

## EU Crowdfunding Regulation – crowdfunding the future?

Since their appearance in the late 1990s, investment and financing activities using crowdfunding platforms have been subject to fragmented and diverging pieces of regulation throughout the European Union (EU) and thus impeding access to alternative financing opportunities for small businesses.



However, there may be a silver lining, since as from 10 November 2021, the crowdfunding industry benefits from the provisions of the European Regulation 2020/1503 of 7 October 2020 on European crowdfunding service providers for business (the “**Regulation**”), which sets out an European legal framework for the crowdfunding industry, aiming to improve access to funding for project owners<sup>1</sup> and facilitating the cross-border offer of services for crowdfunding platforms.

### New framework obligations

The Regulation introduces a single European status for any legal persons seeking to provide crowdfunding services, the

“European crowdfunding service providers” (“**ECSP**”), to be authorised by the national authority of its home Member State. An authorised ECSP may passport its services to project owners or investors located in other EU members states, without necessity to establish a physical presence thereto. In other words, investors from a certain European Member State will now have the opportunity to participate in cross-border financing projects of companies based in another Member State, through a crowdfunding platform based in a third Member State.

Investors, now classified as “sophisticated” or “non-sophisticated”, will gain access to an enlarged offer of crowdfunding

<sup>1</sup> The Regulation does not apply to crowdfunding services that are provided to project owners who are consumers in the meaning of article L. 010-1.2) of the Luxembourg Consumer Code.

services, ranging from lending-based or investment-based crowdfunding to individual portfolio management of loans.

New opportunities brought to the crowdfunding platforms by the Regulation do not come without a cost, as they will have to establish strong governance to comply with the new requirements set by the Regulation (publication of a Key Investment Information Sheet (“KIIS”) to be provided to the potential investors, due diligence requirements, conflict of interest policy, etc.).

### Next steps on the Luxembourg side

The Luxembourg bill of law no. 7825 (the “**Bill**”) amending the Luxembourg law to comply with the new regime set by the Regulation and appointing the Luxembourg financial sector supervisory authority, the *Commission de Surveillance du Secteur Financier* (“**CSSF**”), as competent authority for the application of the Crowdfunding Regulation, has been lodged on 21 May 2021 and we anticipate that the Bill shall be approved in the upcoming months.

This Regulation may provide crowdfunding platforms with a well-needed push as they may now extend their offer of services throughout the EU while investors will benefit from enhanced transparency and protection measures. We trust the Luxembourg financial market is well-armed to implement this major transition for our market on a European scale.

You are looking to set up your crowdfunding activities in Luxembourg or review your processes in the light of the Regulation? You are a project owner seeking funding through crowdfunding and willing to discuss the opportunities brought by the Regulation? Get in touch with our Banking, Finance and Capital Markets Team.

### Your contacts at Luther



#### Bob Scharfe

Avocat à la Cour, Partner  
Luther S.A. Luxembourg  
T +352 27484 667  
bob.scharfe@luther-lawfirm.com



#### Marion Lanne

Jurist, Managing Associate  
Luther S.A. Luxembourg  
T +352 27484 674  
marion.lanne@luther-lawfirm.com



#### Maeva N'Zogho

Jurist, Associate  
Luther S.A. Luxembourg  
T +352 27484 623  
maeva.nzogho@luther-lawfirm.com

