Review of Crowdfunding Regulation & Market Developments

"Unleashing the potential of Crowdfunding for Financing Renewable Energy Projects"

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I. Austria

1 Austrian market for RES Crowdfunding Platforms

Austria is among the leading nations in Europe in terms of renewable energy supply. Austria's energy policy aims to increase the use of renewable energy sources, and in particular biomass for heating, electricity generation, and transport fuel purposes through direct and consumer financial support, as well as tax exemptions, in support of its Climate Change Strategy. There has also been a rapid increase of wind power during the last years.

According to the EU directive 2009/28/EC Austria is obliged to increase the share of renewable energy sources in gross final energy consumption from about 24% to 34% by 2020. Austria will be relying on synergies between energy efficiency and renewable energy sources (*RES*) policies and measures in order to achieve its RES target of 34% of gross final energy consumption by 2020.
Despite the fact that Austria is among the leading nations in terms of renewable energy supply, this development is not reflected in the Austrian market for RES Crowdfunding platforms. While the European Crowdfunding volume is increasing and it is becoming an important source of capital for start-ups and SMEs, the Austrian market for alternative financing is rather small. Different platforms exist for crowd-donation, crowd-sponsoring as well as crowdinvesting but the total volume is still below the European average. In 2014 Austrian platforms for alternative financing helped to raise a total of EUR 3.6 million.

Whereas a first Crowdfunding platform started in Austria in 2010, until now – as far as can be seen – at least seven Crowdfunding platforms (www.1000x1000.at, www.conda.at, www.crowdcapital.at, www.greenrocket.at, www.inject-power.at; www.neurovation.net and www.respekt.net) have been established.

1.1 RES Crowdfunding Platforms in Austria

The Austrian market for RES Crowdfunding platforms is almost non-existent, Green Rocket is the only Austrian Crowdfunding platform specialised on crowdinvesting campaigns for businesses ideas for sustainable projects in the future topics energy, environment, mobility and health. Basically, the platform is hosting crowdinvesting campaigns for start-ups, first-stage business and for established firms. Furthermore, Green Rocket also offers equity-based Crowdfunding where individuals make investments in return for a share in the profits or revenue generated by the RES project. Their mission is to discover and push the best start-ups and businesses in the field of sustainable innovation.
The platform was founded in 2013 and is itself still in a start-up phase. In 2014 seven projects were funded with an investment sum of EUR 1.12 million.

1.2 RES Projects – different investment models

Due to the fact that there are hardly RES Crowdfunding platforms operating in Austria, most of the RES projects are financed with the support of local citizens through so called participation models or projects ("**Citizen Participation Model**" – *Bürgerbeteiligungsmodell*).

Current methods for financing RES projects include private equity, silent partnerships according to § 179 UGB (*Unternehmensgesetzbuch - UGB*), purchase communities, loan constructions, participating certificates (*Genussscheine*) and issue of bonds.

The most frequently used investment models for RES Crowdfunding platforms and RES projects include the following models:

1.2.1 The Equity Model (individuals make investments in return for a share in the profits or revenue generated by the company/project)

The Equity Model is one of the most important ways for people to invest in RES projects. The only Austrian RES Crowdfunding platform Green Rocket also offers an equity-based Crowd-funding model. Investment either implies taking part in profit and loss (e.g. as a shareholder of capital companies or companionships), or taking part in profits only, under the exclusion of sharing losses (e.g. with some kinds of silent partnerships).

Looking at the Equity Model, one can find Crowdfunding platforms which are active in the business of investment broking and/or contract broking and do not obtain any license in the sense of the Federal law on Banking (*Bankwesengesetz – BWG*). They operate outside the prospectus regime and must therefore comply with the legally defined exemptions (for more details see section 3.2 hereof). The main field of the aforementioned Crowdfunding platforms works with the model of silent partnerships.

On the other hand, some Crowdfunding platforms operate within the scope of regulation especially of the Federal Law on Banking. Those platforms offer a trade market for security papers (*Wertpapiere*) or investment products (*Veranlagungen*) and therefore have to obtain a licence for financial services under the Banking Act. Entrepreneurs issuing security papers (*Wertpapiere*) or investment products (*Veranlagungen*) to investors by means of a public offer can be subject to a prospectus requirement approved by Financial Market Authority according to the Capital Market Act (*Kapitalmarktgesetz – KGM*). Moreover, certain investment services might require a license of the Financial Market Authority in the sense of the Federal Law on the Supervision of Securities (*Wertpapieraufsichtsgesetz 2007 – WAG 2007*).

1.2.2 The Purchase Model

Some RES projects, especially so-called "citizen-powerplants" (*Bürgerkraftwerke*), are based upon a sale-and-lease-back-model. Citizens buy single parts of a facility (e.g. cells of a solar power station) and lease it back to the operating company.

As a principle, the conclusion of respective purchase and lease contracts is neither subject to a licence according to the Federal Act on Banking or the Federal Law on the Supervision of Securities, nor to any securities prospectus requirements.

1.2.3 The Lending Model (individuals lend money to a company or project in return for repayment of the loan and interest on their investment)

Some RES projects offer loans (*Darlehen*) or subordinated loans (*Nachrangdarlehen*). Hence, individuals lend money to a RES project, which in the end returns money with interest to the lender. In this model, the investor does not share liability for any losses.

Such loans or subordinated loans can, under certain circumstances, fall under the definition of the commercial acceptance of foreign funds for management or as deposits (deposit business; *Einlagengeschäft*) and therefore require a license of the Financial Market Authority (*Finanzmarktaufsicht – FMA*).

Bonds are another possibility to receive money from investors. Bonds in general do not require a licence according to the Federal Law on Banking or the Federal Law on the Supervision of Securities, if marketable bearer bonds or registered bonds are issued.

1.2.4 The Donations or Rewards Model (individuals provide money to a company or project for benevolent reasons or for a non-monetary reward)

The Donations or Rewards Model is mainly used to finance social, charity or creative projects or companies. Monetary returns are not envisaged for investors who fund projects or companies and they either get no return at all or a non-monetary reward (e.g. tickets or other rewards of a rather symbolic value).

2 Recent regulatory developments regarding Crowdfunding regulation in Austria

During the last years, crowdinvesting has been subject of broad public discussion in Austria. Starting point was the case of a SME whose founder got prosecuted and fined by the Financial Market Authority after raising money to increase his production capacity. This debate led to passing of a specific crowdinvesting act, so called **Alternative Financing Act** (*Alternativ Finanzierungsgesetz - AltFG*) and to an alteration of the existing Capital Market Act (*Kapitalmarktgesetz - KMG*) in summer 2015. The Alternative Financing Act specifically ad-dresses crowdinvesting.

The Austrian Alternative Financing Act established the legal basis for the financing of SMEs (small and medium-sized enterprises) through Crowdfunding and citizen participation models. In addition, it created a legal framework for the operators of Crowdfunding platforms. The aims of the Alternative Financing Act and the Capital Market Act are to increase the innovative potential of crowdinvesting for start-ups and to protect the investors.

The Alternative Financing Act applies to SME's which have fewer than 250 employees and either generate annual turnover of no more than EUR 50 million or with an annual balance sheet totalling not more than EUR 43 million. The new law significantly increased the maximum issue volume currently admissible without issuing a capital markets prospectus, raising it from EUR 250.000 to EUR 1.5 million, thereby enabling the financing of larger investment projects. According to the Alternative Financing Act, investments over EUR 5 million raised over a seven-year observation period will trigger the need to publish a prospectus. The new law covers shares, bonds and business shares in capital companies and cooperatives, as well as profit participation rights and silent partnerships. Donations do not fall under the new law. Shares and bonds offered to the public with a total consideration of no less than EUR 250.000 and no more than EUR 1.5 million are covered by special rules, namely the prospectus obligation "light".

In order to improve investor protection, individual investments are generally limited to a maxi-mum of EUR 5.000 per project, only professional investors are exempt from the limitation. The new law also implemented broad information requirements vis-à-vis investors including disclo-sure of information on the business, the alternative financing instrument, the current annual accounts and the business plan. This information must be verified by an expert, for example an attorney or notary, as the Financial Market Authority does not have any competence of verification.

In order to reduce the high risk investments related to Crowdfunding, the Alternative Financing Act implemented new regulations for operators of a Crowdfunding platform. Operators must either hold trade licences entitling them to act as financial advisers for investment transactions or investment service providers (for transactions in alternative financing instruments under the Securities Supervision Act (*Wertpapieraufsichtgesetz - WAG*) or be in possession of a licence issued by the Financial Market Authority. Furthermore, operators are obliged to take out third party liability insurance and to adopt measures to prevent money laundering and the financing of terrorism.

3 Further recent regulatory developments considering RES Projects market in Austria

In 2002, the Green Electricity Act (*Ökostromgesetz - ÖSG*) was adopted to transpose the EU-Renewable Directive into national law, implementing for the first time a nationwide consistently feed-in system for electricity from renewable energy sources. Due to the latest amendment, Green Electricity Act 2012 (*Ökostromgesetz 2012 – ÖSG 2012*), the annual total subsidies amount for new green electricity generation facilities increased from EUR 21 million to EUR 50 million.

Due to strong linkages between the Austrian and the German electricity market, Austrian experts expect that new laws will be passed in the near future as a consequence of the implementation of the new German Renewable Energy Act (*Erneuerbare-Energien-Gesetz*) on 31 December 2014.

At the beginning of 2015 the National Energy Efficiency Act (*Bundes-Energieeffizienzgesetz - EEffG*) came into force in Austria. Its objectives are to increase energy efficiency in Austria by 20 % by 2020, improve the security of supply, promote the use of renewables, reduce green-house gas emissions and at the same time stimulate the economy. Since January 2015 large corporations - over 250 employees or with an annual turnover of at least EUR 50 million - have been required to conduct an energy audit every four years and install an energy management system. These regulations will increase energy efficiency and reduce energy costs in the long term.

4 Regulation of Crowdfunding in Austria

4.1 Licence under the Federal Law on Banking and the Federal Law on the Supervision of Securities

4.1.1 Equity Model

Investment Services, Noncore Investment Services, Financial Instruments and Assessments

According to § 5 of the currently implemented Alternative Financing Act, operators of a Crowd-funding platform must hold trade licences entitling them to act as financial advisors for investment transactions or investment service providers (§ 4 par 1 Securities Supervision Act). This new regulation is applicable if the provided alternative investment instruments fall under § 1 Z 6 of the Securities Supervision Act.

The Federal Law on the Supervision of Securities rules investment services (*Wertpapierdienstleistungen*), noncore investment services (*Nebendienstleistungen*), financial instruments (*Finanzinstrumente*) and assessments (*Veranlagungen*). As to Crowdfunding models, especially the terms of financial instruments and assessments matter:

- Financial instruments, amongst others, are shares in transferable securities and instruments (e.g. stocks, certificates, loans).

- Assessments are, amongst others, uncertificated property rights, which serve as a direct or indirect investment for several investors, who bear – either alone or together with the issuer – the risk, and provided that investors do not manage the property rights (e.g. un-certificated holdings, limited partner participation, closed-end funds).

The Federal Law on the Supervision of Securities contains organizational requirements as well as good conduct rules, in which the latter can apply either directly or indirectly (which means an applicability to services, which in general do not fall under the regime of the Federal Law on the Supervision of Securities). For any services, which fall under the regime of the Federal Law on the Supervision of Securities, the Financial Market Authority is the competent controlling institution, whereas the Trade Office

(*Gewerbebehörde*) is competent for any services, which fall up-on the regime of the Federal Law on the Supervision of Securities indirectly (e.g. for commercial property consultants that solely convey assessments).

According to the Federal Law on the Supervision of Securities, the commercial provision of the following investment services requires a license of the Financial Market Authority:

- rendering of investment advice in relation to financial instruments;
- portfolio management by managing portfolios for individual customers with a discretion under a power of attorney of the customer, unless the customer portfolio contains one or more financial instruments;
- acceptance and transmission of orders in relation to subjects of one or more financial instruments;
- operating a multilateral trading facility.

Hence, the above mentioned services can only be rendered if either a discrete licence of the Financial Market Authority exists or one cooperates with a securities company or a credit institution as an auxiliary person.

Protection of Investors

The Federal Law on the Supervision of Securities contains provisions regarding the protection of investors. In order to avoid any liability of the operator of a Crowdfunding platform for investors' possible losses, it should be considered not to raise investors' false expectations. Services of the operator of a Crowdfunding platform should be restricted to the acceptance and forwarding of orders of customers (execution-only-orders).

Other investment services

The right to provide other investment services and ancillary services than mentioned above under the heading Investment services, noncore investment services, financial instruments and assessments by companies established in Austria's national territory is governed by the Federal Law on Banking. The latter rules the business of credit institutions and financial institutions, which, in principle, requires a license of the Financial Market Authority.

Also, the commercial assignment of credits and financing is subject to the Federal Law on Banking, whereas the commercial investment counselling is subject to the Trade Law (*Gewerbeordnung – GewO*) and also comprises the procurement of participations, loans and invest-ments. Such activities have to be dissociated from so-called

loroemissions (*Loroemissionsgeschäft*), i.e. the adoption of the placement of emissions of third parties, which are re-served to credit institutions.

Summary

To sum up, according to the Alternative Financing Act operators of a Crowdfunding platform need to obtain a licence of the Financial Market Authority if the provided alternative instruments are covered by § 1 Z 6 of the Securities Supervision Act. If other investment services and ancillary services than covered by the Federal Law on the Supervision of Securities are provided the Federal Law on Banking might apply.

4.1.2 Lending Model

In a startling administrative proceeding, the Financial Market Authority ruled that commercial collection of loans on the basis of standardized loan agreements by a company, which uses such loans for the financing of its on-going business and pays these loans back with interest after a definite period, falls within the scope of section 1 subsection 1 figure 1 of the Federal Law on Banking and is therefore a commercial acceptance of foreign funds for management or as deposits (deposit business; *Einlagengeschäft*), a business reserved to credit institutions and requiring a license of the Financial Market Authority (FMA UB0001.200/0017-BUG 2012). The Constitutional Court (*Verfassungsgerichtshof – VfGH*) refused to handle a complaint against the aforementioned decision (B 54/13-11). Therefore the Higher Administrative Court (*Verwaltungsgerichtshof – VwGH*) had to handle the complaint; the Higher Administrative Court rejected the complaint and affirmed the decision of the Financial Market Authority (Zl. 2013/17/0242-10).

By contrast, the emission of loans or subordinated loans does not constitute an assessment in the sense of the Federal Law on the supervision of securities.

4.1.3 Donations or Rewards Model

Depending on the structure in detail, there are good reasons to state that these kinds of in-vestments do not qualify as assessment products (*Veranlagungen*) and therefore should usually fall outside the jurisdiction of the Federal Law on Banking.

4.2 Prospectus Requirements

4.2.1 General Rule

Entrepreneurs issuing security papers (*Wertpapiere*) or investment products (*Veranlagungen*) to investors by means of a public offer can be subject to a prospectus requirement, namely a requirement to publish a prospectus approved by the Financial Market Authority.

The legal basis for publicly offering security papers or investment products for sale is the Capital Market Act (*Kapitalmarktgesetz – KGM*). In addition, EU Regulation Nr

809/2004, as amended, establishes the legal framework for drawing up prospectuses for investments. If the prospectus includes securities for admission to the stock exchange the Stock Exchange Act (*Börsegesetz – BörseG*) also applies.

A "*public offer*" is a notification to the public in any form and distributed in any way, which contains sufficient information on the conditions of the offer to allow an investor to decide whether or not to buy or subscribe to the securities or investments. The operator of a Crowdfunding plat-form is not usually subject to such a prospectus requirement, provided that he, or she, will not be responsible for the "*public offering*". However, if the operator of a Crowdfunding platform merchandises the Crowdfunding project via a website and hereby makes a public offer, a pro-spectus might have to be published. Only a simplified prospectus (*prospectus requirement light*) is required for an issue volume of between EUR 1.5 Million and EUR 5 Million. The obligation to publish a complete capital market prospectus now applies starting with an issue volume of EUR 5 Million.

Depending on the structure, subordinated loans do not generally constitute assessments under the Capital Market Act and therefore no prospectus might be required. The same should apply to investments where individuals provide money to a company or project for benevolent reasons or for a non-monetary reward (Donations or Rewards Model).

4.2.2 Exceptions from Prospectus Requirement

The general prospectus requirements do not apply in exceptional cases exhaustively named in section 3 of the Capital Market Act, amongst others for offering security papers or investments products in the European Union for a total consideration of less than EUR 250.000,--, calculated over a period of twelve months.
The recently implemented Alternative Financing Act and the alteration of the existing Capital Market Act significantly increased the maximum issue volume currently admissible without issuing a capital markets prospectus, raising it from EUR 250.000 to EUR 1.5 Million.

4.3 Possible Regulation of Crowdfunding Platforms under the AIFMD Regime in Austria

4.3.1 Status of AIFMD Implementation

Austria implemented the European Alternative Investment Fund Managers Directive (*AIFMD*) by the Alternative Investment Funds Manager Act (*Alternative Investmentfonds Manager-Gesetz – AIFMG*).

The AIFMG is heavily based on the AIFMD and in some parts corresponds literally to the AIFMD. Contrary to the AIFMD, the AIFMG also provides the legal possibility to market alternative investment funds to private customers. On August 1st, 2014, the legal situation hereof has changed by an additional insertion of a definition of a qualified private customer ("*qualifizierter Privatkunde*"), who have to fulfill certain

criteria (e.g. minimum investment EUR 100,000 in an Alternative Investment Fund). Hence, § 48 (applicable to Austrian managers of Alternative In-vestment Funds) and § 49 AIFMG (applicable to foreign managers of Alternative Investment Funds) now contain specific regulations regarding the distribution to private customers as well as to qualified private customers.

4.3.2 Definition of an Alternative Investment Fund

The scope of the AIFMD is a broad one: The AIFMD is aimed at the managers of Alternative Investment Funds (*AIFM*). The AIFMD is applicable when either the alternative investment fund is authorized pursuant to relevant national law in a member state or its registered office or head office in a member state and / or the manager of an Alternative Investment Fund (*AIF*) has its registered office in the European Union. As defined in the AIFMG, an Alternative Investment Fund is any organ for a collective investment undertaking which,

- on the basis of a stipulated portfolio strategy
- raises capital from a number of investors
- with a view to investing it in accordance with a defined investment policy
- for the benefit of those investors
- as long as the money collected does not directly serve for operational activities.

However, any organs that require a permit under the Directive 2009/65/EC (UCITS), is excluded from the definition of an alternative investment fund.

In its brochure "*Frequently asked questions regarding the applicability of the AIFMG*" dated February 10, 2015, the Financial Market Authority clarifies that the examination of the question, whether an organ is to be classified as an AIF, must in any case be done on an individual basis, taking regard to the structural and content factors and not the pure form of an organ, whereas the crucial point is the structural and content condition and not the pure form of an organism.

4.3.2.1 Company Seeking Funding

As stated above, the AIFMG does not apply if money collected does directly serve for operational activities.
Companies seeking funding by means of a Crowdfunding platform could only be operating companies outside the financial sector if

- their business strategy is simply the commercial success of their business,

- they do not intend to follow any defined investment policy, but want to finance their on-going day-to-day business, and

- they operate the facility, production or project themselves within their day-to-day business.

In general, these requirements are met by the typical start-up or developing company seeking funding for its general commercial business by means of a Crowdfunding platform, so that those companies mentioned before should usually fall outside the scope of the AIFMG.

As there are no consistent European guidelines regarding the term of an Alternative Investment Fund, the Financial Market Authority acclaims that, if it is located in the legal interests of a party, it is possible to obtain a notice of assessment (*Feststellungsbescheid*) by the Financial Market Authority on the issue whether an operating company is an Alternative Investment Funds or not. Finally, it has to be noted that Alternative Investment Funds are facilitated when the assets acquired through leverage do not exceed a total of EUR 100 million. or total assets do not exceed EUR 500 million. ("*de minimis-barrier*"). Although such Alternative Investment Funds must be registered with the competent authority, the other conditions regarding the licensing do not apply to those funds, which fall below this amount's specified limits.

4.3.2.2 Project Company Seeking Funding

Equity Model

Although neither the AIFMG, nor the explanatory notes hereto, nor the Financial Market Author-ity or courts have dealt with this question, we assume that, following the notion of the German BaFin relating to the comparable German law, companies cannot qualify as *operating companies* if they are established as a "project company" to finance a single project and do not operate the facility or production themselves.

Accordingly, it cannot be excluded that this kind of "Project Company" might constitute an AIF within the meaning of the AIFMG, if it seeks funding in return for a share in the profits or revenue generated by the project.

Lending Model

A subordinated loan ("*Nachrangdarlehen*") should generally be capable of being structured as a non-AIF investment, provided that the investor does not share liability for any losses. However, this issue has not been dealt with by the AIFMG, nor the explanatory notes hereto, nor the Financial Market Authority or courts.

Donations or Rewards Model

Some of the Project Companies do not offer any kind of revenue, but instead return non-financial rewards. Although neither the AIFMG, nor the explanatory notes hereto, nor the Financial Market Authority or courts have dealt with this question, we assume that, in the latter case it can be argued that the funds are not invested *for the benefit of those investors* and the funding therefore contains no collective investment undertaking and no alternative investment funds.

4.3.2.3 Crowdfunding Platform

As a general rule, since the operator of a Crowdfunding platform does not raise capital from investors for his or her own business, it should not qualify as an Alternative Investment Fund. Even if the underlying investment qualifies as an Alternative Investment Fund there are persuasive reasons to state that the Crowdfunding platform does not "*manage*" this underlying in-vestment, but that the Crowdfunding platform merely arranges investment into it. The manager of the Alternative Investment Funds is typically the company seeking funding by means of the Crowdfunding platform.

To sum up, there are sound arguments that a Crowdfunding platform in general should not qualify as an Alternative Investment Fund in the sense of the AIFMG.

4.4 Licence under the Payment Services Supervision Law

A transfer of funds between investors and the operator of a Crowdfunding platform can constitute remittance services (*Zahlungsdienste*) in the sense of the Payment Services Act (*Zahlungsdienstegesetz – ZaDiG*). Such a transfer of funds could occur if the investors pay their investment amounts to the operator of the Crowdfunding platform, who passes the funds on to an entrepreneur.

The Payment Services Act provides for various legal institutes, which are excluded from the applicability of this law; this applies, amongst others, to commercial agents (*Handelsagenten*). Under various circumstances, especially provided that the operator of a Crowdfunding platform has the authorisation to negotiate, or negotiate contracts, on behalf of the funder and the fund seeker, the operator of a Crowdfunding platform may be regarded as a commercial agent.

As an alternative – in order to avoid licensing requirements – the operator of a Crowdfunding platform could use an external provider or partner for processing payments instead of acting as an intermediary himself.

4.5 Possible Additional Regulations

Other common regulations to which the operator of a Crowdfunding platform may be subject include:

- Trade Law;
- Act on Supervision of Securities;

- Consumer Credit Regulation (*Verbraucherkreditgesetz – VKrG*);
- Consumer Protection Act (*Konsumentenschutzgesetz – KSchG*).

5 Regulation of RES Projects in Austria

5.1 Overview

There is no general definition of renewable energy sources in Austria. An incomplete definition is contained in the Federal Electricity Act (*Elektrizitätswirtschaftsorganisationsgesetz - ElWOG*) of 1998/2000. It declares in Article 40 that electric installations operating on the basis of specifically listed renewable energy sources – i.e. solid or liquid biomass, biogas, landfill and sewage treatment plant gas, geothermal energy, wind and solar energy – are to be recognised as eco-electric plants. This also applies to hybrid plants which co-fire a high share of biogenic material, but specifically not to installations burning waste or sewage sludge. Obviously electricity from hydro-electric plants is also considered as renewable energy for certain purposes, but only "small" hydro plants are eligible for special treatment.

Austria's climate policy is based on two main documents, the Climate Change Strategy and the National Allocation Plan (*NAP*), regulating the allocation of emissions to the trading sectors in Austria. In addition, most of the Austrian federal provinces have adopted their own regional climate change programmes, taking into account specific regional circumstances, needs and areas of competence.

Although the share of renewable energy is relatively high in Austria across the heating, electricity and transport sectors, renewable energy growth has been slow over the last few years, despite the country's hydropower and biomass potential. The reasons for this can be traced back to amendments in the Green Electricity Act (*Ökostromgesetz - ÖSG*). The Austrian Government supported green electricity via the adoption of the first Green Electricity Act in 2003. However, several amendments to this act in the following years reduced the yearly growth rates in the renewable electricity sector. The implementation of an annual "*financial support volume cap*" led to reduced investments in RES technologies. Many projects were delayed because of this maximum financial support cap. The Green Electricity Act was finally positively amended in 2012.

Austria is a forerunner in the use of RES in the rail sector with 97% of the electricity currently used by the Austrian railway company Österreichische Bundesbahnen (*ÖBB*) being generated by RES, mainly from hydropower. What's more, ÖBB intends to increase the share of electricity from photovoltaics (*PV*) by feeding it directly into the rail network.

Regarding the use of RES in the heating sector, Austria is in a favourable starting position with a more than 30% share of RES and with its long-term strategy of constantly reducing the country's heat demand.

Faster development of RES in Austria is hindered by the fact that the targets formulated in the National Renewable Energy Action Plan (*NREAP*) are not ambitious enough, though they are in line with Austria's target of 34% RES by 2020.

In general, renewable energy policy is divided in three main sectors:

- Electricity;
- Heating & Cooling; and
- Transport.

The most important codes containing renewable energy regulation are the Green Electricity Act 2012 (*Ökostromgesetz 2012 - ÖSG*), the Green Electricity Regulation 2012 (*Ökostromverordnung 2012 - ÖSVO*), the Climate Protection Act (*Klimaschutzgesetz - KSG*), the Energy Efficiency Act (*Bundes-Energieeffizienzgesetz - EEffG*), the Climate and Energy Fund Act (*Klima- und Energiefondsgesetz - KLI.EN-FondsG*) and the Environmental Support Act (*Umweltförderungsgesetz - UFG*).

5.2 Electricity

In Austria, electricity from renewable sources is supported mainly through a feed-in tariff regulated by the Green Electricity Act 2012, whereas constructions of photovoltaics installations on buildings and small or medium-sized hydroelectric power stations are supported through subsidies.

Electricity from renewable sources is granted access to grid according to the general legislation on energy and according to non-discriminatory principles. According to § 20 of the Electricity Sector Act 2010 (*Elektrizitätswirtschafts- und –organisationsgesetz 2010, EIWOG*), electricity from renewable sources must be given priority transmission when grid capacity is not sufficient to meet all requests for use of the grid. Grid operators are obliged by national law to operate, maintain and develop the grid. In doing so they shall consider economic conditions as well as the protection of the environment *(§ 40 EIWOG*). Neither the national nor the regional laws, however, define a specific obligation to develop the grid in order to enable the deployment or the integration of RES electricity. Therefore, the Austrian legal framework provides no instrument that would enable the regulator to take future RES deployment as a specific objective into account when regulating tariffs.

Electricity from renewable sources is supported through four main means of support, the Feed-in tariff (*Green Electricity Act 2012*), Subsidy I (*Investment Subsidy for Hydro*),

Subsidy II (*In-vestment Subsidy for offgrid installations*) and Subsidy III (*Investment subsidy for small PV*).

As mentioned before, in Austria electricity from renewable sources is supported mainly through a feed-in tariff, which is set out in the Green Electricity Act 2012. The concrete feed-in tariffs have to be determined each year by a decree from the Ministry of Economics. The operators of renewable energy plants are entitled against the government purchasing agency, the so-called Clearing and Settlement Agency (*Ökostromabwicklungsstelle*), to the conclusion of a contract on the purchase of the electricity they produce. The second party obliged to satisfy a claim for the feed-in tariff are the electricity traders, who are obliged to purchase the quantities of electricity assigned to them by the Clearing and Settlement Agency at the transfer price set by § 40 of the Green Electricity Act 2012. In general, all renewable electricity generation technologies are eligible for the Austrian-feed-in tariff. However, the plant must be registered as a "*green electricity plant*" (*Ökostromanlage*) according to § 7 of the Green Electricity Act 2012.

The construction of small and medium-sized hydro-electric power stations is subsidised by in-vestment grants (*Subsidy I*). The legal basis of these grants is the Green Electricity Act 2012 in conjunction with the applicable subsidy directive. The funds available for small hydro-power plants are limited to EUR 14 million *(§ 26 par 2 Green Electricity Act 2012*), while funds for medium-sized hydro-power plants amount to EUR 50 million *(§ 27 par 2 Green Electricity Act 2012*).
In addition to the feed-in tariff, an investment subsidy is granted for offgrid installations that generate electricity from renewable energies for the purpose of self-supply (*Subsidy II*). Furthermore, subsidies are also granted for small PV installations (*Subsidy III*). In contrast to the tariff, subsidies are available for small and medium-sized hydro-electric power stations only.

In Austria, there is no single certification programme for renewable energy installations. How-ever, RES installations must meet certain quality standards in order to be able to be entitled to promotion. These quality criteria are established by the Austrian Standards Institute in the form of Ö-Normen (Austrian standards). The most important laws containing regulations are the Heating and Cooling Network Expansion Act (*Wärme- und Kälteleitungsausbaugesetz - WKLG*) and the Environmental Support Act (*Umweltförderungsgesetz - UFG*).

5.3 Heating & Cooling

Heating and cooling from renewable sources is supported through an incentive scheme on the level of the individual federal states (*Bundesländer*). District heating networks are managed at local level by the individual heat supply companies. Basically, there is no federal regulation providing a legal framework for the connection of RES heating plants to the heating grid. There-fore, the connection to the grid is based on the individual contract with the district heating supply company.

The most substantial form of supporting small-scale RES heating and cooling is provided by the Environmental Assistance in Austria (*Umweltförderung im Inland - UFI*) which is based on the Environmental Support Act. There are special investment incentives for solar thermal installations, heat pumps, geothermics and biomass heating plants. The Environmental Support Act provides for the general support of schemes to protect the environment and is divided into several fields of action. In principle, the investment grants for measures supporting the use of energy from renewable sources in the heating and cooling sector differ according to technology. Support within the Environmental Assistance in Austria is directed primarily at natural or legal persons registered on the territory of Austria (*§ 26 par 1 of the Environmental Support Act*).

While renewable energy measures in industrial and commercial buildings are mainly supported at federal level through the Environmental Support Act, measures for residential buildings largely fall within the sphere of competence of the federal states. There are investment incentives for the integration of RES in order to reinforce the small-scale regional heat supply in rural areas as well as the expansion of district heating in urban centres. Relevant statutory provisions include the Heating and Cooling Network Expansion Act (*Wärme- und Kälteleitungsausbaugesetz - WKLG*) and the Environmental Support Act (*Umweltförderungsgesetz - UFG*).

5.4 Transport

A key policy objective in the transport sector is to comply with the EU Renewable Energy Directive of 2009, which set a target that all member states should derive 10 % of their fuel from renewable sources by 2020. The EU Renewable Energy Directive is implemented through the Fuel Ordinance (*Kraftstoffverordnung*). Austria has also passed legislation to improve the energy efficiency of its transport sector through a CO2-based tax on new cars and passenger car registration tax is based on CO2 emissions. Taxes on fuels and on the purchase of vehicles as well as road pricing are the main factors to influence the financial framework for motorised transport. The road pricing for trucks was introduced in 2004. Since 2007, taxes on diesel and gasoline and the purchase tax on cars have been determined according to ecological criteria. The purchase tax on cars (*Normverbrauchsabgabe - NoVA*) depends on fuel consumption. In 2008, this tax system has been amended with a bonus/malus system where cars with relatively low CO2 emissions get tax breaks and cars with higher CO2 emissions have to pay a higher purchase tax.

The main support scheme for renewable energy sources used in transport is a quota system. This scheme obliges companies importing or producing petrol or diesel to ensure that biofuels make up a defined percentage of their annual fuel sales. In addition, biofuels are supported through a fiscal regulation mechanism. Petrol and diesel from a minimum content of 4.6 % respectively 6.6 % of biogenic material are subject to a lower mineral oil tax. Mineral oil solely from biogenic material and E 85 (*environmental-friendly fuel*) are exempt from this tax.

"*klima:aktiv*", the national programme for climate protection, contains seven sub-programmes in the field of transport promoting climate and environmentally friendly mobility, for example, in the areas of e-mobility, eco-driving, cycling, and demand-oriented public transport.

The most important codes for promoting renewable energy in the transport sector include the Fuel Order (*Kraftstoffverordnung 1999*), the Mineral Oil Tax Act (*Mineralölsteuergesetz 1995 - MOeStG*) and the Bioethanol Blending Order (*Bioethanolgemischverordnung 2007*).

6 Conclusion

In conclusion, Crowdfunding is regulated extensively in Austria as a cross-sectional matter. In 2015, the first law was introduced serving as legal basis tailored to needs of Crowdfunding. Similar to Crowdfunding, the current regulatory framework for RES projects in Austria is com-posed of several laws including renewable energy regulations as well as general building and environmental laws. In general, RES projects are divided in three main areas including electricity, heating & cooling and transport.

The main tools of funding RES projects include private equity models, silent partnerships, purchase communities, loan constructions and participating certificates (*Genussscheine*). Despite the fact, that Austria is among the leading nations in Europe in terms of renewable energy sup-ply, Austria's market for RES Crowdfunding platforms is almost non-existent.

The newly implemented Alternative Investment Act might be an efficient tool to foster economic growth but Austrian investors are rather conservative and it is doubtful if the newly implemented law will stimulate new investments. The key to increase the market for RES Crowdfunding plat-forms would be the establishment of a sound legal framework which will enable start-ups and SMEs to fund their projects via the crowd in an effective manner.

As the Alternative Financing Act is only 6 months in force, it is too early to assess its impact on Crowdfunding in general and RES Crowdfunding in particular.

7 Summary – Crowdfunding and RES Projects Regulation

Country / **Summary**	**Austria**
Recent developments in Crowdfunding regulation	• Crowdfunding is regulated extensively in Austria as a cross-sectional matter. • The Alternative Financing Act specifically addressing crowdinvesting was passed in summer 2015. This law established the legal basis for the financing of SMEs

	through Crowdfunding and citizen participation models. In addition, it created a legal framework for the operators of Crowdfunding platforms.
Current Crowdfunding Regulation	
General regulation	• If a Crowdfunding platform offers securities or investment products, the operator of the platform provides **financial services in the sense of the WAG 2007** → the commercial provision of various investment services requires a license from the FMA → Alternatively, the operator of a Crowdfunding platform can cooperate with a securities company or a credit institution as an auxiliary person. • The commercial collection of loans, which finance the on-going business, can constitute a deposit **business in the sense of the BWG** → such business is reserved to credit institutions and requires a license of the FMA. • Depending on the structure in detail: sound arguments argue that contributions under Donations/Rewards Model do not constitute investment products. • In order to reduce the high risk investments related to Crowdfunding, the **Alternative Financing Act** implemented new regulations for operators of a Crowdfunding platform. Operators must either hold trade licences entitling them to act as financial advisers for investment transactions or investment service providers or be in possession of a licence issued by the FMA. • In order to improve investor protection, individual investments are generally limited to a maximum of EUR 5.000 per project. • Operators are obliged to take out third party liability insurance and to adopt measures to prevent money laundering and the financing of terrorism.
Prospectus	• Prospectus requirement according to the BWG for the

requirement	public offering of **securities** or **investment products**. If the prospectus includes securities for admission to the stock exchange, also the KMG can apply. • The general prospectus requirements do not apply in exceptional cases, inter alia for offering security papers or investments products within the European Union for a total consideration of less than EUR 250.000,--, calculated over a period of twelve months. • The Alternative Investment Act significantly increased the maximum issue volume currently admissible without issuing a capital markets prospectus, raising it from EUR 250.000 to EUR 1.5 million, thereby enabling the financing of larger investment projects. • Investments over EUR 5 Million raised over a seven-year observation period will trigger the need to publish a prospectus. • Shares and bonds offered to the public with a total consideration of no less than EUR 250.000 and no more than EUR 1.5 million are covered by special rules, namely the prospectus obligation "light". • Depending on the structure in detail: no prospectus requirements for subordinated loans or contributions under Donations/Rewards Model.
AIFMD-regulation	• Typical start-up or developing companies in general do not constitute an AIF. • Alternative investment funds are facilitated when the assets acquired through leverage do not exceed a total of EUR 100.000.000,-- or total assets do not exceed EUR 500.000.000 ("*de minimis-barrier*"). • A "Project Company" may, under various circumstances, constitute an AIF. • Depending on the structure in detail, Crowdfunding by means of subordinated loans or contributions under Donations/Rewards Model should not entail an AIF.
Payment service	• Transfer of funds between investors and the operator of a

regulation	Crowdfunding platform can constitute **remittance services in the sense of the ZaDiG** → authorisation by the FMA required. • Exception of the applicability of the ZaDiG, if the operator of a Crowdfunding platform acts as a commercial agent. Alternatively the operator could use an external provider or partner for processing payments.
Consumer credit regulation	• If consumer borrowers lend money to a Crowdfunding platform (Lending Model), there are impacts on the form and content of the lending agreements according to the VKrG.
Further possible requirements	• Trade Law (*Gewerbeordnung*); • Law regarding the Supervision of Securities (*Wertpapieraufsichtsgesetz 2007*); • Cumsumer Protection Act (*Konsumentenschutzgesetz*).
RES Projects Regulation	
Electricity regulation applicable to RES Projects	• Electricity from renewable sources is supported mainly through a feed-in tariff regulated by the Green Electricity Act 2012. • Electricity from renewable sources is granted access to grid according to the general legislation on energy and according to non-discriminatory principles. • Electricity from renewable sources is supported through four main means of support, the Feed-in tariff (*Green Electricity Act 2012*), Subsidy I (Investment Subsidy for Hydro), Subsidy II (Investment Subsidy for offgrid installations) and Subsidy III (Investment subsidy for small PV). • Planning, construction and commissioning of RES Projects is subject to renewable energy, building and environmental laws.
Heating & Cooling regulation	• Heating and cooling from renewable sources is supported through an incentive scheme on the level of the individual

applicable to RES Projects	federal states (*Bundesländer*). • The most substantial form of supporting small-scale RES heating and cooling is based on the Environmental Support Act. There are special investment incentives for solar thermal installations, heat pumps, geothermics and biomass heating plants. • While renewable energy measures in industrial and commercial buildings are mainly supported at federal level through the Environmental Support Act, measures for residential buildings largely fall within the sphere of competence of the federal states.
Transport regulation applicable to RES Projects	• Taxes on diesel and gasoline and the purchase tax on cars have been determined according to ecological criteria. • The main support scheme for renewable energy sources used in transport is a quota system. This scheme obliges companies importing or producing petrol or diesel to ensure that biofuels make up a defined percentage of their annual fuel sales.

Lessons learned – Crowdfunding / RES Projects Regulation

Lessons learned for a possible harmonized European Crowdfunding Regulation	
Role model ("dos")	• Establishment of a legal basis for the financing of SMEs through Crowdfunding and citizen participation models. • Reduced regulation of the Crowdfunding platform.
Aspects that should be avoided ("don'ts")	• Limitation of investment per investor per project, except professional investors.
Lessons learned for a possible harmonized European RES Projects Regulation	
Role model ("dos")	• N/A
Aspects that should be avoided ("don'ts")	• Increased regulation for new RES Projects discouraging small project developers and citizens participating in projects.

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II. Belgium

1 Belgian market for RES Crowdfunding Platforms

In Belgium, there are no Crowdfunding Platforms specifically dedicated to renewable energy sources ("**RES Projects**"). Crowdfunding of RES Projects has instead mainly been organized on a local basis through cooperative companies. The corporate structure of these companies allows to easily gather public funding for RES Projects. Moreover, under certain conditions, individuals investing through a cooperative company can benefit from limited tax incentives.

Adapted Crowdfunding legislation allowing Crowdfunding Platforms to benefit from viable prospectus exemption was only adopted in April 2014. As a consequence, Belgium is lagging behind as far as Crowdfunding is concerned. The total volume of Crowdfunding is estimated between EUR 2 and EUR 4,5 million in 2014. This encompasses both commercial and social Crowdfunding. In 2014 Crowdfunding of RES projects though Crowdfunding Platforms was insignificant.

It is only in 2015 that for the first time (generic) Crowdfunding Platforms have been used to fund RES projects. This type of funding of RES Project through Crowdfunding Platforms generated probably less than EUR 500.000 of funding. The fact is that most of the funding still occurs through local cooperative companies' initiatives and this totally independently of Crowdfunding Platforms.

1.1 Use of Investment Models

In Belgium equity, lending and rewards based Crowdfunding are available.

Most RES Projects, using cooperative companies, are equity based. The individuals acquiring units in the cooperative receive dividends if the venture is profitable. For tax reasons that potential dividend is capped at an annual 6% of the amount invested, although in practice it is usually lower.

The two Crowdfunding projects that have recently been financed through a generic Crowdfunding Platform have both offered lending based funding, with interest rates being notably higher than the maximum 6% offered by registered cooperative companies. Sometimes higher interest rates are offered to local investors leaving near the RES Projects to strengthen the link between the RES Project (e.g. a wind turbine) and the inhabitants/investors leaving in the vicinity of the project (and thus to reduce NIMBY opposition). Other investors then benefit from lower returns.

The average interest rate for lending based Crowdfunding projects is 8,4%.

The use of a pure rewards based model to fund RES Projects is negligible. Rewards are instead offered "in addition to". Cooperative companies funding RES Projects have also

a social aim and systematically offer, in addition to the above mentioned equity compensation, "social" rewards to investors.

