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Fintech regulation in the European Union: trends and blurred lines

Regulación de las Fintech en la Unión Europea: tendencias y líneas difusas

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Abstract: Digitalisation, innovative financial services technologies and new business models hope for borderless markets. Financial technology (Fintech) is looking to be another player in this market. In order to increase the integrity of the EU common market and the size of its capital market, new legislative initiatives have been designed to level the playing field for all participants and to rethink the traditional concepts of capital flows and instruments and the risks associated with opening the capital market up to new participants. Financial services like crowdfunding platforms are transforming the services concept, while the risks associated with the digital operations of financial services place the entire digital finance world on the same level. In this context, this paper examines the EU's efforts to create a seamless legal environment.

Key words: European Union, Fintech, digital finance, crowdfunding platforms, crowdfunding, crowdlending, financial services, digital operations

Resumen: La digitalización, las tecnologías innovadoras en los servicios financieros y los nuevos modelos de negocio aspiran a un mercado sin fronteras. Las tecnologías financieras (Fintech) quieren ser un actor más en dicho mercado. A fin de aumentar la integridad del mercado común y el volumen del mercado de capitales de la UE, las nuevas iniciativas legislativas se han elaborado para homogeneizar el terreno de juego de todos los participantes y repensar los conceptos tradicionales de flujos de capitales e instrumentos y riesgos asociados a la apertura del mercado de capitales a nuevos participantes. Servicios financieros como las plataformas de crowdfunding están transformando el concepto servicios, mientras que los riesgos relacionados con las operaciones digitales de los servicios financieros sitúan al mismo nivel a todo el mundo de las finanzas digitales. Al respecto, este artículo examina los esfuerzos de la UE por crear un entorno jurídico sin costuras.

Palabras clave: Unión Europea, Fintech, finanzas digitales, plataformas de crowdfunding, micromecenazgo, crowdlending, servicios financieros, operaciones digitales

The EU is at the doorstep of providing the common legislative framework for financial innovation to support digital innovation in the Union and to empower the Single Market for capital. To estimate the necessity of a certain legislative initiative, it is important to understand what the financial sector situation is: how innovation influences the functioning of the capital market and which developments should be reflected in the scope of the legislation. Keywords of the 21st-century financial industry are digital finance and innovation. Digital finance is making a revolution in the way in which the financial instruments are provided, and financial services rendered, whether by the traditional financial sector or new market participants. In order to target the goals of the EU towards digital leadership and an attractive Single Market, first, the features of the innovative financial services should be identified, and secondly, the relevant regulations proposed and applied.

Keywords of the 21st-century financial industry are digital finance and innovation. Digital finance is making a revolution in the way in which the financial instruments are provided, and financial services rendered, whether by the traditional financial sector or new market participants.

It is recognised that relying only on national rules would result in fragmentation (Lehmann, 2021) and would not allow benefitting from the common market synergy. The EU-wide approach should be preferred compared to the regulatory competition of Member

States. For this reason, the paper focuses on the new trends in the digital financial market of the EU and the framework of the EU legislative initiatives on Fintech, and as a more precise example of the regulatory package on the legislation of crowdfunding service providers. The latter sector of Fintech is regulated by the EU regulation on European crowdfunding service providers for business (ECSPR)¹ and is accompanied by the proposal for the directive on consumer credits (CCD2)², which aims to cover the unregulated spectrum of crowdfunding service providers.

From the view of the EU-wide approach, the main question is whether the horizontal approach of the EU covers the whole innovative field of peer-to-peer financing for investment purposes, and secondly, are the risks and features of the crowdfunding service targeted in the relevant acts. The more precise

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1. Regulation (EU) 2020/1503 of the European Parliament and of the Council, of October 7, 2020, regarding European providers of crowdfunding services for companies, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937.
 2. Directive (EU) 2021/2167 of the European Parliament and of the Council of November 24, 2021 on credit managers and credit buyers and amending Directives 2008/48/EC and 2014/17/EU.

issues related to the terms and conditions of new financial services, including applying financing solutions built on a distributed ledger, and innovative payment services, are excluded from further research. The analysis is based on the comparison of the EU's new legislative proposals and the regulation in force, excluding the level of national legislation.

