

# Crossing borders to crowdfund renewables

December 28 2016, by Alfredo Ranavolo

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Credit: Andras Barta

Today energy crowdfunding platforms and investors experience many problems if they want to finance projects that cross the legal boundaries between the EU member states. International experts are striving to harmonise to European regulations in the sector

Renewable energy crowdfunding involves three different parties: the fundraising platform, the investors who generally expect a return, and project developers needing money. They may come from different nations. And that is surely a complication, since there isn't one legislative framework for this business sector, nor one that is so recent and linked to the use of the web.

This challenge has been under the lens of international lawyers, such as [Osborn Clarke](#) legal practice, who has produced a lot of relevant material. In the release named [Crowdfunding crossing borders](#), they observe that if a platform aims to expand its business into other EU member states, it will need legal advice in those countries. And an investor wishing to invest in a cross border project listed on a foreign platform, should be aware of how the law differs from his or her home country. The same applies if the investment is related to a project owner abroad.

Thorge Drefke, an Osborne Clarke associate in Köln, Germany, explains that already in late 2014 the European Securities and Markets Authority (ESMA) published its opinion/advice on investment-based crowdfunding, which clarifies how crowdfunding models fit within existing EU legislation such as MiFID, Prospectus Directive, AIFMD and other financial regulations.

ESMA affirms that, where crowdfunding platforms operate within MiFID (the "Markets in Financial Instruments Directive" has been in force since 2007. It will be updated in 2018 to increase transparency across the EU financial markets), the current EU regime provides a reasonable degree of risk mitigation, due to disclosure requirements and classification of risk profiles of the investors. But for platforms operating outside MiFID, investor protection could be mitigated by measures at local level as national legislation doesn't require compliance with the directive.

Regarding the Prospectus Directive, it stipulates that producing a [prospectus](#) is not mandatory if the amount payable for all shares offered over a period of 12 months in aggregate across all Member States, is less than €5 million. But EU countries have chosen different thresholds under national law for the minimum size of offers for which a prospectus must be produced.

ESMA assumes that the strong incentives for project sizes to be kept below the relevant offer size threshold, imposed under national regimes, pose challenges to the viability of the crowdfunding platform business model. Some platforms could limit the type or the number of investors in projects in order to benefit from one of the exemptions set out in the Prospectus Directive (which is currently under review and should increase the size limit to €8 million).

In 2016, for the first time, the European Parliament [asked](#) the European Commission to present an initiative to regulate and harmonise crowdfunding practices across the EU. "The main issue for platforms is that they cannot actively market investment opportunities across different member states without complying with each country's requirements", says Oliver Gajda, executive director of the [European Crowdfunding Network \(ECN\)](#).

Alex Raguet, founder of the French crowdfunding platform [Lumo](#), confirms that few players have licenses for crossing borders. "We are only regulated for France. I can't translate my site into English, but we have a lot of English people living in France and we would like them to invest in our platform", he says.

To find solutions to such issues, ECN and Lumo have joined the international network of the European project [CrowdFundRES](#), which aims to unleash the potential of crowdfunding for financing renewable energy projects.

The European Commission published a [report on crowdfunding](#) in May 2016. "This report gives a detailed description of the regulatory environment of crowdfunding in the EU", says Drefke, "But the EC states that currently, as crowdfunding remains largely local and the sector is changing rapidly, there is no strong case for a EU level framework. However, the EC will keep developments in the sector under close review, and meet twice per year with regulators and the sector".

Which legislation could be a benchmark for harmonising the regulatory situation? "According to our experience, for example, Austria and the UK have crowdfunding regulations which could be called advanced", Drefke points out.

Austria has a specific [Crowdinvesting act](#), called Alternativfinanzierungsgesetz, providing for a legal framework for crowdfunding platforms. In the UK the specific regulations are left to administrative provisions published by the Financial Conduct Authority – FCA, which allows for a flexible response to economic or social developments of crowdfunding business.

"In France you can't do nothing for two years while you wait for inspections and authorisations. In London small frameworks are required to let business start", Raguet says.

Bearing in mind that [81% of the whole European crowdfunding market volume in 2015](#) (including any types of crowdfunding such as peer-to-peer, equity or lending or reward donation crowdfunding etc.) is generated in the UK, the liberal British legislation playing a role in this strong market position.

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