List of provisions for consumer protection

Type of provision	Lending platforms	Equity and/or Debt platforms
Maximum amount of investment for consumers on the platform	40.000 Euro	20.000 Euro
Maximum frequency of investing by consumers on the platform	Not more than 100 times	same
Spreading of risks	One time investment of 5.000 Euro should be spread over 3 or more projects	One time investment of 2.500 Euro should be spread over 3 or more projects
	Platform must inform consumers actively and continuously to spread their investments	same
	Platform must inform consumers only to invest a responsible amount of their income	same
Transparency	Platform must inform consumers actively and continuously about the risks of investing	same
	Platform must give full disclosure about the projects on the platform. All relevant financial information should be available.	same
	Platform must ensure all information on their website is clear and not misleading.	same
Risk management	Platform must have a policy to assess credit risks of the loans.	same
	Platform should give risk qualifications on the basis of debtor's capacity to pay off the loan.	same.
	Platform should give ranges of possible interest rates corresponding to the risks of the projects	same
	The maximum interest rate for a consumer credit is 15%	Not applicable
	Platforms must have a policy to prevent overextension of	Not applicable

	credit to consumers	

EU regulatory framework or local regulation applicable to CF platforms/portals within your jurisdiction

Lending based CF				
EU Directive	Applicable to			Local deviations from the directive (interpretation of the directive or local initiatives when exemptions apply)
	Borrower (1)	Lender (1)	Platform /portal (1)	
Payment Services Directive[1]	No	No	No/Depends	According to DNB the separate legal entity that works as an escrow account provides payment services, but because these services support the main activity this entity cannot be seen as Payment Service Provider.[2] Some platforms make use of a Payment Service Provider or Electronic Money Institution.
Banking Directive[3]	No		No	Not applicable. Crowdfunding platforms cannot be qualified as a bank or as an entity that is inviting repayable funds[4] because the platform doesn't bear credit risk.
Capital Requirements Directive[5]	No	No	No	See explanation banking directive
Consumer Credit Directive[6]			Depends	In case of peer to peer lending to consumers, rules regarding the intermediation in consumer credit are applicable.
Distance marketing of consumer financial service Directive[7]			Depends	In case of peer to peer lending to consumers, this regulation is applicable.
Anti Money Laundering Directive[8]			Depends	These rules apply to firms that intermediate in consumer credit, but don't apply to intermediaries in repayable funds.

[1] Directive 2007/64/EC on payment services in the internal market
[2] Article 2:3a FSA is not applicable because the payment service is not the main activity of a crowdfundingplatform
[3] Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions
[4] Article 3:5 FSA
[5] Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions
[6] Directive 2008/48/EC on credit agreements for consumers
[7] Directive 2002/65/EC concerning the distance marketing of consumer financial services

Other EU regulation applicable (please explain)			No	
Other local regulation when there is not harmonised EU regulation (please explain)				
Yes. In case of business loans, the AFM treats Crowdfunding platforms as an intermediary in repayable funds under the FSA[9]. For this activity an exemption of the AFM is needed (article 4:3 FSA). DNB is the supervisor on article 3:5 FSA with states that is forbidden to invite repayable funds. This article could be applicable on the legal entities that Crowdfunding platforms use as an escrow account. According to DNB collecting crowd money during the funding period is allowed if there is technical or organizational necessity to collect the money for a considerate amount of time.				
Are there any restrictions on the type of investor that may participate? (Retail vs Professional)[10]. Please explain.				
No. In the provisions on the permits and exemption we focus on consumer protection, but there is no restriction on platforms to offer their services only to professional investors.				
Do you observe any gap or limitation under the existing regulatory framework?				
Yes. The FSA was not written for an innovative concept like Crowdfunding. With legal creativity we found points of application in the FSA for the short term. However Crowdfundingplatforms are more than just intermediaries, because they supply two sides of the market. Whereas the more traditional intermediary only has one customer, being the investor (securities) or lender (loans). For the long term specific regulation for Crowdfundingplatform would be appropriate, in the shape of specific rules that are relevant for Crowdfunding activities instead of general rules that apply.				