The article is divided into three subtopics. Firstly, the overview is provided of the developments of financial services and the interconnectedness with digital technology. The outlook of the EU to contribute to a real digital Single Market depends on the cooperation of the digital and financial sectors as well as the ability to support the capital flows enabled by Fintech solutions. Crowdfunding service as an example of an innovative financial service combines the flexibility provided by the digital approach to the movement of capital flows and at the same time opens the potential for financial inclusion as a driver for the rise of capital markets. Next, the review is headed to the special legislative initiatives of the FinTech Action Plan and Digital Strategy of the EU, which include also the ECSPR and the CCD2. As the new regulations aim to support the development of the common market via the cross-border recognition of Fintechs, the question remains whether the scope of the legislation recognizes all innovative peer-to-peer capital transfers and foresees equal treatment, comparable safeguards, and same supervision for the services which entail same risks. Finally, the third section focuses on the crowdfunding service, as an example of an innovative financial service, which combines the flexibility provided by the digital approach for the movement of capital flows and, at the same time, opens the door to inclusion. finance as an engine of growth in capital markets.

Towards a borderless digital market

An altered financial and economic environment sets new objectives and, recognising new trends, European Union (EU) is moving towards climate neutrality and digital leadership (EU, 2020). As a result, the main topics of our time have acquired a defining role also in financial law: the onward route towards technology, and sustainability, but also an ongoing hassle to support integration and harmonisation. New market participants like crowdfunding platforms, online payment systems, and crypto-asset exchanges provide channels and marketplaces to move the capital towards the ones in need as well as encourage to replace the traditional infrastructure and financial instruments with novel and digital ones, challenging the traditional financial intermediaries. The essence of financial services, providing the circulation

of capital, remains. But the notion of Fintech refers to a set of companies focused on using the latest innovations and new opportunities in information technology to improve financial services (McQueen *et al.*, 2016: 1). Technology is not often associated with environmental goals but the Fintech world with its peer-to-peer and distributed ledger technology networks and forms of direct finance presents coherence and aims at realizing a socially more inclusive financial system supporting sustainable development (Macchiavello and Siri, 2020: 4). Since 2020 has increased the number of retail investors in the financial markets (Pareek, 2021; New Economy Observer, 2021) and furthermore, millennials (as the main drivers beyond the growth of Fintech) show particular interest in investing in sustainable activities (Macchiavello and Siri, 2020: 3).

However, although increasing social inclusiveness, innovation also raises concerns about individuals' money, trust and relevant measures for protection, and appropriate surveillance (Buckley *et al.*, 2019). There is still controversy over whether Fintech contributes to financial stability or increases volatility and instability in the economy (Chen *et al.*, 2021). While creating new markets and blurring the lines between financial services, technological innovations bring new risks to the financial system, raising the question also of digital resilience (OECD, 2019). It is considered that Fintech blurs not only geographical boundaries but also legally important lines that delimit different segments of the financial markets (Omarova, 2020: 24). As an example of a combination of favorable digital developments and potential amongst the crowd, the rise of crowdfunding services may be witnessed. However, the term 'crowdfunding' is an umbrella term reflecting a wide variety of fundraising models (Shneor *et al.*, 2020: 2), which in a large scale may be divided into financial and non-financial types. The financial type of crowdfunding models, which include peer-to-peer lending and equity investments, may be regarded as segments of capital markets and catch the attention of regulators.

With the ever-increasing advent of digitalization combined with tightening regulation for banks, alternative finance has become an important part of the present financial markets; and crowdfunding, at least for the time being, can be considered one of the most viable examples of the gradual transformation of financial markets caused by the emergence of Fintech (Kallio and Vuola, 2020: 210). Favouring factors to the growth and spread of crowdfunding were (i) the financial markets crisis in 2008 that resulted in a number of bank failures and led to the tightening of the capital adequacy and solvency requirements for banks by Basel III regulations, which in turn pathed the way to capital constraints for SMEs; and (ii) the explosion of technology and internet usage and usability (IOSCO, 2015). These implications together

have made it possible to reach large crowds of potential investors in a cost-effective manner.