1.2 Belgian Crowdfunded RES Projects

Most crowdfunded RES Projects in Belgium concern the financing of wind turbines and photovoltaic cells installation. Some companies offering energy efficiency services (such as services promoting led-lightening as a replacement for traditional light sources) have also appealed to the public. Other types of crowdfunded RES Projects are of marginal importance (e.g., a RES Project aiming at the restoration of old watermills for hydroelectric purposes is currently on offer for funding).

2 Recent regulatory developments regarding Crowdfunding regulation in Belgium

In April 2014, the Belgian Government took a first Crowdfunding legislative initiative, which aimed at opening up the Crowdfunding market. The main feature of that law was to increase the threshold of the so called "prospectus exemption", thereby making it possible to appeal to the crowd for the financing of projects of up to EUR 300.000 without an obligation to issue a prospectus.

One year later, in April 2015 the government acknowledges that the absence of tax incentives was a deterrent to Crowdfunding. The Belgian Government introduced tax incentives specifically geared towards Crowdfunding. The "Tax-Shelter" for Crowdfunding, entering officially into force on 1 July 2015 provides for tax incentives for both equity-based and lending-based Crowdfunding schemes.

2.1 First legal framework for Crowdfunding: amended prospectus requirements

Before May 2014, there was no specific legislation addressing Crowdfunding issues.
In March 2014, the Belgian Finance Minister announced a Crowdfunding initiative addressing mainly, but not only, the public offering thresholds. The initiative was said to address "both the legal burdens for promoters and investor protection".

On 7 May 2014, the Belgian Act of 25 April 2014 (which is not limited to Crowdfunding but ad-dressed various topics) included various provisions amending the Prospectus Act (Act of 16 June 2006 on public offer of investments instruments, amended by the Act of 17 July 2013 which came into force on 16 August 2013) was published in the Belgian Official Journal.

These provisions that came into force on 17 May 2014 introduce, among others, a prospectus exemption and provide for better crowd-investor protection.

The amended article 18 of the Prospectus Act increased the ceiling to benefit from the exemption from the obligation to issue a prospectus from EUR 100.000 to EUR 300.000. To protect investors, the exemption limits the investor's investment to a maximum of EUR 1,000 per project, in the absence of prospectus. These two

conditions are cumulative. Additionally, all documents concerning the offer must mention the total value offered as well as the maximum subscription amount per investor (the "**Crowdfunding exemption**").

In addition, the Act of 25 July 2014 exempts the persons or institutions carrying out intermediation for public offerings falling within the scope of the Crowdfunding exemption, from the obligation pursuant to Article 56 of the Prospectus Act, to be licensed as a credit institution or investment firm. This provision is crucial. Article 13 of the Prospectus Act defines intermediation as any action towards investors, including temporary or incidental, in every capacity, in the placement of investment instruments on behalf of the offeror or issuer, against compensation or any benefit in kind, directly or indirectly provided by the offeror or issuer.

2.2 Tax Incentives for Crowdfunding

The Belgian Federal Government introduced in 2015 two types of tax incentives to encourage investment in start-ups. The first one consists of a personal income tax reduction for equity investments in start-ups (for equity based Crowdfunding). The second one is a tax exemption on interests of loans to start-ups (for lending based Crowdfunding).

2.2.1 Tax shelter for equity investments

For investments in start-ups that qualify as a "small company" and for investments in starter funds, the personal income tax reduction amounts to 30% of a maximum investment of EUR 100.000 per investor per taxable period. A tax reduction of 45% is granted for investments in a micro-undertaking as defined in EU accounting directive 2013/34.

The total amount of the investment qualifying for a tax exemption may not exceed EUR 250.000 per start-up. This threshold has been criticized as it is not in line with the above mentioned prospectus exemption threshold which is set at EUR 300.000.
Another fiercely criticized (anti-abuse) limitation is that the management of the start-up cannot benefit from the exemption. This amounts to discouraging the management of making equity investment in its own company! Indirect investment by the management, through management companies, is also excluded.

The law sets a number of additional conditions to qualify for the tax exemptions:

1. The exemption is only available for investment in qualifying companies, not in business held by private individuals;

2. The shares of the small company must be registered shares;

3. The shares must be acquired at incorporation or pursuant to a capital increase;

4. They must be held at least 4 years (safe transfer due to decease of the investor). In case of early transfer, the benefit of the tax reduction is not lost but proportionally reduced to the period of ownership vs. the 48 months' period;

5. Investments in kind are excluded from the scope of the tax shelter exemption. The capital of these shares must be fully paid up;

6. Some companies are excluded from the scope of the tax shelter (companies in reorganization, listed companies, finance and investment firms, real estate companies, etc.);

7. The funds invested cannot be used for the distribution of dividends, for acquiring financial assets or onwards lending;

8. The tax reduction is further capped to 30 % of the shares of the company per investor. If the investor as a higher stake in the company, he will not benefit from the exemption above for any shares held above the 30% cap.

The tax reduction is only available to private individuals (investors,) not to companies. An individual may benefit, through various qualifying investment of up to EUR 100.000 tax reduction per taxable period.

"Starter funds", means funds that invest at least 80 % of their assets in starters and are regulated by the FSMA (i.e., the Belgian Financial Services and Market Authority). These have not been approved yet.

Only shares issued by small companies qualify. These are companies as defined by article 15 of the Belgian Companies Code. The company must be small in the year of issuance when the investors benefit from the tax exemption. Small companies are considered qualifying start-ups if they are no older than 4 years. They must be registered in the EEE.

The 45% reduction is available to the smallest companies, so -called "micro undertakings". This is an undertaking that has (i) maximum 10 employees, (ii) a turnover of maximum EUR 700.000, and (iii) a total balance sheet value not exceeding EUR 350.000. Small and medium sized undertakings benefiting from the 30% reduction are undertakings which have (i) maximum 50 employees, (ii) a turnover of maximum EUR 40.000.000, and (iii) a total balance sheet value not exceeding EUR 20.000.000.

2.2.2 Withholding tax exemption on loans

Individuals who provide a loan to a start-up (as defined above) will benefit from a complete withholding tax exemption on interests produced by the first tranche of maximum EUR 15.000 of that loan. The maximum exempted amount is to be

understood per taxpayer per year. The withholding tax rate on interest of most loans in Belgium is of 25% and will be increased to 27%.

The (exempted tranche of the) loan must have a maturity of at least 4 years. Unlike what is the case for the tax shelter for equity investments, both start-up companies and individuals can benefit from exempted loans as long as they meet the criteria of a small company (as defined above). These companies may not be registered for more than 48 months at the Crossroads Bank for Enterprises.

Also unlike what is the case for the tax shelter for equity investments, managers granting a loan to their own start-up may benefit from the withholding tax exemption.
The loan must be provided through a regulated Crowdfunding Platform. There are no regulated Crowdfunding Platforms yet in Belgium. It is our understanding that as long as the Government does not further implement this provision to define the condition a Crowdfunding Platform must meet to be approved, the FSMA will not register any Crowdfunding Platform for tax sheltering purposes. As a result, the withholding tax exemption is not yet available for investment through regulated Crowdfunding Platforms.

3 Further recent developments considering RES Projects market in Belgium

The share of energy originating from renewable sources in Belgium was approximately 7.9% in 2013. In comparison, this figure was about 12.4% in Germany and 14.2% in France. Belgium must achieve 13% renewable energy sources by 2020. It will probably not achieve more. This has already been confirmed by the Walloon region which now sets the target at 13% for 2020 and 20% for 2030. Flanders' target for 2020 is set at 10,5% and Brussels at 3%.

The main developments in the market concerns the management of the consequences of the fact that solar panels and some other RES Projects have been overly subsidized through premium's and green certificates. This left the regions, which are now competent, with a financially unsustainable system.

In Flanders, from 14 June 2015 new solar panels of maximum then 10 kW will not benefit from green certificates anymore. Moreover, the cost of past subsidies for solar panels will be recovered from consumers through an increase of the electricity distribution charges and a special levy which will increase electricity cost substantially. Also the electricity price is going to increase further to finance additional quota of green certificates.

Since July 1, 2015 prosumers with a decentralized production plants ≤ 10 kW (solar panels, cogeneration plants, wind turbines) and a backwards running meter pay an additional fee for the use of the distribution network.

A similar but softer approach is taken in the Walloon region. The Qualiwatt Premium for solar panel is reduced for 2016 by an average 90 EUR/year. In general, premium

level decreased in 2015. The government also took measure to further support biomass installations which threatened to be shut down at lower levels of support. In April 2015, the Walloon government decided for financial reasons to decrease its targets of renewable energy productions

In Brussels premium level were stable in 2015 but in 2016 premiums for many types of RES Projects have been cancelled. Also it was proposed to cancel metered compensation in exchange for an increase of green certificates allocated to solar panel production.

4 Regulation of Crowdfunding in Belgium

4.1 License as in investment service firm

4.1.1 Equity Model / Lending Model

The Act of 6 April 1995 (as amended) regulating investment firms, which implements MIFID, defines "investment services" inter alia as the reception and transmission of orders in relation to one or more financial instruments, the execution of orders on behalf of clients, investment advice and the placing of financial instruments with or without a firm commitment basis.

"Financial Instruments" include securities such as shares, bonds and other debt instruments. The definition of financial instrument used for the regulation of investment firms is narrower than that of "investment instruments" under the Prospectus Act, Investment instruments encompasses all types of instruments (including debt instruments) permitting financial investments, whatever the nature of the underlying assets.

With respect to the placing of Financial Instruments, the Banking, Finance and Insurance Commission (CBFA, the forerunner to the FSMA) clarified in a 2004 board report that the following factors are indicative that a regulated "placement service" is being offered:

- the existence of an agreement (whether written or oral) between the issuer and the financial intermediary whereby the intermediary acts on behalf of the issuer

- a consideration paid by the intermediary to the issuer.

The CBFA has further indicated that these indicators are usually accompanied by the financial intermediary providing marketing and advertising services, and "door-to-door" selling to, or cold calling of, potential investors.

These indicators do not sufficiently clarify whether a Crowdfunding Platform will be automatically deemed to provide "placement services" when it merely passively

facilitates the placement of financial instruments. In particular, it has been pointed out that most Crowdfunding Platforms do not actively promote the offered securities (no road shows, no specific marketing devices, etc.). Usually, the issuer seeking the funds does the promotion direct (through the communication modules offered by the Platform and other social networks), while the Platform (management) often does not actively participate in that promotion exercise.

The above discussion may soon be outdated as the April 2014 Crowdfunding legislation, which modified the Prospectus Act, specifies that the persons or institutions carrying out intermediation for public offers falling within the scope of the "Crowdfunding exemption" (see above), are exempted from the obligation to be licensed as a credit institution or investment firm. This exemption is likely to open the door for equity Crowdfunding in Belgium.

Up to recently no licensed financial services firms or intermediaries offered Crowdfunding services in Belgium. Recently KBC Securities (Bolero Crowdfunding) entered the Crowdfunding market as first regulated investment firm. Other banks and investment service firms have teamed up or partnered with existing Crowdfunding Platforms (BNP Paribas Fortis Bank and Keytrade Bank with the Crowdfunding Platform MyMicroInvest, etc.).

The FSMA has further pointed out that Crowdfunding Platforms organizing a market for the financial instruments offered through the Platform could be considered a multilateral trading facility, which also requires a licence.

4.1.2 Donations or Rewards Model

The Donation and Rewards model is subject to very few regulations as it does not fall within the scope of most financial regulations.

4.1.3 Bank monopoly for the collection of public savings

In principle, only credit institutions (and the like) are authorized to collect deposits and other repayable funds from the public in Belgium (section 68b is Prospectus Act, previously regulated under the Banking Act).

This is a fundamental problem as Crowdfunding Platforms often collect funds, which they pay back to the crowd if the minimum target financing is not achieved. Luckily, from the very inception of rewards based Crowdfunding, the FSMA has accepted that, subject to certain guarantees and given the limited funds that each investor usually invests in a Crowdfunding project (usually a few hundred euros), the funds stockpiled by Crowdfunding Platforms are not considered as falling within the scope of the banking monopoly.

In this respect, Crowdfunding Platforms need to build in adequate contractual and other guarantees to make sure that the collected funds cannot be used for any other

purpose than either reimbursing the investor (if the fundraising venture fails) or investing in the project (in case of success).

In its earliest stage, because of that, Crowdfunding Platforms set up non-profit organizations to collect the funds. The articles of association of these non-profit organizations offered additional guarantees regarding the limited use that could be made of the collected funds. Lately, it has been found to be sufficient for the general terms and conditions of the Platform and the conditions of the specific account to provide such guarantees, e.g. by using special escrow bank accounts.

Lending based Crowdfunding Platforms, whose core business is to obtain repayable funds from the public through the issue of debt instruments, fall within the scope of the banking monopoly.

They circumvent that monopoly either by collecting non-repayable funds (i.e., by collecting the funds at the end, once the funding operation's success is already secure and it is certain that no funds need to be repaid) or by issuing a prospectus, as the Prospectus Act provides for an exemption to the banking monopoly.

4.2 Prospectus requirements

4.2.1 Equity Model / Lending Model

The Prospectus Act defines a public offer as a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the investment instruments offered so as to enable an investor to decide to purchase or subscribe to these investment instruments, and which is made by the person who is in a position to issue or transfer the investment instruments or by a person who acts for the account of the aforementioned person.

The Prospectus Act requires the publication of a prospectus and the approval by the FSMA for offers of investment instruments when the total investment offered is more than EUR 100.000.

An offer of investment instruments does not qualify as a public offer, if:

1. it is addressed to fewer than 150 natural or legal persons per Member State, other than qualified investors; or

2. the total consideration per investor and per offer is more than EUR 100.000, calculated over a period of 12 months.

As seen above, the new Crowdfunding Exemption introduced in the Prospectus Act provides that the following operations do not qualify as a public offer of investment instruments, if they are offers:

- for a total consideration of less than EUR 300.000;
- with a maximum investment of EUR 1.000 per person and per project.

All documents concerning the offer must indicate the total value offered as well as the maximum subscription amount per investor.

As the Crowdfunding Exemption is an addition to the Prospectus Act it is to note that offers under the old exemption, i.e., for less than EUR 100.000 do not limit the allowed investment per person to EUR 1.000.

In order to benefit from the Crowdfunding Exemption, the Prospectus Act provides that the offeror is required to demonstrate to the FSMA that the public offer complies with the conditions of exemption and this PRIOR to the offer. For continuous offers, the offeror must demonstrate this each 12 months. The FSMA has put a notification procedure in place.

The FSMA recommends to issuers benefiting from the prospectus exemptions to point out to the public that the offer takes place without the publication of a prospectus and also to stress the risks associated with the investment instruments offered.

Most (but not all) Belgian Crowdfunding Platforms operate within the prospectus exemptions.

Most crowdfunded RES Projects in Belgium are structured through a cooperative company. Registered cooperative companies benefit from another exemption under the Prospectus Act.

To benefit from that exemption, the cooperative must register with the National Counsel of Cooperatives, which requires fulfilling certain strict conditions.

The offer of securities from these registered cooperatives is exempted from the prospectus obligation provided the total offer is of less than EUR 5.000.000 and for those cooperative companies which aim to offer and economic and social advantage for the private benefit of their shareholders, the offer must be limited so that a shareholder can, as a result of the offer, only hold shares up to a nominal value of maximum EUR 5.000.

RES cooperatives in Belgium have either issued a prospectus or used the above mentioned exemption. The FSMA has reviewed multiple prospectus files from RES cooperatives and made a special mention and comment in relation thereto in its 2011 annual report. The cooperative exemption regime was further modified by the law of 25 April 2014. The FSMA issued a communication in respect to these changes and prior review of the exempted nature of these offers.

It is worthwhile to mention, that aside of the exemption of the prospectus requirement some social regulated cooperative companies can provide a tax advantage to investors. Subject to certain conditions such as to pay out a dividend of maximum 6% (art. 6 of the Royal Decree of 8 January 1962), dividends up to EUR 190 per shareholder – are exempted from withholding tax (for Belgian taxpayers).
Moreover, Belgian taxpayers benefit from a 5% reduction of its investment in the cooperative's shares. Conditions for such reduction is that the investment must be of at least EUR 437.50 in 2015, the tax reduction is capped at EUR 320 in 2015 (for an investment of EUR 6437.50), the shares must be registered and must remain in possession of the investor for a continuous period of at least 5 years (except in case of death).

4.2.2 Donations or Rewards Model

The Donation and Rewards model is subject to very few regulations as it does not fall within the scope of most financial regulations.

4.3 Regulation of Crowdfunding under the AIFMD regime

4.3.1 Definition of AIF

Belgium implemented the European Alternative Investment Fund Managers Directive ("AIFMD"), by the Act on Alternative Investment Funds Managers of 19 April 2014 (*Wet betreffende de Alternatieve Instellingen voor Collectieve belegging en hun beheerders*– "the "AIFM Act") following its approval by the Parliament on 3 April 2014. The AIFM Act came into force on 27 June 2014.

For the most part, the AIFM Act is heavily based on the directive. However, it imposes more stringent rules on the managers of alternative investment funds marketed to the public.

An AIF (alternative undertaking for collective investment ("*alternatieve instelling voor collectieve belegging*" / "*organismes de placement collectif alternatif*") is defined as an undertaking for collective investment, including investment compartments thereof, which (i) raises capital from a number of investors with a view to investing it in accordance with a defined investment policy and (ii) is not subject to the UCITS legislation implementing Directive 2009/65/EC.

The AIFM Act applies to all Belgian funds which qualify as AIFs, such as real estate closed-ended investment funds (*sicafis/vastgoedbevaks*[1]) , public closed-end private-equity investment companies (*openbare privak/pricaf publique)*, both of which were, pursuant to the previous regulation (Act of 3 August 2012), already subject to a special status and to supervision by the FSMA, as well as to funds which do not raise funds

[1] Pursuant to the Act of 12 May 2014, Belgian real estate closed-ended investment funds (which are subject to the Act of 3 August 2012) have the possibility to remain outside the scope of the AIFM Act if they opt for the new regulated investment company status (*société immobilière reglementée/gereglementeerde vastgoedvennootschap*).

from the public but are registered as institutional or private collective investment undertakings and which were previously unregulated.

Finally, the AIFM Act applies to all AIFs which do not raise capital through private placements and which are not yet subject to the Act of 3 August 2012.

Accordingly, the AIFM Act applies to the managers of these funds which solicit capital from investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors.

The AIFM Act excludes certain types of funds from its scope and provides for certain exemptions which may be helpful for managers of smaller or of certain specific funds. As such, holding companies, institutions for occupational retirement provisions, employee participation schemes/employee saving schemes, securitisation SPVs, family office vehicles, joint ventures, supranational institutions, national central banks and governments are excluded from its scope of application.

In addition to these exclusions, Belgium has opted to implement less stringent rules for "small" AIFM's. As a result, the following AIFMs benefit from a lighter regime:

- AIFMs managing AIFs with total assets under their management of a value of less than EUR 100 million; or

- AIFMs managing AIFs with total assets under their management of a value of less than EUR 500 million (if the AIFs portfolios are unlevered and no redemption rights exist during a period of five years following the date of initial investment in each AIF).

All Belgian Crowdfunding Platforms, that would be considered an AIFM, will benefit from the above "small" AIF exemption. The same applies to RES Projects financed through Crowdfunding.

To conclude, the implementation of the AIFM Directive in Belgium seems unlikely to impact Crowdfunding activities, since the criteria will generally not be met by operating companies, project companies seeking funding or Crowdfunding Platforms. Most will benefit from exemptions, or in worst case from the "lighter regime".

4.3.2 Equity Model

4.3.2.1 Operating Company seeking funds

Pursuant to the Belgian AIFM legislation, an Operating Company seeking for funding with the purpose of generating profit to its shareholders should not qualify as an AIF, as the characteristics of AIF are not met. Usually such a company does not have a defined investment policy for the benefit of the investors. RES Projects that operate

energy production capacity (such has windmills or solar panels) should thus fall outside the scope of the AIFM legislation.

4.3.2.2 Project Company seeking funds

With regard to a Project Company seeking funding, the Act does not apply to business in which collective investments are not conducted in the form of an AIF. However, it cannot be ruled out that a project company would constitute an AIF in the event that the project company has several investors (at least two) and there is a collective investment policy. This can be the case for companies acquiring equity participations (in several) operating companies operating a RES Project. However, these AIF will either benefit from the holding exemption or the lighter regime for small AIF.

4.3.3 Lending Model

Investments by means of debt or placement instruments are generally non-AIF investments since the investors do not share liability for any losses – and therefore do not invest in a collective investment undertaking.

4.3.4 Donations or Rewards Model

RES Projects can be structured so as not to offer any kind of revenue but instead non-financial rewards in return. If the promised reward is electricity at a reduced price it can be argued that the funds are not invested for the benefit of investors. The funding therefore is not a collective investment undertaking.

4.3.5 Cooperatives

Most crowdfunded RES Projects in Belgium are organized through a cooperative company. The AIFM Act does not exclude cooperatives from its scope. Two cooperatives, with activities relating to alternative (mico-)financing, have already registered as AIF with the FSMA (Alterfin and CCP-Icofin).

The FSMA has not yet clarified whether it considers that cooperatives can be considered as pursuing a defined investment policy. It is likely they can.

4.3.6 Crowdfunding Platforms

Concerning the AIFMD regulation impact on Belgian Crowdfunding Platforms, it should probably be minimal, but it is too early to say. In its 2013 annual report the FSMA stressed that it indicated to a Crowdfunding Platform that it would again review application of the AIFMD provisions after implementation of the AIFMD Act. In the FSMA's view application would depend on the scope of the holding exemption under the AIFMD.

Although holding companies are excluded from the scope of the AIFM Act, this concept will be interpreted narrowly. Platforms using special purpose vehicles to manage investments on a discretionary basis could fall under the AIFMD.

4.4 Payments Services

Any transfer of funds through a Crowdfunding Platform or payment operations executed by a Crowdfunding Platform will generally constitute money remittance services within the meaning of the Payment Service Act (Payment services are regulated by Book 7 of the Code of Economic Law and the Belgian Payments Services Act of 21 December 2009).

These activities are normally restricted to banks and payment establishments licensed by the Belgian National Bank that have been granted the status of Payment Institutions (section 6 of the Act).

If the Crowdfunding Platform falls within the scope of the Payment Services Act, i.e., if the money transits through the Crowdfunding Platform's bank accounts, it will have to apply for a licence from the Belgian National Bank.

To avoid this burden and expense, Platforms usually rely on a third party, an external provider or partner, for processing payments rather than acting as a payment intermediary between the investors and the company seeking funding.

Most Belgian Platforms even avoid the cost of a payment services provider by having the funds wired direct by the investor into the funded company's account. Cooperatives funding RES Projects work with an online subscription form. Payment of the units follows then by way of a direct wire into the cooperatives bank account. Thus most cooperatives and crowdfunded RES Projects avoid the use of Payment Institutions.

Platform promoters will probably not be able to rely on the "sales agent" exemption provided for in section 4(1°) of schedule II to the Payment Services Act ("payment transactions from the payer to the payee through a commercial agent authorized to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee"), as the chance is that, in the absence of steady relations with the funded company, they will be deemed to be acting as a broker rather than an agent.

4.5 Possible additional regulations

Other common regulations to which the operator of a Crowdfunding Platform may be subject include:

- Book VI Market Practices and Consumer Protection of the Code of Economic Law (formerly The Act on Market Practices and Consumer Protection);
- Money Laundering Provisions (Law of 11 January 1993 as amended)
- Privacy legislation (Mainly Law of 8 December 1992)

- The Consumer Credit Legislation (Now Book VII of the Code of Economic Law)

5 Regulation of RES Projects in Belgium

5.1 Regionalised structure of the energy market

Renewable energy policy is mainly a regional matter. Meaning that, aside of the Federal government, the three regional governments (for Flanders, the Walloon region and Brussels) have their say. The Federal government remains in charge of offshore wind power (in the North Sea) and hydro power. Each of these political level has its independent energy regulatory authority (the CREG for the Federal Level, the VREG for Flanders, CWaPE for the Walloon region and BRUGEL for Brussels).

Promotion of electricity as a source occurs mainly through tradeable green certificates. The system entails energy suppliers being forced to cover a share of their supply with renewable energy. Each region sets its own priorities and certificates are not tradable among regions (subject to a nuance for Brussels).

Electricity from renewable energy sources is given priority in both connections to and use of the grid. This is also further regulated at regional level.

There are various reliable sources to better understand legislation of the regionalised Belgian energy market. For the present section, we refer mainly to the websites of the regulators (CREG, VREG, CWaPE and BRUGEL as well as to the Belgian overview from Céline Najdawi and Melissa Wevers on www.res-legal.eu).

5.2 Regulation in Flanders

The Flemish region supports renewable energy mainly through green certificates and a call system. Both these support systems cannot be combined. The Flemish government reached the conclusion that some categories of green energy, such as solar panels and wind energy were over subsidized. It significantly reduced available green certificates. Prosumers still benefit from net-metering.

The economic sustainability of these incentive system is now guaranteed by a monitoring system which on half-yearly or yearly basis determines a banding factor on the basis of financial shortfall calculation. This calculation takes into accounts parameters such as capital costs, fuel costs and electricity prices.

A banding factor is used to determine incentives in the most common renewable technologies in Flanders: biomass, biogas, wind and solar energy. For heat cogeneration this concerns mainly power plants with internal combustion engines, steam or gas turbines. The banding factor determines the number of certificates one obtains per generated green electricity.

The local grid administration company must buy these certificates at a fixed price. Distribution grid operators are obliged to finance grid expansion.

There is also a limited premium system in place which is offered by grid operators or local municipalities. These fall outside the scope of the current review.

Subsidies are also available for companies investing in a listed eco-friendly technology.

The main regulatory provisions concerning Flemish energy policy are set in the Energy Decree of 8 may 2009 and the Energy Decision of 19 November 2010, as regularly amended.

5.2.1 Green Certificates

Owners of green power generation systems can receive green certificates. These have a value and can be sold to the distribution system or electricity supplier. These certificates are registered in a database of the VREG. A certificate is worth minimum EUR 93 (since 2013).

A green power generation installation can receive green certificates in Flanders if:

1. The new production facility is located in the Flemish Region;
2. The new production facility generates electricity from a renewable energy source;
3. The production facility technology fit in a representative project category (e.g. solar or wind powered energy) or a project specific banding factor has been specified;
4. The production facility was sufficiently tested.

No certificates are granted after the funding period. Most renewable energy production technologies are eligible for green certificates.

The funding period is the period during which a facility is entitled to green electricity certificates or cogeneration heating certificates. This period starts from the date of commissioning or substantial modification of the production facility. Since 1 January 2013 the duration of the funding period for green facilities is determined by the depreciation period used in the calculation methodology of the non-profitable peaks. In calculating the non-profitable peaks the following depreciation periods are used and recorded:

1. 15 years for wind turbines;
2. 10 years for all other facilities for which not profitable top was calculated.

The number of green certificates for facilities dating after January 1, 2013 is calculated based with the banding factor. The net electricity generated from renewable energy sources (EGSC) is multiplied by the applicable bandingfactor (BF) to determine the number of green certificates (GSC) that are allocated (GSC = EGSC x BF). The VREG provides the following example on her website (Wind-energy case – Wind turbine bandingfactor 0.681 for a project with start date in 2015 this for a maximum power per turbine of ≤ 4 MWe). This means that 1469 kWh of electricity must be produced, before the applicant receives one green certificate. If the bandingfactor is set to 0, the producer does not receive green certificates.

Since 31 March 2013, exemptions for energy intensive industries have been introduced.

Owners of renewable energy production facility (usually solar panels) with a maximum installed capacity of 10 kW and a backward running meter are obliged to pay a yearly grid use fee. A new tariff scheme is applicable since 1 July 2015. The tariff depending on localization varies around 100 EUR/year (with increased VAT).

Distribution grid operators buy the certificates and pass the costs to consumers via higher prices. A substantial increase of transport cost is expected in the coming years.

5.2.1.1 Green Certificates for solar panels

The support system for new solar panels installations (with a capacity up to 10kW) is flexible and takes into account price evolutions. Each semester the authority assesses what level of support is required to recover the investment in new standard solar panels with a 5% return over a period Each semester a new banding factor is determined for solar panels. if the correction factor is 1, a green certificate will be granted for a power generation of 1,000 kWh. When the correction factor 0.5 is the green certificate only awarded after producing 2000 kWh. When the correction factor is set at 0 (temporarily) no aid is granted.

From 14 June 2015 onwards, new solar panel facilities of maximum 10 kW will not benefit from any support anymore (Decree of the Flemish Government of 29 May 2015).

5.2.1.2 Green certificates for wind turbines on shore

The green certificate system for windmills is similar as the system for solar panels. The minimum level of support for wind energy has also been reduced since 2013.
To place a wind turbine construction and environmental permits must be obtained. Depending of the Depending on the size of the wind farm, the procedure for the environmental permit is different.

5.2.1.3 Heating cogeneration

Heating cogeneration certificates are granted on similar criteria as for solar panels for facilities put in service after 2002. However, for production facilities installed before 2013 support is decreasing over a 4 years' period. As a result, part of these certificates are not accepted anymore.

5.2.1.4 Net-metering

Owners of renewable technology (usually solar panels) of less than 10 kW also benefit from a metered compensation. Any electricity produced into the grid is deducted from the electricity bill through a reverse running meter (net-metering). However, if an installation injects more electricity than it has taken from the grid during a billing period, this amount is not financially reimbursed. All renewable technologies are eligible for net-metering.

5.2.2 Call green heat, waste heat, biomethane

Investments in:

1. Green heat from biomass (with a capacity of more than 1 MW);
2. Green heat from deep geothermal energy (with a capacity of over 5 MW);
3. residual heat; or,
4. bio methane production;

can apply for support under the call system.

The eligible investment projects are evaluated and ranked. The total available grant amount is divided among the better ranked projects up till the capped budget is spent.

Support schemes cannot be combined. Applying for a call subsidy is not compatible with benefiting from green certificates or the ecology premium

Next year's budget includes

1. EUR 1,000.000 for installations producing green heat from biomass capacity> 1 MWth
2. EUR 4 Million for installations that make use of green heat from deep geothermal energy, capacity> 5 MW;
3. EUR 4,217,341 for installations for the utilization of waste heat;

4. EUR 1,000.000 for installations for the projection and injection of bio methane.

5.2.3 Ecology premium (EP-PLUS) and Strategic Ecology support

The Flemish government provides an ecology premium to companies investing in a more environmentally friendly and energy efficient production process. The Flemish government takes a portion of that investment for its own account.

Investments that can benefit from an ecology premium are mentioned in a limited technologies list. An eco-class is granted to each type of technology, depending on the environmental and energy benefits of the technology. There are 4 eco-classes (A to D). The level of support granted varies with the eco-class. A new list of technologies is in force since 1 July 2015

For non- standard environmental technology which cannot easily be listed on the technologies list a separate incentive for "Strategic Ecology "project has been put in place. This is meant for global and specific company projects.

Depending on the eco-class SME's can benefit from up to 40 % funding of their investment under the Strategic Ecology support fund and up to 25% funding under the Ecology Premium system. For both systems the support is limited to up to EUR 1.000.000 over 3 years' subject to availability of an overall budget for this kind of support.

5.3 Regulation in the Walloon Region

As is the case for Flanders, the Walloon region came to the conclusions that some of the subsidies regime were financially unsustainable. Hence the subsidy system was redesigned and the system of green certificates limited

The energy policy of the Walloon government now emphasizes that the policy includes:

- evaluation and adaptation at regular intervals of the amount support and use of annual support envelopes by sector to avoid budgetary issues;

- a quicker reduction of the imbalance on the market for green certificates and studying the possibility of supporting renewable energy through other mechanisms that the market for green certificates.

Regional support includes energy subsidies, investment assistance for companies and net metering. The generation of heat is promoted through investment assistance.

In general, all renewable energy generation technologies except geothermal power plants are eligible under the quota system. Small solar panels installations have been excluded from the green certificate system.

The basic regulation on access of electricity from renewable energy sources is to be found in the Walloon grid code and the regional electricity market decree. Electricity from renewable energy sources is given priority in both connections to and use of the grid. Each application for a connection to the electricity distribution grid shall be submitted to the Distribution System Operator appointed to the area of the plant operator. Connection applications for installations with a capacity over 25 MW must be submitted to the Transmission System Operator Elia.

5.3.1 Qualiwatt premium

Up to 2013 solar energy production of less than 10 kW benefited from green certificates through the "Solwatt" system. A certificate was granted per MWh. The certificates were bought by either the Federal or the regional grid operator at minimum EUR 65. The system was not sustainable.

The "Qualiwatt" system (adopted on 12 September 2013) consist in a direct subsidy for photovoltaic installations up of to 10 kWp operating since after 1 March 2014.

The premium amount is set in advance by the CWaPE based on a methodology which aims to obtain for an installation-type 3 kW a return on investment within an 8 years' period. The amount of the premium calculated by CWaPE is therefore a function of the distribution network to which the system is connected (different premiums per GRD).

An additional premium is granted to protected or fragile consumers. The amount of the premium is reviewed each semester by the CwaPE. The premium is meant for maximum 12.000 installations. The last published premium is of approximately EUR 600 for a 3 kW installation. The premium is capped for installations to up to 3 kW.

5.3.2 Net-metering

Prosumers (installation of up 10 kW) benefit from a net-metering mechanism. Different kind of meters makes this possible, some for bigger producers having a night and day tariff alow for compensation of surplus electricity added to the grid. The compensation mechanism is based on the period between two meter-readings.

5.3.3 Green certificates for production facilities of more than 10 KW

Green certificates are now allocated based on a pre-reservation system in order to cap the system. The allocation of green certificates was revised by decree of the Walloon Government of 3 April 2014 and came into force on 1 July 2014. We do not discuss previous systems that are still in place for older installations.

Producers wishing to obtain green certificates must reserve green certificates from within a total of certificates allocated per sector.

Moreover, from 1 January 2015, the number of certificates allocated per technology sector are calculated according to a new methodology. The number of green certificates to which the producer is entitled is now the product of its electricity production by a factor Keco into account the investment made by a KCO2 factor reflecting CO2 emissions and a conversion factor for the sectors hydropower, photovoltaic and wind that takes the electricity price into account.

Once approved the project benefits from an automatic buyback guarantee of green certificates from ELIA (grid operator).

The reservation system concerns:

- for solar PV whose power is greater than or equal to 10 kW all new production approves after 1 January 2015;

- for other sectors (biogas, solid and liquid biomass, fossil cogeneration, wind, hydro): all new production with the exception of units having obtained a final permit before 1 July 2014 or units whose visit of compliance was made before 1 July 2014.

Certificates are approved for a 10 to 15 years' period. Every quarter, the producer transmits his metering readings to the CWaPE. On this basis, the CWaPE grants certificates from the production unit. The Certificates are then tradeable. They have a 5-year validity period.

The CWaPE checks energy supplies on a quarterly basis. Based on this information, providers and network operators are required to show to the CWaPE an amount of certificates proportional CV to the amount of electricity supplied during the quarter. The operators are fined EUR 100 per missing certificate.

An alternative to selling certificate is the purchase by ELIA as local grid operator at a guaranteed minimum price of EUR 65: These certificates are then cancelled and cannot be resold in the market. A guaranteed price has also been provided by the Federal Government (TSO Elia). For example, for photovoltaic systems, the guaranteed price is EUR 50 per MWh. These CV purchased by the TSO can be resold in the Certificates market.

5.3.4 Inverstment incentives for undertakings

Pursuant to the decree of 11 March 2004 and within the allocated budget, the Walloon Region grants a premium to and exemption from property tax for investment programs in sustainable development.

The solar photovoltaic segment no longer benefits from investment support. The same applies to investment in biomethanisation with a unit capacity below 10 kW and wind turbines with a capacity of more than 1000 kW.

5.3.5 Other direct subsidies

Other direct subsidies system exists. This is the case for combined heat and power plants or for solar water heating. UREBA subsidies aim at supporting public bodies such as towns and provinces in their initiatives to reduce the energy consumption of their buildings. Projects using renewable energy sources are subsidised.

5.4 Regulation in the Brussels Region

The main incentive for green energy production in the Brussels region are the green certificates. From 2016 onwards most subsidies supporting RES Projects have been abolished.

In the Brussels-Capital region, access of electricity from renewable energy sources is basically regulated by the Brussels-Capital distribution grid code and by the regional electricity market ordinance. Electricity from renewable energy sources is given priority in both connection to and use of the grid.

5.4.1 Green certificates

Most RES technologies are eligible for green certificates under a quota system in the Brussels region.

The number of green certificates a supplier receives depends on the technology used, the capacity of the installation and the green electricity actually produced. Green certificates are awarded by the Brussels Energy Regulator (BRUGEL). Each electricity distributor in the Brussels region must acquire a quota of green certificates on penalty of being fined EUR 100 per missing certificate. He obtains these by producing green electricity of by acquiring green certificates. The quota for 2016 is set at 5.1% and yearly increases to up to 12% in 2025. Green certificates can under conditions also be bought from the Walloon region.

Green certificates are awarded after the RES installation has been certified by BRUGEL. The certified installation must provide savings of at least 5% CO2 compared to the best conventional systems. One certificate is issued for every 217 kg of CO2 saved.

For heat cogeneration the analysis of the saving is subject to a relevance and feasibility study. The Brussels Region awards more green certificates for cogeneration systems on gas catering to collective dwellings provided that at least 75% of the heat is redistributed to residential customers and the system allows for CO2 savings of at least 5% compared to a conventional installation.

Once an installation is certified, the certificates are awarded for a period of 10 years.

Each year the number of certificates that are granted per MWh are reassessed for new plants based on market conditions and this number is adjusted as necessary to ensure the viability of the installation within a reasonable period of time. For photovoltaic solar panels, the average payback time considered is seven years. The return on investment period considered for cogeneration is around five years.

In the Brussels Capital Region, a green certificate is worth about EUR 85 and its price has remained stable since the introduction of the system of green certificates in 2011. The minimum price is set at EUR 65.

5.4.2 Net-metering

Prosumers of green electricity with an installation of less than 5 Kw can benefit from compensation between the amounts of electricity taken from and injected in the grid but up to the amount taken from the grid. Prosumers benefiting from net-metering cannot receive a label of origins for quantities injected in the grid (Article 26bis of the Decree of 6 May 2004 of the Brussels-Capital Government regarding the promotion of green electricity and quality CHP).

5.4.3 Energy premium

Up to 2015 a subsidy was available for private individuals for the placement of renewable energy installations such as solar panels or wind turbines. These have been cancelled for 2016. Premium now mainly target heating installation, solar water heating and energy savings installations.

5.4.4 Investment incentives for undertakings

Within the bounds of its available budget, the Brussels-Capital provides investment assistance for companies which develop environmental projects, including investments in renewable energy plants. Eligible are investments in photovoltaic installations for the production of electricity as well as biogas and biomass CHP and tri-generation plants for the production of heating, cooling and electricity. The eligible investment amount also includes freight, installation and assembly charges. Moreover, the eligible investment shall amount to at least EUR 7,500 and shall concern investments planned within the Brussels-Capital region. The amount of the investment assistance depends on the size of the company: Micro and small enterprises: 40 % of the eligible costs; Medium enterprises: 30 % of the eligible costs; Large enterprises. 20 % of the eligible costs. Moreover, the subsidy can be increased by 5 % if the company is certified Emas, ISO 14.000 or « eco-dynamic enterprise». The amount of the investment assistance cannot exceed EUR 80.000 per company and per calendar year. This is regulated by the Decree of 2 April 2009 of the Brussels-Capital region regarding the promotion of energy efficiency and energy production through renewable energy sources.

5.5 Federal regulation and support

Support for renewable energy source from the federal government is limited to support to an increase of the tax deductibility of investments in certain types of green facilities. In 2015 the increase deductibility for investment in energy savings is of 13%. A conditional reduction of certain levies and excise duties is also available.

Green electricity

The Federal Level which mainly deals with off-shore electricity and (some) hydropower has also put in place a system of green certificates and certificates of origin. The subsidy mechanism is adopted on proposition of the CREG which also deals with market organization (Electricity Act of 29 April 1999). The mechanism establishes a renewable energy repurchase obligation at a minimum price and resale obligation to the manager of green certificates transport network attributed by the federal or regional authorities.

The main regulation is the Royal Decree of 16 July 2002 concerning mechanism of promotion of electricity produced from renewable energy sources (as amended mainly in 2012).

Pursuant to article 14 of the Royal Decree of 16 July 2002, the electricity network operator must as part of its public service mission, purchase green certificates at a minimum price from producers of green electricity.

The prices are set as follows:

1. Offshore wind energy:

a) EUR 107 / MWh for electricity generated from facilities subject to a domain concession and this for the production of the first 216 MW of installed capacity;

b) EUR 90 / MWh for electricity from installations belonging to the same domain concession and for the installed capacity exceeding the first 216 MW;

2. Solar production commissioned before 1 August 2012: EUR 150 / MWh;

3. for offshore facilities that generate electricity from water or tides: EUR 20 / MWh.

The obligation to purchase green electricity certificates produced from offshore wind energy is defined in a contract approved by the CREG between the holder of the domain concession and the network manager. The CREG approved contracts for the purchase of green certificates concluded between ELIA SYSTEM OPERATOR SA (the

network operator) and C-POWER SA, SA BELWIND and NORTHWIND SA (all off-shore electricity producers).

The underwater cable necessity for off-shore electricity is also benefits from subsidies for up to one 1/3 of its cost and up to EUR 25.000.000 over 5 years per project.