Debt based CF				
EU Directive	Applicable to			Local deviations from the directive (interpretation of the directive or local initiatives when exemptions apply)
	Project owner (1)	Investor (debtholder) (1)	Platform /Portal (1)	
MiFID[11]			Yes	If the Crowdfunding platform intermediates in financial instruments, the platform will need a permit for reception and transmission of orders.
Prospectus Directive[12]	Depends		Depends	If the offer is made to the public and doesn't exceed 2,5 Million Euro this offer can be made without an approved

[8] Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing
[9] Article 4:3 FSA,
[10] Professional client means a client meeting the criteria laid down in Annex II of MiFID; Retail client means a client who is not a professional.
[11] Directive 2004/39/EC, MiFID.
[12] Directive 2003/71/EC on the prospectus.

				prospectus. Platforms have to state on their website that these kinds of offering are made without supervision of the AFM (= disclaimer)
UCITS Directive[13]			No	To our opinion debt based financial instruments will not fall under the provision of the AIFMD
AIFMD[14]			No	To our opinion debt based financial instruments will not fall under the provision of the AIFMD
Venture Capital Regulation[15]			No	This regulation is new to us and we haven't studied the impact on Crowdfunding yet.
Regulation on European Social Entrepreneurship Funds[16]			No	This regulation is new to us and we haven't studied the impact on Crowdfunding yet.
Payment Services Directive[3]			Depends	See our comments about the lending based model.
Capital Requirements Directive[4]			No	
Distance marketing of consumer financial service Directive[6]			Depends	In case of loans to consumers this regulation is applicable.
Anti Money Laundering Directive[7]			Yes	These rules apply to investment firms
Other EU regulation applicable (please explain)			No	
Other local regulation when there is not harmonised EU regulation (please explain)				
No. We use the existing regulatory framework for investment firms.				
Are there any restrictions on the type of investor that may participate? (Retail vs Professional.)[8] Please explain.				
No				
Do you observe any gap or limitation under the existing regulatory framework?				
Yes. An investment firm is something different than a Crowdfunding firm. The applied rules are not always relevant. At the market entry the demands are high. Not every firm will be able to meet this demands. This is very heavy permit and costly too.				

[13] Directive 2009/65/EC, UCITS.
[14] Directive 2011/61/EU on Alternative Investment Fund Managers.
[15] Regulation (EU) No 345/2013 on Venture Capital.
[16] Regulation (EU) No 346/2013 on European social entrepreneurship funds

Equity based CF				
EU Directive	Applicable to			Local deviations from the directive (interpretation of the directive or local initiatives when exemptions apply)
	Project owner (1)	Investor (shareholder) (1)	Platform /Portal (1)	
MiFID[9]			Depends	If the Crowdfunding platform intermediates in financial instruments, the platform will need a permit for reception and transmission of orders.
Prospectus Directive[10]	Depends		Depends	If the offer is made to the public and doesn't exceed 2,5 Million Euro this offer can be made without an approved prospectus. Platforms have to state on their website that these kinds of offering are made without supervision of the AFM (= disclaimer)
UCITS Directive[11]			Depends	In the case of intermediation in bonds or shares we will qualify this as an investment firm. In the case of a collective investment scheme our point of view is that UCITS is not applicable because investors own the project and invest labour.
AIFMD[12]			Depends	In the case of intermediation in bonds or shares we will qualify this as an investment firm. In the case of a collective investment scheme our point of view is that AIFM is not applicable because investors own the project and invest labour.
Venture Capital Regulation[13]			No	This regulation is new to us and we haven't studied the impact on Crowdfunding yet.
Regulation on European Social Entrepreneurship Funds[14]			No	This regulation is new to us and we haven't studied the impact on Crowdfunding yet.
Payment Services Directive[3]			Yes	See our earlier comments.
Capital Require-ments Directive[4]			No	
Distance market-ing of consumer financial service Directive[6]			Depends	In case of loans to consumers this regulation is applicable.

Anti Money Laundering Directive[7]			Yes	These rules apply to investment firms
Other EU regulation applicable (please explain)			No	
Other local regulation when there is not harmonised EU regulation (please explain)				
No.				
Are there any restrictions on the type of investor that may participate? (Retail vs Professional.)[8] Please explain.				
No.				
Do you observe any gap or limitation under the existing regulatory framework?				
Yes in the case of Crowdfunding with a collective investment scheme we don’t know our point of view is still in line with AIFMD regulation.				

