

Opinion of the European Economic and Social Committee on the communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Unleashing the potential of Crowdfunding in the European Union

COM(2014) 172 final

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On 14 March 2014, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the:

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Unleashing the potential of Crowdfunding in the European Union.

COM(2014) 172 final.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 June 2014.

At its 500th plenary session, held on 9 and 10 July 2014 (meeting of 9 July 2014), the European Economic and Social Committee adopted the following opinion by 195 votes to 1 with 5 abstentions.

1. Conclusions and recommendations

1.1 The EESC welcomes the Commission communication and emphasises the growth potential of crowdfunding in the EU as an alternative source of funding.

1.2 The EESC stresses that crowdfunding benefits the economy in terms of investment, innovation and employment and, at the same time, increases the range of consumer credit options.

1.3 Universal access to crowdfunding will ensure that people with disabilities are not excluded from this source of funding.

1.4 Since EU businesses are more dependent on bank loans than their US counterparts, they are hit harder when recessions are compounded by financial crises. Furthermore, many EU countries are unduly restrictive when it comes to SME credit.

1.5 The EESC emphasises the dependence of SMEs on bank loans, a situation that will persist despite the existence of alternative sources which are not always easy to access.

1.6 Crowdfunding benefits the financial ecosystem which will not in itself suffice to address the funding difficulties facing businesses.

1.7 Start-ups, young innovators, and social economy enterprises play a significant role in the 2020 Agenda and the Digital Agenda.

1.8 Crowdfunding with non-financial returns is widespread in the EU. The impact of tax incentives, which vary among the Member States, should be studied.

1.9 European legislation should only cover specific types of financial return crowdfunding, and not donations and other forms of non-profit sponsoring.

1.10 These rules should be based on achieving balance, protecting investors and avoiding excessive regulation. Nevertheless, the regulator's actions are crucial to fostering investor confidence.

1.11 The rules should seek to achieve simple administrative procedures, rapid decision procedures and minimum costs, as well as neutrality, transparency and avoidance of unfair practices, with accessible claims procedures. This is as much in the interest of providers as of consumers.

1.12 Potential investors must receive accessible information that is clear, appropriate, accurate and not misleading.

1.13 The EESC suggests that the EU should supplement action taken by the Member States to support non-profit initiatives that promote values such as employment, solidarity, pluralism, democracy and freedom.

1.14 Crowdfunding should be explicitly recognised in the laws of the Member States as a new form of patronage.

2. Introduction

2.1 In recent years, there has been a trend towards certain forms of production moving from businesses to individuals, who have come to be called 'prosumers' ⁽¹⁾.

2.2 This process was accelerated by the introduction of the internet, giving rise to the 'collaborative economy', where someone decides to share an asset in their possession with others, sometimes in exchange for money. See EESC opinion on 'Collaborative or participatory consumption, a sustainability model for the 21st century' ⁽²⁾ and the European Parliament resolution ⁽³⁾.

2.3 Against this backdrop, a handful of start-ups are flourishing on the Internet, since the net often allows for a process of disintermediation through which individuals may exchange digital and physical goods. Unfortunately, in order to avoid undermining confidence, it is important to be alert to the improper use that 'adventurers' might make of this aspect of the Internet.

2.4 In the financial sphere too, other methods are emerging, such as the issuing of high-yield bonds in the European primary market or locally through the alternative fixed income market (MARF).

2.5 Direct lending allows businesses to finance themselves through bilateral negotiations with specialised market agents and through banking disintermediation; or the most 'alternative' option, crowdfunding, where generally small investors come together through the internet to allocate savings to borrowers.

3. Gist of the Communication

3.1 The Green Paper on Long-Term Financing of the European Economy ⁽⁴⁾ initiated a broad debate on the different factors that enable the European economy to channel funding towards the investments needed to ensure economic growth ⁽⁵⁾.

3.2 According to the Commission, crowdfunding is an open call to the public — usually through a web page — requesting funds for specific projects or business investments. In this way, funding platforms or campaigns put a variety of non-professional investors in contact with project promoters. Nevertheless, their improper use must be prevented.

⁽¹⁾ Alvin Toffler, *The Third Wave*, p. 86 and seq.

⁽²⁾ OJ C 177, 11.6.2014, p. 1.