6 Conclusion

Crowdfunding of RES Projects remains limited by the stringent financial regulations limiting the possibilities of Crowdfunding in Belgium. These two last years, the Belgian Government took two initiatives which slowly and timidly open-up the Crowdfunding market.

First, the threshold of the exemptions to the prospectus act was increased allowing to offer up to EUR 300.000 to the crowd without having to publish a prospectus. Secondly, a tax shelter was introduced providing for tax deductions for equity Crowdfunding of start-ups and a limited withholding tax exemption for lending based Crowdfunding. The system is not entirely in place yet but it is likely that these incentives will make Crowdfunding much more popular. One hopes that the current prospectus act exemption threshold will again be reviewed and increased.

Up to now, RES Projects have only to a very limited extent used Crowdfunding Platforms. This is due to the fact that most RES Projects in Belgium make use of registered cooperatives which benefit from lenient exemptions to the Prospectus Act with the ability to collect up to EUR 5.000.000 without having to issue a prospectus. These cooperatives also benefit from own tax incentives providing amongst others, they limit benefit distribution. These incentives could be further combined with the new tax shelter regime for Crowdfunding. The cooperative company structure is also very well adapted to bundle a crowd together

In summary, it is likely that cooperatives developing RES Projects will continue to develop under the existing regime for cooperatives which provides sufficient flexibility (except for the registration requirements). They may incidentally and additionally make use of Crowdfunding Platforms but are not dependent on the development of these.

On the longer run (and this will take time) a harmonised EU Crowdfunding regulation would be welcome. For the time being each Member State is providing for its own Crowdfunding Exemptions and developing a specific national regime. These often entail an obligation to register with the national financial markets authority.

As for the electricity market, the Belgian market is overly complex due to the regionalised structure with different regimes existing along each other to cater to limited populations. The main tendency for the moment, across the regions, is to decrease support for some green energy sources and mainly smaller solar panels as these have been over-subsidized. The cost of green energy is now, more than in the

past, fully paid by the (smaller) final consumer. To remain competitive large industrial energy consumers have been spared.

The transition has now just started and energy regulations will probably be subject to fast and substantial changes at all regional levels.

7 Summary – Crowdfunding and RES Projects Regulation

Country / Summary	Belgium
Recent developments in Crowdfunding regulation	• The most important development concerns the adoption of specific legislation which broadened the prospectus exemption for public Crowdfunding offers to 300.000 EUR/year with a maximum of EUR 1.000 per investor. Registered cooperative companies may now collect up to EUR 5.000.000 without issuing a prospectus. Additionally, tax incentives were introduced to support start-ups. The regime caters to both equity and lending based Crowdfunding.
Current / planned Crowdfunding Regulation	
General regulation	• Crowdfunding Platforms facilitating direct investment in financial instruments but under the Crowdfunding exemption for public offerings will not need to be licensed investment firms. • Crowdfunding Platforms facilitating direct investment in financial instruments operating outside the Crowdfunding exemption for public offerings are likely to require a licence under the Act regulating investment services firms – authorization and supervision by the FSMA (or Belgian National Bank, depending on the nature of their activities) save if no compensation is charged for these services. • Onward trading in financial instruments requires a licence • Collection of limited public refundable funds does not fall within banking monopoly if sufficient safeguards are provided to guarantee that the funds will only be used to refund the crowd or finance the project • The Lending (and Rewards) Model uses debt instruments, which are not regulated by the Act regulating investment services firms.

	• The Donation Model is least prone to financial regulation.
Prospectus requirement	• Prospectus requirement for offering of investment instruments (a term broader than financial Instruments, as it encompasses contract-based debt instruments). • Thresholds: EUR 300,000 per issuer within 12 months, a maximum of EUR 1.000 per project per investor. Registered cooperatives may collect up to EUR 5.000.000
AIFMD-regulation	• AIFMD has been transposed in Belgium but, those Platforms' not benefiting from the holding exemption, will still benefit from the lighter regime put in place. Impact of AIFMD will probably be low.
Payment service regulation	• Transfer of funds through operator may constitute money remittance service → Belgian National Bank licence required • "Commercial agents" exemption probably does not apply to Crowdfunding Platforms
Further possible requirements	• Book VI Market Practices and Consumer Protection of the Code of Economic Law (formerly The Act on Market Practices and Consumer Protection); • Money Laundering Provisions (Law of 11 January 1993 as amended) • Privacy legislation (Mainly law of 8 December 1992) • The Consumer Credit Legislation (Now Book VII of the Code of Economic Law)
RES Projects Regulation	
Electricity regulation applicable to RES projects	• The Belgian market is characterized by local regulations and different policies at regional level. The overwhole renewable energy generation target is set at 13 % in 2020 for Belgium. • As a general rule and subject to certain limitation renewable energy is given priority in both access and use of the grid.

	• There is no legislation that guarantee preferential access to the grid to renewable energy in case of energy curtailment • The main policy discussions concern the limitation of support schemes to renewable green energy. • Planning construction and commissioning of new RES Projects is subject to regionalised building and environmental law (or federal law for certain projects)
Market Integration of RES Projects	• RES Projects have been supported in the three regions mainly through a quota system based on the allocation of tradeable green certificates. • Additionally, premiums and investments incentives through increased taxed deduction further support the development of RES Projects. • The scope and level of funding available through these support schemes has recently been limited to guarantee the financial sustainability of the system. • Tender based call systems are now being put in place to allocate capped funding amounts.
Further regulatory sources	• Due to the regional structure both federal and regional regulations must be followed. Monitoring of these regulations requires looking into overview provided by the federal and regional regulators (CREG, VREG, CWaPE and BRUGEL)

Lessons learned – Crowdfunding / RES Projects Regulation

Lessons learned for a possible harmonized European Crowdfunding Regulation	
Role model ("dos")	• Increase of thresholds under the Prospectus Act. • Exemption from most financial regulatory requirement and limitations under these thresholds • No overregulation of Crowdfunding Platforms.

Aspects that should be avoided ("don'ts")	• Thresholds for public offers are to low and limitation of allowed investment per investor even more so–not competitive in compared to other EU countries. EU harmonisation required. • Exemption from prospectus Act for cooperatives to be available to all cooperatives and not only subject to adhering to the too stringent regime applicable to registered cooperatives
Lessons learned for a possible harmonization of European RES Projects Regulation	
Role model ("dos")	• Preferential gird access • Support to various funding schemes adapted per sector in function of efficiency • Incentives for decentralised electricity generation and usage
Aspects that should be avoided ("don'ts")	• Stringent environmental and townplanning regulation hampering development of RES Projects due amongst other to NIMBY reactions. • Oversubsidizing less performant RES Project sectors in the absence of general renewable efficiency policy.

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III. Bulgaria

1 Bulgarian market for RES Crowdfunding Platforms

The Bulgarian sector of the RES experienced important development since 2007. Due to the existing of an attractive regulatory framework during years 2007-2010, and the lucrative feed-in tariffs (FiT) a flood of investments was seen in 2008, with 450 MW of new wind and solar capacity coming on line by 2010. In this way the share of renewable energy sources (RES) in the total production of energy in the country rose to 16 % by the end of 2010.

The sharp increase in investment in the sector from 2009 to 2013 can be attributed to Bulgaria's decision to improve its renewable energy sector via laws encouraging investment - the Renewable and Alternative Energy Sources and Biofuels Act (RAESB Act), adopted in Bulgaria in 2007. It transposed the requirements of the Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market. Since then the legal environment evolved to allow the increase of the share of RES energy in Bulgaria.

Additional support measures were planned within the operational programme of Bulgaria for the period 2007 – 2013. Pursuant to Directive 2009/28/EC on the promotion of the use of energy from renewable sources Bulgaria was required to achieve a 16% share of renewable energy of total internal energy consumption by 2020, whereas in 2012 it reached 17,9%.

1.1 Current RES Crowdfunding platforms

Unfortunately, according to the information available, there are no projects dealing with renewable energy sources (“RES Projects”) in Bulgaria, which are entirely financed with funds raised from Crowdfunding platforms.

Traditionally the RES projects are financed with private capital funds, bank loans from commercial banks, as well as through EU financial instruments implemented by the local public authorities.

Amongst the capital funds, for example, is the Energy Efficiency and Renewable Sources Fund (EERSF) - it was established through the Energy Efficiency Act adopted by the Bulgarian Parliament in February 2004. The initial capitalization of EERSF is entirely with grant funds, its major donors being the Global Environment Facility through the International Bank for Reconstruction and Development (the World Bank) - USD 10 million, the Government of Austria - Euro 1.5 million, the Government of Bulgaria - Euro 1.5 million and several private Bulgarian companies. The underlying principle of EERSF's operations is a public-private partnership. The Fund pursues an agenda fully

supported by the Government of Bulgaria, but it is structured as an independent legal entity, separate from any governmental, municipal and private agency or institution.

Another fund is the Fund for Energy and Energy Savings (EESF) - the first fund in Bulgaria, which invests in securitization of receivables under contracts for energy efficiency. The Fund invests the funds raised in the so called ESCO contracts.

The Kozloduy nuclear power plant was funded by Kozloduy International Decommissioning Support Fund, established by The European Bank for Reconstruction and Development (EBRD) in June 2001. It was created when the European Commission and other western European donors offered the Bulgarian government an assistance program to cope with the early closure of the plant and the development of a competitive energy sector. The Fund operates on the basis of a Framework Agreement between the EBRD and the Bulgarian government, which has also been approved by the KIDSF Assembly of Contributors and ratified by the Bulgarian Parliament. More than EUR 170 million has been committed in contributions from the European Community, Austria, Belgium, Denmark, France, Greece, Ireland, the Netherlands, Spain, Switzerland and the United Kingdom.

The Kozloduy IDSF finances and co-finances selected projects for two main purposes:

- to support the decommissioning of units 1-4 of the Kozloduy nuclear power plant, particularly through the provision of facilities for the storage and treatment of spent nuclear fuel and radioactive waste in a safe and cost effective manner.

- to address issues in the energy sector related to the closure of units 1-4 by demonstrating ways to reform and modernize both the supply and demand side of energy use in Bulgaria.

Another fund, supported by the EBRD is the Bulgarian Energy Efficiency and Renewable Energy Credit Line (BEERECL). The EBRD, the Bulgarian Government and the European Union offered the BEERECL credit facility from 2004 to early 2014. Bulgarian companies received financial support to invest in energy efficiency or renewable energy projects. The investments reduced the participating business's operating costs and enhanced their competitive position – while contributing to reducing energy consumption or increasing production of sustainable, secure and reliable energy in Bulgaria. The program supported interested businesses by offering energy audits and developing sustainable energy project business plans – free of charge.

The Residential Energy Efficient Credit Line (REECL) Facility was established to provide loans for energy efficiency home improvements. To help Bulgarian households reduce their energy bills and consumption the European Commission, the European Bank for Reconstruction and Development, and the Bulgarian Energy Efficiency Agency have developed a EUR 40 million Residential Energy Efficiency Credit (REECL) Facility to

provide credit lines to reputable Bulgarian banks to make loans to householders and Associations of Home Owners for specific energy efficiency measures including double-glazing, wall, floor, and roof insulation; efficient biomass stoves and boilers; solar water heaters; efficient gas boilers; heat pump systems; building-integrated photovoltaic systems; heat-exchanger stations and building installations; gasification installations; and balanced mechanical ventilation systems with heat recovery.
The Structural Funds and the Cohesion Fund of the European Union were also used as tools for financing of RES Projects in the country.

1.2 RES Projects existing in Bulgaria

Currently over 1500 companies are involved in RES projects in Bulgaria, dealing with solar parks, windmill parks, hydro plants, commercial power plants, biomass and biofuel projects etc.

2 Recent regulatory developments regarding Crowdfunding regulation in Bulgaria

In connection with the abovementioned lack of RES Projects financed via Crowdfunding on the territory of Bulgaria, currently there are no existing legislative regulations and mechanisms outlining the RES Crowdfunding framework in the country.

3 Further recent developments considering RES Projects market in Bulgaria

There are several organisations (mainly non-governmental) in RES sector aiming to develop and maintain the wind and solar energy domain. Among them we could mention the Bulgarian Photovoltaic Association (BPVA), established in 2009 (with more than 400 members at present – different companies, dealing with RES energy projects) acting for the creation of a favourable environment in this sector.

The members are companies with different profile – producers of solar panels, designers, installers, investors in the construction of photovoltaic power plants, project developers, financial institutions, investment companies and consultancies. BPVA's mission is sustainable, low-carbon, modern and corresponding to the European standards energy sector.

BPVA's objectives are:

- stability and predictability of the legal and regulatory framework for investors in renewable energy;
- full implementation of the Third Energy Package of the European Union;
- promotion of the benefits for Bulgarian citizens and the perspectives for the country from the creation of the European Energy Union;

- support by the national institutions of the new climate and energy targets of the European Union by 2030;

- increase the share of renewable energy in consumption to 50%;

- promote the positive effects for society from the production and consumption of green energy (in terms of climate, health and environment);

- improvement of the conditions for new investments in renewable energy.

Another non-profit organization is the Association of Producers of Ecological Energy (APEE). The APEE was established in August 2004 by 16 companies willing to invest in ecological power plants in Bulgaria. The Association took the challenge to help and protect the private initiative of the Bulgarian and international investors, representing their economic and branch interests to the state authorities and other organizations.
The Coalition "Alliance of the producers of ecological energy – BG" was established in 2007 as a non – profit entity aiming to participate in socially helpful activities. Its objectives include the following:

- To develop and realize initiatives in the sphere of the power production through developing and supplying ecological and economic advantageous decisions on the base of applying programs for power engineering development.

- To cooperate for achieving economic effectiveness in the production of ecological energy.

- To cooperate for saving the environment and developing the social receptivity.

- To popularize studying, projecting and exploiting activities of the power facilities.

- To protect the rights and interests, the authority and the high repute of its members while accomplishing collaboration between them and other professional and social organizations and local and civil authorities, medias and civil organizations.

These organizations are consistently involved with the processes within the RES projects, their main purpose being to establish sustainable market and legal environment for successful development of the sector.

Therefore, they are expected to have a significant impact on the future legislative, market and financial improvement with respect to the Crowdfunding platforms expansion.

4 Regulation of Crowdfunding in Bulgaria

After reviewing the current applicable Bulgarian legislation (as of December 2015) and the available public information provided by the competent state authorities in this regard, we can confirm that there are no explicit regulations in the field of Crowdfunding financing being adopted yet.

Notwithstanding the above, upon development of this legal institute in Bulgaria, the following legal framework could be applied in future to the already existing types of crowd-funding:

1. Law on Credit Institutions & Law on Payment Services and Payment Systems

In general, pursuant to Art. 2 and 3 of the *Law on Credit Institutions* a legal entity is treated as a credit or a financial institution in any case it provides to the public financial services including payment services within the meaning of the *Law on Payment Services and Payment Systems*.

Financial institutions which are not subject to license under another special legal act are required to register in the Financial Institutions Register maintained by the Bulgarian National Bank (BNB) – the institution, supervising their activity. BNB shall be also competent to exercise control to payment service providers as defined in the *Law on Payment Services and Payment Systems.*

In summary, notwithstanding the type of the Crowdfunding platform, the operator of the platform shall be required to meet the prerequisites of at least one of the abovementioned legal acts.

2. Public Offering of Securities Act & Markets in Financial Instruments Act

In case the Crowdfunding platform offers an *equity model* it could fall within the legal framework of the *Public Offering of Securities Act* or the *Markets in Financial Instruments Act.*

Legal entities providing public offering of securities shall be required to register as a public joint-stock company and to comply with the requirements for those companies under the Law.

The companies which publicly offer securities to investors are generally subject to a prospectus requirement as per Art 78 of the *Public Offering of Securities Act*. These rules do not apply to the following types of offering:

- the securities are offered solely to qualified investors;

- the securities are offered to fewer than 100 natural persons or legal entities in Bulgaria or to fewer than 100 natural persons or legal entities in each other Member State;

- the minimum consideration to acquire the securities amounts to the BGN equivalence to EUR 50000 per investor, for each separate offer;

- the denomination of the offered securities per unit amounts to at least the BGN equivalent to EUR 50000;

- the total consideration of the offered securities is less than the BGN equivalent to EUR 100000, which limit shall be calculated within a time period of one year.

Legal entities facilitating public offering of securities or investment products could have been required to register as an investment intermediary under the *Markets in Financial Instruments Act.*

The Financial Supervision Commission is responsible to supervise the public offering of securities and to exercise controlling activities in order to prevent and terminate legal violations in view to ensure protection of the interests of investors.

Other applicable laws related to the activities of the crowd-funding platforms might be the *Commerce Act,* the *Law on Measures against Money Laundering* and the *Currency Act,* in regard to the bank transfers regulations, as well as the different lending models, including between related parties.

With regard to the management of the alternative investment funds (AIFs) a new chapter has been adopted in the Law on Collective Investment Schemes and Other Undertakings for Collective Investments which provides for detailed regulation of the activity of the fund managers, including their registration/licensing, requirements for their organization, terms and conditions in case of trans-border management. The competent body which shall regulate and supervise the activities of AIFs and their managers shall be the Financial Supervision Commission. Nevertheless, pursuant to the Law on Collective Investment Schemes and Other Undertakings for Collective Investments, the Crowdfunding financing does not fall within the scope of its application. It shall apply to closed-end investment companies, as far as the special investment purposes companies are excluded of the scope of application of the Directive.

Recent developments of the Crowdfunding Market in Bulgaria

During the last 12 months there were several new projects in Bulgaria regarding Crowdfunding:

There are two new Bulgarian platforms – www.tramplin.bg and www.krile.bg – connected to each other, eager to overcome the current problems existing in the Bulgarian Crowdfunding field and willing to offer all the necessary conditions for active development projects. Tramplin.bg was initially designed to support projects with mainly social purposes, whereas krile.bg was designed for commercial projects of people who want to start a family business.

Another platform was established during the last year – www.propertyclub.eu – this is an online marketplace where potential investors are given the opportunity to invest in real estate projects.

5 Regulation of RES Projects in Bulgaria

5.1 Legal framework between 2007-2010

The Renewable and Alternative Energy Sources and Biofuels Act (RAESB Act) was adopted in Bulgaria in 2007. This legal act allowed the development of the RES in Bulgaria. It transposed the requirements of the EC Directive 2001/77. Until the transposition of the Directive 2009/28/EO in 2011 it was the main legal act for the promotion and consumption of RES in Bulgaria.

Various measures, such as priority connection to the grid, subsidised FITs, financial incentives for the construction of RES, etc. were put in place under the RAESB Act. Since 2007 Bulgaria has its differentiated FiTs support regime in place with obligatory purchase of RES energy, priority connection of RES generation to the grid, long-term power purchase agreements and limited annual FiT adjustments. The State Energy and Water Regulatory Commission assumed the commitment to purchase alternative energy at a higher tariff and for the specific duration (12 years or 15 years, according to the legal modifications). Suppliers refusing to accept renewably-produced electricity were fined up to 500 000 euros in response to renewable power producers' reports of difficulty in grid connection. The RAESB Act also established an obligation to purchase and dispatch electricity from renewable sources. System operators are contractually entitled against the grid operator to the purchase and transmission of all electricity from renewable sources supplied (§ 18 par. 1 item 2 RAESB Act).

5.2 Legal framework between 2010-2015

In 2010 Bulgaria adopted new legislation about the RES projects, changing the conditions for the support of the sector in terms of preferential prices, terms and introduction of guarantee payments. The explanation of this policy could be seen in the Ministry of Energy report. The evaluation of Ministry of Energy is that the introduced with the 2007 law support measures for the RES – preferential prices, compulsory buying, long term contract, etc. led to very high interest about the production of RES based electricity. This causes several problems such as: the announcement of too much investment intentions for solar and wind parks, not in compliance with the capacity of the energy system of the country; the cases of RES

projects in preserved or other sensitive areas without the necessary authorizations, the need to change the statute of agricultural lands and the fact that many potential investors were not prepared to fully support their investment.

According to the experts of the RES-Integration project, “The new RES Act now abolishes the priority access to the grid for RES producers completely. The law places renewable energy behind all other kinds of energy. The law envisages stopping the application of the support mechanism after the indicative target for Bulgaria is achieved. This measure is in direct violation of EU directives. Another serious barrier is the fact that RES investors will find out the price at which they will be selling their energy only after the construction of their power generating facilities is completed”.

In 2011 the Parliament adopted a new, rather restrictive Renewable Energy Sources Act (RES Act) in response to the significant rise of the percentage of the energy, produced via renewable sources. The eligibility period for FiTs for wind and solar photovoltaic (PV) was reduced. The main reason for this legislative direction was the prognosis for sharp increase of the cost of renewable support systems and grid development, and the falling cost of renewables, especially solar. Following this tendency after 2012 the new legislative measures brought the RES sector to a significant decrease of the support for RES. These developments led to certain protests from investors against the newly adopted rules, the lack of transparency in the energy sector and the lack of predictability for their investment.

6 Conclusion

In view of future developments in the referred to sector, it should be pointed out that there is a need to rely on the market mechanisms and to ensure that support measures are transparent and equal for the potential investors. There is also a need to simplify the complex administrative procedures, especially for small RES projects such as roof installations.

Already when the new legislation adopted in 2011 was discussed, Bulgarian Investment Agency (BIA) claimed that all producers of electricity, including from RES, should pay to connect to the grid and not to continue to practice free of charges connection at the expense of the investment capacity of the electricity system

BIA considers that there is a need of large societal consensus about the main directions of the RES development that ensure sustainable development and competitive energy prices for the industry and the households.

Due to the fact that Bulgaria has good wind, water and solar resources, especially in the North-East, along the Black Sea coast and in the South-West Bulgaria, the country has good potential for the development of RES projects. There are large solar photovoltaic projects proposed, especially in the South, as well as biofuel and biomass projects to be released in the near future. Therefore, through reasonable legislative mechanisms and proper quality and financial control in the sector, there are good

future perspectives for the development of the RES projects in Bulgaria, including through the support of the Crowdfunding market platforms. The latter have not been utilized essentially as of this date. It is important that this type of funding mechanism finds finally a regulatory base in Bulgaria and later on to be included in the harmonisation process of renewable electricity policies within the European Union.

7 Summary – Crowdfunding and RES Projects Regulation

Country / Summary	Bulgaria
Recent developments in Crowdfunding regulation	• There are two new Bulgarian platforms – www.tramplin.bg and www.krile.bg – connected to each other, eager to overcome the current problems existing in the Bulgarian Crowdfunding field and willing to offer all the necessary conditions for active development projects. Tramplin.bg was initially designed to support projects with mainly social purposes, whereas krile.bg was designed for commercial projects of people who want to start a family business.
Current Crowdfunding Regulation	
General regulation	• The operator of the platform may be required to be licensed / registered either as a financial or a credit institution by the Bulgarian National Bank in accordance with the Law on Credit Institutions, respectively with the Law on Payment Services and Payment Systems. • Legal entities providing public offering of securities shall be required to register as a public joint stock company in compliance with the Public Offering of Securities Act. • Legal entities facilitating public offering of securities or investment products could be required to register as an investment intermediary under the Markets in Financial Instruments Act. • The Financial Supervision Commission is responsible to supervise both the public offering of securities and the investment intermediaries.
Prospectus requirement	• Prospectus requirement for companies which publicly offer securities to investors • Threshold: EUR 100.000 per issuer within 12 months

AIFMD-regulation	• With regard to the management of the alternative investment funds (AIFs) a new chapter has been adopted in the Law on Collective Investment Schemes and Other Undertakings for Collective Investments which provides for detailed regulation of the activity of the fund managers, including their registration/licensing, requirements for their organization, terms and conditions in case of trans-border management. The competent body which shall regulate and supervise the activities of AIFs and their managers shall be the Financial Supervision Commission. • Pursuant to the Law on Collective Investment Schemes and Other Undertakings for Collective Investments, the Crowdfunding financing shall not fall within the scope of its application. • It shall apply to closed-end investment companies only, as far as the special investment purposes companies are excluded from the scope of application of the Directive.
Payment services regulation	• Transfer of funds through operator may constitute money remittance service – in future, the operator of the platform may be required to be licensed / registered either as a financial or a credit institution by the Bulgarian National Bank in accordance with the Law on Credit Institutions, respectively with the Law on Payment Services and Payment Systems.
Consumer credit regulation	• At present, lending agreements, including between related parties or between a local and foreign entities are subject to a registration under the Currency Act in a special register at the Bulgarian National Bank.
Further possible require-ments	• The Commerce Act • The Law on Measures against Money Laundering • The Currency Act
RES Projects Regulation	
Electricity regulation applicable to RES Projects	• Energy Act and Renewable Energy Sources Act (RES Act) – • Amendments as of 7th March, limiting the FiT scheme;

	• Amendments as of 24th July imposing a retroactive fee of 5% on all electricity producers

Lessons learned – Crowdfunding / RES Projects Regulation

Lessons learned for a possible harmonized European Crowdfunding Regulation	
Role model ("dos")	• Adoption of explicit legal regulation of Crowdfunding in Bulgaria which shall set clear and simple rules and procedures • Measures for protection of the investors in Crowdfunding projects should be adopted • Measures for increase of people's trust in Crowdfunding projects should be taken having in mind the impact of the financial pyramid schemes which have caused substantial turbulence in Bulgaria and in the other Balkan countries in the 90s
Aspects that should be avoided ("don'ts")	• Lack of legal framework, including clear rules about the protection of intellectual property over the Crowdfunding projects exposed in Bulgarian platforms, clear contractual rules between the platforms and the investors • Decrease of the administrative burden for the investors and the business, including licensing exemption in certain cases
Lessons learned for a possible harmonized European RES Projects Regulation	
Role model ("dos")	• Adoption of explicit legal regulation of Crowdfunding in Bulgaria which shall set clear and simple rules and procedures • Incentives for RES Projects • Adoption of citizen participation models for small RES Projects by explicit and simple rules • Popularisation of the RES Projects in the society having in mind the latest adopted restrictive RES Act in Bulgaria, the lack of transparency in the Bulgarian energy sector and the lack of predictability for the investments in the sector

Aspects that should be avoided ("don'ts")	• Lack of clear and simple rules • Lack of transparency in the Bulgarian energy sector • Lack of predictability for the investments in the RES Projects • Lack of control over the state authorities as regards proper implementation of the RES Projects in Bulgaria

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IV. Croatia

1 Croatian market for RES Crowdfunding Platforms

Projects dealing with renewable energy sources ("**RES Projects**") are beginning to get more and more attention in Croatia, as from the regulatory, but also from the entrepreneurial aspect. However, the market for Crowdfunding platforms specialized in funding RES Projects ("**RES Crowdfunding Platforms**") is still practically non – existent, with barely a few exceptions. This is mostly due to the fact that Crowdfunding in general is still not fully integrated as an instrument of gathering funds for realization of projects, despite certain attempts to familiarize the general public with its benefits.

1.1 Different investment models

The rare successful RES projects funded through Crowdfunding in Croatia indicate practice through international platforms (such as IndieGoGo) with energy cooperatives (*energetske zadruge*) as project holders. In light of the investment model this example was set up as a reward – based one, in the form of certain gifts made by local citizens as a non – monetary reward for the investors. This model could undoubtedly be combined with the Donations model.

Energy cooperatives function as associations of local actors (individuals, companies, public institutions etc.) who combine their efforts to develop RES projects, especially concerning those that are owned by the local community. They are governed by the general provisions of the Cooperative's Act (*Zakon o zadrugama*) such that all the participants have equal rights with respect to decision making. Members can only be natural persons or legal entities which are either directly involved in the cooperative's conduct, do business through the cooperative, use its services or in any other way take part in achieving the goals set by the cooperative or allocate a specific amount set forth by the cooperative. This legal instrument is becoming popular because it provides a platform for achieving common goals, especially in local/regional communities by uniting their actors, decreasing the individual investment risks and dividing the project gain. Due to the involvement of the local community, the model also has the potential to minimize the NIMBY ("Not In My Back Yard") effect.

As the cooperatives usually also obtain finance for their RES projects via bank loans there is a significant probability for the development of the Lending model for possible CrowdFundRES platforms in the future.

1.2 RES Projects

The best known RES project set up by means of Crowdfunding was the so called "Energy self-sufficient" primary school in Zaostrog. The project was initiated by an energy cooperative which managed to accumulate funds through the IndieGoGo Crowdfunding platform. The goal was to accumulate funds in the amount of USD 10,000.00 in order to put up a solar panel with which they would be able to produce electricity and to invest any surplus in other matters of efficiency, as additional lighting

and isolation of the rooftop. The project was successful and set a good example of how RES projects can be successfully undertaken by way of Crowdfunding.

2 Recent regulatory developments regarding Crowdfunding regulation in Croatia

Crowdfunding in general is, as stated before, inadequately dealt with in legislation. No acts have been enacted specifically in relation to Crowdfunding. Instead, general legislation applicable to business financing is applicable. There exists no published case law on the application of such general legislation in the context of Crowdfunding. The only administrative review of Crowdfunding practice is stated in a non-binding assessment by the Tax Administration set forth on an official request to assess the application of tax regulation on the management of Crowdfunding. The assessment merely quoted the applicable tax rules regarding donations, VAT and corporate income tax, without going into details regarding the specifics of Crowdfunding platforms.

Civil organizations put much effort on pointing out the advantages of Crowdfunding through media, blogs and potential projects which could raise public awareness, participation and, ultimately, investment by way of Crowdfunding. Among the most popular sites on Crowdfunding is Crowdfunding.hr, which is a blog with news about Crowdfunding in Croatia, analysis, reports and pending projects. «Crowdfunding academy» an initiative, backed by the United Nations Development Programme in Croatia, is also active, as well as the non-profit organization Brodoto which plays a notable role in the promotion of Crowdfunding through education and support. The Zagreb Crowdfunding Convention in September 2015 also raised considerable interest gathering a lot of entrepreneurs on the Crowdfunding issues.

Interestingly enough, some world known Crowdfunding platforms served as an excellent platform for projects originating from Croatia, with a total of more than HRK 2,750,000.00 (about EUR 370,000.00) of accumulated investments. Among those, projects centered on technology and innovations have caught most of the investor's eye.

Croinvest.eu and Doniralica

The only currently active Croatian Crowdfunding platforms are Croinvest.eu and Doniralica, both of recent date. Croinvest.eu is the first Croatian Crowdfunding platform, which was set up for financing entrepreneurial and infrastructural projects as well as projects of public interest, with a special emphasis on European Union funds. The platform is open to all natural persons with legal capacity and legal entities as well as for “all foreigners willing to invest in Croatia”. In summary, it enables donating funds, investing in exchange for a non-monetary reward, classical loan or investing in exchange for shares in the pending company or through a silent partnership agreement (*Tajno društvo*).

Doniralica accumulates funds primarily for the activities of the civil sector. The model is based on regular donations. Doniralica is a hybrid between a Crowdfunding platform

and a typical charity organization. The project holder must describe its pilot project, lay down its financial goals, duration of the funding campaign and then promote the idea. The project holders are mostly associations which have registered seat in Croatia, have adequate capacities for the realization of stated projects and are in awe with the principles of Crowdfunding.

3 Further recent regulatory developments considering RES projects market in Croatia

As of 1 January 2016 the Act on Renewable Energy Sources and High-Efficient Cogeneration (*Zakon o obnovljivim izvorima energije i visoko učinkovitoj kogeneraciji*) shall be applicable. The Act is intended to bring some changes that shall presumably accelerate the development of RES politics, support and projects in general.

The Act is a reflection of the efforts on harmonization of the Croatian legislation with the Acquis Communitaire (implementation of the Directive 2009/28/EC and the Energy Efficiency Directive 2012/27/EU) and it represents a corner stone for the National Energy Strategy. The target scenario of the Strategy is to have a 20% share of renewable energy consumption in the overall energy consumption by 2020.

The Act on Renewable Energy Sources and High – Efficient Cogeneration

The Act on Renewable Energy Sources and High-Efficient Cogeneration (*Zakon o obnovljivim izvorima energije i visoko učinkovitoj kogeneraciji*), which shall come into effect as of 1 January 2016, will bring some awaited amendments into the RES industry, although professionals in the field have mixed opinions on how will this Act turn out in practice. The Act is intended to achieve improvements in the sector of managing incentives for production, introducing specific quotas in regard of RES, setting up and management of a registry of projects, project developers and eligible producers, introducing possibilities to build facilities on state property (either by easement or building rights) and dealing with issues of international cooperation.

The most important changes are the following:

- Premium prices: the traditional feed in tariffs will be modified with so called premium prices (*premijske cijene).* In practice this means that the future producers of electrical energy from RES will have the opportunity to enter into bilateral contracts for the repurchase of electrical energy at market value while the Croatian Energy Market Operator (*Hrvatski operater tržišta energije*) will contribute with a premium which represents the difference between the average price of energy production from RES and the market price.

- Introduction of the ECO balance group: membership in the newly established ECO balance group (ECO bilančna grupa) shall be mandatory for all RES producers entitled to a preferential purchase price or guaranteed purchase price based on the existing Tariffs. The Croatian Energy Market Operator shall

be in charge of this group and shall be responsible for the planning, administration and reporting on management of the production plans. The goal of this measure is a better regulation of obligations of eligible producers of electrical energy based on RES so the balance of the electro energy system can be efficiently restored if necessary.

- Possibility to build facilities on state property (easement or building rights): producers based on RES can apply, at a public tender organized by the government, to construct on state property electricity production facilities using renewable energy or high efficient cogeneration. The main criteria on which they will be assessed are the planned annual production of energy based on RES, possible positive outcomes for the local community in the area, participation of local community actors, planned employment of workers, and issued certificates from government bodies on the development of the project.

- Takeover of surplus of electricity from purchasers with its own production: the electricity suppliers are obliged to take over any surplus of electricity from purchasers with their own production provided that they qualify as Preferred Producers and comply with the technical conditions set out in the Act.

4 Regulation of Crowdfunding in Croatia

As stated before, there are no regulations (statutes, ordinances or bylaws) which address Crowdfunding specifically. The analysis below addresses the relevant general legislation and other legal instruments as applied to Crowdfunding.

4.1 Licence under the Croatian Capital Market Act

4.1.1 Equity Model

Crowdfunding platforms relying on the Equity model would be characterized as investment companies in terms mean of interpretation of the provisions of the Capital Market Act (*Zakon o tržištu kapitala*).Accordingly, pursuant to the Act, a licence from the domestic Financial Services Supervisory Authority (*Hrvatska agencija za nadzor financijskih usluga*) or in cases of credit institutions, from the Croatian National Bank (*Hrvatska narodna banka*), is mandatory for providing "investment services and activities" by means of Crowdfunding.

"Investment services and activities" (*investicijske usluge i aktivnosti*) as mentioned above are defined as the brokering of business involving the purchase and sale of financial instruments (investment brokering), the purchase and sale of financial instruments in the name of and for the account of others (contract brokering), the placement of financial instruments without commitment to take up those instruments (placement of financial instruments), portfolio management, investment counselling, safeguarding and administering investments (including custodial services).

As the term "financial instruments" (*financijski instrumenti*) is critical in this assessment, it is notable to outline that this term includes, among others;

- transferable securities,
- units in collective investment funds,
- money market instruments options,
- futures,
- swaps,
- forward rate agreements,
- other derivative instruments linked to securities, currency, interest rates or returns.

On the other hand, transferable securities (*prenosivi vrijednosni papiri*) are defined as securities which are transferable on capital markets and that they include bonds and other forms of securitized debt, stock corporation shares and other equivalent securities representing shares in the capital or in membership rights and any other securities based on which a cash payment may be made as determined with reference to securities.

When discussing the view of the Equity model one must also state that in practice the available Croatian Crowdfunding platforms offer models which could fall out of the scope of the Croatian Capital Market regulations, specifically when offering stakes which are not transferable on capital markets, therefore being not required to obtain mandatory licences from the Financial Services Supervisory Authority or the Croatian National Bank. For instance, the models which are present in Croatia and could fall out of the scope of the Act are the following:

a) investing in exchange for shares in the pending limited liability company. The proportion of investment in the company's registered share capital will correspond to the equity share. This process must be commenced and managed in accordance with the Companies Act (*Zakon o trgovačkim društvima*).

b) investing in exchange for stakes in a cooperative in which case the investment is subject to the Cooperatives' Act, particularly in terms of establishing, owning and managing of a cooperative. Members of a cooperative have a duty to directly participate in the operations of the cooperative, by doing business through the cooperative or otherwise directly participating by achieving its goals. Also, in this case the size of

the investment does not affect the voting rights as all members have equal rights in this manner.

c) the silent partnership model (*tajno društvo*) is mostly recommended by the Croatian Crowdfunding platforms due to the fact that this scenario has less formalities, the investor is in a favored position because he is typically not liable for company's losses or debts toward third parties and the project holder keeps a certain amount of independence. In this structure, the project holder must first establish a company (specifically, a private limited liability company) and then enter into an agreement with each investor whereby such an investor (silent partner) is entitled to a certain percentage of profits of the relevant company (losses, only if agreed) for a definite or indefinite amount of time.

4.1.2 Lending model

The lending model resembles the classical loan agreement, although the platforms offering this model do not specify whether it includes issuance of bonds or other transferable debt securities. In case it does include issuance of debt securities, the Capital Market Act can apply to this structure as well. Taking that into account, an appropriate licence would also have to be obtained from the Financial Services Supervisory Agency or the Croatian National Bank.

The Croatian Consumer Credit Act (*Zakon o potrošačkom kreditiranju*) may also be applicable to the extent that it can be used as a vehicle for providing consumer credit. The principle stated on the platforms is merely that the investor loans funds to the project holder in the form of an interest-free or interest-bearing investment loan, which must be repaid within a set timeframe.

4.1.3 Donations and Rewards Model

The Donations Model offers investors the opportunity to donate funds for realization of projects without receiving a monetary reward or share in equity or profits. Projects financed through this model are usually of humanitarian or other socially beneficial nature.

The Rewards model allows investors to invest funds in exchange for a supply of a product or service within a set time-frame. According to the relevant Croatian regulations, this is a sale and purchase transaction performed by a for-profit entity (except where the reward is only of symbolic value, such as a certificate). This means that the project holder is obliged to register a business entity (rather than a nonprofit organization) and satisfy minimum technical requirements for sale of certain goods or services in order to comply with the relevant regulations on sale and purchase transactions of the relevant goods or services. The project holder must also specify the deadline for the delivery of goods and services. The project holder must issue invoices to the investors for the goods and services delivered.

As these models do not qualify as investment services or activities, they fall out of the scope of regulation regarding financial services.

4.2 Prospectus requirements

A public offering of transferable securities in Croatia falls, as stated before, under the provisions of the Capital Market Act and therefore an issuance of a prospectus is required.

A prospectus would thus have to be filed in the Lending model in cases where lending involves bonds or other debt securities transferable on capital markets.

The law provides for exceptions from the duty to issue prospectus, such as:

- for securities where the total consideration of the offer is less than EUR 5.000.000, which limit shall be calculated over a period of 12 months, provided that these securities are not convertible or exchangeable securities or subordinated securities and are not securities that give their holder a right to subscribe to or acquire other types of securities and that they are not linked to a derivative financial instrument,

- where debt securities are issued by the government or local governments,

- for securities which are irrevocably guaranteed by the state or the regional/local administration.

4.3 Regulation of Crowdfunding under the AIFMD regime

The Alternative Investment Funds Act (*Zakon o alternativnim investicijskim fondovima*) governs the establishment and management of Alternative Investment Funds ("AIFs") and AIF management entities ("AIFMs").

Under this regime, the AIF is defined as an investment fund established for the purpose of raising assets through public or private offer and investing these assets into different types of property in accordance with a strategy and investment targets defined upfront for the benefit of investors of such AIF.

The two main types of AIFs are

a) open ended: generally only a collection of assets without legal personality and managed by AIFM

b) close ended: company formed as a stock corporation or a private liability company, managed by AIFM

Crowdfunding platforms should not properly be qualified as an AIFM, even if the underlying investment qualifies as an AIF, because the investment is not managed by the platforms but rather by the fund seeker.

4.4 Licence under the Payment Services Act

In case the platform operator provides "money remittance" (*novčana pošiljka*) services between the investor and the crowd-funded business within the meaning of the Croatian Payment Services Act (*Zakon o platnom prometu*), the operator shall generally be required to have a relevant authorization from the Croatian National Bank.

This does not however apply to payments made by "commercial agents" (*trgovački zastupnici*) authorized to negotiate or conclude contracts on behalf of the payer and the payee. To the extent that the platform operators may qualify, depending on the overall structure, as commercial agents, they are able to rely on this exception.

4.5 Possible additional Regulations

Other regulations to which the operator of a Crowdfunding platform may be subject include:

- Croatian Act on Prevention of Money Laundering and Financing of Terrorism (*Zakon o sprječavanju pranja novca i financiranja terorizma*)
- Croatian Act on Protection of Personal Data (*Zakon o zaštiti osobnih podataka*)
- Croatian Companies Act (*Zakon o trgovačkim društvima*).

5 Regulation of RES Projects in Croatia

RES projects are growing more and more popular over the years due to institutional backup, such as from the central and local governments, but also due to civic engagement.

An important step in this process has been the adoption of the National Action Plan for Renewable Energy (*Nacionalni akcijski plan za obnovljive izvore energije*) which follows up on the National Energy Strategy (*Strategija energetskog razvoja*).

In addition to the aforementioned Act on Renewable Energy Sources and High-Efficient Cogeneration, a major role in this context is played by the general energy legislation such as the Energy Act (*Zakon o energiji*), Act on Regulation of Energy Activities (*Zakon o regulaciji energetskih djelatnosti*), Ordinance on the Use of Renewable Energy Sources and Cogeneration (*Pravilnik o korištenju obnovljivih izvora energije i kogeneracije*), Rules on the Acquiring of the Status of an Electricity Preferred Producer (*Pravilnik o stjecanju statusa povlaštenog proizvođača električne energije*) and other indirectly involved laws and bylaws.