Crowdfunding involves three main actors: a) fundraisers, who publish their projects online, which are studied by the b) interested parties, who decide whether to invest in them, and c) the platforms functioning as a bridge (Cai *et al.*, 2020: 185). Interested parties are the potential investors, who are usually not professional investors (Kallio and Vuola, 2020: 209); and start-ups and small businesses act as the fundraisers, for which crowdfunding has generally been considered appropriate for the initial and growth stages of investment (Spacetec, 2014, in Kallio and Vuola, 2020: 229). In short, crowdfunding constitutes a digital version of the initial public offering of securities or loans in an initial stage of investment for smaller entities. However, this modality is not exempt from risks, whether moral or opportunistic,

which have been observed in the financial sector from the beginning. In this sense, it has been pointed out that crowdfunding, as a financial investment, encompasses a wide spectrum of risks from the investor's point of view (Kirby and Worner, 2014, in Cai *et al.*, 2020: 183). The large number of "inexperienced retail investors" (defined according to their level of income and wealth)

involved compound financial governance problems, as fundraisers are mostly small businesses (Cumming *et al.*, 2021: 4).

The aforementioned issues challenge the financial sector regulation, principles of market integrity, and investor and consumer protection. According to BIS (BIS, 2011) new entrants prefer to stay away from financial activities that carry large licensing, capital, and regulatory burdens and therefore focus on activities such as payments, cards and financial advice. Regulatory gaps facilitated the rapid rise of Fintech in many markets that allowed new service providers to enter and operate with minimal regulatory burden. Despite the attractiveness of the regulatory gaps in the first phases of innovation, the novel solutions tend to seek a proportionate regulatory environment that would enable further progress and growth. As a response to market innovation, different countries have been making efforts to regulate peer-to-peer and other Fintech services (World Bank and CCAF, 2019). Considering the borderless use of digital technology, the means of the legislation should be as integrated, high level, and cross-border as possible (EBA, 2021).

With the ever-increasing advent of digitalization combined with tightening regulation for banks, alternative finance has become an important part of the present financial markets; and crowdfunding, at least for the time being, can be considered one of the most viable examples of the gradual transformation of financial markets caused by the emergence of Fin-tech.

A commonly regulated financial marketplace of the EU

With the world shrinking into a single marketplace, the question arises of who should regulate what (Lehmann, 2019: 1). As transactions are made across borders and using a number of service providers in different jurisdictions it is difficult to determine whose jurisdiction the services fall under and how to ensure that the relevant information is available. Therefore, the harmonised legislation which is applicable across borders in the EU may be more in compliance with the dimensions of digital financial services.

One of the main pillars of the EU, the commitment to provide an environment where industry meets funding is challenged by the digital era. Well-developed capital markets function as an essential base for financing innovation and are good shock absorbers in case an inevitable crisis may occur. Financing the knowledge economy, high-growth sectors, and digitalisation require investments in intangible capital. Instead of requiring financing to acquire buildings and machines, innovators have invested in software, data, research, which cannot easily be collateralised. As banks are not well suited to finance high-risk initiatives that rely heavily on intangible capital, these sectors seek alternative financing via digital platforms (Demertzis *et al.*, 2021: 3).

In addition, considering the green transition and sustainability goals provided by the EU enlarging the regulatory scope of financial markets may lead to additional benefits in thinking green. To illustrate the latter, De Haas and Popov (2019) have found that, for given levels of economic and financial development and environmental regulation, economies that are relatively more equity-funded have lower CO2 emissions per capita, as “stock markets reallocate funds to less-polluting sectors more efficiently than banks and in addition stock markets provide incentives for carbon-intensive sectors to develop greener technologies (publishing of green patents increases as stock markets deepen)” (Ibid: 4). As higher volumes of capital markets support the sustainable transformation of the society, the question one step backward is, how to increase the volume of capital markets, what is the role of Fintech in this picture.