⁽³⁾ EP resolution on the European Consumer Agenda — 2012/2133(INI).

⁽⁴⁾ COM(2013) 150 final.

⁽⁵⁾ See EESC opinion, OJ C 327, 12.11.2013, p. 11.

3.3 The most common forms of crowdfunding are:

- donations;
- sponsorship (publicity in exchange for financing);
- rewards (a good or service is received which is worth less than the contribution);
- pre-sales (receipt of funds to launch a product on the market);
- loans with or without interest;
- investments in businesses (purchase of bonds or shares).

3.4 Advantages: It is an alternative form of funding characterised by flexibility and the participation of society and takes a broad range of forms. Moreover, crowdfunding goes straight to the consumer, facilitates market studies and provides credit to those who have most difficulty accessing it.

3.5 However, it also entails risks and challenges, such as the possibility of fraud or money laundering and the non-existence of a secondary market etc.

3.6 European regulation on this matter covers among other things: the prospectus in public offers for shares⁽⁶⁾, MiFID⁽⁷⁾, European payment services⁽⁸⁾, consumer credit⁽⁹⁾ and mortgage loans⁽¹⁰⁾.

3.7 The Green Paper sets certain priorities: to create a group of experts to seek advice on various aspects; to increase knowledge and information; and to evaluate the current rules in the Member States in order to assess whether measures are needed at European level.

3.8 The Commission acknowledges that, in the EU, financing through crowdfunding is rather marginal compared to bank lending but is 'promising' compared to other sources such as business angels or venture capitalists.

3.9 In order to develop, crowdfunding must face a number of challenges, such as the lack of transparency of the applicable rules, the role it will play in the internal market and its integration into the financial ecosystem.

4. General comments

4.1 The EESC takes note of the communication and agrees on the need to improve knowledge of a source of funding with potential for growth in Europe. It also agrees that alternative financing models can help start-ups move up the 'funding escalator'.

4.2 The data corroborates the Green Paper's use of the word 'marginal' to describe crowdfunding, which amounted to EUR 735 million⁽¹¹⁾ in 2012, compared with EUR 6 trillion in bank lending to non-financial institutions⁽¹²⁾.

4.3 Nevertheless, its growth must be emphasised. Globally speaking, crowdfunding rose gradually from USD 530 million in 2009 to an estimated total of USD 5,1 billion in 2013, representing an annual growth rate of 76 %. Geographically speaking, the biggest market was North America (mainly the USA), representing 60 % of the total, followed by Europe, which accounted for 36 %⁽¹³⁾.

4.4 Crowdfunding benefits the economy since it is an alternative to traditional funding sources that promotes investment, innovation and job creation. Its possible impact on the development of the activities of the social economy, craft and micro-enterprises should also be stressed⁽¹⁴⁾.

⁽⁶⁾ Directive 2003/71/EC (OJ L 345, p. 64) amended by Directive 2010/73/EU (OJ L 327, p. 1).

⁽⁷⁾ Directive 2004/39/EC (OJ L 145, p. 1).

⁽⁸⁾ Directive 2007/64/EC (OJ L 319, p. 1).

⁽⁹⁾ Directive 2008/48/EC (OJ L 133, p. 66).

⁽¹⁰⁾ Proposal for a directive COM(2011) 142 final.

⁽¹¹⁾ Massolution (2013), Crowdfunding Industry Report 2012, <http://www.crowdsourcing.org/research>

⁽¹²⁾ European Banking Federation Facts and Figures (2012): <http://www.ebf-fbe.eu/uploads/FF2012.pdf>

⁽¹³⁾ <http://www.bruegel.org/nc/blog/detail/article/1330-the-crowdfunding-phenomenon>

⁽¹⁴⁾ See EESC opinions on Finance for business/alternative supply mechanisms and on Long-Term Financing of the European Economy (not yet published in the OJ).

4.5 Universal access must be promoted and fostered in order to ensure that people with disabilities can participate in crowdfunding platforms and are not excluded from this new form of financing, which is another opportunity for the third sector.

4.6 The EESC welcomes the decision to include SME representatives in the expert group. This group must include both supply and demand side representatives.