5.1 RES institutional support and incentives

5.1.1 The Environmental Protection and Energy Efficiency Fund

In the context of the protection of the environment, a key role is played by the Environmental Protection and Energy Efficiency Fund (*Fond za zaštitu okoliša i energetsku učinkovitost*) which has the task of collecting and investing extra budgetary resources in the programmes and projects of environmental protection, energy efficiency and use of renewable energy sources. The fund finances the preparation, implementation and development of programmes and projects in the field of sustainable use and improvement.

The Fund is governed by the Act on the Environmental Protection and Energy Efficiency Fund and it is authorized to provide loans, subsidies, financial assistance and donations to natural persons and legal entities involved in the aforementioned projects and activities.

The Fund co-finances the purchase of RES systems by citizens, companies, units of local and regional self-government, and other institutions.

The funds give interest-free loans to renewable energy projects through a tendering process to legal entities or natural persons. The amount of the loans depends on the budget possibilities for the current year. The main criteria for the applicant are that he must:

- have his registered seat in Croatia
- invest his own funds into projects in the field of RES
- accept the terms of participation in the projects and programs prescribed in the Fund's Statute
- conclude an agreement with the Fund on the joint investment (loan contract)
- meet other specific requirements.

5.1.2 Croatian Bank for Reconstruction and Development

The Croatian Bank for Reconstruction and Development (*Hrvatska banka za obnovu i razvoj*) has operates the Loan Programme for Environmental Protection, Energy Efficiency and Renewable Energy, which supports investments relating to the initial funding and acquisition of land, buildings, equipment and devices. The minimum loan amount is set at HRK 100,000.00 (about EUR 13,300.00). The maximum amount is not pre-defined and it depends on variables such as the Bank's financial capacity, the specific investment programme, creditworthiness of the end borrower and the value and quality of the security offered. The standard procedure is that the loan seekers

must submit their loan requests to a commercial bank along with the documents listed in the Loan Programme (such as investment plans, cost projections, technical documentation including the necessary permits etc.).

5.1.3 Croatian Energy Market Operator

The Croatian Energy Market Operator (*Hrvatski operator tržišta energije*) performs activities of organizing electricity and gas market as a public service, under the supervision of the Croatian Energy Regulatory Agency (*Hrvatska energetska regulatorna agencija*). It is authorized to conduct activities in regard of incentivizing electricity production from renewable sources and cogeneration and for incentivizing production of biofuels for transport. Its competences also include the registration of contractual obligations among market participants, settlement of balancing energy, concluding contracts with incentivized Preferred Producers, making reports about proceeding activities on supplier change, distribution of incentive fee to producers of biofuels, etc. Notably, it proceeds with the so called feed in tariffs (*zajamčene cijene*) in respect of subjects that have obtained the status of a "Preferred Producer" in accordance with the current Tariff System.

5.2 Defining the Preferred Producer

The so called "Preferred Producer" (*Povlašteni proizvođač*) is any entity which produces electrical and heating energy in a singular facility, by using waste or RES in in compliance with the environment protection regulations. The technical aspects and criteria are listed in the Rules on Acquiring the Status of the Preferred Electricity Producer (most recently amended in 2015).

The Preferred Producer, after acquiring its status, is entitled to an incentive in the form of feed in tariffs, depending on the type of RES technology and power output of his RES facility, provided that it signs a relevant agreement (which usually has 14 years duration) with the Croatian Energy Market.

The amount of the feed-in tariff depends on the generating capacity and the specific technology or the efficiency of the target facility. The tariff system is funded by fees that are charged per each kWh purchased by end consumers.

5.3 Grid issues concerning RES Electricity Producers

Any electricity producer must apply to the Croatian Grid Operator (*Hrvatski operater prijenosnog sustava*) for a new connection or reinforcement of an existing connection to the electricity grid. Wind power plants are subject to certain special requirements and technical specifications in. The procedure is subject to the requirements of the Grid Code (*Mrežna pravila elektroenergetskog sustava*) and the agreement made between the producer and the Grid Operator.

5.4 Issues concerning biofuel

The Biofuel Act (*Zakon o biogorivima za prijevoz*) primarily governs placement of biofuels on the market. The goal of the Act is to promote the use of biofuels in accordance with the goals set forth in the National Action Plan.

Biofuel, as defined in the Act, includes biodiesel from rapeseed, bioethanol from corn, bioethanol from sugar beet, biodiesel from waste cooking oil, biodiesel from lignocellulosic raw materials, bioethanol from lignocellulosic raw materials, biogas, biomethanol.

Energy producers are entitled, according to the Act, to incentives based on their production quotas by filling an application to the Market Operator.

6 Conclusion

Crowdfunding in Croatia has not yet lived up to its potentials. Certain steps have been taken in the right direction, mostly through the civil sector, but a lot more is to be done.

RES projects, on the other hand, have been actively promoted by the central and local government. They have received more public attention, although the measures needed for their advancement could be improved.

As for CrowdFundRes as a system, it is still practically non-existent in Croatia. Initial examples (such as the energetically sufficient primary school in Zaostrog) show that energy cooperatives, in case Crowdfunding gets its needed recognition in the eyes of the state, could be the pioneers in general practice of this instrument of gathering funds for RES projects.

7 Summary – Crowdfunding and RES Projects Regulation

Country / **Summary**	**Croatia**
Recent developments in Crowdfunding regulation	• there have been no recent developments concerning the regulation of Crowdfunding in Croatia
Current Crowdfunding Regulation	

General regulation	• in case the platform operator deals with financial instruments (transferable securities) or bonds, it falls within the scope of the Capital Market Act • authorization is required from the Financial Services Supervisory Agency or from the Croatian Central Bank in case of credit institutions (except when offering stakes which are not transferable in capital markets)
Prospectus requirement	• prospectus is necessary in case of public offering of transferable securities • certain exceptions apply (e.g. offerings issued or guaranteed by the state or local governments)
AIFMD-regulation	• Crowdfunding platforms cannot be properly considered as AIFM's
Payment Services regulation	• authorization needed from the Croatian National Bank for transmission of funds between the investor and the crowd-funded business via the Crowdfunding platform • exception: payments made by "commercial agents" authorized to negotiate or conclude contracts on behalf of the payer and the payee
Further possible requirements	• Croatian Act on Prevention of Money Laundering and Financing of Terrorism • Croatian Personal Data Protection Act • Croatian Companies Act
RES Projects Regulation	
Electricity regulation applicable to RES Projects	• RES-E producer must apply a submission to the Croatian Grid Operator for a new connection or reinforcement of an existing connection • Croatian Energy Market Operator is particularly important in regard of incentives - Rules on Acquiring the Status of a Preferred Electricity Producer

Market Integration of RES Projects	• the Act on Renewable Energy Sources and High-Efficient Cogeneration is applicable as of 1 January 2016 • the Act introduces premium prices, possibility of obtaining building rights on state property, obligatory quotas, the ECO balance group, possibility to repurchase surplus from the RES producer • feed in tariffs and loans main incentive instruments
Transition to tender based allocation of new RES projects	• tender based allocation of funds in certain cases where criteria must be satisfied has managed to produce some results regarding production of RES based energy, in some cases also regarding specific RES projects on local/regional level

Lessons learned – Crowdfunding / RES Projects Regulation

Lessons learned for a possible harmonized European Crowdfunding Regulation	
Role model ("do's")	• more legal certainty needed regarding Crowdfunding in Croatia
Aspects that should be avoided ("don'ts")	• proper regulation must first be set forth in order to asses possible pitfalls
Lessons learned for a possible harmonized European RES Projects Regulation	
Role Model ("do's")	• system of incentives and additional benefits has certain effects, the premium prices as an instrument should contribute to a more market – oriented approach • further involvement of energy cooperatives
Aspects that should be avoided ("don'ts")	• complicating submissions for incentives • having unilateral bylaws and regulation which do not take into consideration different potentials of market acters, therefore discouraging the small and medium sized to participate

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V. Cyprus

1 Cyprus market for RES Crowdfunding Platforms

Projects dealing with renewable energy sources in Cyprus ("**RES Projects**") are only now starting to gain attention of the public and for this reason there is not a Cyprus market for RES Crowdfunding platforms. At the moment, no Crowdfunding platform has yet been developed or operates in Cyprus dealing specifically with the promotion of RES Projects or campaigning, amongst others, for any RES Project.

As a general remark, the Crowdfunding business in Cyprus is under-developed, with only one Crowdfunding platform presently existing in the country, which is based on donation or rewards-based Crowdfunding, and involves campaigns supporting charitable causes or the promotion of innovative ideas. Cyprus has not enacted specific legislation regulating Crowdfunding business. Instead, the European Union (EU) legislation either directly applicable in Cyprus in the case of EU primary regulations or transposed into national law in the case of EU directives and other secondary legislation sets out a framework and provides the necessary guidance for regulating the lending-based and investment-based Crowdfunding models. Therefore, any future Crowdfunding platforms aspiring to be established in Cyprus would operate under and would have comply with such regulation. Furthermore, on the basis of incentives provided by the use of renewable energy sources (analyzed below) Crowdfunding platforms endorsing fundraising for RES Projects may be developed soon.

2 Recent regulatory developments regarding Crowdfunding regulation in Cyprus

No recent regulatory developments have been adopted relating in particular to Crowdfunding, and/or facilitating the establishment of Crowdfunding platforms.

3 Further recent regulatory developments considering RES Projects market in Cyprus

The Law for the Promotion and Encouraging the Use of Renewable Energy Sources, Law 112(I)/2013 ("**RES Law**"), transposing the provisions of Directive 2009/28/EC ("**RES Directive**"), provides for the establishment of a special fund ("**RES Fund**") under the administration and management of a commission constituted, amongst others, by the Permanent Secretary of the Ministry of Energy, Commerce, Industry and Tourism, the Permanent Secretary of the Ministry of Finance or his representative and a Representative of the Technical Chamber of Cyprus, which operates Grant Schemes for the grant or subsidy of various investments or activities purporting to promote the use of renewable energy sources, and also the co-generation of energy from renewable energy sources and energy saving.

The RES Fund is financed, inter alia, by a levy imposed on electricity consumption payable by every consumer of electricity, regardless of category or tariff on which they are charged, and by anyone connected to the main electricity transmission or

distribution system who is producing electricity on their own using conventional fuels or renewable energy. Due to a deficit in the RES fund's budget for 2015, an exceptional levy has been recently implemented by virtue of Law 121(I)/2015 amending the RES Law, that is the so-called "green levy" which is imposed on consumers and producers of renewable energy. It is noted that the levy payable by consumers is calculated on the basis of a different methodology than the levy imposed on electricity producers. Finally, the amount contributed by electricity producers will be returned to them by 31 December 2017 in separate installations set by the Minister of Finance.

Nonetheless, the adoption of the green levy was not without criticism; in fact associations of producers of energy from renewable sources have stated that such levy could hinder any interest in investing on renewable energy sources.

For the purposes of transposing the Energy Efficiency Directive 2012/27/EU, the House of Representatives has recently adopted certain amendments to the Energy End-Use Efficiency and Energy Services Law, Law 31(I)/2009. The amendments purport to promote energy efficiency and remove barriers to energy efficiency measures, by introducing, among others, the obligation to conduct an energy audit on all businesses not being Small or Medium sized Enterprises and the obligation for an annual energy upgrade to 3% of the total useful floor area of buildings used by governmental authorities, or other measures resulting in the same energy saving and additionally providing a framework for promoting individual consumption meters for measuring the consumption of heat or cooling or hot water where technically feasible and cost-efficient.

It is also noted that by an order of the Minister of Interior (Order No. 1 of 2014) dated 17 November 2014, urban development incentives, in the form of an additional building factor, purporting to encourage the use of renewable energy in various types of developments, have been adopted. Specifically, the order aims at creating conditions for attracting natural or legal persons of the private sector (or entities of the broader public sector) for the production of energy from renewable energy sources and is associated with all types of developments within specific areas (therein defined) and with other large scale and complex developments within specific areas. Accordingly, the relevant facilities shall be limited to the installation of photovoltaic (PV) and solar-thermal only and in the case PV systems are utilized for producing energy, they will be connected to the electricity distribution network of EAC. Applicants who benefit the urban incentives will not be able to receive grants from the RES Fund or from other resources originating from EU Structural and Investment Funds.

4 Regulation of Crowdfunding in Cyprus

4.1 Equity / investment model

4.1.1 Investment licensing requirements

The carrying of investment services and/or the performance of investment activities in connection with financial instruments in Cyprus falls within the scope of and is regulated by the Investment Services and Activities and Regulated Markets Law, Law 144(I)/2007 ("**MiFID Law**"), transposing in Cyprus the Markets in Financial Instruments Directive 2004/39/EC ("**MiFID Directive**").

According to the MiFID Law, and in line with the MiFID Directive, investment services/activities include the reception and transmission of orders in relation to one or more financial instruments, the execution of orders on behalf of clients, the provision of investment advice, the engagement in portfolio management, the operation of a multilateral trading facility, the dealing on own account, the placing of financial instruments without a firm commitment basis and the underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis.

As regards financial instruments, these include transferable securities, money-market instruments, units in collective investment undertakings, derivative instruments for the transfer of credit risk, as well as options, futures, swaps, forwards which may be settled physically or in cash, etc.

The MiFID Law provides several exemptions from its scope, including persons who do not provide any investment services or activities other than dealing on own account unless they are market makers or deal on own account unless they are market makers or deal on own account outside a regulated market or an MTF on an organised, frequent and systematic basis by providing a system accessible to third parties in order to engage in dealings with them, or persons providing investment advice in the course of providing another professional activity not governed by this Law, provided that the provision of such advice is not specifically remunerated, or persons providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service etc.

It is likely that a Crowdfunding platform wishing to engage in investment-based Crowdfunding will offer services tantamount to investment services and activities provided for in the MiFID Law. Accordingly, the platform could be receiving orders from investors and transmitting them to the issuer or another third party intermediary, thus performing the activity of reception and transmission of orders, or could be acting on behalf of investors to conclude agreements to buy or sell one or more financial

instruments, thus effectively executing orders on behalf of clients within the scope of the MiFID Law.

As a result of the above, where a Crowdfunding platform is carrying out business within the scope of the MiFID Law, and to the extent there is no applicable exemption from the application of the MiFID Law, such platform would have to obtain a license from the competent authority in Cyprus, being the Cyprus Securities and Exchange Commission ("**CySEC**"), or would have to be a credit institution that has an existing authorization to also provide MiFID regulated services and/or activities under its banking license, or act as the tied agent of an investment firm or credit institution.

In either case, where applicable, the MiFID Law imposes a variety of capital, organizational and conduct of business requirements, purporting to ensure that client assets are protected, conflicts of interests are avoided, and that the platform acts in the interests of the clients/investors. More specifically, the MiFID Law the investment firm licensed under the MiFID Law, should have a specified initial capital varying in case the investment firm in question does not deal in any financial instruments for its own account or underwrite issues of financial instruments on a firm commitment basis, but holds client money or securities and engages in the reception and transmission of investors' orders for financial instruments and/or the execution of investors' orders for financial instruments and/or the management of individual portfolios of investments in financial instruments. In the event that an investment firm is active in any or all of the above-named services/activities, but is not authorized to hold client money or securities, to deal for its own account, or to underwrite issues or on a firm commitment basis, the initial share capital required is significantly lower.

Furthermore, in case of a Crowdfunding platform offering investments through equity and hybrid instruments, and takes place solely in the primary market whereas there are no frequent opportunities to realize and/or dispose of the investment at publicly available market prices, the platform offering such investments would have to carry out an appropriateness assessment regarding its clients. Additionally, platforms remunerated by both projects and investors would have to take measures to ensure that they are acting in the best interests of clients.

It is noted, that in accordance with the MiFID Law (and in line with the requirements of the Directive on investor-compensation schemes – Directive 97/9/EC), investment firms licensed under the MiFID Law and credit institutions authorized in Cyprus, are not allowed to provide investment services without participating in the respective investment compensation funds, providing investors with access to compensation up to a specified amount where the investment firm is no longer financially able to meet its obligations. In view of the above, a Crowdfunding platform authorized under the MiFID Law, would have to comply with the above requirement as well.

4.1.2 Prospectus requirements

Entities seeking Crowdfunding for RES projects which involve either the issuing securities or, in general, offerings of investment products to investors may be required to observe the provisions of the Public Offer and Prospectus Law, Law 114(I) of 2005 ("**Prospectus Law**"), which implements the provisions of the Prospectus Directive, namely Directive 2003/71/EC.

The Prospectus Law requires the publication of a prospectus by any entity which offers its securities to the public prior to any such offer of securities or to the admission to trading of such securities on a regulated market, except where certain exclusions or exemptions apply. The prospectus cannot be published unless approved by the CySEC. Nonetheless, the Prospectus Law applies only where instruments are transferable securities within the definition of MiFID Law, transposing the MiFID Directive.

Furthermore, the Prospectus Law may not be apply in the event that the offer made refers to an annual consideration below EUR 5.000.000, since such an offer is outside the scope of the Law. Additionally, several exemptions to the requirement of publishing a prospectus, apply, as regards in particular offers with a total annual consideration below EUR 100,000, offers addressed to fewer than 150 natural or legal persons per Member State other than 'qualified investors' as the latter is defined under the MiFID Law, or offers addressed solely to qualified investors.

As regards the content of the prospectus, the Prospectus Law provides that the prospectus shall contain all information which according to the specific nature of the issuer and the securities being object of the public offer or admission to trading on a regulated market, which is necessary in order to enable investors to evaluate comprehensively the assets, liabilities, financial position, profits and losses and prospects of the issuer and of any guarantor, and of the rights attaching to such securities.

Upon its approval, the prospectus is valid for 12 months, provided that every time there is a substantial amendment to it that may potentially influence the evaluation by investors of the offered securities, a supplementary prospectus shall by published which again, must be approved by CySEC.

Lastly, it is noted that the prospectus must be accompanied by a summary note drafted in a concise manner and summarizing the content of the prospectus and containing basic information on the offered securities.

4.1.3 Companies Law

Under Cyprus Companies Law, Cap. 113 (the "**Companies Law**") only public companies (i.e. non-private companies with more than 7 members) can offer shares to the public. Therefore, companies offering their shares to the public through Crowdfunding

platforms and adopting the investment-model have to take the form of a public company in accordance with the provisions of the Companies Law.

The granting of subordinated or profit-participation loans to a limited company established in Cyprus has recently started to become increasingly popular. However, the granting of any such loans is not expressly regulated under the Companies Law nor are such loans, as a general rule, regarded per se as investment products. Therefore, the entering into of such subordinated and/or profit-participation loans to a Cypriot limited company would need to be examined on a case-by-case basis in order to be determined whether these loans could potentially trigger any regulatory licensing requirement, either by the Cyprus Securities and Exchange Commission or the Central Bank of Cyprus, for the entity accepting such loans as its main profession. In the case of a Crowdfunding platform facilitating the entering into such loans, the analysis with regard to the lending model below applies (please refer to section 4.2 below).

4.1.4 Market Abuse Law

The Law on Insider Dealing and Market Manipulation, Law 116(I)/2005 ("**Market Abuse Law**"), implementing the respective EU Directive on the matter, namely Directive 2003/6/EC, as amended and in force, prohibits insider dealing and market manipulation in relation to financial instruments which have been admitted to trading on at least one regulated market or for which a request for such admission has been made. Where applicable the Market Abuse Law requires issuers of financial instruments to disclose inside information as soon as possible and managers of firms issuing financial instruments to inform competent authorities of transactions on their own account as regards such financial instruments.

Conversely, the Market Abuse Law will not apply in the case the offering and/or dealing of securities is performed through Crowdfunding platform, as the requirements of the regulated market and of trading on such market are not met.

4.1.5 Requirements under the AIFM Law

The Cyprus Alternative Investment Fund Managers Law 56(I)/2013 (the "**AIFM Law**") could be applicable to a Crowdfunding platform where the latter manages or markets a collective investment undertaking (other than in the form of Undertakings for Collective Investments in Transferable Securities- UCITS) which raises capital from a number of investors with the aim of investing it in accordance with a "*defined investment policy*". In the latter scenario, the investment vehicle itself could form an alternative investment fund ("**AIF**"), which would have to be authorized by CySEC if established in Cyprus. However, if the investment vehicle constitutes an operating company engaged in the fields of RES Projects and their development, it is unlikely that the application of the AIFM Law would be triggered; instead the general provisions of the Companies Law would be applicable to it if it operates as a limited company established under the Cypriot law.

It is clarified, that in accordance with the Alternative Investment Funds, Law 131(I)/2014 ("**AIF Law**"), an AIF is any collective investment undertaking (other than UCITS) including the investment compartments thereof, which, collectively:

a) raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and

b) does not require authorisation pursuant under the Open-ended Undertakings for Collective Investments Law of 2012, Law 78(I)/2012 or pursuant to the legislation of another Member State which harmonises the article 5 of the Directive 2009/65/EC (the "**UCITS IV Directive**").

Nonetheless, the AIFM Law, entails various exclusions from its scope, including:

a) Holding companies, defined as "a company with shareholdings in one or more other companies, the commercial purpose of which is to carry out a business strategy or strategies through its subsidiaries, associated companies or participants in order to contribute to their long-term value, and which is either a company:

- Operating on its own account and whose shares are admitted to trading on a regulated market in the Union; or

- is not established for the main purpose of generating returns for its in vestors by means of divestment of its subsidiaries or associated companies, as evidenced in its annual report or other official documents".

b) Securitisation special purpose entities defined as "entities whose sole purpose is to carry on a securitisation or securitisations within the meaning of Article 1(2) of Regulation (EC) No 24/2009 of the European Central Bank of 19 December 2008 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions (ECB/2008/30) and other activities which are appropriate to accomplish that purpose".

In the event that the AIFM Law applies, a manager of the AIF (or the AIF itself in case it is a self-managed AIF) would have to be appointed, which itself would be subject to organizational and capital requirements. Where the AIF is internally managed (i.e. the AIF manages itself), the initial capital required is EUR 300.000. In case the AIF is externally managed, the external manager would have to have an initial capital of EUR 125.000. Other requirements that would have to be complied with include risk management, asset valuation, disclosure requirements, addressing of conflicts of interest, remuneration practices and management of the AIF's liquidity. Additionally, a depositary would have to be appointed for the AIF, which can only be either an

authorised credit institution, investment firm or other eligible firm but may not be the AIFM.

It is noted that at the time being AIFs may be marketed solely to professional investors, however the AIF and AIFM Laws provide for the possibility of marketing such funds to retail investors as well, subject to the observance of further requirements expected to be introduced by CySEC shortly.

In the above context, a Crowdfunding platform, being an external AIFM, apart from the services of managing and marketing AIFs, it may also be authorized by CySEC to provide other non-core services, i.e. investment advice, safe-keeping and administration in relation to shares or units of collective investment undertakings and reception and transmission of orders in relation to financial instruments.

4.1.6 Distance Marketing

The Distance Marketing of Financial Services Law, Law 242(I)/2004, ("**Distance Marketing Law**"), transposing into national law the Distance Marketing of Financial Services Directive, namely Directive 2002/65/EC, is applicable where there is a financial services related contract between a supplier (i.e. any person acting in a commercial/professional capacity who in that capacity provides contractual services forming the object of a contract concluded without the simultaneous presence of the supplier and consumer) and a consumer (i.e. any natural person not acting in a commercial/professional capacity) concluded without the two parties being physically in the same place.

Therefore, the Distance Marketing Law, could, in principle, apply to the investment contract and to any separate contract with the Crowdfunding platform, as the investor's counterparty would be a supplier. In the case where it is applicable, the Distance Marketing Law requires, inter alia, the supplier to provide sufficient information to the consumer as to its identity, the financial service offered and rights of the consumer under the contract.

4.2 Lending model

4.2.1 License under the Business of Credit Institutions Law

Under the Business of Credit Institutions Law 66/1997 (the "**Business of Credit Institutions Law**"), it is prohibited for any person, other than a licensed credit institution, to engage in the business of taking deposits or other repayable funds from the public unless it has been previously authorized by the Central Bank of Cyprus. The definition of the "**credit institution**" in Cyprus follows that of Regulation (EU) No 575/2013 (the "**CRD IV**") which clarifies that credit institution is an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account.

In view of the above, it would seem unlikely for a Crowdfunding platform, having adopted the lending model, to fall into the above definition that would trigger a banking licensing requirement by the Central Bank of Cyprus, if the platform does not hold money for own account and therefore does not perform the activity of holding deposits and simultaneously granting credit to others for own account.

4.2.2 Payment services

The money-handling aspect may be of relevance in all types of Crowdfunding. Whether rewards-based, donations-based, investment-based or lending-based, Crowdfunding platforms could be said to be providing the following services as defined in the Payment Services Law, Law 128(I)/2009 ("**PS Law**"):

- services enabling cash to be placed in, or withdrawn from, a payment account and the operations required for operating a payment account;
- the execution of payment transactions, including transfers of funds on a payment account with the users' payment service provider or with another payment service provider;
- issuing and/or acquiring payment instruments; or
- money remittance.

In cases where Crowdfunding platforms intend to provide directly the above-listed services they could be regarded as payment service providers ("**PSPs**"), and as such, unless they are credit-institutions or e-money institutions, must be authorised by the Central Bank of Cyprus.

The PS Law provides different thresholds of initial capital requirements for payment institutions ranging from EUR 20.000 in case it offers money remittance services, to EUR 125.000 if different services are offered. PSPs must also adhere to requirements relating to own funds, appropriate governing arrangements and internal control mechanisms, transparency requirements while also entails provisions as regards the consequences of non-execution or defective execution of a payment order, including restoration of the amount of the payment transaction.

Note is made however that the PS Law excludes from its scope certain services which could be of relevance for Crowdfunding activities, i.e.:

- payment transactions from the payer to the payee through a commercial agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee;
- services provided by technical service providers, which support the provision of payment services, without them entering at any time into possession of the

funds to be transferred, including processing and storage of data, trust and privacy protection services, data and entity authentication, information technology (IT) and communication network provision, provision and maintenance of terminals and devices used for payment services;

- services based on instruments that can be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services.

Importantly, the law clarifies that any funds received by payment institutions from payment service users with a view to the provision of payment services shall not constitute a deposit or other repayable funds (within the meaning of the Business of Credit Institutions Law, , or e-money within the meaning of the E-money Law, Law 81(I)/2012. This is of particular importance, when the Crowdfunding platform is operating under the lending model.

4.2.3 E-money Law

In the event that the Crowdfunding platform receives and keeps funds, until the required amount purported to be collected for a specific project is reached, following which the funds will be paid out via an electronic wallet service, it could be argued that the above would amount to issuing e-money and therefore such Crowdfunding platform would need to obtain a license from the Central Bank of Cyprus under the E-money Law, Law 81(I)/2012 (the "**E-money Law**").

In particular, the E-money Law defines electronic money as "monetary value stored electronically, including magnetically, as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions and is accepted by natural or legal persons other than the issuer". Although contributions from lenders into a Crowdfunding platform could potentially amount to e-money, which pursuant to the E-money Law shall be prepaid and issued at par value on receipt of funds, lending-based Crowdfunding could still be excluded from the scope of the Law, as the funds received by lenders are to be used only by borrowers inside the platform for financing purposes.

It is noted that where the E-money law applies, it requires e-money institutions to have, inter alia, an initial capital of EUR 350.000, own funds requirements, governance requirements in place etc.

4.2.4 Consumer Credit

The Consumer Credit Law, Law 106(I)/2010 (the "**Consumer Credit Law**") in line with the Consumer Credit Directive 87/102/EEC applies to credit agreements in which a creditor, defined as a "natural or legal person who grants or promises to grant credit in the course of his trade, business or profession", grants or promises to grant credit to a

consumer. It can be argued that the Consumer Credit Law would not be applicable to lending-based Crowdfunding when the platform would not normally act as lender or borrower.

4.3 Donations or rewards model

The donations-based or reward-based Crowdfunding is not expressly regulated.

4.4 Anti-money Laundering

The Prevention and Suppression of Money Laundering Activities Law, Law 188(I)/2007, ("**Anti-Money-Laundering Law**") applies to firms including credit institutions and institutions offering financial and other services and requires, amongst others, that such institutions carry out due diligence on customers, which may be enhanced or simplified in certain circumstances and to have in place appropriate record-keeping and other internal procedures.

Depending on the activities the Crowdfunding platform engages into and its business model, it may fall into the provisions of the Anti-Money-Laundering Law and therefore be subject to the various obligations set out therein, in connection with applying know-your customer policies and procedures, monitor and update the due diligence measures and refraining from dealing with persons when such measures have not been sufficiently met, storing the information for a specified period of time, reporting suspicious transactions to the competent authorities etc.

4.5 Data protection

Crowdfunding (in all its forms) would require both the funder and the project owner to provide certain personal data, which may include names, addresses and bank details. Cyprus has adopted legislation aiming to regulate the processing of personal data, which most probably would apply in the case of Crowdfunding as well.

Accordingly, the Regulation of Electronic Communications and Postal Services Law, implementing the E-Privacy Directive (Directive 2002/58/EC) lays down the conditions for electronic communication networks and associated services necessary for the implementation of a harmonized regulatory framework within the European Community in order to contribute to the convergence of the telecommunications, information technology and electronic media, and the postal services required for the implementation of a harmonized regulatory framework within the European Community. The Law requires, among others, prior informed consent for storage with regard to accessing information stored on a user's terminal equipment and also provides that users may withdraw their consent on the processing of traffic data at any point.

Furthermore, the Processing of Personal Data (Protection of Individuals) Law 138(I) 2001) ("**Data Protection Law**") to data controllers established in Cyprus and to controllers not established in Cyprus but who, for the purposes of processing personal

data, make use of means, automated or otherwise, situated in Cyprus, unless such means are only for the purposes of transmission of data through Cyprus. The Data Protection Law provides that the processing of personal data may only be made after the person whose data are to be processed consents to such processing. Personal data may be processed without a person's consent, among others, if processing is necessary for the performance of a contract to which such person is party or for taking steps at the request of the data subject, before the conclusion of the contract.

4.6 Advertising

The Control of Misleading and Comparative Advertising Law, Law 92(I)/2000, purports to protect the consumer, trader and the general public from misleading advertising as well as to specify the terms under which comparative advertising is permitted. The Director of the Competition Service of the Ministry of Commerce, Industry and Tourism, shall, either upon submission of a complaint or on his own initiative examine whether a specific advertisement is misleading or amounts to unlawful comparative advertising. If the Director finds that a given advertisement contravenes the law, he can impose administrative fines.

In view of the above, should a Crowdfunding platform engage in any advertising which in any way, deceives or is likely to deceive the persons to whom it is addressed or to whose perception is reached, and is likely to affect their economic behaviour or is likely to injure a competitor, may face administrative fines.

4.7 Possible additional regulations

Other common regulations to which the operator of a RES Crowdfunding Platform may be subject to include:

- The Unfair Business-To-Consumer Commercial Practices Law, Law 103(I)/2007
- The Unfair Terms in Consumer Contracts Law, Law 93(I)/1996
- The Electronic Commerce and Associated Matters Law, Law 156(I)/2004.

5 Regulation of RES Projects in Cyprus

5.1 Overview

In line with article 194(1) of the Treaty on Functioning of the EU and the RES Directive, Cyprus is focused on a rapid move to renewable energy sources for its energy needs. The Energy Service of the Ministry of Commerce, Industry and Tourism is the governmental authority that oversees and coordinates the Cyprus energy sector, including the preparation of the necessary legislation, policies and programs. Insofar as renewable energy sources are concerned, the Energy Service is promoting the development, installation and utilization of RES with regard in particular to solar energy, wind energy, hydro energy and biomass-derived energy.

Generally, electricity produced from renewable sources is promoted in Cyprus through subsidy combined with a net metering scheme. Notably, access of electricity from renewable energy sources to the grid is granted according to the principle of non-discrimination, while renewable energy is given priority as regards the grid's use. It is noted that grid development is a matter of central planning as per the Transmission Grid Development Plan 2007-2016 by the Cypriot Transmission System Operator ("**TSO**").

The legal basis for the promotion for RES is the RES law and the regulations issued by virtue thereof, the Law on the Energy Performance of Buildings, Law 142(I)/2006, implementing the provisions of the respective EU Directive (Directive 2002/91/EC) and related regulatory administrative acts, such as the regulation on Energy Performance of Buildings (Minimum Energy Performance Requirements for Buildings, RAA 446/2009, the Law on the Co-ordination of Procurement Procedures for Works, Supplies and Services in the Water Management, Energy, Transport and Postal Services Sectors and Related Issues, Law 11(I)/2006, transposing the provisions of Directive 2004/17/EC and the Law on the Co-ordination of Procurement Procedures for Works, Supplies and Services and Related Issues, Law 12(I)/2006.

Note is made to the provisions of the RES Law, whereby the national target of the share of energy produced from RES by the year 2020 is set. Accordingly, it is provided that the target of Cyprus is 13% of the gross final consumption of energy. In order to meet the above target, and to generally encourage the use of renewable energy sources (defined as the renewable non-fossil energy sources of wind, solar, aero thermal, geothermal, hydrothermal, ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases) the RES Fund (a special fund having a separate legal personality) has been set up whose purpose is to subsidize or finance:

- The installation and equipment of renewable energy sources;
- The production or purchase of electrical energy derived from renewable energy sources;
- Installations, equipment and other activities that save energy;
- Programmes intended to educate the public and promote renewable energy sources including co-production of electricity and heat;
- Any other relevant expenditure that may be approved; and
- The costs of running the fund.

The fund is managed by a commission that has an obligation to examine applications for the subsidizing or financing of various activities intended to promote the use of

renewable energy sources or energy savings, including the co-production of heat and electricity. As a proof of the production of electrical energy from renewable energy sources, a certificate referred to as a source of guarantee is issued on application by the interested producer.

It is also noted that power plants producing renewable energy are subject to town-planning requirements, in the sense that the location on which wind farms, individual wind turbines and photovoltaic installations can be placed.

5.2 Feed-in tariffs - support schemes

Cyprus promotes renewable electricity generation through subsidy and a net metering scheme. As regards the former, grants relating to the purchase and installation of Photovoltaic Systems until 3kW are allocated under the "**Solar Energy for All**" Scheme. The subsidy amounts to EUR 900 per kw with the maximum amount being EUR 2700 per installation, while in aggregate 1.2. MW of PV installations will be subsidized. Persons who are eligible for receiving a grant under the above scheme are natural persons whose selection will be based on income and social criteria. More specifically, the scheme is addressed to natural persons belonging in vulnerable social groups and recipients of family allowance for single parents, having an income of less than EUR 39.000. The above grant scheme is operated by the RES Fund committee. It is noted that successful applicants can be operate under a net-metering scheme.

As regards the net-metering scheme, Cyprus has recently introduced for the first time such a scheme on the basis of the "Solar Energy for All" Scheme and refers to the installation of PV plants. For households the aggregate installed capacity shall be 20 MW and for industrial/commercial units producing electricity for own use shall be 20MW. CERA is responsible for reviewing all applications.

The Promotion of the Energy Upgrade and Utilisation of RES for Businesses, aims at the energy upgrade of large scale buildings used either by natural or legal persons, who are owners or tenants of building facilities for Small and Medium-sized Enterprises ("**SMEs**") engaging in economic activities. The scheme may be co-financed by the Cypriot Government and the European Regional Development Fund within the context of the operational program for "Competitiveness and Sustainable Development 2014-2020." The Ministry of Commerce, Industry and Tourism is responsible for the implementation of the above scheme, while its budget for the aforesaid period is EUR 15.300.000. The share of public funding is 75% of the total approved budget proposal. The maximum amount of grant shall be EUR 200.000.

On the same basis a new scheme has been adopted in connection with the operational program Competitiveness and Sustainable Development 2014-2020, relating to the Energy Upgrade and Utilisation of RES for Households. The Plan aims at the energy upgrade of large-scale, existing buildings or building units used as houses, which belong to natural persons living permanently in the areas under the control of the Republic of Cyprus. The Scheme is co-financed by the Cypriot Government and the EU

Cohesion Fund, and its budget amounts to EUR 16.500.000. The Ministry of Energy, Commerce, Industry and Tourism is responsible for the implementation of the above plan. The percentage of public financing will amount to 50% of the approved budget proposal, however, in the event that the beneficiaries are vulnerable consumers, the public funding will be increased to 75%. The amount for energy upgrade of each building may reach up to EUR 15.000 and for each building unit up to EUR 10.000. If heating/cooling systems are installed the grant amount could be increased by EUR 10.000.

Most recently the RES Fund committee has announced the launch of a new scheme aiming at the replacement of solar water heaters in existing private housing units. Any natural person not performing an economic activity is eligible to apply. The grants to be provided are EUR 350 per residential unit and per beneficiary, in order to replace integrated solar water heating and EUR 175 per residential unit and per beneficiary, for the replacement of existing solar panels water heating systems. The total amount allocated by the scheme amount to EUR 200.000.

5.3 Technical standards

In accordance with the National Plan of Action for Renewable Energy for 2010-2020, in order for an application to be considered eligible for the receipt of grants for the production of electrical energy from RES, it must have certain terms of connection with the Electricity Authority of Cyprus or the Transmission System Operator and must produce a relevant Declaration of Conformity as required by Directive 93/68/EEC.
All RES systems which are connected with the Electric Authority of Cyprus ("**EAC**") network, must satisfy the connection terms of the EAC and the TSO. By way of example, for small RES systems the voltage inverters must be compatible with the following standards: To allow the interconnection of Electric Installation of a PV system up to 150 KWp with the Network of Low Voltage (LV) of EAC, it should be based on the Standard IEC 60364- 7-712.

Furthermore, if the facilities of a plant operator are to be connected to the grid, must fulfill the relevant European standards. If there are no relevant European standards, the standards applicable would be the ones applied in the countries of the EU at the commencement of the connection agreement. If, in the reasonable view of the TSO for the purposes of ensuring the safe and coordinated operation of the transmission system, additional requirements should be complied with in relation to the installations and machinery of a user, such user is notified accordingly and is obliged to adhere to such additional requirements. It is noted that additional requirements apply as to windfarms and PV parks.

5.4 Connection to the grid

According to the Regulating the Electricity Market Law, Law 122(I)/2003, plant operators, after having obtained a license from CERA, may, depending on the capacity of their plant, apply for their connection to the grid either to the distribution grid

operator (Electricity Authority Cyprus) or the TSO, on the basis of a contract without any plant operator being discriminated against. In particular, producers with a maximum capacity of 8MW, should apply to the EAC, while producers with a capacity greater than 8MW shall be applying to the TSO. It is noted that upon signing the connection agreement the plant operator will be entitled to request the expansion of the grid if such expansion is necessary for the purpose of connecting a plant to the grid.

Note is made that in exceptional cases, non-licensed operators of small installations may be entitled to connection provided that such persons are the operators of electricity plants whose production capacity does not exceed 5 MW.

Although in principle plant operators may export unlimited amounts of electricity to the grid, a maximum possible capacity may be inserted in the operator's application for connection, which shall then be included in the connection agreement.

As regards costs, it is provided in the Transmission and Distribution Rules issued by CERA, that the plant operator bears all the costs for his connection to the grid. It is noted that energy produced by RES plant operators is purchased by the EAC at a price determined by CERA.

5.5 Upcoming changes in energy regulation

An imminent change to the scheme "Solar Energy for All" was set for publication in December 2015, after having been approved by the Council of Ministers at the end of November 2015. Accordingly, for the first time net-metering for PV installations is to be increased to 5KW for all consumers and households in different sub-categories and for industrial/commercial units to 20kW per unit. It is also the first time that net-metering will be applied to non-residential consumers.

Additionally, the President of the Republic, has recently announced that tax incentives will be adopted with regard to investments in the renewable energy sector. As of the date of this memorandum (December 2015) no such provisions have been implemented.

6 Conclusion

Cyprus has not implemented legislation dealing specifically with Crowdfunding nor has in place specific rules and regulations to address this form of funding and/or facilitate its wider use in funding projects. Instead, the laws of wider application to the provision of either investment services or lending or even donations apply to Crowdfunding platforms as well. As a result, the Crowdfunding business in Cyprus has generally yet to kick-start, let alone Crowdfunding promoting specifically RES projects. However, given that Cyprus has adopted a comprehensive regulatory framework as regards financial services, platforms aspiring to promote RES Projects through the lending-based or the investment-based model are to be regulated under those provisions.

With regard to RES Regulation, Cyprus being an EU member state, has committed itself to promoting the utilization of RES. To that end, Cyprus has taken several measures purporting to increase awareness and provide incentives for the installation, among others, of PVs or wind turbines, including by providing subsidies for the above. Nonetheless, Cyprus has still a long way to go in order to make the utmost use of RES so as to limit its dependence on imported petroleum products and to provide affordable energy, green jobs and modern supply chains. Cyprus is a very small island and cannot in fact, adopt policies equivalent to other EU member states, however, one cannot overlook the fact that significant steps have been taken toward that direction, in view of wind farms establishment and increasing PV installations. In any case, additional incentives are expected to be adopted soon for furthering investment in all types of RES Projects, electricity, heating and cooling and transport.