The results from the survey on institutional drivers of crowdfunding volume show that the presence of regulation heightens the volume of funding: the existence of crowdlending³ or equity crowdfunding regulations is associated with an increase

3. Loans between individuals.

in the crowdfunding volume per capita by 17 to 18 times (Kukk and Laidroo, 2020: 14). Although these findings are based on the survey of figures from individual countries and may be regarded as an incentive to work on the relevant legislation on a national level, these correlations may be valid also on the level of the Single Market (Hamulák, 2018). Overall, the described preferences of market participants support the movement toward a wide-ranging financial market, which does not rely too heavily on the banking sector to tackle innovation and climate change, but rather seeks the solutions to advance the completion of a digital Single Capital Market.

The integration of Europe's capital markets started with the development of the single market in the 1980s introducing passporting rights for financial services. As the next step, there has been an expectation that the more integrated Capital Markets Union (CMU) can entail the power to push the development more deeply. The CMU initiative began in 2014 and reached its next level in September 2020 as the Commission published a new CMU action plan (CMU2). Beyond integration into a genuine Single Market for capital, other primary objectives include supporting a green and inclusive recovery and making the EU a safer place to invest long-term (Commission, 2020/590).

The CMU2 action plan, besides covering versatile issues related to the traditional capital market emphasises the digital transformation of financial markets as part of the CMU drivers. More precisely, the CMU2 initiatives FinTech action plan of March 2018 and the Digital Finance Package of September 2020, build on the CMU in the fields of digital finance. These initiatives focus on seven major subtopics to increase the competitiveness of the EU, which may be summarized as enabling innovative business models, supporting the uptake of technological innovation (including DLT), and increasing the cyber security of the financial sector. In combination, the FinTech action plan and Digital Finance Package have led to several legislative initiatives either already adopted or currently in development. The most mature of the CMU2 initiatives is the legislation of peer-to-peer financial services – the ECSPR, which entered into force on 10th November 2020. Subsequently, the negotiations are open on the dossiers of the Digital Finance Package including the proposal for the Regulation on Markets in Crypto-assets and amending Directive (EU) 2019/1937 (MICA), as well as a proposal for a regulation to establish a pilot regime on DLT market infrastructures

The form of an EU regulation is preferred in order to pre-empt the emergence of different national frameworks, which would lead to fragmentation of the digital market. The sector of Fintech is regulated by the EU regulation on European crowdfunding service providers for business (ECSPR) and is accompanied by the proposal for the directive on consumer credits (CCD2), which aims to cover the unregulated spectrum of crowdfunding service providers.

for these instruments (Commission, 2020/594). and the proposal for the Regulation on digital operational resilience for the financial sector (DORA).

Previously, the EU rules for the financial markets were mainly found in directives. These in turn had to be transposed into national legislation, which led to differences in implementation that tended to adversely affect the degree of harmonisation and thus undermine the notion of a level playing field in Europe (Busch, 2021: 4). In regards to novel technologies related to Fintech, the form of an EU regulation is preferred in order to pre-empt the emergence of different national frameworks, which would lead to fragmentation of the digital market. Thereby the Commission as the only institution that can initiate legislation in the Union, performs its role as the one to push for deeper integration (Troitiño, 2014: 248). The instrument chosen for new legislation (regulation) speaks clearly to the seriousness of regulatory intentions – that is to fill a major regulatory gap and ensure a harmonized approach across the EU Single Market (Zetzsche *et al.*, 2020: 4). The form of the EU regulation might be the one to better support the principle of “same activity, same rules”. As brought out also in the surveys of the Cambridge University Centre for Alternative Finance (CCAF) the regulatory risk has been regarded as one of the most important ones amongst alternative finance market participants (CCAF, 2021). A fundamental question on inclusiveness from the view of the financial industry shall have its initial responses during the negotiation process of the Commission proposals on Fintech.