Sources of risk

Risk	Agree? Yes/No; if no explain why	Mitigation of risks: What measures can be taken by the platform to mitigate these risks?
Money laundering	YES	This risk exists on both sides of the platform. Risk mitigation for the platform All payments have to be made via bank accounts, so that platforms can rely on the client identification procedures of banks. On the side of the borrower most platforms only admit people living in the Netherlands and with a Dutch nationality (18 years and older) or legal entities with a residence in the Netherlands. A copy of a passport is needed and in case of a legal entity also a copy of an abstract of the Chamber of Commerce. On the side of the lender there is bigger risk of money laundering, because most platforms only rely on the indirect client identification of banks. A way to mitigate this risk could be by asking more information from investors.
Fraud	YES	This risk always exist on the side of the borrower. After receiving the money from the escrow account of the platform a borrower can take the money and leave. To mitigate this risk all platforms do some due diligence to the background of persons or companies during the funding fase. We believe this risk is high concerning start ups, because of the non existence of a track record. According to some platforms crowd members function as eyes and ears for the platform and function as a second line of defence during the funding phase and post-crowdfunding phase. Some platforms have a chatroom functionality where information can be shared between lenders and borrower. We believe that the effectiveness of crowd due diligence will heavenly depend on the amount of money invested. Most fraud cases will be detected after funding and most platforms have to rely on the effectiveness of the in crowd detecting fraud, because of the low cost business model. If fraud is detected the platform has to do some effort to get the money back for the crowdmembers. The AFM demands that in all contracts the platform take responsibility and will undertake action on behalf of the crowd to get the money back.
Lack of transparency or misleading information	YES	Information asymmetry is a big risk looking at the theoretical incentives of a borrower and lender. Borrower wants money against a low interest rate and has an incentive to

		underestimate its own credit risk and therefore provide less information about risks. Lenders that lend small amounts of money don't want to do a time consuming due diligence or own risk assessment based on all relevant information available about the investment. The AFM demands that the platform will do a risk assessment and needs to have a thorough application process to ensure all relevant information for this risk assessment is made available by the borrower. Furthermore a platform has the obligation to verify all available information and must ensure the borrower will not give misleading information to the crowd on the website.
Unfair contract terms	YES/NO	All platforms constitute their own standardized contracts in which the offer is made clear and where unfair terms can be identified at the start. Borrower or lenders have no influence on the specific terms. The platform is never a contract party. In some cases it is possible to modify the contract after funding, but mostly all lenders have to agree on that. Most of the loan based contracts we have seen look alike and don't have unfair terms.
Difficulty to carry out correct valuation and due diligence	YES/NO	Most platforms do due diligence similarly to banks. Quantitative and qualitative criteria are used to make a good risk assessment. After funding a bank has better information about the payment behaviour of the borrower. All platforms do the administration of the payment of the loan back to the lenders. The AFM demands that investors ensure that the crowd is informed as soon as possible if signs of default arise..
Risks of project failure	YES	This risk is higher with equity and debt Crowdfunding then with Lending based crowdfunding. Especially financing start ups is risky business. The AFM demands that platforms have to make absolutely clear that investing in projects via Crowdfunding can be risky and that after project failure the money is gone. In the provisions on the permit or exemption all platforms must warn about the risks of investing and must advice investors to spread risks.
Higher costs for the borrower/project owner[17]	YES/NO	The AFM believes that the costs of getting a loan is lower than the more traditional way of financing: - The registration fee that is used to do a risk assessment is about 250 Euro and is similar to the fees asked by a banks or credit institutions. - The risk assessment procedures of banks are similar to that of the loan based Crowdfundingplatforms. - The interest rate payed by the borrower can be much lower than the interest rates for traditional bank loans. Especially for a borrower that can get a bank loan. All platforms use the same price setting mechanism. The level of the interest rate is dictated by the borrower and is not open for arbitrage by the crowd. The borrower defines its interest rate and the platform has the obligation to verify if this 'price offering' is a good reflection of the risk of the loan. At the moment there is no bidding structure that

[17] E.g., implicit costs, potentially additional layers of fees.