7 Summary - Crowdfunding and RES Projects Regulation

Country / Summary	Cyprus
Recent developments in Crowdfunding regulation	• There have been no recent developments in Crowdfunding regulation in Cyprus
Current Crowdfunding Regulation	
General regulation	• No specific regulation exists either facilitating Crowdfunding as a source of funding in general or RES Projects more specifically or addressing risks associated with it; instead the general and existing legislation applies.
Investment license requirement	• If investment services are offered or investment activities are performed by the Crowdfunding platform as regards financial instruments (e.g. shares, units in collective investments etc) an investment license must be granted following the prior authorization of the Cyprus Securities and Exchange Commission (CySEC)
Prospectus requirement	• A requirement for the issuance of a prospectus applies for the offering of securities to the public. The scope, application and exemptions follows those of the relevant EU Prospectus Directive.
AIFMD regulation	• A Crowdfunding platform investing in RES Projects may constitute an AIFM operating an AIF. In such instance the AIFM and/or the AIF must be licensed by CySEC under the AIFMD. However, operating companies engaged in RES Projects and their developments are unlikely to be considered as falling under the scope of the relevant legislation.

Business of Credit Institutions regulation	• It is unlikely for a Crowdfunding platform, having adopted the lending model, to be considered as a credit institution, thus triggering a banking licensing requirement by the Central Bank of Cyprus, if the platform does not hold money for own account and therefore does not perform the activity of holding deposits and simultaneously granting credit to others for own account.
Payment services	• The transfer of funds through a Crowdfunding platform could constitute a money remittance service which would trigger the obligation for licensing by the Central Bank of Cyprus
Further possible requirements	• The Prevention and Suppression of Money Laundering Activities Law, Law 188(I)/2007 • The Unfair Business-To-Consumer Commercial Practices Law, Law 103(I)/2007 • The Unfair Terms in Consumer Contracts Law, Law 93(I)/1996 • The Electronic Commerce and Associated Matters Law, Law 156(I)/2004
RES Projects Regulation	
Electricity regulation applicable to RES Projects	• Centerpiece of Res Projects in Cyprus is the Law for the Promotion and Encouraging the Use of Renewable Energy Sources, Law 112(I)/2013 ("RES Law"). • The national target of the share of energy produced from RES by the year 2020 is set to 13% of the gross final consumption of energy in Cyprus
Market Integration of RES Projects	• Cyprus promotes renewable electricity generation through subsidy and a net metering scheme. The scheme "Solar Energy for All" is set for publication in December 2015 and for the first time net-metering for PV installations is to be increased to 5kW for all consumers and households in different sub-categories and for industrial/commercial units to 20kW per unit. • Access of electricity from renewable energy sources to the grid is granted according to the principle of non-discrimination, while renewable energy is given priority as regards the grid's use. Grid development is a matter of central planning. • Cyprus being an island and having a special topography has still a long way to go in order to make the utmost use of RES so as to limit its dependence on imported petroleum products

	and to provide affordable energy, green jobs and modern supply chains.
Transition to tender based allocation of new RES Projects	• As RES Projects are only now starting to become popular in Cyprus, no transition to tender based allocation of new RES Projects is set.
Further regulatory sources	• The Regulating the Electricity Market Law, Law 122(I)/2003 • The Law on the Co-ordination of Procurement Procedures for Works, Supplies and Services in the Water Management, Energy, Transport and Postal Services Sectors and Related Issues, Law 11(I)/2006

Lessons learned for a possible harmonized European Crowdfunding Regulation

Lessons learned for a possible harmonized European Crowdfunding Regulation	
Role model ("dos")	• There are no lessons that can be learned from Cyprus
Aspects that should be avoided ("don'ts")	• There are no aspect that should be avoided that can be learned from Cyprus
Lessons learned for a possible harmonized European RES Projects Regulation	
Role model ("dos")	• There are no lessons that can be learned from Cyprus
Aspects that should be avoided ("don'ts")	• There are no aspect that should be avoided that can be learned from Cyprus

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VI. Czech Republic

1 Czech market for RES Crowdfunding Platforms

Crowdfunding has become very popular in the Czech Republic and vast majority of the projects supported by Crowdfunding platforms is in the cultural and social area. The donation- and reward-based model is still the most used Crowdfunding model. The lending model has been established in the area of peer-to-peer lending and recently a new platform focused on the loans to small and medium-sized businesses become active.

The projects dealing with the renewable energy sources ("**RES Projects**") are generally popular and attractive in the market, but so far no Crowdfunding platform focused on the RES Projects has been established in the Czech Republic.

2 Recent regulatory developments regarding Crowdfunding regulation in the Czech Republic

In the past year the main regulations relevant to Crowdfunding remained mostly stable and unchanged. We understand from unofficial contact with public bodies that the current extent of Crowdfunding regulation is viewed as sufficient and that, therefore, no specific regulatory changes directly affecting Crowdfunding are expected in the near future.

Recently there have been the following significant developments in the Czech Republic regarding Crowdfunding:

2.1 Equity Model

While there is still no working equity Crowdfunding platform in the Czech Republic, we perceive an increased interest in creating such a platform. This development may be partly attributable to new legislation governing corporations (Act no. 90/2012 Coll., the Corporations Act, which took effect on 1 January 2014). The Corporations Act enables more flexibility in setting up the corporate governance structure of target companies, thereby making equity Crowdfunding projects more viable in the long term. There have been some announcements with respect to new equity platforms however as at 1 December 2015 no equity Crowdfunding platform has been operational yet.

2.2 Lending Model

There has been a significant development in the Lending Model, mostly regarding peer-to-peer lending. New platforms with business loans are also becoming active in the market. Business loans still continue to be outnumbered by loans to private individuals. Some of the newly created lending platforms are established by financial institutions (including banks).

2.3 Donations or Rewards Model

Crowdfunding platforms based on the Rewards Model continue to be the most successful and popular in the Czech Republic. As in the past, social and cultural projects still form a majority of funded ventures, along with a smaller number of start-up companies and projects.

3 Further recent developments considering RES Projects market in the Czech Republic

New amendment to the existing legislation on the support of generation of electricity from renewable sources will be effective from 1 January 2016 and it will mainly:

a) implement certain provisions of EU Directive No. 2012/27/EU on energy efficiency;

b) fulfil requirements of the European Commission resulting from its decision on notification of the Renewables Act (as defined below) (SA.35177 (2013/N)); and

c) eliminate defects highlighted during application of the Renewables Act (as defined below) in practice.

4 Regulation of Crowdfunding in the Czech Republic

4.1 Licence under Act no. 240/2013 Coll., on management companies and investment funds, as amended (the "AMCIF")

Equity Model

Investing in return for a share in the profits or revenue generated by a company/project is defined by the AMCIF as a form of collective investment.

Such activity corresponds most closely to the definition of an investment fund under the AMCIF. An investment fund is either a joint-stock company with its registered office in the Czech Republic or a mutual fund (which is merely a collection of funds and has no legal personality) that is entitled or the purpose of which is (i) to collect funds from the public by issuing shares/participation certificates and (ii) to perform the collective investment of the collected funds on the basis of a given investment strategy based on the principle of the division of risk for the benefit of the owners of the shares/participation certificates and further (iii) to manage the funds ("**Investment Fund**").

An Investment Fund can either (i) be managed by a management company, (ii) exist in the form of an Investment Fund which is entitled to manage itself or (iii) exist in the form of an Investment Fund which is managed by its executive body being a management company. All three possibilities (a management company, a self-

managing Investment Fund and an Investment Fund managed by its executive body) are required to obtain a licence from the Czech regulator (i.e. the Czech National Bank).

The capital of an Investment Fund has to reach at least EUR 1,250,000 within six months of the date of the establishment of such Investment Fund. Given this high capital requirement, Crowdfunding platforms or project companies in the Czech Republic usually do not choose the Equity Model.

If a project company or a Crowdfunding platform acting under the Equity Model would intend to provide investment services, it would have to be properly licensed under Act no. 256/2004 Coll., on capital markets, as amended (the "**Capital Markets Act**").
Investment services ("**Investment Services**") under the Capital Markets Act include in particular:

a) receipt and transmission of orders in relation to investment instruments (i.e. in particular investment securities such as shares or bonds and derivatives – "**Investment Instruments**");

b) execution of orders in relation to Investment Instruments on behalf of a client;

c) proprietary trading in Investment Instruments;

d) management of client's assets under a contract with the client if an Investment Instrument is part of such assets;

e) investment advice concerning Investment Instruments;

f) underwriting and/or placing of Investment Instruments on a firm commitment basis;

g) placing of Investment Instruments without a firm commitment basis; and

h) services of safekeeping and administration of Investment Instruments for the account of clients (including custodianship and related services).

Alternatively, a Crowdfunding platform may position itself as an intermediary for a direct sale of shares in the individual companies to its investors, thereby avoiding the application of collective investment rules. Under this model, the platform would still have to be licensed with the Czech National Bank as an investment firm, in particular providing the Investment Services listed above under no. (ii), (iii), (vi) and (viii).

However, the application of this method provides for significant administrative constraints, in particular regarding the corporate structure of the target companies (e.g. the economies of the relevant administrative costs effectively rule out target

companies structured as limited liability companies). Furthermore, prospectus requirements (as described in section 3.2) must also be respected.

Lending Model

Under Czech law, the lending of money by individuals to a company/project in return for repayment of the loan and interest is a non-regulated activity. Despite the fact that the lending of money would occur through an online Crowdfunding platform, there are no regulatory requirements under Act no. 21/1992 Coll., on banking, as amended (the "**Banking Act**"). However, general civil and commercial rules on lending must be observed.

The Crowdfunding platform would also have to obtain a trade licence in order to be entitled to organise collective lending and borrowing.

Act no. 145/2010 Coll., on consumer credit (the "**Consumer Credit Act**") only applies to individuals as consumers, not to companies. Should the project be undertaken by an individual who is to be granted loans under the Lending Model, he/she cannot be qualified as a consumer within the meaning of the Consumer Credit Act, as long as he/she is going about his/her business activity or performing his/her profession in an independent way.

Donations or Rewards Model

The provision of money by individuals to a company/project for benevolent reasons or for non-monetary reward constitutes an exemption under the AMCIF. Collecting funds or assets that can be valued in money the main purpose of which is the financing of activities that relate to the production or sale of goods, research or the provision of services (other than financial services) and further management of such collected funds or assets that can be valued in money (or assets gained for such funds or assets that can be valued in money) does not constitute collective investment. Such activity is thus not regulated by the AMCIF. However, a Crowdfunding platform which would organise such collection of funds would have to obtain a trade licence for these purposes.

Furthermore, the requirements of Act No. 117/2001 Coll., on public collections, as amended (the "**APC**") apply to the Donations Model. The APC applies to any activity by which voluntary donations are being collected from further unspecified members of the public (the "**Public Collection**") and imposes several restrictions. In particular, Public Collections may only be held for publicly beneficial purposes, such as humanitarian purposes, charity, education, sport, protection of cultural items, cultural heritage or the environment. Any Public Collection has to be notified to the relevant Regional Authority (in Czech: "*krajský úřad*"). The Regional Authority subsequently scrutinizes the application and may reject it for non-compliance with the statutory requirements, in particular if it finds that the purpose of the Public Collection is not

publicly 100ertifycial. Furthermore, detailed records of the contributions must be kept and must be submitted to the Regional Authority after the Public Collection has finished.
Due to the aforementioned administrative requirements and the fact that Crowdfunding of certain types of projects (e.g. business start-ups) would rarely satisfy the conditions of public benefit, current Crowdfunding platforms refrain from the use of the Donations model. Instead, the Rewards model is used where each project typically has to define rewards for contributors and the contribution is structured as a sale of such reward, thus falling out of the scope of the APC.

4.2 Prospectus requirements

Under the Capital Markets Act, the general prospectus requirement does not apply where the offering of investment securities (i.e. shares, bonds, securities substituting shares or bonds, securities enabling the acquisition or sale of shares or bonds, certain derivatives, or similar securities) in all member state of the European Union does not exceed EUR 1,000,000 within a time period of 12 months.

4.3 Regulation of Crowdfunding under the AIFMD regime

In the Czech Republic, the AIFMD has been implemented by the AMCIF. Under the AMCIF, an alternative investment fund (an "**AIF**") constitutes either a special fund or a fund of qualified investors.

A special fund under the AMCIF is defined as an Investment Fund which does not fulfil the requirements stipulated by the law of the European Union and thus is not registered in the relevant register kept by the Czech National Bank.

The AMCIF defines a fund of qualified investors as:

- a legal entity (limited partnership, limited liability company, joint stock company, *societas europea* or cooperative) with its registered office in the Czech Republic that is entitled to (i) collect funds or assets that can be valued in money from several qualified investors by issuing participation securities or in a way that such qualified investors become its shareholders, and (ii) perform collective investment of the collected funds or assets that can be valued in money on the basis of a given investment strategy for the benefit of such qualified investors, and (iii) to manage such assets; or

- a mutual fund the purpose of which is to (i) collect funds or assets that can be valued in money from several qualified investors by issuing participation securities and (ii) invest the collected funds on the basis of a given investment strategy for the benefit of the owners of the participation certificates and (iii) manage these assets; or

- a trust fund (i) the statutes of which identifies several qualified investors as beneficiaries; such beneficiaries are the founder of the given trust fund or the person that increased the assets of the given trust fund on the basis of a contract and (ii) which is established for the purpose of investment on the basis of a given strategy for the benefit of its beneficiaries.

4.3.1 Operating company seeking funding

Assuming that "operating company" means a start-up or developing company seeking funding for its general commercial business by means of a Crowdfunding platform, the operating company falls under an exemption under the AMCIF. Collecting funds or assets that can be valued in money the main purpose of which is the financing of activities that relate to the production or sale of goods, research or the provision of services (other than financial services) and the further management of such collected funds or assets that can be valued in money (or assets gained for such funds or assets that can be valued in money) does not constitute collective investment. Such activity is not regulated by the AMCIF; therefore, an operating company can neither fall under the definition of a special fund nor of a fund of qualified investors under the AMCIF.
Of course, the operating company would have to obtain a relevant trade license in order to be able to conduct its business.

4.3.2 Project Company seeking funding

As long as a project company is acting under the Equity Model (i.e. it invests in return for a share in the profits or revenue generated by such project company), then the provisions in the AMCIF apply to it. An investor in a project company acting under the Equity Model would probably not qualify as a qualified investor (as defined by the AMCIF), so a project company acting under the Equity Model would probably not constitute a fund of qualified investors under the AMCIF. However, it cannot be ruled out that such project company could constitute a special fund under the AMCIF (i.e. an AIF under the AMCIF).

The capital of a special fund has to reach at least EUR 1,250,000 within six months of the date of the establishment of such special fund.

Also, if a project company acting under the Equity Model would intend to provide Investment Services (as defined above), it would have to be properly licensed under the Capital Markets Act.

The AMCIF will not apply to project companies seeking funding via the Lending or Reward Models.

4.3.3 Crowdfunding Platform

Should the Crowdfunding platform organise funding for project companies under the Equity Model, it would probably not constitute a fund of qualified investors under the

AMCIF (as an investor of a project company acting under the Equity Model would probably not qualify as a qualified investor, as defined by the AMCIF). It cannot be ruled out, however, that such Crowdfunding platform could constitute a special fund under the AMCIF (i.e. an AIF under the AMCIF).

The capital of a special fund has to reach at least EUR 1,250,000 within six months of the date of the establishment of such special fund.

If the Crowdfunding platform intends to provide Investment Services (as defined above) for project companies under the Equity Model, it would have to be properly licensed under the Capital Markets Act.

Should the Crowdfunding platform organise funding for project companies under the Lending Model, it would neither have to constitute a special fund nor a fund of qualified investors, as the AMCIF would not apply due to the fact that organising the lending of money by individuals to a company/project in return for the repayment of the loan plus the payment of interest is a non-regulated activity.

Should the Crowdfunding platform organise funding for project companies under the Donations or Rewards Model, it would neither have to constitute a special fund nor a fund of qualified investors, as the AMCIF would not apply due to the fact that organising the provision of money by individuals to a company/project for benevolent reasons or for non-monetary reward constitutes an exemption under the AMCIF.

4.4 Licence under the Act no. 284/2009 Coll., on payment services, as amended (the "Payment Services Act")

Should the Crowdfunding platform intend to perform payment services itself in the Czech Republic, it would have to be properly licensed. There is the possibility to become either (i) a payment institution, (ii) a small-scale payment service provider, (iii) an electronic money institution or (iv) a small-scale electronic money issuer under the Payment Services Act. Becoming a payment institution or an electronic money institution requires a licence granted by the Czech National Bank. Becoming a small-scale payment service provider or a small-scale electronic money issuer requires registration with the Czech National Bank.

In any event, the Crowdfunding platform could also outsource payment services, which would not trigger any licensing or registration requirements.

4.5 Possible additional Regulations

Other common regulations to which the operator of a Crowdfunding platform may be subject include:

- Act 455/1991 Coll., on trading, as amended (which regulates trade licences) (the "**Trade Licensing Act**");

- the Capital Markets Act; and

- Act 253/2008 Coll., on some measures against the legalisation of proceeds gained from criminal conduct and financing of terrorism (AML provisions) (the "**AML Act**").

5 Regulation of RES Projects in the Czech Republic

5.1 General overview

As a result of the transposition of EU Directive No. 2009/28/EC on the use of renewable energy sources, the Czech Parliament on 31 May 2012 enacted new legislation on renewables – Act No. 165/2012 Coll., on Promoted Sources of Energy (the "**Renewables Act**"), which replaced the previous Act No. 185/2005 Coll., on the Promotion of Electricity Generation from Renewable Sources.

The Renewables Act has been in force since 1 January 2013 and unifies support for all promoted energy sources and their legal regulation in one act. It covers not only the promotion of renewable electricity and heat, and biomethane, but also regulates the support for secondary energy sources and combined heat and power (together "**Renewables**").

The Renewables Act is based on the principle of climate and environmental protection and as such promotes the use of Renewables. The Renewables Act aims to continuously increase the share of Renewables in primary energy consumption, with the goal of achieving a 13 per cent share in the Czech Republic's gross energy consumption by the end of 2020.

The Renewables Act stipulates (among other things) (i) a model for purchasing electricity produced from Renewables, and (ii) a (market-oriented) method of electricity support payment, which shall be determined by the market operator – OTE a.s. – a joint stock company owned by the Czech state (the "**Market Operator**").

5.2 Types of incentive regime

In general, the Renewables Act provides two types of incentive regime for projects which generate electricity from Renewables – (i) a regime of fixed purchase prices, and (ii) a regime of green premiums.

5.2.1 Fixed purchase price

Electricity support in the regime of fixed purchase prices is provided in the form of a guaranteed price. This price is determined for each type of Renewables so that the investors can aim for a maximum investment pay-back period of 15 years.

Under this regime, the respective support payments are paid to power producers through the distribution system operators or the transmission system operators who are obliged to purchase all of the electricity produced from the Renewables. However, the obligation to purchase the electricity is guaranteed only for the lifespan of the facility producing the electricity (i.e. 15 – 20 years). Distribution system operators and transmission system operators are subsequently compensated for any difference between market price and the fixed purchase price through the Market Operator.

5.2.2 Green premiums

On the other hand, electricity support payments in the form of green premiums are paid directly to power producers by the Market Operator from a special bank account. This support is an amount paid on top of the market price. The green premiums are provided on the basis of an annual or hourly regime (it depends on the producer). Electricity produced in the regime of green premiums can either be sold at market prices to end customers or traders, or can be consumed by the power producers themselves (in contrast to the regime of the fixed purchase prices, the rule of mandatory purchase does not apply).

Only certain power producers have the right to choose the type of incentive regime applicable to them. It depends on the installed capacity of their electricity generators. Power producers that own electricity generators with a small installed capacity (i.e. 100 kW or with respect to hydro plants 10 kW) may choose between these two regimes of support. Taking into account the size of installed capacity, the electricity support payment primarily takes the form of "green premiums".

The amount of electricity support for both fixed purchase prices and green premiums regimes are stipulated by the Energy Regulatory Office (as the main regulatory body under the Renewables Act) in its price decision, which is issued once per year.

5.3 Upcoming changes in the Renewables Act

Recently, an amending legislation on the support of generation of electricity from renewable sources has been adopted in the Czech Parliament under Act No. 131/2015 Coll. (the "**Amendment**"), which will be effective from 1 January 2016.

This Amendment shall mainly:

a) implement certain provisions of EU Directive No. 2012/27/EU on energy efficiency (the "**Directive**"),

b) adapt and implement some terms used in the Directive, for example "useful heat" (in Czech: *užitečné teplo*) or "efficient system of supply of heat energy" (in Czech: *účinná soustava zásobování tepelnou energií*),

c) regulate guarantees regarding the origin of electricity produced from high efficiency cogeneration,

d) fulfil requirements of the European Commission resulting from its decision on notification of the Renewables Act (SA.35177 (2013/N)),

e) introduce a new method of funding of the Renewables and other supported sources. To date the calculation of the amount of support payments depends on the amount of electricity consumed by the end user. The new method shall be independent of the amount of consumed electricity, and the amount of payment shall be determined on a monthly basis based on the agreed amount of reserved capacity or the nominal value of current at the main circuit breaker,

f) eliminate defects highlighted during application of the Renewables Act in practice.

6 Conclusion

During the past year there has been growing interest in Crowdfunding in the Czech Republic. Currently, the Rewards Model remains the most popular and successful with the Lending Model growing mostly in respect of peer-to-peer lending. Despite regulatory constraints making it the most costly alternative, we expect the emergence of platforms using the Equity Model. So far no Crowdfunding platform specialised on the RES Projects has been established in the Czech Republic.

7 Summary – Crowdfunding and RES Projects Regulation

Country / Summary	Czech Republic
Recent developments in Crowdfunding regulation	• No new developments in applicable regulations • New Corporations Act enables more flexible structure of target companies using Equity Model • No new regulation is expected in the near future
Current Crowdfunding Regulation	
General regulation	• Project company or Crowdfunding platform acting under Equity Model can be qualified as an Investment Fund under AMCIF → licence from the Czech National Bank required • Alternatively, Crowdfunding platform may to a limited extent act as intermediary in direct purchase of shares by investors

	→ licence from the Czech National Bank required • Project company or Crowdfunding platform acting under Lending Model is not a regulated entity → no licence required • Project company or Crowdfunding platform acting under Donations or Rewards Model enjoys an exemption under AMCIF and cannot be qualified as an Investment Fund → no licence required
Prospectus requirement	• General prospectus requirement for offering of investment securities • Exemptions apply under threshold of EUR 1,000,000 per issuer for investment securities offered in any Member State of EU within 12 months
AIFMD-regulation	• Operating company like start-up or developing company will not be qualified as AIF under AMCIF → no licence required • A project company/Crowdfunding platform acting under Equity Model could possibly be qualified as AIF under AMCIF → license from Czech National Bank required • Project company/Crowdfunding platform acting under Lending or Rewards Model will not be qualified as AIF → no licence required
Payment services regulation	• Provision of payment services as defined under Payment Services Act by a project company or a Crowdfunding platform triggers licensing requirements (licence granted by Czech National Bank)
Consumer credit regulation	• The Consumer Credit Act only applies to individuals who are consumers. The Consumer Credit Act does not apply to business relationships.

Further possible requirements	• Trade Licensing Act • Capital Markets Act • AML Act
RES Projects Regulation	
Current legislation	• Act No. 165/2012 Coll., on Promoted Sources of Energy, which in general unifies support for all promoted energy sources (renewable sources, secondary sources and combined heat and power).
Upcoming legislation changes	• Act No. 131/2015 Coll., which will be effective from 1 January 2016. • This amendment shall (among others) ensure compliance of the Renewables Act with European legislation and the requirements of the European Commission.
Types of incentives	• Regime of fixed purchase prices (a guaranteed price); and • Regime of green premiums (an amount paid on top of the market price). • The amount of support is stipulated by the Energy Regulatory Office in its price decision, which is issued once per year.

Lessons learned – Crowdfunding / RES Projects Regulation

Lessons learned for a possible harmonized European Crowdfunding Regulation	
Role model ("dos")	• Light regulation of Lending Model and Rewards Model
Aspects that should be avoided ("don'ts")	• Strict requirements of investor protection which do not take account of special features of Crowdfunding • Equity Model: certain administrative steps require written form and may not be completed electronically • Strict regulation of the Donations Model

Lessons learned for a possible harmonized European RES Projects Regulation	
Role model ("dos")	• No special regulation of the RES Projects Crowdfunding
Aspects that should be avoided ("don'ts")	• No exemptions applicable to Crowdfunding with respect to RES Projects

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VII. Denmark

1 Danish market for RES Crowdfunding platforms

1.1 Local Danish market for RES Crowdfunding Platforms

During the last couple of years the Crowdfunding market in Denmark has become more and more popular but has still been limited in Denmark compared to the popularity in other European countries due to uncertainty of the lawfulness and the regulation of both Crowdfunding and Crowdfunding platforms in Denmark. Accordingly, there are no specific Crowdfunding projects dealing with renewable energy sources ("**RES Projects**") or specific Danish Crowdfunding platforms specialised on funding RES Projects ("**RES Crowdfunding Platforms**"). Potential Danish RES Projects would therefore be funded via the ordinary Crowdfunding platforms currently available in Denmark.

1.2 Danish investment models

Currently, 4 different investment models are recognised in Denmark – however, some are more popular than others and none of the Crowdfunding platforms available in Denmark have specialized in RES Projects. To our knowledge the number of RES Projects financed by the available Crowdfunding platforms in Denmark are very limited and the amounts raised were also limited to less than EUR 2,000. The different Danish investment models currently available in Denmark are described below.

1.2.1 Equity Model

Currently, there are no Crowdfunding platforms in Denmark which offers the Equity Model. The Danish Ministry of Business and Growth disclosed a report in May 2015 stating that Crowdfunding in general is considered a legal form of financing and clarifying the Danish regulation of the equity-model whereby it is possible to set up and manage equity-based Crowdfunding platform in Denmark. Accordingly, it has become more transparent to set up and manage an equity-based Crowdfunding model even though the equity-based model is the most complex model from a regulatory perspective. The equity model is based on investments in over-the-counter shares. A company which intends to offer a Crowdfunding platform based on the equity model will have to obtain authorisation from the Danish Financial Supervisory Authority (the "**Danish FSA**") as an investment firm in accordance with the Danish Financial Business Act in order to offer rendering of investment services in securities. If the platform itself doesn't offer investment advice a suitability test must be carried out to ensure that the investor is adequately informed about the risks involved in the equity-based Crowdfunding transaction prior to the execution thereof. Any company which intends to engage in the equity model of Crowdfunding will have to be registered as a public limited company or a partnership company. However, if the offering of shares through a Crowdfunding platform is for the purpose of raising the minimum capital requirement for a public limited company of DKK 500,000 this is however permitted. If

the value of the securities exceeds EUR 1 million and the offering is structured as a public offer it will trigger a prospectus requirement.

1.2.2 Lending Model

Three Danish platforms currently offer the lending-based Crowdfunding model, i.e. www.betterrates.dk, http://www.flexfunding.dk and www.lendino.dk. The regulation and approval of a lending-based Crowdfunding platform depend on which specific model the platform applies. Platforms that render services subject to the Danish Payments Services and Electronic Money Act or services subject to the Danish Financial Business Act have to be licensed by the Danish FSA. The provider of the Crowdfunding platform either has to apply for a restricted authorisation to provide payment services in Denmark if the activities constitute payment services or apply for a banking license, if the activities constitute receipt from the public of deposits or other funds to be repaid. In addition, the platforms have to comply with the Danish Act on Measures to Prevent Money Laundering and Financing of Terrorism.

1.2.3 Donations or Rewards Model

The donation-based Crowdfunding is based on a concept where contributors do not expect money or rewards in return. Rather, contributions are, as the name suggests, a donation. Generally, this type of Crowdfunding is regulated in the same manner as other types of charitable fund-raising. The donations campaign must be notified to the Danish Fundraising Board and are subjected to the conditions of the Danish Fundraising Act. A fee of DKK 1,000 must be paid to the Danish Fundraising Board in case of notifications and applications, if the fundraising campaign falls within the scope of the Danish Fundraising Act. Any Crowdfunding platform that engages in donation-based Crowdfunding is governed by general regulations under company law. No other requirements are imposed.

The Danish reward-based Crowdfunding is similar to the donation-based model, however, the two models differ as a potential investor who invests in reward-based Crowdfunding expects to receive something in return and the transaction is therefore fiscally similar to selling a product. Companies who apply rewards-based Crowdfunding are obliged to list the income from such sale in their annual reports together with expenses for production and similar and thereby special attention is to be paid to corporate taxation and VAT declaration.

1.3 RES projects in Denmark

Only very few minor RES Projects have been financed via Crowdfunding platforms in Denmark. The amounts raised were less than EUR 2,000 for each RES Project and were related to advocacy and raising awareness campaigns in relation to alternative energy sources and targeting students. The limited number of RES Projects in Denmark may be due to the fact that Crowdfunding is still in its early days in Denmark and as Denmark does not offer the same favourable market conditions with a guaranteed

minimum price as Germany's producers enjoy for renewable energy projects in Germany.

2 Recent regulatory developments regarding Crowdfunding regulation in Denmark

In May 2015 the Danish Ministry of Business and Growth disclosed a report on Crowdfunding in Denmark analysing the legal framework for Crowdfunding in Denmark. Previously the lawfulness and the specific regulation of Crowdfunding in Denmark are non-transparent but the report describes in detail the different Danish investment models and the regulation thereof providing more clarity over the legal framework and the different regulations to comply with for each different investment model. In addition, the Danish Ministry of Business and Growth has initiated several initiatives in order to advance the application of Crowdfunding in Denmark, i.e. by offering guarantees through the Danish Growth Fund, disclosing guidance for both investors and platform-owners, monitoring the market and further cooperation on an international level.

The Danish Ministry of Business and Growth concluded that currently no amendments to existing regulation are necessary to advance the application of Crowdfunding in Denmark.

3 Further recent developments considering RES Projects market in Denmark

The Danish Act on Renewable Energy (Act no. 122 of 6 February 2015) (the "**Renewable Energy Act**") was amended in February 2015, including changes in major schemes for renewable energy. This may have implications for future renewable energy projects. A new application procedure is established, requiring that the Danish National TSO (Energinet.dk) has committed to pay subsidies before a project is commenced. This includes photovoltaics, small wind turbines and other installations using renewable energy. The Act also establishes an upper limit of 500 kW to obtain subsidies for electricity production based on renewable energy. Therefore no subsidies will be provided for electricity produced by plants which only use renewable energy, when these plants have an installed capacity of 500 kW or more. The changes will take effect for plants connected from 1 January 2016 and later. A transitional phase has been established, which provides access to funding for projects which began before 1 July 2015 and where the fact that connection to the grid has not been established before 1 January 2016 cannot be imputed to the owner of the plant or it is a photo voltaic plant, which meets a list of requirements.

Further, an already adopted supplement of DKK 0.01 per kWh for coastal wind farms is removed because the European Commission cannot approve the scheme and a time limit on support for offshore wind turbines is shortened from 2019 to 2016.

Additionally, subsidies given as fixed prices for electricity produced from a number of decentralized combined heat and power plants and power generation plants with

waste as a fuel of up to 5 MW are repealed. The plants which received subsidies can instead receive the aid as a basic amount independent of production.

Central Heating Plants ("CHP") can receive subsidies for investment and operating from a subsidy pool. The aim is for the CHP's to implement projects which replace fossil fuels with renewable energy sources.

Another bill has been put forward but not yet amended, to reduce aid for small wind turbines, i.e. with an installed capacity of 25 kW or less, which are connected to their own consumption installation. The current subsidies scheme for 20 years from the network connection is shortened to 12 years. These subsidies will only apply to wind turbines connected to the grid by 31 December 2015. Instead, an annual pool of 1 MW is introduced, with the settlement price reduced slightly every year from the time of connection to the network grid. Applications must be committed before the commencement of the project.

4 Regulation of Crowdfunding in Denmark

4.1 Equity Model

Rendering of investment services in Denmark commercially are regulated activities under Danish law and such activities are subject to a licensing requirement from the Danish FSA according to the Danish Financial Business Act (Consolidated Act No. 182 of 18 February 2015).

For the purpose of Danish law "investment services" are, inter alia, receipt and arrangement for the account of investors of orders in relation to one or more financial instruments and, execution of orders with one or more financial instruments.

Financial instruments within the scope of the Danish Financial Business Act include securities and financial instruments. Securities include shares in companies and other securities equivalent to shares in companies, partnerships and other businesses, and share certificates, bonds and other debt instruments, including certificates for such securities, and any other securities of which securities as mentioned above can be acquired or sold, or give rise to a cash settlement, the amount of which is fixed with securities, currencies, interest rates or returns, commodities indexes and other indexes and targets as reference.

If a Crowdfunding platform facilitates the offering of securities or financial instruments, the operator of the platform renders investment services and is therefore subject to the licensing requirement under the Danish Financial Business Act if the Crowdfunding platform facilitates that investors meet public limited companies that are seeking funding with a view to facilitating a transaction in respect of the shares in the limited companies. The Danish FSA has in November 2013 issued guidance on the licensing requirements and the exemptions thereunder.

The Danish Executive Order on Investor Protection (Executive Order no. 623 of 24 April 2015) will also be applicable to the services rendered and a suitability test will have to be performed on a retail-investor. However, the suitability test is not a requirement, if the order is execution only.

As all Danish investment firms are subject to the Danish Act on Prevention of Money Laundering and Financing of Terrorism (Consolidated Act no. 1022 of 13 August 2013) this will also apply in this situation.

4.2 Lending Model

Any activity in Denmark comprising receiving from the public of deposits or other funds to be repaid requires a license in accordance with the Danish FBA. If the Crowdfunding model is based on the concept that the Crowdfunding platform provider will repay the deposits provided by the investors this will under Danish law require a license.

If the activity rendered in connection with the Lending Model qualifies as payment services the rendering of such activity will require an authorisation from the Danish FSA pursuant to the Danish Payment Services and Electronic Money Act. The transmission of funds between the potential investor and the project/entity which is being funded may require the Crowdfunding platform provider providing "money remittance" services under the Danish Payment Services and Electronic Money Act.

4.3 Donations or Rewards Model

Each of the Donations and Rewards Model is structured in order not to constitute any form of financial investment or financial return and therefore is not within the scope of the Danish financial regulation. Accordingly, the provider of a Crowdfunding platform operating this model is not subject to any financial regulation or license requirements.

A possible donations campaign must be notified to the Danish Fundraising Board and is subjected to the conditions of the Danish Fundraising Act (Act no. 511 of 26 May 2014). A fee of DKK 1000 must be paid to the Danish Fundraising Board in case of notifications and applications, if the fundraising campaign falls within the scope of the Danish Fundraising Act. Any Crowdfunding platform that engages in donation-based Crowdfunding is governed by general regulations under company law. No other requirements are imposed.

The Danish reward-based Crowdfunding is similar to the donation-based model, however, the two models differ as a potential investor who invests in reward-based Crowdfunding expects to receive something in return and the transaction is therefore fiscally similar to selling a product. Companies who apply rewards-based Crowdfunding are obliged to list the income from such sale in their annual reports together with expenses for production and similar and thereby special attention is to be paid to corporate taxation and VAT declaration.

4.4 Prospectus requirements

The public offering and sale of securities or investment products to investors is subject to a prospectus requirement pursuant to the Danish Securities Trading Act (Consolidated Act no. 831 of 12 June 2014). However, as the Danish Crowdfunding offers are very limited most Crowdfunding offers fall within the exemption for offers worth less than EUR 1,000,000 in a period of 12 months. There are other exemptions that may be applicable if single issues exceed this level such as if the issues are addressed solely to qualified investors or is addressed to fewer than 150 natural or legal persons. However, as the Danish offerings are very limited, and most often subject to the exemptions no prospectus requirement is likely to apply in respect of the three types of Crowdfunding which are currently available or will be in the near future in Denmark.

4.5 Regulation of Crowdfunding under the AIFMD regime

A Crowdfunding platform where investors are offered a variety of start-ups, which they are able to invest in in order to receive a return may be subject to the Danish Act on Alternative Investment Fund Managers (Act no. 598 of 12 June 2013) (the "**AIFM Act**"), if the platform will qualify as an Alternative Investment Fund. This definition is laid out in the AIFM Act implementing the Alternative Investment Funds Managers Directive (the "**AIFMD**") in Danish legislation. If the platform qualifies as an alternative investment fund (an "**AIF**"), the persons administering the platform will qualify as Fund Managers and thereby be subject to the AIFM Act. Currently, no platforms have been registered as an AIF according to the Danish FSA's homepage.

5 Regulation of RES Projects in Denmark

5.1 Overview

Regulation on renewable energy in Denmark is focused on increasing the use of renewable energy, with a political ambition of a minimum of 35% renewable energy in total energy consumption and a minimum of 50% wind power of the electricity consumption by 2020, coal phased out in 2030 and 100% renewable energy in energy consumption by 2050. The ambitions are to be achieved by increasing the wind power from offshore and near shore wind farms, conversion from coal to biomass at large scale CHP and smaller open field plants, and supporting the development of photo voltaic, wave power, biogas etc. Generally there is a large focus on developing wind energy. A tender for an offshore wind turbine farm at Kriegers Flak in the Baltic Sea has been commenced in 2015 and is expected to be completed in the latter part of 2016.

5.2 Remuneration

The Danish Act on Renewable Energy was adopted in 2008. The purpose of the Renewable Energy Act is to promote the production of energy using renewable energy sources, in line with climate, environmental and socio-economic reasons for reducing dependence on fossil fuels, security of supply and reducing emissions of CO2. The

Renewable Energy Act brought together existing provisions specifically relating to renewable electricity to make the legislation for establishing and producing renewable energy as clear as possible.

In Denmark, electricity from renewable sources is mainly promoted through subsidies, either as a permanent settlement, a fixed premium, on a contract for difference basis or given as a basic amount. When given as a permanent settlement the producer receives a fixed amount per delivered kWh. A fixed premium is given operators of the renewable energy plants as a variable bonus on top of the market price, with a maximum amount per kWh. This depends on the source of energy used and the connection date of the plant. Electricity producers who use all or part of the electricity they produce themselves are exempt from paying the Public Service Obligation[1] on this electricity. A contract for difference is used for the offered off shore wind turbine farms and the subsidy is given as a contract for difference between the spot market price and the offer price. Basic amount is given as a lump sum.

In return for payment, all plant operators must be granted connection to the grid on a non-discrimination principle and renewable energy plants are not given priority, while on the use of the grid the renewable energy plants are entitled to priority use. The national TSO and the distribution companies are required to expand the grid in order to guarantee the efficient transmission of electricity with a focus of increasing both competition and renewable energy sources. However, the plant operators are not entitled to call for an expansion of the grid.

In order to increase the number of wind turbines on land four incentives have been established. A purchase scheme which imposes the wind turbine setter to offer 20% of the project to local residents at cost prices; a loss of value scheme which gives neighbours of future wind turbines opportunity to receive compensation for loss in value of their property from the wind turbine setter; a Green Plan in which the municipality can apply for grants to initiatives that benefits the local citizens; and a Guarantee Scheme, giving an option to apply for a guarantee for loans of up to DKK 500,000 to borrowings related to the financing of feasibility studies for new wind projects. The Guarantee Scheme is available to local associations of wind plant owners and other local initiative groups to finance feasibility studies prior to the construction of wind energy turbines. Organisations or groups must have at least 10 members and the majority of these must be residents in the municipality in which the turbines will be constructed or live within a 4.5 km radius. This includes wind turbines with a capacity of more than 25 kW, and an off shore tendering procedure is not included. A budget of DKK 10 million is provided for guarantees and each guarantee will cover most of the specific loans. A group or association must apply to Energinet.dk, who decides whether a guarantee will be provided and if so, Energinet.dk will provide a guarantee to the bank. As another incentive to increase the number of wind turbines, the municipalities have promised to actively plan to provide sites for wind turbines.

[1] The Public Service Obligation is a charge imposed to support renewable energy. It is determined by Energinet.dk and depends on the consumer's individual level of consumption.

A subsidy is also given for small renewable energy technologies using renewable energy sources or technologies deemed to be of strategic importance (i.e. solar energy, biogas, hydro-power and biomass). Subsidies may be awarded for investment costs, preparation or installation costs, commissioning the plant into a proving phase, including the cost of the necessary consultancy. Energinet.dk has a budget of DKK 25 million. It is required to apply for the subsidy within a specified timeframe and applicants must be project owners. Energinet.dk decides which projects are subsidised. As a ground rule the project may begin after the contract between Energinet.dk and the owner of the project is signed. During the project interim reports must be submitted twice a year. When the project is completed a final report and financial statements must submitted.

Generally there are two types of policy programmes for installers of RES plants; the Quality Assurance Scheme for the installers of solar heating plants, photo voltaic and biofuels, and the Heat Pump Scheme for installations of heat pumps. Other than these, the vocational education for specific professions covers all the requirements of the European RES Directive.

The Danish Certification Scheme for wind energy plants includes a type certification certifying the type of wind turbine and a project certification, evaluating the individual installations.

There are also development programmes supporting innovative sustainable energy technologies and the "Green Labs DK Programme", giving subsidies for the establishment of test and demonstration facilities for new sustainable technologies.

6 Conclusion

The Danish market for RES Crowdfunding platforms and RES Projects is currently very limited. As such, the Danish Ministry of Business and Growth has in May 2015 initiated several efforts to promote and support the Danish Crowdfunding market but the effects of these initiatives are yet to be seen. The Danish Crowdfunding market is still in its early days but the Danish Ministry of Business and Growth has clarified the legal framework for application of Crowdfunding in Denmark and elaborated on the specific regulation of the donation- and reward-based model, the lending model and the equity model – the equity model being the most complex model from a regulatory perspective. Even though regulation of renewable energy in Denmark is focused on increasing the use of renewable energy with a political ambition of among others 35% renewable energy in total energy consumption and a minimum of 50% wind power of the electricity consumption by 2020 the regulation and the new initiatives within renewable energy in Denmark have not yet been combined with the regulation of Crowdfunding or other types of funding. However, as the Ministry of Business and Growth is open-minded in relation to cooperating internationally and within a European framework in relation to promoting the Crowdfunding market it is yet to be seen in specific RES Projects and regulation will be implemented in Denmark.