The legislative proposals on Fintech and digital finance intend to build a Common Market, which is oriented toward innovative financial services and corresponds to the needs of rapid technological development, but at the same time ensures sufficient consumer and investor protection and financial stability. Digital financial services have been recognised as the tool to modernize the European economy across sectors and make Europe a global digital player. Hence, the review focuses on the assessment of the EU solutions provided for the peer-to-peer funding activity and its service providers.

Scaling up with the help of a regulation (EU) – cross-border provisions on crowdfunding

Proportionate regulation may be the key to accelerating the volumes of capital markets offering a sufficient level of trust for investors and other market participants as noted in the survey of Kukk and Laidroo (2020). The lack of explicit coverage of newer business models in national laws has led to notable

differences in interpretations by the Member States locally (Laidroo *et al.*, 2021: 8). High-quality infrastructure and regulatory clarity are highly valued by Fintechs (ibid., 18). EU legislative proposals on Fintech and digital finance are a step forward to enforce the principle of ‘the same activity, same risks, and same rules in a harmonised format’. However, concluding these negotiations is not an easy task considering already the first part of the agenda: what may be considered as ‘the same activity’, which players of the new financial market should be included in the scope of legislation in order to hope for the blossoming of the capital markets.

According to the Commission proposal of ECSPR, crowdfunding is a new form of technology-enabled financial service, which carries the potential to help better match investors with business projects in need of funding as the platforms act as intermediaries between investors and businesses. Crowdfunding provides an alternative to unsecured bank lending, which is the main source of external finance for EU SMEs, especially during the initial period of activity (Commission, 2018). The reasoning of the EU legislation in the form of the ECSPR and directive (EU) 2020/1504⁴ derives from the intention to enable authorised crowdfunding service providers to raise capital volumes in the whole Single Market. The title of the ECSPR and its scope refer to a certain category of peer-to-peer services – the financial type of crowdfunding based on equity and lending models for matching business funding interests.

Equity-based peer-to-peer investment activity is included into the scope of the ECSPR when crowdfunding service is related to (i) transferable securities as defined in the Markets in Financial Instruments Directive (MIFID2)⁵, or (ii) admitted instruments. The latter is a new category of instruments, which may be offered EU-wide as ‘admitted instruments for crowdfunding purposes’ and according to the Article 2(1)(n) of ECSPR these instruments are, in respect of each Member State, shares of a private limited liability company that are not subject to restrictions that would effectively prevent them from being transferred, including restrictions to the way in which those shares are offered or advertised to the public. According to recital 14 authentication of the transfer by a notary is not regarded as a restriction in the meaning of the ECSPR as an example. The open definition provides room for interpretation, what are the conditions from the national law, which stand as restrictions to transfer, and therefore limit the application of

4. Directive (EU) 2020/1504 of the European Parliament and of the Council of 7 October 2020 amending Directive 2014/65/EU on markets in financial instruments.

5. *Directive 2014/65/EU* of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.

passportable crowdfunding services. Although the transferability of an instrument is considered to be an important safeguard for investors to provide the possibility to exit from the investment, a question arises, whether the transferability should stand as a threshold for a passportable financial service. As crowdfunding services may be channelled to investors of different categories, whether sophisticated or non-sophisticated, the terms and conditions related to exit or transferability may be of secondary importance compared to the safeguards provided to the investors of the Common Market by a harmonised legislation.

