

¹² SHILLITO Josephine, « *Quand le crowdlending remplace les banques* », Paperjam, 12 October 2022.

¹³ ELVINGER HOSS PRUSSEN, "[New regulatory framework for Crowdfunding Service Providers](#)", 3 February 2022.

¹⁴ *Id.*

caused in this respect, it was essential for the Prospectus Regulation not to be applicable to the crowdfunding projects owners.¹⁵

Directly applicable in all Member States since 10 November 2021, the Crowdfunding Regulation has been complemented by the Law of 25 February 2022 through which the legislator has notably specified the terms of application in Luxembourg.¹⁶ As the regulatory and supervisory authority for financial activities in Luxembourg, the CSSF has been granted a key role in the supervision of crowdfunding platforms to ensure that they comply with the laws and rules in force¹⁷. Indeed, crowdfunding platforms must be granted a licence by the CSSF before they can operate. To obtain this licence, platforms must provide detailed information on their operation, their ownership structure, their risk management system and their compliance policy. Once licensed, these platforms must comply with regulatory requirements regarding transparency, investor protection and anti-money laundering. The CSSF underlines that ECSPs intending to provide payment services in addition to crowdfunding services, may need to obtain a separate licence under the amended Law of 10 November 2009 on payment services. Platforms must also ensure that the proposed projects are legitimate and they also respect the regulatory framework. In this respect, the CSSF also monitors them to ensure that they comply with transparency and investor protection requirements, in particular with regard to the disclosure of information relating to the projects proposed on the platform¹⁸. In the event of non-compliance, the CSSF may impose sanctions.¹⁹ These sanctions may include fines or even the suspension of the platform's licence.

In response to a question raised by the ESMA²⁰, the European Commission clarified that the provisions of Article 48 of the Crowdfunding Regulation, according to which existing crowdfunding service providers operating under national law, may continue to provide services within the meaning of the Crowdfunding Regulation, according to the applicable national law, for a transitional period. These provisions apply also to crowdfunding service providers operating in a jurisdiction where no national law is applicable.²¹ The transitional period referred to in Article 48(1) of the Crowdfunding Regulation is extended until 10 November 2023.

What about tax? Crowdfunding is subject to the same tax rules as other forms of investment. Thus, the income generated by loans or donations are subject to income tax.

¹⁵ MANZARI Nadia and LLERENA Maxime, "European Regulation on Crowdfunding Service Providers (CSPs) for business", *Revue Pratique de Droit des Affaires* (Legitech, November 2021).

¹⁶ Chapter 4quater of the Law of 25 February 2022.

¹⁷ Art. 20-15 of the Law of 25 February 2022.

¹⁸ Art. 20-18 and 20-19 of the Law of 25 February 2022.

¹⁹ Art. 20-16 of the Law of 25 February 2022.

²⁰ ESMA, "[Q&A on the European crowdfunding service providers for business Regulation](#)", Question 2.

²¹ See CSSF's web page dedicated to [crowdfunding service providers](#).

3. Cautionary notes and future outlook

Although very attractive, crowdfunding is still subject to certain risks. These risks can be related to the investment in the sense that the projects proposed on the platforms are often high-risk projects, such as start-ups or real estate development projects. There is therefore a risk that these projects will not be profitable and that investors will not recover their investment. Incidentally, the projects often experience major difficulties in collecting the necessary funds through crowdfunding. Risks can also be related to the platform, which may be subject to fraud or mismanagement.

Furthermore, it is worth mentioning the current limitations of the Crowdfunding Regulation as it only applies to crowdfunding services provided to non-consumer project owners relating to offers for an amount up to EUR 5m calculated over a period of twelve months per project owner.²² Indeed, there are other crowdfunding activities, which are out of scope of the Crowdfunding Regulation:

- Other types of crowdfunding such as donation-based crowdfunding (where the funders do not receive any consideration) or reward-based crowdfunding (where the funders receive a non-financial consideration, like a copy of the project result);
- Crowdfunding offers with a consideration of more than EUR 5m calculated over a period of twelve months (these offers will instead be subject to the rules set out in MiFID II and the Prospectus Regulation); and
- Crowdfunding offers where project owners are consumers.

Finally, the risks also relate to the regulatory framework. Crowdfunding laws and regulations are evolving and investors may be exposed to risks if platforms do not comply with the applicable legal framework. Compliance requirements are one of the challenges for the development of ECSP, but if completed successfully, the crowdfunding ecosystem will be even more secured and successful.

Although less used than in our neighbouring countries (France and Belgium in particular), crowdfunding is becoming more and more attractive due to its accessible and attractive model in Luxembourg, in line with the digitalisation of the economy. With an active, increasingly younger population interested in the world of finance, together with players looking for financing other than through traditional channels, it is likely that crowdfunding will have a growing influence on our economy in the years to come.

²² *Idem.*