7 Summary – Crowdfunding and RES Projects Regulation

Country / Summary	Denmark
Recent developments in Crowdfunding regulation	• The Danish Ministry of Business and Growth disclosed a report in May 2015 setting-out the legal framework for Crowdfunding in Denmark. In addition the Ministry wish to promote Crowdfunding and has initiated several efforts to support the Crowdfunding market in Denmark.
Current Crowdfunding Regulation	
General regulation	• If a Crowdfunding platform facilitates offering of securities or investment products the operator of the platform renders financial services, which is subject to a licensing requirement • Donations or Rewards Model does not involve any form of financial investment or financial return and therefore is not within the scope of the Danish financial regulation but only subject to additional regulation.
Prospectus requirement	• Prospectus requirement for offering of securities or investment products • Threshold: EUR 1.000,000 per issuer within 12 months
AIFMD-regulation	• Crowdfunding platform may qualify as an AIF and be subject to the Danish AIFM Act • The persons administering the AIF – platform may qualify as Fund Managers of the AIF.
Payment services regulation	• Transfer of funds through an operator may constitute money remittance service • Requires Danish FSA's authorisation
Consumer credit regulation	• If consumer borrowers are permitted on a platform and Crowdfunding offered is based on the Lending Model there are requirements to the loan agreement pursuant to the Danish Act on Credit Agreements
Further possible	• The Danish Act on Measures to Prevent Money Laundering

requirements	and Financing of Terrorism • Danish Marketing Practices Act • Danish Investment Associations, etc. Act. • Danish Act on Credit Agreements. • Danish Tax Rules • Danish Fundraising Act.
RES Projects Regulation	
Electricity regulation applicable to RES Projects	• Political aim to increase the volume of renewables • Number of remuneration schemes • Incentives to establish wind turbines on land, including offering 20 % to local residents
Market Integration of RES Projects	• When receiving remuneration RES Projects will in many cases have a competitive advantage
Transition to tender based allocation of new RES Projects	• Off shore wind turbines are generally tendered
Further regulatory sources	• The Danish Act on renewable energy

Lessons learned – Crowdfunding / RES Projects Regulation

Lessons learned for a possible harmonized European Crowdfunding Regulation	
Role model ("dos")	• Disclosure of guidance for both investors and platform owners • Offering of guarantees
Aspects that should be avoided ("don'ts")	• The lack of implementation of specific regulation of Crowdfunding
Lessons learned for a possible harmonized European RES Projects Regulation	

Role model ("dos")	• Introduction of pur-chase scheme for local residents • Guarantee of borrow-ings related to the fi-nancing of feasibility studies for new wind projects • Subsidies given for es-tablishment of test and demonstration facilities for new sustainable facilities
Aspects that should be avoided ("don'ts")	• N/A

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VIII. Estonia

1 Estonian market for RES Crowdfunding platforms

Although, recently there have been many discussions on the possibilities to use Crowdfunding for funding projects dealing with renewable energy sources (**RES Projects**), there are still no Crowdfunding platforms specialised on funding RES Projects (**RES Crowdfunding Platforms**) in Estonia. However, few RES Projects have searched for financing through other existing (lending based) Crowdfunding platforms.

The biggest RES Project, known to us, was the campaign for Smart City expansion in Pakri in May 2015. PAKRI Science and Industrial park was seeking the capital in total of EUR 490 000 through a lending based Crowdfunding platform. PAKRI is planning to use Crowdfunding also in the near future to invest in wind turbine, smart-grid network and next building constructions.

1.1 Different investment models

As stated above, there are no RES Crowdfunding Platforms currently operating in Estonia. There are, however, several other lending based, donations based and equity based platforms.

Most of the Crowdfunding platforms in Estonia are lending based (individuals lend money in return for repayment of the loan and interest on their investment). Generally, there are two different kinds of lending based Crowdfunding structures: the platforms that intermediate loans between natural persons (peer to peer lending platforms), and the platforms that enable businesses to take loans from individuals (e.g. real estate projects funding platforms). As far as we are aware, there are at least two peer to peer lending platforms and two platforms that focus on real estate projects financing.

At the moment, there is also one donation based Crowdfunding platform. On this platform, the projects owners are supposed to establish a project, based on innovative ideas (including design, music, books, cinema, theatre, etc.), for financing and present it with a video and/or descriptive summary. In these projects, no financial return is involved. The investors may donate money for the projects or companies (in minimum 1 euro) and do not get any return at all or a non-monetary reward (e.g. tickets, books, “thank you” notes in publications) for their donation. The project has to be financed 100% (or more) before its final date. If it will not, the backers will receive the money back.

There is one equity based Crowdfunding platform where investors make investments in return for a share in a company. The platform gives two options for the investors: direct equity option and convertible note. First requires the investor to purchase share in the business straight away, the second allows for a delayed transaction where an

investor gives out a loan to the company that can later on be converted into an equity stake in the business.

2 Recent regulatory developments regarding Crowdfunding regulation in Estonia

There have been no substantial developments regarding Crowdfunding regulations. Estonian legislator has shown no initiative for enacting a special law regulating Crowdfunding as it has been in several other countries. However, on 29 March 2015, the Creditors and Credit Intermediaries Act (CCIA) entered into force. It obligates creditors and credit intermediaries to apply to the Estonian Financial Supervision Authority (**EFSA**) for authorisation and to bring their activities into compliance with the statutory requirements. Under the CCIA also Crowdfunding platforms, falling under the regulation of CCIA, are required to have an activity license by 21st March 2016.

3 Further recent developments considering RES Projects market in Estonia

There have been no substantial developments regarding RES Projects regulations.

However Estonian Supreme Court is currently analysing (case No 3-2-1-71-14) whether the renewable energy fee which the end-users of electricity must pay to finance the renewable energy support payable to renewable energy producers complies with Estonian Constitution. Main concern of the court is that the subsidies payable to electricity producers might be too high, in which case also the renewable energy fee payable by end-users might be excessive and hence disproportionally restrict end-users property rights. This judgement, if negative, may have negative implications towards implementation of RES Projects in Estonia.

Estonia also plans to amend its current renewable energy support scheme. Details of this development are described in more detail in point 5.4.

4 Regulation of Crowdfunding in Estonia

4.1 Licence requirement

4.1.1 Equity Model

Currently there is only one (recently established) equity based Crowdfunding platform operating in Estonia. There is no common understanding yet, whether an equity Crowdfunding platform is considered to provide investment services or not. There is, however, high risk that such services will be considered to be investment services in the meaning of MiFID and are therefore subject to licensing requirement. In this case the activity of the platform would fall under the scope of Estonian Securities Market Act (**SMA**).

When the Crowdfunding platform facilitates the offering of transferrable securities, or its operator acts as a securities broker, the platform may be deemed to provide

investment services in the meaning of SMA and will be subject to the investment firm license requirement issued by EFSA.

4.1.2 Lending Model

Pursuant to the Estonian Credit Institutions Act (**CIA**), a company who wishes to receive cash deposits or other repayable funds from the public in any other manner is a credit institution and must hold a license granted by the EFSA. A credit institution has an exclusive right to receive money from public for the purposes of depositing. However, in Estonia the platforms use a lending model based on loans between individuals and companies. The platforms are providing only lending brokerage services and the whole process of investing and lending is under platforms' clients own control. Therefore, the platforms do not receive cash deposits or provide loans on their own account and thus they do not fall under the regulation of credit institution and do not need a credit institution license.

However, as discussed in section 2, under the new CCIA, the licensing requirement will also apply to credit intermediaries. Intermediation of credit under the CCIA means (i) intermediating the granting of credit or indicating the possibility to enter into a credit agreement to a consumer for a charge, (ii) assisting consumers in acts preliminary to entering into a credit agreement or in entering into the agreement and any other activities related thereto, or (iii) in the interests of and for the benefit of the creditor, negotiating or entering into agreements on behalf and on the account of the creditor independently and on a permanent basis. By 21st March 2016 the lending based platforms, depending on the structure and activity of a platform, may be obliged to hold a license granted by the EFSA. Supervision may also be exercised over foreign creditors and credit intermediaries and their Estonian branches that grant or intermediate credit to consumers in Estonia in the framework of their economic or professional activities.

4.1.3 Donations or Rewards Model

Depending on the detailed structure of the platform, the investments under donations and rewards model platforms generally do not qualify as investment services, as they do not relate to (tradable) securities.

Also, as the money is donated and not lent, such activity should not require a banking license or credit intermediaries' license. In case the platform operator, under certain circumstances, repays the money donated back to the donator, there may be a risk that such an activity would be deemed to be 'receiving repayable funds from public' and thus would fall under the regulation of CIA. However, in our opinion, it is not likely that such interpretation would be applied.

4.2 Prospectus requirements

4.2.1 Lending or Equity Model

RES Project initiators issuing securities to investors may be subject to prospectus requirement in Estonia. Requirements for the preparation, submission and approval of the prospectus and exemptions from the requirement to publish the prospectus are established by the SMA. The implementation can mostly be regarded as complying with the Prospectus Directive. Few inconsistences, however, exist.

In contrast to several other countries, where the prospectus requirement does not apply to the offering of securities with a value of EUR 5 million or less within a one-year period, in Estonia, specific requirements towards the prospectuses in such offerings are established by a regulation of the Minister of Finance[1]. Therefore, publicly offering securities using a Crowdfunding platform in Estonia is likely to require publication of a prospectus, subject to certain exemptions.

Pursuant to the SMA, a prospectus has to be drawn up when (i) securities are offered to the public, (ii) the securities are admitted to trading on a regulated market ('a trading prospectus') and (iii) the securities are admitted to trading on an exchange ('a listing prospectus'). The prospectus is not required if securities are not offered publicly (definition of public offer as defined in the Prospectus Directive). Also, the prospectus requirement does generally not reply if the securities offered are not tradable. However, in case a foreign Crowdfunding instrument constitutes an investment fund, we note that public offering of non-tradable units of such non-Estonian investment fund may be subject to Estonian law regulation on the public offering of investment fund units.

The platforms operating lending model are not subject to prospectus requirement.

4.2.2 Donations or Rewards Model

As stated in clause 4.1.3 depending on the specific structure of the platform, the investments under donations and rewards model platforms generally do not qualify as investment services, as they do not relate to (tradable) securities. Therefore, the prospectus requirement would not apply to these platforms.

4.3 Regulation of Crowdfunding under the AIMFD regime

The law enabling alternative investment fund managers from other EU countries marketing EU alternative investment funds (**AIF**) to passport to Estonia came into force on 22th July 2013. Further amendments to the Investment Funds Act (**IFA**) became effective from 19th May 2014. The aim of the amended IFA was to transpose other provisions of the AIFMD into Estonian law.

[1] Regulation No. 4 of the Minister of Finance from 09.01.2006 „Requirements for public offer, trading and notation prospect"(in Estonian: *Nõuded väärtpaberite avaliku pakkumise, kauplemis- ja noteerimisprospektile*).

The new legislation does not introduce any provisions that would explicitly regulate the activity of Crowdfunding. However, depending on the nature and the scope of services provided by a Crowdfunding platform it might qualify as an AIFM and therefore each situation should be evaluated on case by case basis. If the platform qualifies as an AIFM, it will require a licence from EFSA.

4.3.1 Definition of AIF

As explained above, the regulation of AIF was transposed to IFA. However, IFA does not define AIF and therefore the definition of AIF in AIMFD would be applied. According to Article 4(1) of AIMFD, AIFs means (i) collective investment undertakings, including investment compartments thereof, (ii) which raise capital from a number of investors, (iii) with a view to investing it in accordance with a defined investment policy for the benefit of those investors, (iv) and do not require authorisation pursuant to Article 5 of Directive 2009/65/EC.

European Securities and Markets Authority (**ESMA**) has issued further guidelines on the definition of an AIF which clarify what constitutes a 'collective investment undertaking'. These are that (i) the undertaking does not have a general commercial or industrial purpose, (ii) it pools capital from investors with a view to generating a pooled return from assets, (iii) the unitholders/shareholders have no "day to day discretion or control" over operational matter.

'The defined investment policy' according to the ESMA guidelines contains the following factors: (i) the investment policy is determined and fixed, at the latest by the time that investors' commitments to the undertaking become binding on them; (ii) the investment policy is set out in a document which becomes part of or is referenced in the rules or instruments of incorporation of the undertaking; (iii) the undertaking or the legal person managing the undertaking has an obligation (however arising) to investors, which is legally enforceable by them, to follow the investment policy, including all changes to it; (iv) the investment policy specifies investment guidelines, with reference to criteria including any or all of the following:

a) to invest in certain categories of assets, or conform to restrictions on asset allocation,

b) to pursue certain strategies,

c) to invest in particular geographical regions,

d) to conform to restrictions on leverage,

e) to conform to minimum holding periods, or

f) to conform to other restrictions designed to provide risk diversification.

4.3.2 Equity Model

There is lack of certainty under Estonian law whether an equity Crowdfunding platform would fall under the regulation of AIFMD. It cannot be excluded it may constitute an AIF within the meaning of Estonian AIFMD regulation if it seeks funding in return for a share in that company. Upon determining whether a company is to be classified as an AIF, it must be evaluated in case to case basis taking into account the specific structure and operation of the platform.

4.3.3 Lending Model

The lending based Crowdfunding platforms can generally be structured as non-AIF investments since the investors do not share liability for any losses and therefore do not invest in a *collective investment* undertaking.

4.3.4 Donations or Rewards Model

When the Crowdfunding platforms do not offer any kind of revenues, or provide only very small non-financial rewards, it cannot be argued that these funds are invested for the benefit of those investors and the funding thus contains no collective investment. Therefore, it is not likely that these platforms would fall under the regulation of AIFs in Estonia.

4.3.5 Crowdfunding Platform

A Crowdfunding platform does not raise capital from investors for its own business. Moreover, the platform does not manage the underlying investment but merely arranges investments into projects or companies or intermediates loans between natural persons. Therefore, provided that the platform operates within the previously described structure, the platform should not qualify as AIF.

4.3.6 Special Purpose Vehicle

A Special Purpose Vehicle (SPV) may be used to pool investments from a larger group of individual investors into one entity. Provided that the SPV meets all the other general requirements of AIF, it would fall under the regulation of AIF under Estonian law and therefore would be subject to AIFMD regulation. It is required to apply for an authorisation of a manager of an alternative fund if a person manages, in the course of its principal and permanent professional activities, funds which assets, including the total volume of all the assets obtained by means of leverage exceeds EUR 100 million or the total volume of the assets exceeds EUR 500 million provided that the funds' portfolio consists of unleveraged funds and the right to redeem the units or shares cannot be exercised within five years as of the date of making investments in each fund. If the funds managed by the SPV are less than the named limits, the authorisation requirement would not apply. However, the SPV would still be obliged to register its activities with the EFSA.

An alternative would be a contractual pooling of the investors. In this structure, no pooling entity would be involved (the investors enter into a pooling agreement with the company itself or a third party) and therefore it should not fall under the AIFMD regulation.

4.4 Licence under Estonian Payment Institutions and E-money Institutions Act

Transfer of funds through the operator of a Crowdfunding platform may generally constitute payment services (if a payment account is opened) or money remittance services (if no payment account is opened) within the meaning of the Payment Institutions and E-money Institutions Act (**PIEIA**).

Transfer of funds could occur if the investors pay their investment amounts to the operator of the Crowdfunding platform, who then passes the funds to the person taking advantage of the Crowdfunding financing scheme, or back to investor in case the funding transaction fails.

We are not aware of any cases in Estonia where a Crowdfunding platform holds a payment institution license or where either of above exemptions has been applied to a Crowdfunding platform. Thus, in each situation where any of these exemptions is considered, we strongly recommend that beforehand respective project the structure of each platform is coordinated with the EFSA and/or local counsel is involved.

A possibility to operate Crowdfunding platform without the risk of being obliged to hold a payment services licence and supervised by the EFSA would be using an external provider or partner for processing payments rather than acting as an intermediary himself.

4.5 Possible additional regulations

Other regulations to which the operator of a RES Crowdfunding Platform may be subject to include:

- Estonian Law of Obligations Act (*võlaõigusseadus)*
- Estonian General Part of the Civil Code Act (*tsiviilseadustiku üldosa seadus*)
- Estonian Money Laundering and Terrorist Financing Prevention Act (*rahapesu ja terrorismi rahastamise tõkestamise seadus*)
- Consumer Protection Act (*tarbijakaitseseadus*)
- Estonian Advertisement Act (*reklaamiseadus*)
- Estonian Information Society Services Act (*infoühiskonna teenuse seadus*).

5 Regulation of RES Projects in Estonia

5.1 Overview

Estonian renewable energy policy and regulation is mainly focused on implementation of binding EU renewable energy directives. According to Directive 2009/28/EC Estonia's target for share of energy from renewable sources in gross final consumption of energy is 25% by 2020. In order to achieve this goal Estonia has established financial support measures to incentivise production of electricity from renewable energy sources (**RES**) and production of combined heat and power (**CHP**). This policy has been rather successful. By the end of second quarter of 2015 renewable energy generation constituted 16.7% of Estonian total electricity consumption. Estonia is predicted to reach the target 25% of overall energy consumption from RES by 2020 without significant surplus or deficit. It is unlikely that Estonia will voluntarily provide additional financial or other incentives for production of renewable energy above the binding targets as this would increase the financial burden of energy consumers and hamper local oil shale industry which is strategically important to Estonia. Namely approx. 80-90% of electricity produced in Estonia comes from local oil shale, this sector also provides work for thousands of employees and the state has invested huge amounts of money into this sector.

Unlike some other EU member states, Estonia has no renewable energy specific legal acts. Generation, distribution and sale of renewable electricity are regulated under the general Electricity Market Act (**EMA**) and the grid code (**Grid Code**) which applies both to conventional and renewable energy related activities. Also planning, construction and commissioning of new renewable energy power or CHP plants is subject to general building and environmental laws.

The EMA defines renewable energy sources as water, wind, sun, waves, tidal energy, geothermal energy, landfill gas, sewage treatment plant gas, biogas and biomass. Electricity produced from these sources is classed as renewable energy. The potential for renewable energy in Estonia is strongest in wind power and bioenergy-based CHP.

5.2 Feed-in management

Operators of renewable energy power plants do not benefit from a preferential grid access. According to the EMA, the electricity network operators must observe the principle of equal treatment of all electricity producers when providing network services and cannot prefer producers based on the fuel type used for production. Network operators have an obligation to develop their network such that all production installations which meet established requirements can be connected to the network. In order to be connected to the network and feed electricity into the network, a renewable energy producer and a network operator must conclude respective connection agreement and a network agreement. These agreements are concluded on standard terms which are approved by the energy sector regulatory authority, the Estonian Competition Authority, in advance.

Also in district heating sector heat produced from RES is not granted priority access to the network. However in case there is a need for new production capacities and several undertakings have expressed their wish to enter into contracts, the network operator must organise a tender for the award of the contract. In this tender process the network operator should, if possible, give preference (among certain other types of fuel) to heat produced from predominantly RES or in an efficient cogeneration regime from RES. Network operator is permitted to conclude contracts with a heat producer for a period of up to 12 years.

5.3 Remuneration system

First support mechanism for production of electricity from RES was adopted in Estonia already in 2003 according to which producers of electricity from RES were entitled to receive 1.8 times the regulated price of electricity. In 2005 the scheme was slightly amended and producers of electricity from RES were entitled to receive feed-in tariff which was set at 51.8 EUR/MWh.

In order to attract new investments and meet the 2020 RES target the support scheme was amended in 2007. The new scheme included for the first time aid to high efficient CHPs. 2007 scheme introduced a parallel system according to which the beneficiaries could choose from two support options. Option 1 was a feed-in tariff – EUR 73.5 per MWh if produced from RES, including CHP using RES; or EUR 51.8 per MWh if produced in high-efficient CHP using natural gas, retort gas, peat or municipal waste. Option 2 was a feed-in premium – EUR 53.7 per MWh on top of the market price if produced from RES, including CHP using RES; or EUR 32 per MWh in top of the market price if produced in high-efficient CHP using natural gas, retort gas, peat or municipal waste.

In practice option 1 was never used. Instead all beneficiaries used option 2 as the price for electricity was always higher than the feed-in tariff (option 1). This led to cancellation of option 1 in 2010. As a result of these developments and amendments the support scheme currently (December 2015) in force has the following main characteristics:

- Support is paid for electricity that is generated from RES, from biomass in CHP mode, or in efficient CHP mode;

- Fixed support rates:

  — EUR 53.7 per MWh if produced from RES or from biomass in CHP mode;

  — EUR 32 per MWh if produced in high-efficient CHP mode from waste as defined in the Waste Act, peat or retort gas or if produced in high-efficient CHP mode using generating equipment with a capacity not ex ceeding 10 MW.

- Support is paid on top of the market price. Hence the beneficiaries' total revenue is the sum of the market price and the support. The producers are free to choose to whom they want to sell their electricity.

- Support is paid for up to 12 years from commencement of production.

- Producers using wind as the source of energy may receive support until 600 GWh of electricity is generated and subsidised from wind in Estonia in a calendar year. Support is not paid for wind energy producers who have previously received state investment aid in respect of the same generating installation.

- To qualify for support, electricity must be generated by a generating installation conforming to the requirements of the EMA and the Grid Code and the producer must fulfil the relevant obligations under the EMA.

- The cost of financing RES support is passed on to end consumers in proportion to their consumption of network services and the amount of electricity consumed through direct lines.

- Support is paid to the producer by the transmission system operator (TSO). An application for support must include information concerning installations used for production and other information established by the TSO.

Estonia is in a process of amending the current RES support scheme and relevant draft legislation has been prepared. However, for the time being the final outcome of this legislation is still unknown. Short overview of the envisaged amendments is provided in the next point.

5.4 Upcoming changes in energy regulation

Upcoming changes in energy policy and energy regulation relevant for RES Projects and, thus, potential Crowdfunding investments:

- **Amendment of the RES support scheme** – Estonian authorities intend to amend the RES support scheme that has been in place since 2007. Amendment is necessary to align current scheme with the European Commission's (**Commission**) new Guidelines on State aid for environmental protection and energy 2014-2020. On 28 October 2014 the Commission gave its approval to the intended amendments, but also to existing and previous support schemes, with its decision[2].

[2] State aid SA.36023 (2014/NN) – Estonia. Support scheme for electricity produced from renewable sources and efficient cogeneration.

In order to protect the legitimate expectations of producers who have made investments to RES electricity production based on the existing support scheme, the new scheme is divided into two parts: a scheme for existing producers and a scheme for new producers. Existing producers are defined as installations which by certain date are already producing electricity and feeding it into grid or have a building permit or are in contractual relations providing district heating or have received financial investment support. New producers are producers/installations which do not qualify as existing producers.

All existing producers are automatically eligible for support. Exact rate of support is dependent on electricity market price and on capacity, technology and fuel used by the generating installation. Hence the draft act introduces floating support rates based on the difference between the fixed cap and the market price. For example the rate of support for existing wind energy producers is the difference of EUR 93 per MWh and the market price of electricity.

All new producers may receive support only in case there is a shortfall of electricity produced from RES which is necessary to fulfil the Estonian 2020 RES target. In such case Estonian authorities may organise a competitive bidding process to select the cheapest producer of the RES needed to fulfil the 2020 RES target. Detailed rules of the bidding procedure will be established by separate decree of the relevant minister.

- **Amendment of the Grid Code** – draft act has been prepared to amend the Grid Code. Purpose of the amendments, inter alia, is to specify and simplify the terms of connecting generating installations with capacity below 15 kW to the network. Also to define the meaning of solar power station and to specify the terms of connecting solar power stations to the network.

- **Amendment of the District Heating Act** (**DHA**) – draft act has been prepared to amend the DHA. Among other things the draft obligates local municipalities to assess whether in a given area existence of a district heating region, where it is prohibited to use other ways of heating than district heating, is justified or not. In case existence of district heating region is not justified the local municipality is entitled to abolish the district heating region. The latter situation may provide opportunities for RES Projects to start supplying heat to customers.

- **Amendment of the EMA** – existing regulation includes many barriers for establishment of so called energy communities/co-operatives (high capital requirements, obligation to obtain activity licence, prohibition to provide network services without other network operator's consent, etc.). Draft act has been prepared to amend the EMA and which among other things aims to remove some of these barriers and create better conditions for establishment and operation of energy communities.

6 Conclusion

There are several lending based, donations based and equity based platforms are operating in Estonia, but no specific RES Crowdfunding Platforms have been established so far. There is legal uncertainty about the licencing and prospectus requirements applicable to different Crowdfunding platforms.

No substantial developments regarding Crowdfunding regulations have been conducted recently. Estonian legislator has shown no initiative for enacting a specific law regulating Crowdfunding and guidelines not yet been provided by Estonian Financial Supervision Authority on these matters.

On 29 March 2015, the Creditors and Credit Intermediaries Act entered into force. It obligates creditors and credit intermediaries to apply to the Estonian Financial Supervision Authority for authorisation and to bring their activities into compliance with the statutory requirements. The platforms, falling under this regulation, are required to hold an activity licence from 21st March 2016.

Estonian renewable energy policy and regulation is mainly focused on implementation of binding EU renewable energy directives. According to Directive 2009/28/EC Estonia's target for share of energy from renewable sources in gross final consumption of energy is 25% by 2020. In order to achieve this goal Estonia has established financial support measures to incentivise production of electricity from renewable energy sources and production of combined heat and power.

Estonia has no renewable energy specific legal acts. Generation, distribution and sale of renewable electricity are regulated under the general Electricity Market Act and the grid code which applies both to conventional and renewable energy related activities.

7 Summary – Crowdfunding and RES Projects Regulation

Country / **Summary**	**Estonia**
Recent developments in Crowdfunding regulation	• No specific Crowdfunding regulation has been adopted • Creditors and Credit Intermediaries Act (*krediidiandjate ja -vahendajate seadus*) that sets forth licencing requirement for creditors and credit intermediaries entered into force on 29 March 2015
Current Crowdfunding Regulation	
General regulation	• If the Crowdfunding platform facilitates the offering of transferrable securities, or its operator acts as a securities broker, the platform may be deemed to provide

	investment services in the meaning of SMA and will be subject to the investment firm license requirement • Under the Creditors and Credit Intermediaries Act lending based platforms, depending on the structure and activity of a platform, will be obliged to hold a license from 21st March 2016.
Prospectus requirement	• Prospectus requirement for Crowdfunding platforms offering securities • The platforms operating lending, donations and rewards model are generally not subject to prospectus requirement
AIFMD-regulation	• Depending on the nature and the scope of services provided by a Crowdfunding platform it might qualify as an AIF • The lending based Crowdfunding platforms can generally be structured as non-AIF • It is not likely that lending based or reward based platforms would fall under the regulation of AIFs
Payment services regulation	• Transfer of funds through the operator of a Crowdfunding platform may constitute payment services or money remittance services (payment services licence required)
Further possible requirements	• Estonian Law of Obligations Act (*võlaõigusseadus*) • Estonian General Part of the Civil Code Act (*tsiviilseadustiku üldosa seadus*) • Estonian Money Laundering and Terrorist Financing Prevention Act (*rahapesu ja terrorismi rahastamise tõkestamise seadus*) • Consumer Protection Act (*tarbijakaitseseadus*) • Estonian Advertisement Act (*reklaamiseadus*) • Estonian Information Society Services Act (*infoühiskonna teenuse seadus*)

RES Projects Regulation	
Electricity regulation applicable to RES Projects	• Electricity Market Act (*elektrituruseadus*) which sets forth that the electricity network operators must observe the principle of equal treatment of all electricity producers when providing network services • the grid code
Market Integration of RES Projects	• First support mechanism for production of electricity from RES was adopted in Estonia in 2003. Since that the scheme has been amended several times. • Existing scheme includes fixed support rates of EUR 53.7 per MWh and EUR 32 per MWh depending on exact type of fuel and technology used for the production of electricity. • Support is paid on top of the market price for up to 12 years from commencement of production.
Further regulatory sources	• General Part of the Environmental Code Act (*keskkonnaseadustiku üldosa seadus*) • District Heating Act (*kaugkütteseadus*)

Lessons learned – Crowdfunding / RES Projects Regulation

Lessons learned for a possible harmonized European Crowdfunding Regulation	
Role model ("dos")	• Considering the legal uncertainty on Crowdfunding regulation in Estonia, it is impossible to make an assessment.
Aspects that should be avoided ("don'ts")	• Considering the legal uncertainty on Crowdfunding regulation in Estonia, it is impossible to make an assessment.
Lessons learned for a possible harmonized European RES Projects Regulation	
Role model ("dos")	• Financial incentives for renewable energy generation • Simple, transparent and stable regulation
Aspects that	• Insufficient level of regulation which gives TSOs too broad

should be avoided ("don'ts")	discretion over deciding exact conditions for connecting renewable energy production installations with the grid.

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IX. Finland

1 Finnish market for RES Crowdfunding platforms

Finland has agreed to meet its 38% target set by the RES directive. Over the last few years, the development of the Finnish renewable market has been mainly based on wind power and bio power. However, the solar power sector seems to be the next remarkable sector. Currently only eight (8) megawatts of solar power projects are connected to the grid. However, the reducing price level combined with technological development in the fields of solar power has also provided further opportunities regarding commercialisation. It is assumed that solar power will grow very rapidly in Finland. This growing market may also provide opportunities for Crowdfunding.

2 Recent regulatory developments regarding Crowdfunding regulation in Finland

The major change in Finland with regards to Crowdfunding regulation took place in July 2014, when the FIN-FSA published its new interpretation regarding the scope of activities that constitute an investment service within the meaning of the Finnish Investment Services Act (in Finnish: *sijoituspalvelulaki),* the "**ISA**"). According to this new interpretation of the FIN-FSA, an investment-based Crowdfunding service is an investment service for which the service provider must be authorised according to the ISA. According to the previous interpretation by the FIN-FSA, the operations of Crowdfunding platforms offering the equity model did not fulfil the definition of investment services requiring a license according to the ISA. Hence, since July 2014 platforms offering equity based Crowdfunding services have been required to apply for an authorisation from the FIN-FSA.

At present, there is no coherent regulatory regime specifically adapted to Crowdfunding in Finland, and the regulatory treatment of a Crowdfunding platform depends on how the service of the platform and the product it offers are constructed. If a platform falls within the scope of the ISA, the platform shall comply with all the requirements of the ISA. Because the ISA and other possibly applicable Finnish laws do not take into account the specific characteristics of various Crowdfunding projects, some small-scale operators have decided to exit the market, as they have felt that the current regulatory burden is too high for them. As a consequence of this, and in order to lighten the regulatory burden applicable to platforms offering investment-based Crowdfunding services, the drafting process of new legislation concerning Crowdfunding has been started in Finland, and the Ministry of Finance has issued a draft proposal for a Crowdfunding Act in autumn 2015. Until new legislation concerning Crowdfunding is implemented, the regulatory framework applicable to Crowdfunding platforms remains fragmented.

3 Further recent regulatory developments considering RES Projects market in Finland

The feed-in tariff for RES is in use in Finland. The legal basis for the system is the Finnish Feed-in Tariff Act (in Finnish: *Laki uusiutuvilla energialähteillä tuotetun sähkön tuotantotuesta*, the "**FTA**"). The feed-in tariff system has recently been in practice closed in for wind power in Finland. The amendment of the FTA (Amendment) entered into force on 26 October 2015. Pursuant to the Amendment, a wind power plant can be accepted into the feed-in-tariff system only if it has been granted a quota from the 2,500 MVA cap. Further, according to the Amendment, said decision is valid only till November 2017. The schedule is challenging from the perspective of delivery times of wind turbine generator manufacturers. Due to the Amendment, it is highly likely that Finland will fall short of the 2,500 MVA cap, which is also the target amount. This is because the Amendment does not make it possible to transfer capacity from an unrealised project to another project further down the queue.

Another recent regulatory amendment regarding RES Projects in Finland is entry in the force of the Government Decree on the Guidance Values for the Outside Noise caused by Wind Turbine Power Generators (in Finnish: *Asetus tuulivoimaloiden ulkomelutason ohjearvoista*, the "**Noise Value Decree**"). The Noise Value Decree was issued on 27 August 2015. In the decree, the day time guidance value for noise was set to 45 db, the night time value being 40 db. Before the issuance of the decree, wind power developers have been forced to comply with the different contradictory guidance values, hence the Noise Value Decree has received a positive feedback from the Finnish wind power industry. The new guidance values are applied to projects entering permitting processes after issuance of the decree.

4 Regulation of Crowdfunding in Finland

As mentioned above, at present, there is no coherent regulatory regime specifically adapted to Crowdfunding in Finland. Thus, the regulatory treatment of a Crowdfunding platform is dependent on how the service of the platform and the product it offers are constructed.

4.1 Licence under the Finnish Credit Institutions Act and Investment Services Act

Equity Model

Pursuant to the Finnish Act on Credit Institutions (in Finnish: *laki luottolaitostoiminnasta,* the "**ACI**")) and the ISA implementing the EU Credit Institutions Directive and the EU Markets in Financial Instruments Directive (MiFID) in Finland, the provision of banking or investment services are regulated activities. Any firm offering investment services in Finland must have the license of an investment firm or of a credit institution. This applies to the offering of investment services in Finland irrespective of whether the service is offered to professional or non-professional investors.

The provision of investment services includes, for example, investment broking (reception and transmission of orders in relation to financial instruments and their execution on behalf of customers), contract broking (execution of purchase and sale orders on behalf of others) and the placing of financial instruments without a firm commitment basis. Financial instruments within the meaning of the Act on Investment Services include transferable securities (i.e. shares and bonds or other forms of securitised debt) and other financial instruments. The offer to the public of shares is regulated as the issue of securities in accordance with the Securities Markets Act (in Finnish: *arvopaperimarkkinalaki*, the "**SMA**"). Pursuant to the FIN-FSA's current interpretation of the Investment Services Act, an investment-based Crowdfunding service is an investment service for which the service provider must be authorised.

Licensable investment services consist of reception and further transmission of orders related to financial instruments (Chapter 1, section 11, subsection 1(1) of the Investment Services Act). Such transmission of orders is considered to include a service where the purpose is to bring together parties to a business transaction related to a financial instrument in the manner that enables execution of a transaction between these parties. Consequently, the transmission of orders also includes acting as a place of subscription, where the service provider – for instance, in connection with a share issue – receives subscriptions from the public and transmits them further to the organiser of the issue.

The scope of need for authorisation is dependent on the services provided by the Crowdfunding platform and the scale of its operations. If the service provider executes an order on behalf of a customer, the activity is considered an execution of orders requiring authorisation, as defined in Chapter 1, section 11, subsection 1(2) of the Investment Services Act. If the investor is provided with individual recommendations (advice) tailored for the investor's needs in connection with a business transaction, such as a purchase or sale, related to a certain financial instrument, an authorisation for investment advice according to Chapter 1, section 11, subsection 1(5) of the Investment Services Act will be needed.

Lending Model

The treatment of the Crowdfunding platform is dependent on how the service of the platform and the product it offers are constructed. Similarly, as explained above in respect of the equity model, the offer to the public of bonds is regulated as the issue of securities in accordance with the Securities Markets Act.

Currently, the platforms providing peer-to-peer lending operate outside the regulatory scope. Pursuant to the current interpretation of the Finnish Financial Supervisory Authority, licenses are not required for peer-to-peer lending since individual loan agreements do not constitute regulated financial instruments and, therefore, the lending of funds to a company from the crowd through individual loan agreements has been interpreted to be an unregulated activity. This also applies to financing arranged

through ordinary promissory notes (in Finnish: *tavallinen velkakirja*). However, if the Crowdfunding platform makes the investment decisions on behalf of the investors, the registration requirements arising from the AIFM Directive may apply.

If a platform receives repayable funds from the public, the platform might fall within the scope of the ACI and, consequently, the platform shall comply with all the requirements of the ACI starting from the authorisation requirement.

Donations or Rewards Model

Platforms using the donations or rewards model are not subject to financial services regulation in Finland unless they receive repayable funds from the public. Pursuant to the ACI, an authorisation to act as a credit institution is required if repayable funds are received from the public.

Currently, there is only one platform providing the donations or rewards model in Finland, and it operates outside the scope of financial services regulation. It works as a matchmaking platform between the party seeking funding and the investors and does not gain possession of the funds at any point. The platform using the donations or rewards model operates mainly in the field of social or creative projects.

4.2 Prospectus requirements

Equity Model/Lending Model

Pursuant to SMA, anyone who offers securities to the public or applies for the admission to public trading of a security shall be under an obligation to publish a prospectus relating to the securities before the entry into force of the offer or the admission to public trading and to have it available for the public during the validity of the offer. Shares and bonds are regarded as securities in accordance with the SMA in Finland. At present, all Crowdfunding platform providers operate under the exemptions of the regulatory regime. The prospectus requirement does not apply to an offering of securities with a total consideration of less than EUR 2,500,000, calculated for the preceding 12-month period. However, when evaluating the total consideration for securities included in the above mentioned offer, offers for the same type of security throughout the EEA are considered.

A prospectus is also not required when the total value of securities offered is less than EUR 5,000,000, admission is applied for the securities to be traded in Finland on the First North market place and a company description compliant with the regulations of the said market place is kept available for investors. No prospectus requirement is likely to apply in respect of the peer-to-peer lending model.

Donation or Rewards Model

No prospectus requirement is likely to apply in respect of the donations or rewards model.

4.3 Regulation of Crowdfunding under the AIFMD regime

The Act on Alternative Fund Managers (in Finnish: *Laki vaihtoehtorahastojen hoitajista*) sets the following criteria for an AIF, all of which must be fulfilled in order for an undertaking to be qualified as an AIF: (i) acquires funds or receives capital from (ii) several investors, (iii) invests in accordance with a defined investment policy (iv) for the benefit of the investors, and (v) the undertaking is not a UCITS fund.

Operating company seeking funding

Pursuant to the Act on Alternative Investment Fund Managers, a company (in Finland: a limited liability company) operating within a certain field and seeking funding with the purpose of generating profit for its shareholders would be excluded from the definition of an AIF (usually such a company does not have a defined investment policy for the benefit of the investors). In such a business, the investors do not typically have the possibility for daily evaluation or supervision of investment targets. However, an operating company may also have the intention to invest into certain investment targets, which might constitute an AIF (with the exemption of holding companies which are excluded from the scope of the Act). It should also be noted than an operating company would not normally constitute an AIF in the event of the lending, equity or donations or rewards models, in which the investor itself chooses the investment target, since activities in which investment decisions are made by the investor itself are not regarded as AIF activities.

Project company seeking funding

The Act on Alternative Fund Managers does not apply to businesses in which collective investments are not conducted in the form of an AIF. In the event that collective investments are connected to the regular business of an entity and the investors maintain significant control over the project, such joint ventures (established to finance a single project) would not be regarded as AIFs. However, it cannot be ruled out that a project company would constitute an AIF in the event that the project company would have several investors (at least two) and there would be a collective investment policy.

Equity model

Primarily, it would seem that, in the type of equity model Crowdfunding where the investment decisions are made by the investors and there is no collective investment policy, the criteria for an AIF are not met. However, equity model Crowdfunding may constitute an AIF in the event that there is an element of collective investment policy and the other qualifications of an AIF are met.

Lending model

Similarly as in respect of the equity model, it would seem that a lending model does not constitute an AIF if the investor retains the power to make the investment decisions. However, it is possible that such types of the lending model in which the investment decisions are made according to a defined investment policy, the qualifications of an AIF could be met.

Donation or rewards model

The Crowdfunding platforms offering the donations or rewards model are not likely to be governed by the Act on Alternative Fund Managers, since the investor in this model retains the power to consider, supervise and make investment decisions and there is no element of a collective investment policy.

Crowdfunding platform

It is possible that the Crowdfunding platform could constitute an alternative investment fund manager (AIFM) within the meaning of the Act on Alternative Fund Managers.
Additionally, in respect of the equity model or lending model (as presented above), the question is whether the investment decisions are made on behalf the investor or by the investor. In the event that the platform makes the investment decisions, an AIF would be formed, and the Crowdfunding platform could be seen as an AIFM. It would also seem that since the donations or rewards model does not entail an element of collective invest policy, no AIF or AIFM would be formed.

Pooling vehicle

In case the company seeking funding prefers funding by just one major investor instead of a large number of small retail investors, it is possible that the platform involves a pooling vehicle. A pooling vehicle is a company founded to concentrate a large number of investors. Such a pooling vehicle is likely to be an AIF and, therefore, to be subject to the Act on Alternative Fund Managers.

4.4 Licence under the Finnish Payment Institutions Act

Crowdfunding platform operators receive funds from investors after the financing round is completed and it has been deemed successful. This may be considered money remittance in accordance with the Finnish Payment Institutions Act (in Finnish: *Maksulaitoslaki*) implementing the Payment Services Directive. In order to provide payment services, service providers must either acquire authorisation for their business in line with the Payment Institutions Act or, in the case of smaller scale activities, submit a notification of intention to provide payment services without authorisation. This requires that the service provider fulfils the requirements

stipulated in the Payment Institutions Act applicable to the provision of payment services without authorisation.

There are good reasons to argue that the transfer of funds through the platform operator's customer deposit account does not constitute a money remittance service and that the operators would be able to rely on the exemption of commercial agents on the basis that they have authorisation to negotiate or conclude contracts on behalf of the funder and the funding seeker. However, this interpretation has not been tested, and the platform providers may be required to acquire authorisation or make a notification. The legal treatment of the lending model from this perspective is currently not resolved satisfactorily.