Following the ECSPR includes lending-based crowdfunding services for business. According to the definitions of crowdfunding models for a financial return provided by CCAF in its reports, the financial model of crowdfunding is not only limited to business lending. CCAF taxonomy of crowdlending includes a) peer-to-peer business lending, ie debt-based transactions between individuals and existing businesses which are mostly SMEs with many individual lenders contributing to any one loan, and b) peer-to-peer consumer lending, ie individuals using an online platform to borrow from a number of individual lenders each lending a small amount. Equity crowdfunding includes the sale of stakes in a business via an online platform to a number of investors in return for investment, predominantly used by early-stage firms (World Bank and CCAF, 2019). The study of the European Crowdfunding Network AISBL and Osborne Clarke Germany (Klaes, 2017), brings out the challenges of lending-based and equity-based crowdfunding, addressing the risks that should be addressed in the legislation. The findings of the survey underline that transaction costs (information, measurement, and market-making costs) have a remarkable role in expanding crowdfunding services to the Common Market. Market barriers find their origin in the nature of crowdfunding as a process bringing a range of 'funders' and 'fundraisers' together in novel ways through online marketplaces. While these new forms of market intermediation open the possibility of significant efficiency gains, they are nevertheless susceptible to a range of market imperfections that ultimately find their origin in underlying information asymmetries between funders and fundraisers. Information asymmetries can be reduced by relevant investor protection safeguards, which therefore are expected for business and consumer lending crowdfunding services.

The ECSPR establishes the European label for equity- and business lending-based crowdfunding platforms providing the response to the crowdfunding investors' interest. According to recital 30, the approach adopted in ECSPR would minimise risks of regulatory arbitrage and in addition to the cross-border dimension, the requirements for crowdfunding services should reduce operational risks, and ensure a high degree of transparency and investor protection. The aforementioned goals in regard to risks and investor safeguards are achieved with the following measures.

Firstly, according to the ECSPR, the clients are exposed to potential risks related to the crowdfunding service providers, in particular operational risks. And in order to protect clients against such risks, crowdfunding service providers should be subject to prudential requirements (recital 24). Governance issues that were addressed in research previously, are solved by a horizontal approach on service providers' internal governance. Crowdfunding service providers are required to develop business continuity plans addressing the risks associated with the failure of a service provider (Kerikmäe, 2019), including provisions for the handling of critical functions, which, depending on the business model, could include provisions for the continued servicing of outstanding loans, client notification and handover of asset safekeeping arrangements (Article 4 of ECSPR).

Secondly, following the result from the study of AISBL and Osborne Clarke, from the view of investor protection, the ECSPR aims to reduce information asymmetries. The regulation requires fair treatment of projects and clients and clear information on the service and funding projects.

Thirdly, it is the crowdfunding service provider that is responsible for providing the key investment information sheet (KIIS) of the crowdfunding offer to prospective investors, and ensuring that the KIIS is clear, correct, and complete (Articles 23 and 24).

The EC has recognised crowdlending as an increasing form of finance also available to consumers and proposed CCD2 in June 2021. The proposal of the CCD2 complements ECSPR and grants platforms that mediate capital to consumer loans a right to apply for the EU-wide passport. Valuating the merits to provide a cross-border dimension also for consumer crowdlending service providers the proposal raises essential questions on crowdfunding investor protection instruments (Havrylchyk, 2018).

Following the logic of the CCD, the new CCD2 concentrates on the safeguards of borrowers-consumers and does not include special provisions for protecting the interests of crowdfunding investors. The general goals of the review of the CCD were to reduce consumer detriment and avoid over-indebtedness and the risks of taking out loans in a changing market and facilitate the cross-border provision of consumer credit. Considering crowdfunding, the CCD2 aims to complement ECSPR and bring legal clarity to the applicable legal regime (recital 16). Notably, in the context of 'a crowdfunding service provider' the proposal refers to 'a provider of crowdfunding credit services', which introduces a new term concerning the same activity.

The EC has recognised crowdlending as an increasing form of finance also available to consumers and proposed CCD2 in 2021, which complements ECSPR and grants platforms that mediate capital to consumer loans a right to apply for the EU-wide passport.

Considering the issues on crowdlending transaction costs and informational asymmetries as referred by CCAF and Havrylchyk the proposal on the CCD2 remains modest. According to the impact assessment of the CCD2 proposal “The protection of consumers granting credit through peer-to-peer lending platforms is not addressed as it does not fit the logic of the proposal. Therefore, the protection of consumers investing through these platforms, and the responsibilities of the platforms towards these consumers will be assessed in another context and, if appropriate, followed up by a legal proposal.”. The risks arising from the multitude of (retail) investors, auto-investment services, secondary market, the performance of duty of care, and management of risks in the triangular partnership of crowdfunding service are in particular identified by ECSPR.