		enables the crowd to influence the interest rate. Overall fee's paid by the borrower to the platform differs per platform, but are lower than traditional ways of financing.
Counterparty risk	YES	The risk of default is especially high with Crowdfunding. It affects lenders directly but is also relevant for the platforms. On the product level equity will have more default risk than debt or lending products. In all models there is no guarantee money will be paid back to the crowd after default. There is no deposit guarantee scheme or a guarantee by the crowdfunding platforms. The risk of default is also very relevant for the platform because it want to uphold its reputation to old and new investors. <u>Mitigation of risks</u> - The impact of default risk can be mitigated for the lenders if they spread their investments and make sure not too much money is invested. At the moment the AFM threshold is a maximum of 40.000 Euro for Lending to consumers and a maximum of20.000 Euro for Debt models. - Another way to mitigate the risk of default is to ensure that lenders know of early signal of delays in payment so further steps can be taken to ensure the borrower will not default. At this moment there is no information about defaulted loans, so we cannot verify how well each platform did its due diligence and risk assessment. - It is not in the interest of platforms to publicize information about defaulted investments on their website. That is why all platforms must inform the AFM in a case of default.
Liquidity risk (e.g. limited exit options)	YES	For equity or debt securities there is no secondary market yet. So this risk is especially high for these kind of investments. On the other hands securities can be transferred to somebody else and therefore investors are able to sell them if necessary.
Operational risk	YES	All platforms have a low cost model and low fee structure. The success fee is a percentage of the

		amount of invested and the business model works the bigger the investments get. Most platforms need a couple of years to break even but the variable costs are low and consists of labour costs. Initial investments in IT infrastructure is about € 50.000/ The more processes can be standardized the easier it will be to make money. There is a risk that some crowdfundingplatforms will go bankrupt. <u>Possible mitigation</u> The AFM does not grant a license or exemption to a platform that hasn't got an escrow account or doesn't work with a payment service provider. All platforms should be able to continue the administration of loans after bankruptcy.
Others (explain)	YES	There are inherent risks of crowd dynamics from the more sociology point of view. - There is a theoretical risk of herding behaviour by crowd members especially concerning high risk investments. Early investors can influence the decisions of the herd and decision-making can be manipulated. - There are <u>low entry barriers</u> to start with a Crowdfunding website. If Crowdfunding gains popularity and profits will be made, dishonest market parties will try to free ride on this popularity and will set up fraudulent websites. - There is a more inherent risk to market places that serve two sides of the market and need network effects to become the most popular marketplace. We believe that only a few big Crowdfunding platforms will remain and the smaller ones will leave the market. - There is a thin line between advice and promotion of projects on the platform. Most crowdfundingplatforms promote successful funded projects to investors to gain new investors, but most projects haven't reach the end of their term yet. Promotion of ongoing investments could be misleading in itself. Crowdfunding platforms will gather a lot of data about their investors and will be tempted to use this data to match relevant projects. This may be treated as advice. - Crowdfunding platforms may also try to constitute a portfolio of project investments to attract more investors. The role of a Crowdfunding platform can become more ambiguous with up scaling services for investors. Comparison between different Crowdfundingplatforms will become an issue in the future for consumers.

What further steps could be envisaged, in terms of EU regulation or other reforms, to facilitate SME access to alternative sources of finance?
Would an EU regulatory framework help or hinder the development of this alternative non-bank sources of finance for SMEs? What reforms could help support their continued growth?

Several ways to improve the access of SMEs to finance could be thought of. SME bonds, SME funds, credit unions and crowd funding are examples of initiatives complementing traditional sources of finance.

Crowd funding and credit unions

In the Netherlands, several initiatives for the financing of SMEs through crowd funding and credit unions have been set up. Depending on their exact business model, a license of the Dutch financial market supervisors (the AFM and DNB) is required. We are not yet convinced of the desirability and need for (European) regulation of crowd funding/credit unions by formulating a completely new framework.

The main issue with promoting credit unions as financial intermediaries is in our view the applicable regulatory framework. While credit unions in the UK and Ireland are exempted from CRD, they are not in some other countries . The CRD framework is rather rigid in this respect: either it fully applies to an entity, or it does not. This creates an imbalance between the goals of financial stability (capital requirements) and the ability to provide capital. The Netherlands is currently investigating the creation of a supervisory framework in line with CRD but with specific attention to the characteristics of credit unions. At a European level it might be worthwhile to consider whether there should be a general exemption (of certain parts) within the CRD for alternative sources of SME funding such as credit unions.

Currently, we do not see a need to consider the creation of new, or the evaluation of existing EU regulation regarding alternative sources of finance (with the exception of the points mentioned above) as they are not a guarantee to the development of new markets. New phenomena like crowd funding, SME bonds and credit unions are inherently diverse and hard to define, which makes them hard to regulate ex ante. Small local initiatives (with little to no cross border activities) might best be regulated locally.