To avoid the license requirements, the Crowdfunding platform provider may also use an external authorised payment service provider to process the payments.

4.5 Possible additional Regulations

Other common regulations to which the operator of a Crowdfunding platform may be subject include:

- Money Collection Act (in Finnish: *Rahankeräyslaki*)

In other parts of the world, Crowdfunding has been widely used to raise finance for charity targets and to support arts projects. In Finland, the decision of the National Police Board restricts the use of the donations model: collecting money without consideration and for charity requires a money collection permit granted by the authorities. According to the Finnish Money Collection Act, a money collection permit may be issued for an association or foundation which is registered in Finland and if the sole purpose of the association is to work for public good. Furthermore, according to the Money Collection Act, money can be collected only for charitable purposes. The money collection permit may not be issued for an individual.

Despite the strict interpretation of the Money Collection Act, the only platform in Finland offering the donations or rewards model does promote projects with a charitable purpose. The platform requires that a money collection permit is acquired before the project can be entered in the platform.

- Consumer Protection Act (in Finnish: *Kuluttajansuojalaki*); and

- Act on Registration of Certain Creditors (in Finnish: *Laki eräiden luotonantajien rekisteröinnistä*)

The Finnish Consumer Protection Act regulates domestic and distance selling to consumers as well as the distance selling of financial services and instruments. No conduct that is inappropriate or otherwise unfair from the point of view of consumers shall be allowed in marketing. In addition, false or misleading information shall not be

conveyed in marketing. It is also forbidden to not provide such information in marketing or consumer relations that is relevant taking into account the context and which the consumer needs for a proper purchase decision. Chapter 5 of the Consumer Protection Act could, in theory, be applicable in certain situations concerning Crowdfunding (especially in reward based model). Chapter 5 of the Consumer Protection Act governs i.e. the delivery of goods, passing of risk and liability for defects and could be applicable to Crowdfunding in situations where the investor would receive actual "goods" as defined in the Consumer Protection Act as compensation for the investment made. If Chapter 5 of the Consumer Protection Act would be applicable, the goods sold would need to correspond with can be deemed to have been agreed.

The Consumer Protection Act also regulates the offering of consumer credit and sets out several obligations with respect to the offering of credit to consumers. These obligations include, for example, the duty of disclosure of a company offering consumer credit with regard to interest rates and other costs related to the credit, amount of credit and credit limit, duration of the credit agreement, cash price of the commodity, the aggregate amount of the credit, credit costs and the number of instalments. Additionally, obligations include, e.g. the duty to provide the consumers with sufficient information on the credit before entering into the credit agreement, the obligation of the company offering the credit to act in accordance with principle of responsibility, the duty to assess the creditworthiness of the consumer before entering into the credit agreement, the obligation to verify the identity of the consumer applying for the credit and the duty to inform the consumer if the creditor's rights under the credit agreement or the agreement itself will be assigned to a third party. In addition, a Crowdfunding platform provider offering consumer credit has an obligation to register in the register for creditors pursuant to Act on Registration of Certain Creditors (in Finnish: *Laki eräiden luotonantajien rekisteröinnistä*) provided that a payment institution license or a credit institution license is not required with respect to offering of the services.

Consumer complaints may be made by consumers to the Finnish Consumer Disputes Board. The Board issues non-binding recommendations. If a larger number of consumers have a dispute with the same business regarding the same matter or if a business has concluded a contract containing an unfair term with many consumers, a group complaint can be filed by the Finnish Consumer Ombudsman to the Consumer Disputes Board after considering a case. A case may be heard as a class action if several persons have claims against the same defendant and based on the same or similar circumstances. A class action is brought by the Consumer Ombudsman, who also represents the class.

5 Regulation of RES Projects in Finland

5.1 Overview

Finnish RES legislation does not include a target for the share of renewable energy in overall energy consumption. The Finnish Climate Change Act (in Finnish: *Ilmastolaki*, "**CCA**") entered into force on 1 June 2015 and lays down provisions on the planning system for climate change policy, targeted to the competent authorities as well as 80% reduction target for greenhouse gas emissions by 2050 comparing to emissions in 1990. The CCA does not contain material provisions directly applicable to business sectors and private companies, nor specific provision related to promotion of RES.

In terms of achieving Finland´s 38% renewable energy target set by the RES directive, the most significant legislative instrument is the Finnish Feed-in Tariff Act (in Finnish: *Laki uusiutuvilla energialähteillä tuotetun sähkön tuotantotuesta*, the "**FTA**"). The purpose of the FTA is to promote electricity production by RES and their competitiveness, to diversify Finnish electricity production and to improve self-sufficiency in electricity production. The FTA is applied to electricity produced from forest-chips, wind, biogas and wood subject to certain requirements discussed below in this chapter. As all RES production is not under the scope of the FTA, other pieces of Finnish investment support legislation are also important in promotion on RES projects in Finland.

Grid access of RES has been facilitated through amendments to Finnish energy market legislation. In addition to specific RES legislation, being mainly financial support, the general Finnish legislation as regards emissions control and environmental permitting as well as land-use planning for instance, are applied to RES projects. In practice, one significant piece of Finnish RES legislation is also the Finnish Land Lease Act (in Finnish: *Maanvuokralaki*), as the market practice is that wind farms are built on a leased land. As wind power has been the RES category subject to the most active project development in Finland, a great deal of attention is paid to wind power in this chapter.

5.2 Feed-in tariff

Feed-in tariff legislation in Finland has been enacted in 2010. The basis of the legislation, the FTA, is supported by the Decree of the Council of State Regarding the Feed-in Tariff to the Electricity Produced by Renewable Sources (in Finnish: *asetus uusiutuvilla energialähteillä tuotetun sähkön tuotantotuesta*).

Wind power plants, biogas power plants, forest chip and wood-fuelled power plants meeting the pre-conditions prescribed in the FTA can be accepted into the feed-in tariff system. In accordance with the FTA, a producer whose power plant is approved into the system will receive a subsidy (feed-in tariff) for electricity produced in the power plant in question.

The following power plants can be accepted into the system:

- Wind power plants can be accepted into the system until the combined nominal capacity of the power plants exceeds 2,500 MVA;

- Biogas power plants can be accepted until the combined nominal capacity of the biogas power plants accepted into the system exceeds 19 MVA;

- Forest-chip power plants; and

- Wood-fuelled power plants can accepted until the amount of wood-fuelled power plants exceeds 50 and the combined nominal capacity exceeds 150 MVA.

The detailed preconditions for acceptance of the different kinds of power plants into the system are the following:

- A wind power plant must be built entirely of new parts, the combined nominal capacity of the generators must be at least 500 kVa and, in addition, it must not have received any other state aid. However, a wind power plant can be accepted into the feed-in tariff system only if it has been granted a quota from the 2,500 MVA cap. However, wind power plants which are a part of the experimental offshore wind power plant project will be accepted into the system.

- A biogas power plant can be accepted only if it is built entirely of new parts and it must not have received any other state aid. The combined nominal capacity of the generators must be at least 100 kVa and the power plant must use as its fuel biogas generated in a biogas plant which, like the power plants applying for the system, has not received state aid, is new and does not contain any used parts. A biogas power plant meeting the requirements may be accepted into the system, but also be entitled to a heat premium (please see further information below) if it also produces heat for utilisation and has a total nominal output of at least 50%, or if the combined nominal capacity is at least 1 MVA, at least 75%.

- A forest-chip power plant can be accepted if the combined nominal capacity of the generators is at least 100 kVa and it is not and it has not been a part of the feed-in tariff system. Such a power plant can also be accepted into the system as a power plant entitled to the feed-in tariff increased with the gasification premium (please see further information below) if there is a gasification plant where the wood chips are gasified in order to be used as fuel in a pulverized fuel boiler in connection with the wood-chip power plant.

- A wood-fuelled power plant must be completely built of new parts and it must not have re-ceived state aid. The combined nominal capacity must be at least 100 kVa and maximum 8 MVA, it must also produce heat for utilisation and the

combined nominal output must be at least 50% or, if the combined nominal capacity is at least 1 MVA, at least 75%.

The application to include a power plant into the feed-in tariff system shall be submitted to the Finnish Energy Authority (EA). Clearances that are necessary for the official's discretion regarding the electricity producer, the power plant project and the power plant, must be presented in the application. Further, the planned date for the power plant´s introduction to commercial use has to be stated in the application.
The feed-in tariff is paid to the electricity producer by the EA. The target price for electricity produced in a power plant accepted into the Feed-in Tariff system is EUR 83,50 per MWh.

Electricity production eligible for the target price is electricity produced by the generator of the power plant deducted by the energy consumed by the auxiliary appliances of the power plant. The appliances and machinery needed to produce electricity or electricity and heat and to uphold production facilities and to remove or diminish environmental damage are regarded as auxiliary appliances.

The amount of the feed-in tariff is the difference between the target price and the spot market price (last 3 months' average) in accordance with the amount of electricity produced. However, if the spot market price is under EUR 30 per MWh, the feed-in tariff is the difference between the target price and EUR 30 per MWh. As prescribed in the FTA the feed-in tariff paid for the electricity produced in a power plant using forest chips is EUR 18 per MWh when the 3-month average of the market price of the emission allowance is a maximum of EUR 10.

A heat premium can be paid if a biogas power plant or a wood-fuelled power plant produces heat for utilisation and if the combined nominal output is at least 50%, or if the combined nominal capacity is at least 1 MVA, at least 75%. A feed-in tariff may be increased by a heat premium of EUR 20 per megawatt hour for electricity produced in a wood-fuelled power plant and EUR 50 per megawatt hour for electricity produce d in a biogas power plant.

A gasification premium for electricity produced in a pulverised fuel boiler with wood chips, which have first been gasified in a gasification plant, shall be paid in accordance with the changing peat tax in order to ensure the profitability of the gasification plant.

A calendar year is divided into a four (4) feed-in tariff periods. The feed-in tariff is paid for the electricity produced during the three (3) month tariff period. The electricity producer´s right to the tariff begins from the next tariff period following the decision of the power plant´s approval to the system to gain legal validity. The electricity producer can be allowed for the tariff for a 12-year period at maximum, beginning from the date when the right to the tariff began.

5.3 Other investment aid

Other types of investment aid are also important in relation to RES project development in Finland, as certain types of RES, for example solar power, are excluded from the scope of the FTA and also because the feed-in tariff is available only for relatively large-sized power plants.

Pursuant to the Finnish Decree on the General Conditions for granting the Energy Aid (in Finnish: *Valtioneuvoston asetus energiatuen myöntämisen yleisistä ehdoista*, the "**Energy Aid Decree**"), aid can be granted for climate and environmental friendly investment and feasibility projects promoting the production of RES, promoting energy efficiency or improving efficiency of energy production or reducing the environmental impacts of energy production or use. The scope of application of the Energy Aid Decree is limited in relation to investment projects falling under the scope of the Finnish Emissions Trading Act (in Finnish: *Päästökauppalaki*). The general requirement for granting the aid in accordance with the Energy Aid Decree is that the receiver of the aid finances at least 25% of the project by funding not including any public support. Investment aid is not granted for projects referred in the article 6 of the Kyoto Protocol (Joint Implementation projects).

The amount of the energy aid shall be considered on a case-by-case basis in relation to each individual project. The maximum aid intensity of eligible costs granted is 30% in investment projects and 40% in feasibility projects. However, if an investment project contains new technology, the maximum aid intensity can be raised by 10 percentage points. If energy aid for a feasibility project is granted to a municipality or to a micro, small or medium-sized enterprise within the meaning of Commission Recommendation 2003/361/EC, the aid intensity can be raised by 10 percentage points. In addition, the aid intensity can be raised by additional 10 percentage points if the project in question is a RES audit carried out by a municipality.

The application for the aid in accordance with the Energy Aid Decree shall be submitted to the Centre for Economic Development, Transport and the Environment (ELY-Centre) in whose area of operations the investment or feasibility project shall be implemented or to the ELY Centre, in whose area the applicant's registered office is situated. The energy aid for an investment project must be applied for before acquisition of the fixed assets or commencement of the building-, renovation- or alteration works. The energy aid for a feasibility project must be submitted before commencement the project in question.

The typical projects falling under the scope of the investment aid under the Energy Aid Decree include:

- Small scale hydro power;
- Landfill gas projects;

- Small scale wind power; and
- Solar power

Another significant piece of Finnish investment aid legislation is the Finnish Act on Government Subsi-dies (in Finnish: *Valtionavustuslaki*), which forms the legal basis for the issuance of the Energy Aid Decree. The Finnish Act on Structural Funds (in Finnish: *Rakennerahastolaki*) regulates the projects falling under the scope of application of granting the aid from the structural funds of the EU.

The Finnish Ministry of Employment and the Economy has launched a support program for RES and energy efficiency for 2015 (Programme). The programme is legally based on the EU General Block Exemption Regulation (Regulation). The scope of application of the Programme consists of the measures referred to in articles 38, 46, 41 and 49 of the Regulation.

The aid in accordance with the Programme can be applied for with respect to projects falling under the scope of the Energy Aid Decree. As renewable energy sources, the Programme refers to wind, solar, air-heating, geothermal and hydrothermal energy, marine energy, hydro power, biomass, biogases and gases originating in landfills and wastewater treatment plants. Aid for biofuels can be granted only if the investment fulfils the sustainability criterion laid down in the Finnish Biofuels Act (in Finnish: *Laki biopolttoaineista ja bionesteistä*). The aid cannot be granted for a hydro power plant not complying with the requirements set by the Water Framework Directive.

5.4 Renewable energy specific energy market regulation

The Finnish Electricity Market Act (*in Finnish: Sähkömarkkinalaki*, the "**EMA**") which forms the core of Finnish electricity market legislation offers possibilities facilitating RES productions access to the electricity network.

Pursuant to the EMA, the starting point is that only an administrator of the distribution network has the right to build a new network in its area of responsibility. However, there are certain exceptions to this, and for example, other entities are allowed to build distribution networks in the area of administrator of the network if the matter concerns construction of a connection cable or stand-by supply connection with which the place of utilisation of the electricity is connected to the grid. In addition, other entities are allowed to build distribution networks in the area of operation of an administrator of transmission network if the question if the matter concerns construction of a connection cable or stand-by supply connection which is used to connect one or several power plants to the electricity network. Especially the latter case facilitates the connectivity of RES power plants to the electricity network. Regarding said piece of legislation, it is expressly stated in the preparatory works of the EMA that more loose requirements for connectivity of the places of utilisation of the

electricity to the network facilitate enhancing utilisation of renewable energy as well as self-sufficiency of acquisition of electricity.

The new Finnish Natural Gas Market Act (in Finnish: *Maakaasumarkkinalaki,* the "**GMA**") is also applied to gas produced from renewable sources. Pursuant to the definition laid down in the GMA, gas produced from renewable sources means biogas produced thermally from biomass, gas originating from landfills and wastewater treatment plants and biogas produced by decaying. Certain provisions of the GMA facilitate the utilisation of gas originating from renewable sources.

5.5 EIA and environmental permitting regarding wind power

Pursuant to Finnish environmental impact assessment legislation, an environmental impact assessment process (later EIA) is required if the aim is to construct more than 10 wind turbines or the total output is ≥ 30 MW. The governing authority here is the ELY-Centre. It may in individual cases decide that smaller projects also require an EIA. Even if an EIA is not required, many of the same surveys will nevertheless be required in the building permit process.

An environmental permit pursuant to the Environmental Protection Act (in Finnish: *Ympäristönsuojelulaki*) may be required for wind power plant(s) if the project causes undue harm to neighbours (mainly noise and flicker emissions). The regulation of noise levels in Finland has been contradictory and the operators have been forced to comply with different, contradictory guidelines (please see sub-chapter 5.2 for legislative development regarding noise caused by the wind power production). Currently, Finland does not have limiting values for the flicker emissions caused by the wind turbine generators; the Finnish Ministry of Environment recommends that the Swedish, Danish and German rules should be complied with, thus, generally setting the limit at 8–10 hours per year. The environmental permit is for wind power plants granted by the municipality where the plant is to be located.

5.6 Current developments concerning renewable energy regulation

5.6.1 Recent amendments to FTA

The feed-in tariff system has in practice been closed in Finland for wind power. The amendment of the FTA (Amendment) entered into force on 26 October 2015. Pursuant to the amendment, a wind power plant can be accepted into the feed-in-tariff system only if it has been granted a quota from the 2,500 MVA cap, as stated above. Further, according to the Amendment, said decision is valid only till November 2017. The schedule is challenging from the perspective of delivery times of wind turbine generator manufacturers. Due to the Act, it is highly likely that Finland will fall short of 2,500 MVA. This is because the Act does not make it possible to transfer capacity from an unrealised project to another project further down the queue.

5.6.2 Decree on noise levels of wind power

The Government Decree on the Guidance Values for the Outside Noise caused by Wind Turbine Power Generators (in Finnish: *Asetus tuulivoimaloiden ulkomelutason ohjearvoista*) was issued on 27 August 2015. In the decree, the day time guidance value for noise was set to 45 db, the night time value being 40 db. Before the issuance of the decree, wind power developers have been forced to comply with the different contradictory guidance values. The new guidance values are applied to projects entering permitting processes after issuance of the decree.

5.6.3 Dismantling of wind power plants

The dismantling of wind power plants is another significant issue which must be faced in Finland. It is also typically a land lease agreement related question. Market practice is that it is agreed in the land lease agreements that the wind power operator shall remove the power plants and other its equipment after the expiration of the lease term. It is often agreed that the foundations of the power plant can be left in place after landscaping works. Further, it is often agreed that wind power plant related powerlines that must be removed by an authority order must be removed at expense of the tenant, being the wind farm operator. Quite often the parties also agree that a dismantling security shall be provided by the wind farm operator.

The Finnish Land Lease Act requires that, unless agreed otherwise, the buildings of the tenant shall be re-moved and their place shall be set up in three (3) months from the expiration of the lease term. It is also possible that the dismantling of a wind power plant will requires a dismantling permit in accordance with the Finnish Land-Use and Building Act (in Finnish: *Maankäyttö- ja rakennuslaki*).

5.6.4 Upcoming changes in the Finnish energy regulation

The recently amended FTA is also subject to further amendments. The feed-in tariff for woodchips under the FTA is planned to be amended by placing different emphasis on the origin and source of the woodchips. According to the planned amendment, the subsidy is planned to be cut to 60% of the current level for woodchips that are manufactured from refinement-grade wood originating from a heavy wood logging area. Otherwise the level of subsidy would remain unchanged. The amendment would also enable clarifying provisions to be issued by a government decree regarding woodchips being subject to the reduced subsidy. The amendment is planned to enter into force in accordance with a government decree and is pending approval from the European Commission.

Several pieces of legislation regarding energy excise taxes are planned to be amended in the beginning of 2016, and partly in the beginning of 2017, in order to increase the level of carbon dioxide tax. This would be achieved by increasing the value of a carbon dioxide ton, which is the calculation basis for carbon dioxide tax, from the current EUR

44 to EUR 54. As RES sources are either only partially or totally exempt from the carbon dioxide tax, this would likely improve the competitiveness of RES.

6 Conclusion

The fact that the feed-in tariff system has, in practice, been closed in Finland for wind power, seems to be stopping Finnish wind power development. It is generally assumed that the wind power sector will only be profitable in Finland if there is a subsidy available from the government. Only certain very large scale wind farms may be commercially profitable without any subsidy. Based on market analyses, the bio power sector will also not develop without a subsidy.

Solar power seems to be the fastest growing energy sector in Finland. Due to the fact that individual solar panels are inexpensive compared to any other type individual power plant investment related components. Therefore, people can consider a physical object (i.e. a single solar panel) that they can consider financing. Based on this it seems likely that Crowdfunding and such related platforms will be also utilised the commercialisation of the solar power business.

7 Summary – Crowdfunding and RES Projects Regulation

Country / Summary	Finland
Recent developments in Crowdfunding regulation	• New guidelines by the FIN-FSA on the interpretation of the Investment Services Act. According to this new interpretation, an investment-based Crowdfunding service is an investment service for which the service provider must be authorised according to the Investment Services Act • The drafting process of new legislation concerning Crowdfunding has been started in Finland, and the Ministry of Finance has given a draft proposal for a Crowdfunding Act during autumn 2015. However, until the new legislation concerning Crowdfunding enters into force, the regulatory framework applicable to Crowdfunding platforms remains fragmented.
Current Crowdfunding Regulation	
General regulation	• At present, there is no coherent regulatory regime specifically adapted to Crowdfunding in Finland, and the regulatory treatment of a Crowdfunding platform depends on how the service of the platform and the product it offers are constructed.

	• An investment-based Crowdfunding service is an investment service for which the service provider must be authorised according to the Investment Services Act. • Platforms providing peer-to-peer lending operate outside the regulatory scope, but a possible authorisation is dependent on the services performed and the products offered. • Platforms using the donations or rewards model are not subject to financial services regulation in Finland, unless they receive repayable funds from the public. However, the donation model may be subject to the Money Collection Act.
Prospectus requirement	• Pursuant to Finnish Securities Market Act (SMA), anyone who offers securities to the public or applies for the admission to public trading of a security shall be under an obligation to publish a prospectus. The prospectus requirement does not apply to the offering of securities with a total consideration of less than EUR 2,500,000. At present, all Crowdfunding platform providers operate under the exemptions of the regulatory regime. • No prospectus requirement is likely to apply in respect of the peer-to-peer lending model. • No prospectus requirement is likely to apply in respect of the donations or rewards model.
AIFMD-regulation	• An operating company does not typically constitute an AIF. • Joint ventures (established to finance a single project) would not be regarded as AIFs, if collective investments are connected to the regular business of an entity and the investors maintain significant control over the project. • Primarily, it would seem that in the type of equity model Crowdfunding where the investment decisions are made by the investors and there is no collective investment policy, the criteria for an AIF are not met. • It would seem that the lending model does not constitute an AIF, if the investor retains the power to make the

	investment decisions. • The Crowdfunding platforms offering the donations or rewards model are not likely to be governed by the Act on Alternative Fund Managers. • It is possible that the Crowdfunding platform could constitute an alternative investment fund manager (AIFM) within the meaning of the Act on Alternative Fund Managers. But also here, the question is whether the investment decisions are made on behalf the investor or by the investor. • A pooling vehicle is a company founded to concentrate a large number of investors. Such pooling vehicle is likely to be an AIF and, therefore, to be subject to the Act on Alternative Fund Managers.
Payment services regulation	• The reception of funds by Crowdfunding platforms from investors after the financing round is completed and it has been deemed successful may be considered money remittance in accordance with the Finnish Payment Institutions Act implementing the Payment Services Directive. • It's possible to argue that the operators would be able to rely on the exemption of commercial agents on the basis that they have authorisation to negotiate or conclude contracts on behalf of the funder and the funding seeker. • This interpretation has not been tested and the platform providers may be required to acquire authorisation or make a notification.
Further possible requirements	• Collecting money without consideration and for charity requires a money collection permit granted by the authorities. According to the Money Collection Act, money can be collected only for charitable purposes and a permit issued only to Finnish associations working for the public good. • The Finnish Consumer Protection Act regulates domestic and distance selling to consumers as well as the distance selling of financial services and instruments. It also prohibits inappropriate and unfair conduct as well as false

	or misleading information in marketing.
RES Projects Regulation	
Feed-in Tariff	• Wind power plants, biogas power plants, forest chip and wood-fuelled power plants meeting the pre-conditions prescribed in the Finnish Feed-in Tariff Act (**FTA**) can be accepted into the feed-in tariff system. • The feed-in tariff is paid to the electricity producer by the EA. The target price for electricity produced in a power plant accepted into the Feed-in Tariff system is currently EUR 83,50 per MWh. • RES production meeting the pre-conditions may be eligible for heat or gasification premium. • The amount of the feed-in tariff is the difference between the target price and the spot market price (last 3 months' average) in accordance with the amount of electricity produced. However, if the spot market price is under EUR 30 per MWh, the feed-in tariff is the difference between the target price and EUR 30 per MWh. As prescribed in the FTA the feed-in tariff paid for the electricity produced in a power plant using forest chips is EUR 18 per MWh when the 3-month average of the market price of the emission allowance is a maximum of EUR 10.
Energy aid	• Energy aid in accordance with the Energy Aid Decree can be granted for climate and environmental friendly investment and feasibility projects promoting the production of RES, promoting energy efficiency or improving efficiency of energy production or reducing the environmental impacts of energy production or use. • The Finnish Ministry of Employment and the Economy has launched a support program for RES and energy efficiency for 2015 (Programme). The programme is legally based on the EU General Block Exemption Regulation (Regulation). The scope of application of the Programme consists of the measures referred to in articles 38, 46, 41 and 49 of the Regulation. The aid in accordance with the Programme can be applied for with respect to projects falling under the scope of the Energy Aid Decree. As renewable energy sources, the Programme refers to wind, solar, air-heating,

	geothermal and hydrothermal energy, marine energy, hydro power, biomass, biogases and gases originating in landfills and wastewater treatment plants.
RES specific energy market regulation	• The Finnish Electricity Market Act (**EMA**) offers possibilities facilitating RES productions access to the electricity network. • The Finnish Natural Gas Market Act (**GMA**) is also applied to gas produced from renewable sources. Certain provisions of the GMA facilitate the utilisation of gas originating from renewable sources.
Further regulatory sources	• The Finnish Environmental Protection Act and Decree (in Finnish: *Ympäristönsuojelulaki ja asetus*). • The Finnish Act and Decree on Environmental Impact Assessment (in Finnish: *Laki ja asetus ympäristövaikutusten arviointimenettelystä*). • The Finnish Land Lease Act (in Finnish: *Maanvuokralaki*). • The Finnish Land Use and Building Act (in Finnish: *Maankäyttö- ja rakennuslaki*). • The Government Decree on the Guidance Values for the Outside Noise caused by Wind Turbine Power Generators (in Finnish: *Asetus tuulivoimaloiden ulkomelutason ohjearvoista*).

Lessons learned – Crowdfunding / RES Projects Regulation

Lessons learned for a possible harmonized European Crowdfunding Regulation	
Role model ("dos")	• Reduced regulation of the Crowdfunding platform.
Aspects that should be avoided ("don'ts")	• N/A
Lessons learned for a possible harmonized European RES Projects Regulation	
Role model ("dos")	• Facilitated access to electricity network.

Aspects that should be avoided ("don'ts")	• Contradictory guidance values regarding wind power noise-levels.

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X. France

1 French market for RES Crowdfunding Platforms

1.1 Trends for investment models related to RES projects

French Crowdfunding platforms related to projects dealing with renewable energies and/or sus-tainable development (RES projects) are mostly debt-based projects, either in the form of bonds (obligations) or loans, which are governed by two separate set of rules under the new French regulation, as bonds (securities) are treated as equity from a regulatory standpoint.

Since 2012, c. EUR 1.4m have been raised for financing renewable energies projects. It represents less than 4% of the aggregate amount raised by Crowdfunding, all sectors included. It is thus an emerging market for Crowdfunding in France.

Lendosphere and Lumo are two major Crowdfunding platforms currently operating on the French renewables' funding market. GreenChannel has just been launched in October 2015 by ENGIE, formerly "GDF-Suez")' a French major energy group, which demonstrates the potential of RES projects Crowdfunding market.

1.2 RES projects

French RES projects funded by Crowdfunding are usually projects related to wind or solar farm. The usual mechanism, under a debt-based funding pattern, is that once a platform has selected a project owner and completed its subsequent due diligence, the project owner already collect-ed the funds through a bank loan. Then, the amount raised through the Crowdfunding platform will pay off a proportional part of the bank loan. Such mechanism is notably used by Len-dosphere for funding its selected projects.

The average interest rate for investors in RES Projects in France is usually between 5% to 8%.

2 Recent regulatory developments regarding Crowdfunding regulation in France

In 2014, the French Crowdfunding environment has substantially evolved both from a market and a regulatory perspective.

A new dedicated regulation entered into force on 1 October 2014 and had a positive impact on the market, although it sets some significant limitations, aiming firstly to protect investors.

Two specific statuses have been created for the Crowdfunding platforms, i.e. **CIP** – *conseil en investissement participatif* (Crowdfunding investment advisor) and **IFP** – *intermédiaire en financement participatif* (Crowdfunding investment intermediary),

which are optional but clarify the prior regulatory uncertainties on platform activities. Derogations to public offering rules and banking monopoly have also put an end to the exposure borne by the issuers, under the Equity Model, and by the lenders, under the Lending Model (both statuses are further described below).

In France, Crowdfunding activities performed under the donation model are particularly tailored for projects aiming to a local impact since there is an immediate effect on a local scale. Yet, (as opposed to the French government or its public entities) French local authorities were not allowed to entrust to third parties the collection of funds on their behalf through Crowdfunding operations. On December 16th, 2015, Decree n° 2015-1670 granted French local authorities the opportunity to gain access to Crowdfunding activities and thus acting as project owners in order to fund cultural, educational, and social or solidarity public services.

Additionally, on November 30th, 2015, the French Parliament adopted the amendment no.718, on the tax treatment granted to individual lenders on Crowdfunding platforms, amending Ordi-nance no. 2014‑559 of May 30th, 2014 related to the new Crowdfunding regulation.

The aforementioned amendment provides that individuals who lend money to professionals on Crowdfunding platforms (crowdlending) shall be able to compensate potential financial losses resulting from a default payment, on the calculation of the income tax they shall bear. This tax incentive shall a have a positive impact on French Crowdfunding in 2016. This however applies solely to loan-based Crowdfunding.

3 Further recent developments considering RES Projects market in France

On August 2015, French Parliament adopted the Energy Transition for Green Growth Act. The Act aims notably to reduce French greenhouse gas emissions, diversify French energy model and increase the deployment of renewable energy sources.

Resulting from the implementation of the Energy Transition for Green Growth Act, Decree no. 2015-1615 of December 10th, 2015, published on December 11th, 2015, provides for the crea-tion of an “Energy and Green Transition for climate” label targeting the financial sector. The concept of a label has been initiated by the banking and finance conference of June 2014 in order to facilitate and favour green-related investments. Only certain investment funds and in-vestment management companies qualify for the benefit of the label, not including crowd-funding platforms at this stage.

4 Regulation of Crowdfunding in France

The French legal framework for Crowdfunding activities applicable as from 1 October 2014 was adopted on 30 May 2014 and detailed in Ordinance no. 2014-559 as later detailed on specific provisions by Decree no. 2014-1053 dated 16 September 2014. Further to the adoption of this new set of rules, the French Market Authority General Regulations (Regulations of the French Financial Market Authority *Autorité des*

Marchés Financiers – **AMF**) were modified pursuant to Ministerial Order dated 22 September 2014, also applicable as from 1 October 2014.

The new French regulation provides exception to securities public offering rules and banking monopoly, and creates two specific regulatory statuses for Crowdfunding platforms (**CIP** – *conseil en investissement participatif* and **IFP** – *intermédiaire en financement participatif*) IFPs and CIPs are subject to anti-money laundering and anti-terrorists regulations.

4.1 Different Crowdfunding models

At the end of 2015, the overall French Crowdfunding market was composed of c. 80 active platforms.

Funds raised through Crowdfunding platforms reached c. EUR 78m in 2013, c. EUR 152m in 2014, and c. EUR 133m during the first semester of 2015[1]. The lending model represents the largest part in such market (about EUR 80 million raised in 2014).

The new regulation applying to the Crowdfunding activities in force since 1 October 2014 created a distortion between the economic concept and the legal definition of Equity-based vs. Lending-based Crowdfunding. Indeed, funding structured through bonds (non-convertible bonds) is governed by the rules applying to Equity-Crowdfunding.

a) The French legal "Equity Model" (individuals make investments through securities, either bonds or shares)

In France, investments under the Equity Model entitle the investors to either share(s) in the capital of the company that they finance and/or mere bonds bearing interests (convertible bonds are excluded from the scope of this regulation).
Projects financed under the Equity Model (including bounds) have been sponsored for c. EUR 35m for the first semester of 2015.[2]

b) The French legal "Lending Model" (individuals lend money to a company or project in return for repayment of the loan and interest on their investment)

Projects financed under the Lending Model have been sponsored for c. EUR 76m for the first se-mester of 2015. As a result, the Lending Model is the prominent model in terms of funds raised in France. Most of the loans under this model bear interest.
Note that certain crowdlending platforms, such as Unilend, one of the major ones, have chosen to stay out of the new regulatory framework, by keeping on using an old hybrid instrument (*bons de caisse*) having the economic features of loan bearing

[1] Source: Finance Participative France, a non-for-profit organization regrouping most of the French plat-forms, based on a survey performed amongst its members
[2] Source: Finance Participative France

interest, whilst qualifying neither as equity nor loan and thus allowing platforms to stay out of the new regulation requirements, including loan amount limitations. This alternative scheme will be regulated soon.[3]

4.2 CIP and IFP registration requirements under the Ordinance on Crowdfunding ac-tivities dated 30 May 2014 and the Decree dated 16 September 2014

The CIP and IFP statuses are optional since the Crowdfunding platform operators can also reg-ister or be licensed, if they meet the relevant statutory criteria, as PSI or credit institutions (which implies far more costs and constraints) or adopt alternative schemes (see above).

a) Equity Model (shares or bonds)- CIP status

Since 1 October 2014, Equity Model Crowdfunding platforms may register as *Conseil en inves-tissement participatif* (Crowdfunding investment advisors – **CIPs**). Such status was inspired by that of *Conseiller en investissement financier* – **CIF** (financial investment advisor).

CIPs are those which provide investment services in equity securities and certain debt secu-rities on an internet website complying with specifications set forth by the AMF General Regula-tions.[4] CIPs may also provide a limited number of ancillary services (e.g. handling subscription applications). However, they cannot receive funds from investors (except for their remuneration) and are not authorized to receive securities from issuing companies. CIPs cannot have other activities except those of IFP (see below), in which case, although they will be IFPs, they shall not provide payment services.

CIPs shall be legal entities established in France. Although no license is required to operate, CIPs are placed under the supervision of the AMF and are subject to registration obligations. Indeed, CIPs shall (i) be registered with the ORIAS (register for intermediaries in banking opera-tions and payment services), (ii) present certain moral guarantees, (iii) be members of an AMF accredited association[5] which controls their activities (if the association is not accredited spe-cific control procedures are implemented) in compliance with the AMF General Regulation and (iv) subscribe specific insurance policies (minimum guaranteed amount to be set out by a decree, this being mandatory as from 1 July 2016).

They shall also (v) comply with the good conduct rules set forth in the Ordinance and the AMF General Regulations[6] and (vi) ensure that their clients' interests are protected

[3] Pursuant to Macron law of 6 August 2015, authorizing the French government to take regulatory measures to regulate such alternative scheme.

[4] See articles 325-35 *et seq*. AMF General Regulations

[5] See articles 325-34, 325-45 and 325-51 *et seq*. AMF General Regulations

[6] See articles 325-35 *et seq*. AMF General Regulations

and that they receive the adequate level of information to appreciate the risks connected to their investment.

To be registered as CIPs with the ORIAS, Equity Model platforms must join AMF accredited associations.[7] Such accredited associations shall control the professional capacity of their members and must have the AMF approve the good behaviour code and the capacity rules that they apply to their members. They also have reporting obligations towards the AMF[8], which has the power to revoke the accreditation of an association.

The CIPs will endure a screening process managed by the relevant accredited association be-fore their ORIAS registration is accepted. The applicants shall provide the relevant accredited association with specific information and meet certain professional (*honour, repute*) and competence criteria. The detailed conditions of access to the status have been specified by in the AMF General Regulations[9], as modified per Ministerial Order dated 22 September 2014.

To date, no association has been accredited by the AMF yet, as indicated in a report issued by the AMF and the ACPR on Crowdfunding regulation on 30 September 2014. In the absence of accredited associations or when the platform has not joined such an accredited association, the registration is managed by the AMF which screens the applicants before they can register with the ORIAS. To that aim, the applicants to the CIPs status must demonstrate to the AMF that they comply with their obligations both (i) to inform their clients on risks associated with their investments and the costs associated thereto; and (ii) to ensure that the investments elected by their clients is proportionate to their experience, knowledge about investments, financial capacities and investment targets.

Contrarily to what applies for PSIs (see below), CIPs are not subject to any statutory provision as to a minimum share capital and they do not benefit from a European passport in relation to their activities.

Equity investments on Equity Model platforms (proposed by both PSIs and CIPs) are limited to investments in ordinary shares (*actions ordinaires*) and fixed interests bonds (*obligations à taux fixe*).[10] The formerly envisaged solution that advocated for the issuance of specific shares de-prived of voting right has not been retained by the government.

As a result, securities such as warrants, convertible bonds, etc. are excluded from the scope of investments authorised on Crowdfunding investment platforms. However,

[7] See AMF General Regulations and of article L547-4 CMF
[8] See articles 325-60 *et seq.* AMF General Regulations
[9] See articles 325-32 *et seq.* AMF General Regulations
[10] See article D. 547-1 CMF

the new regulation has provided two significant exceptions to public offering rules in France.

First it provides for prospectus exemption for offers on Crowdfunding platforms (see 4.3 below and in particular a limit of EUR 1 million per issuer and per year). Second, *Société par actions simplifiée* or "SAS" which is the more flexible type of limited liability company by shares that may be set up in France (often used for venture capital) are no longer prohibited from making public offering where proposed by a CIP or a PSI on their websites and only with respect to Crowdfunding operations. A number of conditions are set out in newly applicable article L227-2-1 of the French commercial Code on the content of such SAS articles of association (in particular for voting rights, calls to and powers of the shareholders' meetings and the decisions that can be taken at such meetings).

Further, based on the new regulations, Equity Model platforms can no longer take a share in the companies/projects they organise sponsoring for. As a result, they can no longer have seats at the board of directors of the relevant companies as was the practice implemented by the major Equity Model Crowdfunding platforms previously. Via this system, the Crowdfunding platforms also used to collect proxies for general shareholders' meetings from the investors which they can no longer do as they are not shareholders in the financed companies (in France mandates of representation at general shareholders meetings cannot be given to third parties to the companies).

As a result, some advocate that to organize proxy advisor solutions solutions (which is allow for publicly traded companies on regulated markets[11]) to make sure that no disturbance emerges in the management of the sponsored companies meanwhile ensuring that such inves-tors/contributors still be able to participate in the decision making process and therefore protect their investment.

b) Lending and Donation/Reward Models – IFP status

Online fundraising platforms which propose project financing under the Lending Model (loans bearing interest or not), may register as *intermédiaires en financement participatif* (Crowdfunding Intermediaries – **IFPs**).

IFPs are legal entities (not necessarily established in France – can be branches of foreign com-panies) putting in contact, through a website, people carrying projects and people financing such projects by way of loans or donations (see below), within conditions and limits set forth in article D548-1 CMF with regard to loans.

IFPs may also be banking and credit institutions, payment institutions, electronic currency es-tablishments, PSIs and CIPs (if not licensed payment services intermediaries – prohibited under the CIP regime).

[11] See article L225-106, I §2 of the French commercial Code.

Registration as an IFP is possible but not mandatory for platforms operating under the Donation and/or the Reward Models. If a donation or reward platform elects to register as IFP, it shall have the same license and registration obligations as those applying to the Lending Model platforms.

To qualify as IFPs, a platform shall (i) be registered with the ORIAS, (ii) present certain moral guarantees, (iii) subscribe specific insurance policies (minimum guaranteed amount to be set by decree); and (iv) abide by a good conduct code implemented per the terms of the Ordinance.

The Decree no.2014-1053 specified (a) the conditions of applicability of the good conduct code together with (b) the registration modalities for the internet site of the intermediaries and (c) the conditions of use of the intermediaries' services (see below).

If IFPs wishes to implement transfer of funds between lenders and borrowers, and therefore act as payment establishments, they would then need to be authorized by the ACPR and to hold a licence as a payment institution (*prestataire de services de paiement*) under a simplified regime. In such instance, their share capital shall at least amount to EUR 40,000.

IFPs and credit institutions which are subject to a derogatory prudential regime (*regime prudentiel allégé*) can receive a maximum payment amount set to EUR 3 million per month[12].

An exception to the banking monopoly has been set. Under this statutory exception, individuals can loan money to project carriers on Crowdfunding platforms, on a project per project basis, subject to duration and amount limitations. A project carrier cannot raise more than **EUR 1 million per project** on a Crowdfunding platform, whether by way of loan bearing interests or not. Interest-free loans are capped at EUR 4,000 per year, per project and per lender, while no limitation is currently set on their duration. Interest bearing loans are capped at EUR 1,000 per year, per project and per lender. They shall be of a maximum duration of seven (7) years. They cannot be granted at usury rates (determined according to a legally binding formula).

For interests bearing loans, only individuals can act as **lenders**, while acting in a non-professional capacity[13] both individuals or legal entities, acting in a professional capacity, can act as **borrowers**[14].

With respect to interest-free loans, only individuals acting in a personal and non-professional capacity may act as **borrowers** on Crowdfunding platforms, while **lenders**

[12] See articles D522-1-1 *et seq.* CMF

[13] See article L511-6 CMF

[14] See article L548-1, 1° CMF

may only be individuals or legal entities, provided they act in a non-professional capacity[15].