5. Financial structure and economic growth

5.1 Financial structure is closely linked to economic growth and the effects of the crisis. Businesses in the USA obtain more financing from the capital markets than those in the EU, where most depend on bank loans. The relative importance of bank financing ranges from less than 20 % in the United States to over 60 % in some EU Member States.

5.2 Banks are more inclined to grant loans during a 'normal' recession, thus mitigating the impact on the economy. However, this is different when an economic crisis is linked to a financial crisis. Thus, recessions in countries more dependent on banking systems are three times more serious than in those that have a market-oriented financial structure⁽¹⁵⁾.

5.3 In the EU, the lack of sufficient financing is the second most significant problem facing businesses (after reaching customers)⁽¹⁶⁾.

5.4 There is no doubt that if the ECB injected liquidity into the financial system to facilitate lending to businesses, it would be of considerable benefit to the European economy.

6. Financial return crowdfunding

6.1 Financing SMEs

6.1.1 The EESC has already addressed financing difficulties in various opinions, emphasising the importance of SMEs to the European economy⁽¹⁷⁾.

6.1.2 The restriction of credit (credit crunch) threatens the economy and, in particular, the existence SMEs, for which bank loans (often hard to obtain) are a key source of funding. This is one of the reasons behind the steep rise in unemployment which has affected some EU Member States in particular.

6.1.3 Given that it generally involves smaller investments, crowdfunding is essentially geared to SMEs (and micro-enterprises in particular), which represent the overwhelming majority of Europe's business fabric (99,8 % of the total number of non-financial businesses in the EU-28) and whose contribution to employment is crucial as they represent 67,2 % of the workforce⁽¹⁸⁾.

6.1.4 The EESC notes that some people are sceptical about the effectiveness of alternative sources of finance. The Commission communication on the long-term financing of the European economy⁽¹⁹⁾ has been considered a step forward, but insufficient, by the European association of SMEs, according to which crowdfunding will be used by a 'small' number of businesses; start-ups represent only 1 % of SMEs⁽²⁰⁾.

6.2 Financing of start-ups

6.2.1 The EESC emphasises the need for the EU and the Member States to promote and support crowdfunding especially in the case of start-ups. Start-ups geared to the research and development of high-tech projects — which are one of the objectives of the Digital Agenda — are of special interest due to their potential capacity to promote growth and jobs. Nevertheless, traditional and craft sectors, which can also be very innovative, must not be excluded.

6.2.2 The EESC also urges the EU and the Member States to promote and support crowdfunding for the development and promotion of social innovation, young innovators and the social economy. Social economy organisations play a key role, within the Europe 2020 Strategy, when it comes to achieving social inclusion and integrating vulnerable groups through job creation, thereby reconciling social and economic values.

⁽¹⁵⁾ Financial structure and growth. BIS Quarterly Review, March 2014.

⁽¹⁶⁾ ECB: Survey on the access to finance of SMEs in the euro area, 2013.

⁽¹⁷⁾ OJ C 77, 31.3.2009, p. 23; OJ C 27, 3.2.2009, p. 7; OJ C 351, 15.11.2012; OJ C 48, 15.2.2011, p. 33.

⁽¹⁸⁾ Eurostat: Structural business statistics overview. December 2013.

⁽¹⁹⁾ COM(2014) 168 final.

⁽²⁰⁾ UEAPME, communication of 27/03/2014.

6.2.3 Though insufficient to finance the everyday operations of a business, crowdfunding is especially appropriate for this type of initiative, which in many cases is promoted by young entrepreneurs seeking to develop a specific business project.

7. Crowdfunding in the EU's financial ecosystem

7.1 The EESC points out that crowdfunding can play a role of some importance as a source of financing together with other non-traditional forms, such as business angels or venture capitalists, or win-win loans⁽²¹⁾, etc. At present, however, the main problem facing the economic and monetary authorities, in addition to the credit crunch, concerns the high collaterals required.

7.2 In the EU, the promotion of non-banking sources of finance may help consolidate the trend — which began 20 years ago — for businesses to turn to the capital markets. Consideration needs to be given to the solvency requirements designed to ensure the repayment of capital invested and providing greater legal certainty for this source of financing.

8. Crowdfunding with non-financial returns

8.1 Donations, interest-free loans or free transfers of rights can be used for projects of a commercial nature, but will usually involve solidarity-based contributions to social initiatives promoted by non-profit organisations. Patronage can be used to promote the establishment or continuation of cultural or sporting activities.