The consumer lending crowdfunding service may expect a similar approach and require complementary provisions on diminishing information asymmetries of the investors (in addition to creditworthiness assessment of the fundraiser and transparent marketing communication). According to the views of The European Securities and Markets Authority (ESMA), three

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aspects may provide a ground to monitor and even intervene in the development of innovative financial services: objectives of investor protection, financial stability, and market integrity (ESMA, 2019). Considering the crowdfunding sector, in the area of investor protection, it is seen, that the projects funded via platforms have an inherently high rate of failure, the risks related to market integrity rise from the relative anonymity of investing through a crowdfunding platform, which may increase the potential for fraud (ESMA, 2019). Considering the principle of the same activity, same risks, and same rules, the consideration remains whether the provisions applicable for investor protection and market integrity should be applied also to consumer lending crowdfunding services and harmonised with the ones outlined in ECSPR.

In sum, despite the form of a pan-European regulation, a part of the crowdfunding activity, which comprises non-admitted instruments and safeguards for consumer-crowdlending investors remains to be regulated on the national level by the Member States. In the views of the CMU, the reliance on national legislation does not provide the privilege of passporting the services in the whole single market and therefore contributes to fragmentation. Crowdfunding in its essence needs a ‘crowd’ for functioning. The harmonised investor protection in a wider scope may be in the interests of all types of crowdfunding platforms and also European capital markets as a whole.

Concluding remarks

Europe is witnessing legal and institutional uncertainty resulting from some of the more significant changes in financial and banking systems made possible by new technologies. These financial technologies raise not only technical issues, but also deep conceptual questions about relevant institutes, tools, and also regulatory needs. As Saule Omarova has summed up, Fintech can be understood 'as a systemic force confusing the current paradigm of financial regulation'. Financial technology makes finance bigger, and faster, changing the nature of financial decision-making, and blurring legal and market boundaries. In addition to providing a sound regulatory environment for the traditional financial market to take into use the tools of digital finance, the Fintechs expect the slogan of the same activity, and same rules, to be applied in the market.

The EU is not a federation but a jumble of sovereign states, and the existence of all kinds of national and thus maybe obstructive rules act as an obstacle for providing services across borders and scaling up businesses. Therefore, in the framework of the CMU project, the framework on crowdfunding services for business has entered into force from November 2021 and the regulations on other Fintech applications are already in discussion.

Crowdfunding platforms, which shall be granted the right to passport their services and reach the status of EU-wide trusted entities from November 2022, can bring the EU capital market to life alongside the new digitally innovative traditional financial institutions. The triumph of Fintech, including crowdfunding services, is based on the constraints on access to traditional financing but also the rise in digital literacy amongst investors, first of all, retail investors of whom millennials have a noticeable proportion by today. The new generation prefers innovative, less-burdensome, and sustainable solutions, but on the other hand, smooth access to new financial services raises the issues of investor and client protection.

In the EU the investors of business crowdlending and equity crowdfunding, although limited to certain financial instruments, meet the safeguards provided by ECSPR, which follows the results of the research in this sector largely. Consumer crowdlending in turn has been shifted into separate legislation of CCD2. The current versions of the legislation leave the investors of consumer crowdlending in the gray area of regulation. Investors of crowdfunding platforms seek comparable safeguards for raising capital, despite the question, of who acts as the receiver of funds. The issues of transaction costs and informational asymmetries, also the prudential requirements of the crowdfunding service providers, including the management of operational risk and digital resilience gain importance irrelevant to the fundraising object. Considering the scope

of ECSPR, CCD2, and DORA, there may be some room for flexibility and consideration to open the Single Market to entities and instruments as widely as reasonable and serve the principle of the same risks, same rules in essence. Today CMU and the initiatives on digital finance are pieces of a much wider puzzle of digital and green transformation of the EU and stepping ahead in every section is the way to build up the true Common Market.

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