8.2 Crowdfunding is a common financing model among social enterprises. The potential of this approach, especially with regard to inclusive entrepreneurship, must be assessed in the wider context of the Social Enterprise Initiative.

8.3 Since there are differences in the Member States' tax treatment of donations and of certain types of investment, the EESC endorses the Commission's proposal to study the impact of tax incentives.

9. Specific comments

9.1 *The need for European legislation*

9.1.1 Crowdfunding can only be promoted as a viable financing alternative if investor confidence is fostered. The regulator has a key role to play in this respect.

9.1.2 The Commission mentions possible 'future actions' which it will adopt after receiving the opinion of the group of experts. The EESC maintains the view that boosting cross-border crowdfunding will certainly require legislation harmonising the criteria already adopted (or in the process of being adopted) by the Member States. Special attention must be paid to consumer interests and protection in these new markets.

9.1.3 Harmonisation could consist of the adoption of a regulation on crowdfunding platforms for financial return, covering, at the very least:

- arrangements;
- services to be provided;
- caps on amounts;
- information obligations (including potential conflicts of interest);
- exemptions from the scope of application;
- prohibitions (especially prohibition of the acquisition and publication of related projects);
- need for a level playing field;
- financial requirements; and
- compulsory public registration (disclosure and transparency).

(21) <http://www.bofidi.be/en/nieuws-3/recent-posts/148-winwinloananinterestingalternativemethodoffinancing>

9.1.4 Sponsoring and other non-profit activities should be excluded from any potential European legislation as they do not entail the risks associated with activities for financial return. Potential irregularities are already covered by Member States' administrative and criminal law.

9.1.5 The EESC suggests that crowdfunding should be regulated, essentially in the following cases:

- issue or purchase of bonds or shares of joint stock companies;
- issue or purchase of securities of limited companies;
- interest loans (to individuals or businesses).

9.1.6 Future European legislation should be flexible and balanced, avoiding both excessive regulation (which could be an obstacle to the growth of crowdfunding) and a lack of investor protection. In other words, it should be objective, transparent, proportionate to the aims and with a high level of investor protection.

9.1.7 Investors nevertheless need to be realise that there will always be some level of risk.

9.1.8 Simple administrative procedures and minimum red tape are underpinning principles. The following are also necessary:

- a level playing field;
- lower administrative costs; and
- rapid decision procedures.

9.1.9 The rules should guarantee that crowdfunding platforms act in accordance with the basic principles of:

- neutrality;
- diligence;
- beneficence, i.e. acting in the best interests of the clients, who must be well-informed.
- avoidance of unfair commercial practices in their marketing; and
- accessible claims procedures.

9.1.10 Information to potential investors should be:

- clear and relevant;
- timely and complete;
- objective and accurate; and
- not misleading by action or omission.

9.1.11 The intellectual property rights of those who place projects on the web will be protected when the regulation on the creation of the unitary European patent enters into force.

9.2 *Promotion of alternative sources of finance*

9.2.1 The EESC believes that public authorities should carry out campaigns to promote crowdfunding to encourage companies to make greater use of capital markets. In particular, SMEs should be provided with relevant information in cooperation with their organisations.

9.2.2 Training for entrepreneurs as well as investors — especially disadvantaged entrepreneurs — will also be crucial to integrating crowdfunding into the European economy. Sufficient resources will also have to be allocated for knowledge transfer, both with respect to the administration of the platforms and the effective assessment of transaction risk.

9.2.3 Crowdfunding with non-financial returns

The EESC would point out that:

- they can help promote common European values, such as solidarity, pluralism, democracy and freedom. To this end, it is important that, in this area too, the EU adopt measures to complement the measures adopted by the Member States, supporting the establishment of platforms of European interest for projects geared to boosting economic, social or territorial cohesion, in which employers' organisations, trade unions and other representatives of civil society can play an active role.
- Crowdfunding should be explicitly recognised in the laws of the Member States as a new kind of patronage — in both form and substance — since this is about innovation in products and processes. It is something that needs to be recognised and supported by the Member States.

Brussels, 9 July 2014.

The President
of the European Economic and Social Committee
Henri MALOSSE