IFP Crowdfunding platforms shall publish prior to 30 June of every year on their website an annual report regarding the previous calendar year of operations to make available to the public (i) a presentation of its management bodies, (ii) the number and overall amount of received and retained projects over the given year, (iii) that of actually financed projects, (iv) the overall amount of loans, interest-free loans and donations, together with (v) the number of lenders, average number of lenders per project, (vi) average loan amount, (vi) interest-free loan amount and (vii) donations per loan/donation and per lender/donor and (viii) the number of defaults on loans[16].
IFPs shall provide on their websites, inter alia template loan and interest-free loan agreements, as well as donation agreements (with a minimum of clauses to be provided according to the provisions of articles R.548-6 and 548-10 CMF), selection criteria for the projects on the part of the platform, possible renunciation option for the lenders, etc.

c) National approval label granted to Crowdfunding platforms

The platforms being registered as IFPs, CIPs, or PSI, can refer on their communications to the national approval label's logo showing that they have been approved by the French control authorities:

Such label aims to grant the platform users comfort as to the reliability of such labelled platforms.

d) Specific criminal sanctions applying to IFP and CIP statuses

Both the IFPs and CIPs are subject to good behaviour rules set forth by law. In addition, they must comply with organisation and operation requirements. The management is also subject to specific prohibitions with respect to their capacity for being granted access to the IFP and CIP statuses. Shall they breach the regulations applying to the good behaviour codes and the or-ganisational rules, IFPs and CIPs will be subject to criminal fines.

[15] See article L548-1, 3° CMF
[16] See article R548-4, II CMF

4.3 Prospectus requirements

Since 1 October 2014, a new derogatory regime has been implemented with respect to the obli-gation for issuing companies to establish a prospectus for the public offering of shares or bonds.

a) Prospectus exemption applying to Crowdfunding activities of CIPs and certain PSIs

Since 1 October 2014, the offering of equity and fixed interest bonds (Equity Model) by a CIP or by an authorised *prestataire de services d'investissement* (**PSI** – investment services advisor, a status pre-existing the Crowdfunding regulations), **on their Crowdfunding websites** is not considered as a public offering (subject to a prospectus), if the offering amount is lower than **EUR 1 million per issuer over a 12-month period**[17]. An adequate level of information (simple, clear, balanced) must however be made available to the prospective investors. Pursuant to the provisions of articles L217-1 and 314-106 AMF General Regulations, CIPs or authorised PSIs offering such securities on their websites are bound to provide the investors (CIPs) /their clients (PSIs) with detailed information meant to assess the risks associated with the investment, to permit a better understanding of the organisation and management of the beneficiary of the investment.

PSIs can manage subscription forms when their clients subscribe to a project for which prospectus obligations are waived but should nonetheless comply with the provisions of article 315-66-1 AMF General Regulations, which sets obligations and procedures PSIs undertaking such role must abide by.

Similar rules apply to CIPs for the provision of services of subscription forms management[18].

b) Specific information obligations binding on CIPs and PSIs when prospectus exemptions apply

Where the project holders do not have to issue a prospectus in relation to the offering of shares or fixed interests bonds in their companies on CIP or PSI platforms, the relevant CIP/PSI has to provide the investors with an adequate level of information on its website, in a language accessible to a lay person.

Such information mainly consists of:

- presenting the activity and the project of the issuer together with specific risks associated therewith;

[17] See articles L411-2 and D.411-2 CMF

[18] See article 325-50 AMF General Regulations

- providing the last statutory accounts of the issuer together with financial projections;

- providing the level of participation of the management of the issuer in the project;

- detailing the financial rights, voting rights and information rights attached to the securities offered and those attached to the categories of securities not offered as part of the offer, and the categories of beneficiaries of such not offered securities;

- details on conditions (*inter alia* financial) and limits to the liquidity of the securities according to the provisions of a shareholders' agreement or of the by-laws;

- conditions subject to which an investor can be provided with copies of recordings in the issuer's books relating to its investment (e.g. copy of his/its individual shareholder's account certified true and exact by the legal representative of the company);

- details of costs to be borne by the investor at the time of subscription and thereafter; and

- the opportunity to receive on demand the details of the services provided to the issuer and of the associated fees.

4.4 Regulation of Crowdfunding under the AIFMD regime

The Alternative Investment Funds Management Directive has been transposed into French law by Ordinance no. 2013-676 modifying the framework of assets management dated 25 July 2013 and Decree no. 2013-687 taken on 25 July 2013 for the application of such ordinance, under articles L214-24 et seq. CMF.

It results from the provisions relating to the scope of application of the AIMFD in France and the definition of Alternative Interest Funds (**AIFs**), that this regulation does general not apply to Crowdfunding platforms in France.

Indeed, AIFs are identified in French law:

- as collective investment undertakings, other than UCITSs,

- which "raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors". Under guidelines published by ESMA (European Securities and Market

Authority), characteristics of such collective investment undertakings are that they

a) do not have a general commercial or industrial purpose;

b) pool capital raised from its investors for the purpose of investment with a view to generating a pooled return for those investors; and

c) allow unit holders or shareholders of the undertaking no day-to-day discretion or control.

Under the current regulation, and as anticipated in last year's comments, the Crowdfunding plat-forms that would be likely to present projects falling under the definition of the AIF's scope of activities would be those operating under the Equity Model.

Equity Model platforms do not generally "collect" the funds raised by the project holders, since they are prohibited from doing so under the CIP regime. Most of the projects funded on Equity Model platforms are to be operated by operating companies or project companies which have a general commercial or industrial purpose.

Therefore, since the criteria described above will generally not be met by the Equity Model funded projects, the AIFMD regime shall not apply to most Crowdfunding platforms in France.

However, the AMF pointed out recently that the AIFM regime could apply to Crowdfunding operations[19], if platforms create holding companies to regroup shareholders of a single target company to simplify the relationships with the project holder, and in an exit perspective with a potential purchaser. In such a situation, a case by case analysis will have to be conducted to determine whether the company meets the definition of AIF, notably as regards its investment policy and its corporate purpose.

4.5 Licence under the Payment Services regulations

The Payment services directive was transposed into French law by Ordinance no.2009-866 dat-ed 15 July 2009 which modified the provisions of the CMF.

Pursuant to the provisions of article L521-1, I CMF, "*payment services providers are payment establishments and credit institutions*".

As a result, any IFP Crowdfunding platform proposing payment services whereby it gets paid funds on behalf of third parties in the framework of Crowdfunding operations, will be acting as payment services provider.

[19] See *S'informer sur le nouveau cadre applicable au financement participatif* (Crowdfunding) – Note on Crowdfunding regulations jointly issued by the AMF and the ACPR on 30th September 2014, p.12.

Pursuant to the provisions of article L548-2, III CMF, the relevant IFP shall be at least licensed as payment establishment (*établissement de paiement*) by the ACPR[20] or be registered as agent for payment services provider (*agent pour prestataire de services de paiement*[21]). These IFPs shall have a minimum capital equal to EUR 40,000[22].

The IFP shall mention on its website at an easily accessible location the mention of its 167implifi-tation as payment services provider[23].

Breach of these provisions exposes the contravening platform to criminal fines and manage-ment to both criminal fines and jail sentences[24].

4.6 Possible additional Regulations

Other common regulations to which the operator of a Crowdfunding platform may be subject include:

- Anti-terrorism control regulations,
- Anti-money laundering regulations,
- Consumer credit acts and regulations,
- Financial canvassing ("*démarchage financier*") regulation (prohibited for IFPs and very strictly limited for CIPs[25])
- Information privacy regulations.

5 Regulation of RES Projects in France

The Energy Transition for Green Growth Act (the "**Act**") was adopted by the French Parliament on July 22nd, 2015 and published on August 17th, 2015.

The Act provides for several goals for the promotion of RES projects in France, notably:

- RES projects shall constitute 23% of the final consumption of energy in 2020 and 32% in 2030;
- RES projects shall constitute 40% of electricity production in 2030;

[20] See articles L522-1 *et seq.* CMF
[21] See articles L523-1 *et seq.* CMF
[22] See article D522-1-1 CMF
[23] See article L548-1, I CMF
[24] See articles L572-5 *et seq.* CMF.
[25] CIPs may promote their services under "institutional advertising" if not limited to a specific operation, unless it communicates on an operation for which a prospectus has been issued.

- electricity produced by nuclear facilities shall be reduced to 50% in 2025; and
- adoption of an energy programme for 2016-2023, which will define the development and investment guidelines for French RES projects.

It aims to implement and favours the global integration of renewable energy projects into the domestic electricity market in a progressive way. In other words, the Act aims to provide for the gradual replacement of the existing support mechanism, i.e. the Feed-In-Tariff (the "**FITs**"), by a new mechanism, the contract for difference.

RES projects eligible either for FITs or for a contract for difference will be soon determined by a Decree still to be enacted.

The Act provides also for specific provisions on crowdfunding for renewable production companies.

5.1 Brief overview of the current French FITs mechanism

Around 13% of the French net electricity production is generated from renewable sources. Precisely, 2.2% of the French net electricity production is generated from wind sources, 0.3 from photovoltaic sources and 9.3% is produces from hydraulic sources.

Given the low profitability to date of renewable energy production, development of the production mostly goes through State supported projects.

Among different kind of financial schemes, FITs were most likely the most widely used. The law of February 10th, 2000 on the modernisation and development of the public electricity service, introduced an obligation for EDF (French public company for the provision of electricity) and other non-public operators to purchase electricity from renewable energy sources at favourable feed-in-tariffs (pre-determined price above market price). This purchase obligation applies notably to wind-produced energy (onshore and offshore windfarms) and photovoltaic energy.

Since EDF and other non-public operators are under an obligation to purchase, they are compensated through a complex mechanism, involving notably the *Caisse des depots et consignations* and the Energy Regulation Commission, the French regulator for RES markets. This compensation is funded by the contribution for the public service of electricity, i.e. a tax collected from electricity consumers.

5.2 The new support mechanism

Under the Act, a renewable energy project may be eligible for the FITs mechanism **or** for the contract for difference mechanism. However, these schemes cannot be combined.

The contemplated scheme under a contract for difference mechanism is the following: the power producers shall sell the electricity produced on the wholesale market and shall benefit from a contract with EDF, as obliged off-taker, under which a supplementary remuneration or "premium" (*complément de remuneration*) (the "**Supplementary Remuneration**") will be paid to the power producers.

The Supplementary Remuneration

The detailed calculation formula of the Supplementary Remuneration shall be defined shortly by a Decree, still under discussion.

The Supplementary Remuneration shall be equal to the difference between the average sale price observed on the market and a target price set by Decree for each RES category. This Supplementary Remuneration shall also be supplemented by a management Supplementary Remuneration aiming to compensate the costs of access to the electricity market for electricity producers.

In general terms, the Act states that the Supplementary Remuneration shall not exceed a reasonable remuneration taking into account the representative operating expenses and investments of each sector, the costs of implementing the facility into the grid system and the pro-ceeds generated by the commercial operation of the installation. Such conditions shall be periodically revised in order to adjust the Supplementary Remuneration with the evolution of costs borne by new or existing facilities.

5.3 Renewables production company and crowdfunding

The Act modifies the French Energy Code as well as the Code regulating the Public local authorities (Code des *collectivités territoriales)* in a quite substantial way. The Act authorizes the creation of commercial companies limited by shares (*sociétés par actions* governed by general company rules) or, cooperating companies governed by the Code regulating the Public local authorities, where local authorities and those individuals leaving close to a renewable energy production facility will co-invest in /co-finance renewable energy production. The Act expressly provides that such co-investment can be proposed either directly or, through CIP or IFP crowdfunding platforms.

The objective of this measure is to increase the acceptability of renewable production projects among the residents leaving close to a production facility, by associating such residents in financial sponsoring and success of a project. It is also a true recognition of crowdfunding as an innovating and RES compatible access to financing.

Those provisions will enter into force on 1st of July 2016, pending also enactment of application rules.

6 Conclusion

The new French Crowdfunding regulation adopted in 2014 has already shown some positive impacts on the French market. First clue of such enthusiasm is the arrival of many professional investors on the field, either as Crowdfunding platforms (Engie with GreenChannel) or by entering into new partnerships with existing structures (Groupama Bank with Unilend, Allianz-Smartangels, etc.). Also, the new statuses (CIPs or IFPs) give a clear regulatory framework with clear obligations to the actors and thus shall build a favourable ground for Crowdfunding plat-forms. Between January 2015 and June 2015, 29 newly launched platforms have been registered with the ORIAS, either as CIPs or IFPs.

Additionally, the new Energy Transition for Green Growth Act shall push forward synergies between Crowdfunding and renewable energy projects even though many provisions of the Act are still to be enforced. Tax incentives for both RES projects and Crowdfunding activities shall foster investors to actively stimulate Crowdfunding related to RES projects.

2016 update

2016 shall bring significant changes to the crowdfunding regulation.
The French Minister of Economy announced end of March 2016 a series of significant modifications to the existing regime with a view to introduce more flexibility to the existing dedicated crowdfunding regulation. Most noticeable announced changes are (i) the creation of "*mini-bons*" using the blockchain technology for registration and transfer, (ii) the increase of the yearly ceiling for funds by a commercial company on CIP platforms from 1m to 2.5m and (iii) the inclusion of preferred shares, participating loans and convertible bonds in the crowdfunding regulation. An ordinance has been enacted on 30 April 2016 relating to *mini–bons* and *bons de caisse* and is to be followed by other regulatory modifications, with a view to have the new extended regime in force by 1st October 2016.

7 Summary – Crowdfunding and RES Projects Regulation

Country / Summary	France
Recent developments in Crowdfunding regulation	• New regulation applicable since 1 October 2014 • Creation of 2 optional statuses (alternative to more costly and stringent statuses), subject to the control and disciplinary powers of the *Autorité des Marchés Financiers* (**AMF**) and the *Autorité de contrôle Prudentiel et de Résolution* (**ACPR**):

	— **CIP** – *conseil en investissement participatif* (Crowdfunding investment advisor) – for Equity Model platforms, — **IFP** – (Crowdfunding investment intermediary) – for Loan and Donation/Reward Model platforms, • French local authorities may now benefit from Crowdfunding platforms to fund civil services
Current / planned Crowdfunding Regulation	
General regulation	• Monetary and financial Code as modified by Ordinance no. 2014-559 dated 30 May 2014 and Decree no. 2014-1053 dated 16 September 2014, • AMF General Regulations as modified by Ministerial Order 22nd September 2014.
Prospectus requirement	• Specific Crowdfunding exceptions: — Ordinary shares of societies par actions simplifiées with specific provisions in their by-laws can be offered on Crowdfunding platforms to the public — General cap applying to CIPs and PSIs for public offering on Crowdfunding websites of ordinary shares and fixed interest bonds for a maximum raised amount of EUR 1m per year.
AIFMD-regulation	• Generally not applicable. • Can apply where platforms may create holding companies to regroup shareholders of a single target company to simplify the relationships with the project holder and a potential purchaser in an exit scenario. A case by case analysis will determine if they fall in the category of AIF subject to the AIFM regulations.
Payment service regulation	• CIPs cannot collect payments for the project holders from the investors. • IFPs can apply to be licensed as payment services operator (unless they also are CIPs and are prohibited from doing so).

Consumer credit regulation	• Usury interest rates prohibited, • Obligation for IFPs to provide template loan agreements and risk assessment factors on their websites.
Further possible requirements	• CIPs and IFPs shall comply with: — Anti-terrorism control regulations, — Anti-money laundering regulations, — Financial canvassing (“*démarchage financier*”) regulation (prohibited for IFPs and very strictly limited for CIPs), — Information privacy regulations.
RES Projects Regulation	
Electricity Regulation applicable to RES projects	• The Energy Transition for Green Growth Act aims to reduce final energy consumption by 50% in 2050 compared to 2012 and diversify electricity production and reduce the share of nuclear power to 50% by 2025. • Compliance with energy market regulations is mainly controlled by the Commission of Regulation of Energy, created in February 2000.
Market Integration of RES projects	• Since February 10th, 2000, the Feed-in-tariffs mechanism was the main used mechanism. • It provided for an obligation to purchase borne by EDF and other non-public grid operators. This obligation was compensated through contribution collected from electricity consumers. • As from the enactment of the Energy Transition for Green Growth, FITs will be substituted with contract for difference mechanism. • The new support mechanism provides that electricity will be sold directly on the market and benefit from an additional Supplementary Remuneration. • The Supplementary Remuneration is equal to the

	difference between the average sale price observed on the market and a target price set by Decree for reach renewable energy sector. • Currently, this new support mechanism will only apply to certain categories of facilities still to be enacted.

Lessons learned – Crowdfunding / RES Projects Regulation

Lessons learned for a possible harmonized European Crowdfunding Regulation	
Role model ("dos")	• Specific statuses for Crowdfunding operators less constraining and less costly than for other regulated activities, • Transparency and information obligation binding on the platforms towards the investors/donors, • Labelling of the platforms to increase the public's confidence in the platforms, • Investors' protection: — Cap on maximum investments, funds raised, — Specific Crowdfunding related exceptions to banking monopoly, — Specific Crowdfunding related exceptions to prospectus requirements. — Tax incentives such as compensation of the financial losses through adjustment of the calculation basis of the income tax for individual lenders.
Aspects that should be avoided ("don'ts")	• Regulating that Lending-based Crowdfunding under two different statuses (non-convertible bonds treated as equity instruments) • Imposing that Equity Model only provide for investment of the investors in mere shares(not preferred shares or convertible bonds), • Not adapting the proxy advisor regulations to companies

	financed by way of offering of shares on Equity Model platforms, • Limit tax incentives to loans only (not applicable to crowdlending supported by bonds).
Lessons learned for a possible harmonized European RES Projects Regulation	
Role model („dos“)	• There are no lessons that can be learned from France
Aspects that should be avoided (“don’ts”)	• There are no aspects that should be avoided

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XI. Germany

1 German market for RES Crowdfunding Platforms

Due to the fact that projects dealing with renewable energy sources ("**RES Projects**") became more and more popular over the past few years in Germany also the German market for Crowdfunding platforms specialised on funding RES projects ("**RES Crowdfunding Platforms**") evolved to a considerable size.

As of September 2015 there are about ten RES Crowdfunding Platforms operating in Germany with a roughly calculated overall funding volume of about EUR 6 million.

The biggest RES project in Germany was funded recently: It aimed on replacing old energy intensive illuminants mainly used in the industrial sector with new energy efficient LED-lamps and raised EUR 1 million on a German RES Crowdfunding Platform.

1.1 Different investment models

Mostly, investments in RES Projects are debt based (individuals lend money to a RES project in return for repayment of the loan and interest on their investment), predominantly so called subordinated profit-participating loans (*partiarische Nachrangdarlehen*). This particular type of loan is currently the preferred investment in the Crowdfunding sector in Germany due to its light regulatory regime.

Very few RES Crowdfunding Platforms offer an equity based model (individuals make investments in return for a share in the profits or revenue generated by the RES project). In most cases they are structured as cooperatives (*Genossenschaften*) – so called energy cooperatives (*Energiegenossenschaften*) – and offer units in such cooperatives *(Genossenschaften*).

There are also RES Crowdfunding Platforms that – sometimes in addition to the above mentioned models – offer reward based models (individuals provide money to a RES project for a non-monetary reward), e. g. preferred conditions for electricity, pasta made of algae, plant pods containing seeds, rescue centres for injured birds, car sharing projects or films about RES projects.

Finally, only very few RES Crowdfunding Platforms offer a donation based model (individuals provide money to a RES project for benevolent reasons), especially regarding RES Projects in countries outside of the European Union ("**EU**") (e. g. solar energy boxes for small towns in Tanzania).

1.2 RES Projects

Most of the funds are invested in RES Projects that finance or operate commercial power plants that produce electric power using photovoltaic cells – often with the

support of local citizens, so called participation models or projects ("**Citizen Participation Model**" – *Bürgerbeteiligungsmodell*).

Besides, there are several other RES Projects seeking funding by means of RES Crowdfunding Platforms, i. a. wind farms, bio gas plants, replacements of old energy intensive illuminants with modern LED technology, combined heat and power plants, etc.

Most of the RES Projects use more than one source of funding. Therefore, almost every RES Project is partly financed via traditional bank loans. However, recently an increasing number of RES Projects use Crowdfunding as part of its finance structure – benefiting from the lower costs connected with funding over the crowd compared to the conditions of bank loans.

The average interest rate for investors in RES Projects in Germany amounts to approx. 4 - 6 % p. a.

1.3 Prokon and its consequences

In 2014 the biggest German wind farm operator, Prokon, became insolvent. 74,000 investors who held profit participating certificates (*Genussscheine*) of approx. EUR 1.4 billion were affected by Prokon's insolvency.

The insolvency of Prokon had started a political discussion, whether a more strict regulation of the so called grey capital market (*Grauer Kapitalmarkt*) should be implemented. This was also the initiation for a specific regulation of Crowdfunding in Germany. Neither the Federal Minister of Finance Dr. Wolfgang Schäuble nor the Federal Minister of Justice Heiko Maas wanted to be accused of ignoring an endangerment of EUR 1.4 billion of German retail investors' participation rights capital (*Genussrechtskapital*). Due to this fact, in 2014 they had issued a package of measures to improve the German Retail Investors' protection (*Maßnahmenpaket zur Verbesserung des Schutzes von Kleinanlegern*). Declared intention of this package was an improved investors' protection of dubious and risky investment products. Back then the federal government had realised that the intended measures would have tremendous consequences for Crowdfunding in Germany. Therefore, it was the official intention that as far as Crowdfunding is concerned, solutions shall be found which meet the requirements of young companies that are financed by Crowdfunding in consideration of the protection of investors.

2 Recent regulatory developments regarding Crowdfunding regulation in Germany

The package of measures resulted in a first draft (*Referentenentwurf*) of the so called Retail Investors' Protection Act (*Kleinanlegerschutzgesetz*) published on 28 July 2014. The second draft – government draft (*Regierungsentwurf)* – was published on 10 November 2014. Finally, the German Bundestag passed the Retail Investors' Protection

Act (*Kleinanlegerschutzgesetz*) on 23 April 2015 which entered into force on 10 July 2015.

Main topic of the Retail Investors' Protection Act (*Kleinanlegerschutzgesetz*) is the extension of the scope of the German Investment Products Act (*Vermögensanlagengesetz*). This in particular affects Crowdfunding and its regulation. Until then, subordinated profit-participating loans (*partiarische Nachrangdarlehen*) were not classified as investment products. According to the Retail Investors' Protection Act (*Kleinanlegerschutzgesetz*) they are now – as well as all comparable investment products – covered by the German Investment Products Act (*Vermögensanlagengesetz*). According to the legislative materials the new regulation intends to avoid circumventions of investors' protection contained in the German Investment Products Act (*Vermögensanlagengesetz*).

This extension of the scope of the German Investment Products Act (*Vermögensanlagengesetz*) was only a matter of time. Even for legal experts it was hard to distinguish silent partnerships (*stille Beteiligungen*) and debt participation rights (*Genussrechte*) from profit-participating loans (*partiarische Darlehen*). It was hard to understand why silent partnerships and participation rights on the one side trigger the requirement to publish extensive prospectuses (that must be approved by the German Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht* "**BaFin**")) while on the other side profit-participating loans (*partiarische Darlehen*) were completely unregulated.

In a nutshell, the Retail Investors' Protection Act (*Kleinanlegerschutzgesetz*) provides for the following changes:

- subordinated profit-participating loans (*partiarische Nachrangdarlehen*) qualify as investment products (*Vermögensanlagen*) and – as a rule – trigger a prospectus requirement under the German Investment Products Act (*Vermögensanlagengesetz*)

- increased regulation for all investment products (Vermögensanlagen) – such as silent partnerships (*stille Beteiligungen*), participation rights (*Genussrechte*) and (now also) subordinated profit-participating loans (*partiarische Nachrangdarlehen*):

  — extended requirements for prospectus

  — extended obligation to publish addenda to a prospectus

  — "ad-hoc" notifications

- strict rules for marketing of investment products (*Vermögensanlagen*) - especially rules regarding duties to publish specific warning notices with any advertising

- three-page fact sheet (*Vermögensanlagen-Informationsblatt – "***VIB***"*) – which must contain a highlighted warning notice

- exception from Investment Products Act (*Vermögensanlagengesetz*) for cooperatives (*Genossenschaften*) is narrowed

- extended powers for BaFin

- exception from most requirements under the German Investment Products Act (*Vermögensanlagengesetz*) explicitly tailored to fit financing by means of Crowdfunding ("**Crowdfunding Exception**")

  - only applicable when offering profit participating loans (*partiarische Darlehen*), subordinated loans (*Nachrangdarlehen*) or commercially comparable investments (*wirtschaftlich vergleichbare Anlagen*)

  - no prospectus requirement up to a threshold of EUR 2.5 million per project

  - total investment amount for each investor is limited to a maximum of EUR 10,000; if exceeding a threshold of EUR 1,000 investors must comply with further requirements, i.e. self-exploration on wealth or income

  - corporations (*Kapitalgesellschaften*) are not limited to the absolute maximum investment of EUR 10,000 per investor

  - online platforms need a licence under the German Trade, Commerce and Industry Regulation Act (*Gewerbeordnung*), under the German Banking Act (*Kreditwesengesetz*) or the German Securities Trading Act (*Wertpapierhandelsgesetz*)

  - mandatory right of withdrawal (*Widerrufsrecht*) from investment for investors

  - (electronic) confirmation of warning notice included in fact sheet (VIB)

  - no combination of Crowdfunding Exception with other exceptions under Investment Products Act (*Vermögensanlagengesetz*).

3 Further recent regulatory developments considering RES Projects market in Germany

Due to the implementation of the new German Renewable Energy Act (*Erneuerbare-Energien-Gesetz*) and the expiration of the transition period on 31 December 2014, new RES power plants can no longer apply for statutory feed-in tariffs (*Einspeisevergütungen*) but need to implement a market premium model including remote control requirements and direct sales to third parties in order to enhance market integration of RES Projects.

Furthermore, as of 2017 renewable funding for any and all RES Projects shall be shifted to a public auctioning mechanism. Due to increasing funding and regulatory requirements and benchmarks, this is expected to have a significant impact on small RES Project developers as well as local Citizen Participation Models **(***Bürgerbeteiligungsmodelle*). Hence, centralization of competence and alternative financing, e. g. Crowdfunding, are required. On 15 April 2015, a 150MW pilot auctioning mechanism was initiated for ground-mounted solar projects to evaluate different funding and tender mechanisms. During the course of 2016, the German Renewable Energy Act (*Erneuerbare-Energien-Gesetz*) will be amended to apply auctioning mechanisms for all RES Projects.

On 21 Mai 2015 the Second Amending Act to the German Renewable Energy Act (*Erneuerbare-Energien-Gesetz*) passed the German Bundestag, mainly covering the deletion of the highly disputed section 25 para 2 sentence 1 no. 3, according to which electricity generated from different RES fed into the grid via a shared metering point may only be marketed in a uniform manner. As a consequence, existing RES plants in fact lost the option to receive the statutory feed-in tariff in case new RES plants, to which mandatory direct marketing provisions apply, used the same metering point. The deletion shall take retroactive effect as of 1 August 2014 and increases Crowdfunding opportunities, especially with local Citizen Participation Models (*Bürgerbeteiligungsmodelle*), since various local and regional marketing strategies can be structured, including also the potential use of RES origin certification.

4 Regulation of Crowdfunding in Germany

4.1 Licence under the German Banking Act (*Kreditwesengesetz*)

4.1.1 Equity Model / Lending Model

General Rule

Pursuant to the German Banking Act (*Kreditwesengesetz*), anyone intending to provide financial services in Germany commercially or on a scale which requires a commercially organised business undertaking requires a written licence from BaFin.

The provision of "financial services" includes the brokering of business involving the purchase and sale of financial instruments or their documentation (investment broking), the purchase and sale of financial instruments in the name of and for the account of others (contract broking) and the placement of financial instruments without commitment to take up those instruments (placement of financial instruments).

"Financial instruments" within the meaning of the German Banking Act (*Kreditwesengesetz*) include

- Securities
- investment products (*Vermögensanlagen*) and
- shares in collective investment undertakings (*Investmentvermögen*).

Securities include shares in stock corporations, shares in collective investment undertakings (*Investmentvermögen*) as well as debt securities including participation certificates.

Investment products (*Vermögensanlagen*) under the German Investment Products Act (*Vermögensanlagengesetz*) comprise, inter alia, shares in other legal entities (such as limited liability companies, limited partnerships, civil law partnerships or silent partnerships (*stille Beteiligungen*)), participation rights (*Genussrechte*) with regard to profits in those legal entities, shares in trust assets (*Treuhandvermögen*) and registered bonds. Until recently, subordinated profit-participating loans (*partiarische Nachrangdarlehen*) were not classified as investment products under the German Investment Products Act (*Vermögensanlagengesetz*) and therefore were not considered as “financial instruments” within the meaning of the Banking Act (*Kreditwesengesetz*).

Since July 2015 subordinated profit-participating loans (*partiarische Nachrangdarlehen*) qualify as investment products (*Vermögensanlagen*) and therefore subordinated profit-participating loans (*partiarische Nachrangdarlehen*) are now covered by the German Investment Products Act (*Vermögensanlagengesetz*).

Further, also *“other investments that grant a repayment claim and a claim for interest”* – as a rule – qualify as investment products (*Vermögensanlagen*).

In summary, where an online Crowdfunding platform facilitates the offering of securities, investment products (*Vermögensanlagen*) or shares in collective investment undertakings (*Investmentvermögen*), the operator of the platform provides financial services within the meaning of the German Banking Act (*Kreditwesengesetz*) and therefore, as a general rule, requires a license by BaFin.

Exemptions from licencing requirement

If securities (such as shares in stock corporations) are offered, Crowdfunding platforms cannot use any exemption from the licensing requirement.

However, most German Crowdfunding platforms offer subordinated profit-participating loans (*partiarische Nachrangdarlehen*) and can therefore benefit from a statutory exception to the license requirement (also under the new Crowdfunding Exception).

The following requirements must be met:

- only investment broking and contract broking are conducted,
- only investment products (*Vermögensanlagen*) within the meaning of the Investment Products Act (*Vermögensanlagengesetz*) or shares in collective investment undertakings (*Investmentvermögen*) are offered;
- no acquiring of ownership or possession with regard to funds or shares of customers (unless a specific licence to do so has been obtained).

Where these requirements are met, the operator only needs a licence under the German Trade, Commerce and Industry Regulation Act (*Gewerbeordnung*). Compared to a licence under the German Banking Act (*Kreditwesengesetz*) this is a relatively straightforward matter.

4.1.2 Donations or Rewards Model

The donations model is not regulated at all.

However, the Investment Products Act (*Vermögensanlagengesetz*) – as amended by the Retail Investors' Protection Act (*Kleinanlegerschutzgesetz*) – provides for a rule stating that *"comparable investments that grant a claim for repayment and interest"* are considered as investment products (*Vermögensanlagen*).

It cannot be completely excluded that the formerly unregulated reward-based investments could be subject to the new regulation of the Investment Products Act (*Vermögensanlagengesetz*). It could be argued that certain kinds of rewards based Crowdfunding projects could qualify as investment products (*Vermögensanlagen*) as they are considered as a *comparable investment* within the meaning of the Investment Products Act (*Vermögensanlagengesetz).* However, BaFin has not yet commented on a possible application of the Investment Products Act (*Vermögensanlagengesetz*) to reward-based Crowdfunding.

4.2 Prospectus requirements

4.2.1 Equity Model / Lending Model

RES project initiators issuing securities or investment products (*Vermögensanlagen*) to investors can be subject to a prospectus requirement. Either there is a requirement to publish a prospectus approved by BaFin under the German Securities Prospectus Act (*Wertpapierprospektgesetz*) where securities are offered (e.g. shares in stock corporations) or under the German Investment Products Act (*Vermögensanlagengesetz*) where investment products (*Vermögensanlagen*) are offered (e.g. silent partnerships).

The general prospectus requirement regarding securities does – inter alia – not apply where the offering of securities meets the following requirements:

- sales price does not exceed EUR 100,000 within a time period of 12 months;
- offer addresses not more than 150 investors per country in the European Economic Area or
- price per share amounts to minimum EUR 100,000 per investor

The general prospectus requirement regarding investment products (*Vermögensanlagen*) does not apply where the offering of investment products (*Vermögensanlagen*) is subject to the following:

- sales price does not exceed EUR 100,000 within a time period of 12 months;
- offering of up to 20 shares of the same investment product (*Vermögensanlage*) or
- price per share amounts to minimum EUR 200,000 per investor

According to the Retail Investors' Protection Act (*Kleinanlegerschutzgesetz*) subordinated profit-participating loans (*partiarische Nachrangdarlehen*) are now also covered by the Investment Products Act (*Vermögensanlagengesetz*). Consequently, RES Project initiators offering subordinated profit-participating loans (*partiarische Nachrangdarlehen*) are – as a rule – also subject to the prospectus requirement under the Investment Products Act (*Vermögensanlagengesetz*). Due to the fact that subordinated profit-participating loans (*partiarische Nachrangdarlehen*) are – by far – the most common investment products (*Vermögensanlagen*) used by RES Crowdfunding Platforms in Germany this is the most relevant change of the Retail Investors' Protection Act (*Kleinanlegerschutzgesetz*).

Content of the prospectus

The Retail Investors' Protection Act (*Kleinanlegerschutzgesetz*) provides for extended requirements regarding the prospectus. The prospectus is only valid for 12 months after its publication, more information concerning the addressed investors is demanded, and BaFin is verifying the operability of the business model and is authorized to demand more information within the approval process to guarantee the investors' protection.

Moreover, the Retail Investors' Protection Act (*Kleinanlegerschutzgesetz*) introduces extra requirements for additions to the prospectus during an offering and contains on-going obligations to notify the investors about substantial changes which also comprises the time period after the termination of the offer ("**ad-hoc disclosure obligation**"). This on-going obligation only ceases when the issued investment products are completely redeemed to the investors.

Crowdfunding-Exception from prospectus requirement

However, the Retail Investors' Protection Act (*Kleinanlegerschutzgesetz*) provides for a new exemption from the prospectus requirement for the offering of subordinated profit-participating loans (*partiarische Nachrangdarlehen*) that is specifically tailored to Crowdfunding.

According to this Crowdfunding-Exception, a lighter regulation shall apply if the following (cumulative) conditions are met:

- total offering maximum: EUR 2.5 million;
- offering only of profit-participating loans (*partiarische Darlehen*), subordinated loans (*Nachrangdarlehen*) or commercially comparable investments (*wirtschaftlich vergleichbare Anlagen*);
- total amount for each investor per investment product (*Vermögensanlage*) of one issuer (project initiator) is restricted as follows:
  - up to EUR 1,000: no restrictions
  - more than EUR 1,000: cash deposits or financial instruments of the investor must exceed EUR 100,000 or maximum investment up to two monthly net incomes
  - EUR 10,000 = absolute maximum investment per investor that is not a corporation
  - corporations, i.e. stock corporation (*Aktiengesellschaft*), limited partnership by shares (*Kommanditgesellschaft auf Aktien*) and limited

liability company (*Gesellschaft mit beschränkter Haftung*): no restrictions

- marketing via online platforms that must have a licence under the German Trade, Commerce and Industry Regulation Act (*Gewerbeordnung*), under the German Banking Act (*Kreditwesengesetz*) or the German Securities Trading Act (*Wertpapierhandelsgesetz, WpHG*).

If these requirements are met no prospectus is required.

Fact sheet (*Vermögensanlagen-Informationsblatt – VIB*)

Instead only a three-page fact sheet (*Vermögensanlageninformationsblatt - VIB)* must be provided to the investors to inform them about the RES Project. The fact sheet (*VIB*) must contain the most relevant information about the RES Project and the issued investment product (*Vermögensanlage*). It also must inform the investors about the risks, i. a. in the form of typographically emphasized warning notices on the first page.
As a rule, the investor must confirm in writing that he took notice of it by means of a signature under the fact sheet (*VIB*). However, in the case that the investment is concluded by means of distance communication (*Fernkommunikationsmittel*), e.g. the internet, the investor can confirm the warning notice electronically. This requires that the investor's identity must be ensured by means of specific data, such as name, address, date and place of birth, e-mail-address or phone number and the number of his identity card and the issuing authority.

Ban of combination (*Kombinationsverbot*)

According to section 2a para. 4 Investment Product Act (*Vermögensanlagengesetz*) the Crowdfunding exception cannot be combined with other exceptions (such as issuing of only 20 shares of the same investment product (*Vermögensanlage*)) of the Investment Products Act (*Vermögensanlagengesetz*) until the investment products (*Vermögensanlagen*) are either no longer offered or are not completely redeemed to the investors.

This so called ban of combination (*Kombinationsverbot*) could result in a restriction for large-scale investors (municipal energy suppliers or communities) which intend to invest higher amounts in RES Projects along with the crowd investors. In particular for RES Projects the ban of combination (*Kombinationsverbot*) might have a large impact and fails to put the funding structure on a broader base.

As a rule, the co-investment of Crowdfunding and large-scale investors puts the funding structure of RES Projects on a broader base and therefore enhances their financial and economic possibilities. In turn the chance of the RES Projects to "survive" the start-up period increases as well as the prospects of the investors to get a return on their investments.

Further, the co-investment of large-scale investors could constitute an additional "protection" for the investments of the crowd investors since large-scale investors will often be in the position to conduct due diligence examinations before investing in the RES Project. As a rule, these examinations result in a professionalization of the organisation and structure of the examined RES Project. Crowd investors can directly benefit from these measures taken by the large-scale investor.

Moreover, the wording of section 2a para. 4 VermAnlG could lead to the assumption that only debt based investment products (*Vermögensanlagen*) should fall under the ban of combination (*Kombinationsverbot*). It appears that equity-based investments – which are predominantly preferred by large-scale investors – often by means of a private placement could be excluded. Section 2a para. 4 VermAnlG refers to the other investment products (*Vermögensanlagen*) that should be completely *redeemed.* Since only debt-based investment products (*Vermögensanlagen*) can be *redeemed* to the investors, it can be argued that the Crowdfunding exception cannot be combined with other exceptions where debt-based investment products (*Vermögensanlagen*) are offered.

BaFin – hopefully – will soon clarify that this clause does not cover such kind of parallel investments of "professional" investors. However, so far it cannot be excluded that a parallel investment of a large-scale investor with crowd investors requires a more complex structure in order to comply with regulatory requirements.

Exception for cooperatives (*Genossenschaften*)

Shares of cooperatives (*Genossenschaften*) or subordinated profit-participating loans (*partiarische Nachrangdarlehen*) which are issued only by the cooperative to members of the cooperative were not considered as investment products (*Vermögensanlagen*) within the meaning of the Investment Products Act (*Vermögensanlagengesetz*) until the Retail Investors' Protection Act (*Kleinanlegerschutzgesetz*) entered into force.

In the past cooperatives (*Genossenschaften*) were often used as an investment vehicle especially in the Renewables sector. Therefore, cooperatives (*Genossenschaften*) could have established as a real alternative to the debt-based subordinated profit-participating loans (*partiarische Nachrangdarlehen*), in case that a real equity-based investment is preferred.

However, the Retail Investors' Protection Act (*Kleinanlegerschutzgesetz*) provides for additional restrictions to this exception – taking into account the risk that the regulation might be circumvented by means of cooperatives (*Genossenschaften*). As a result, the "cooperative exception" is now only applicable if no performance-based remuneration is paid for the marketing of the investments. As a conclusion, this option does not really appear to be attractive for many RES Projects since – if the investors are not limited to local citizens – usually the sales and marketing firms demand a performance-based remuneration.

Advertisement

Regarding advertising, the first draft (*Referentenentwurf*) and the Government draft (*Regierungsentwurf*) provided for extensive limitations with respect to the advertisement of investment products (*Vermögensanlagen*), i.e. no advertising in social media or generally in public channels. Advertisements were supposed to be allowed only in economic media. Obviously, this was one of the most controversial points in the legislative procedure of the Retail Investors' Protection Act (*Kleinanlegerschutzgesetz*).

However, this approach was completely aborted. Instead the Retail Investors' Protection Act (*Kleinanlegerschutzgesetz*) does not limit the possibilities to advertise investment products (*Vermögensanlagen*) anymore. Instead, advertisements must now contain some specific warning notices which shall illustrate the risks that may arise from the investments.

The following warning notice must – as a rule – be contained in every advertisement.

"*The acquisition of this investment product is associated with considerable risks and can result in the loss of the deployed funds."*

A special provision (which considers the particular characteristics of Crowdfunding like advertisements by means of twitter) to this general requirement only applies if the following requirements are met:

- advertisement in *electronic media*
- solely text-based advertisements
- less than 210 characters
- link – which is called "warning notice" – to separate document that includes the warning notice

Further, advertisements which promote investment products (*Vermögensanlagen*) that do not provide for a fixed interest rate must contain a respective warning notice in addition.

Finally, any references to the competences of BaFin as well as the use of the word "funds" are prohibited in connection to the investment product (*Vermögensanlage*).

Marketing (*Vertrieb*)

As already stated the exclusive brokering of investment products (*Vermögensanlagen*) requires a licence pursuant to the German Trade, Commerce and Industry Regulation Act (*Gewerbeordnung*). As a result of the Retail Investors' Protection Act (*Kleinanlegerschutzgesetz*) Crowdfunding Platforms now need to pass a test with the Chambers of Commerce (*Industrie- und Handelskammern*) to show its expertise.

4.2.2 Donations or Rewards Model

As already stated above, it cannot be excluded with absolute certainty that certain kinds of rewards based Crowdfunding projects are covered by the category of *"comparable investments that grant a claim for repayment and interest"*. As a result those kinds of RES Projects could – as a rule – also require a prospectus – unless one of the exceptions (e.g. the Crowdfunding Exception) is applicable.

4.3 Regulation of Crowdfunding under the AIFMD regime

Especially RES Projects (like real estate projects) must deal with a possible application of the AIFMD regime which was implemented in Germany by means of the Capital Investment Act (*Kapitalanlagengesetzbuch*). Due to the very comprehensive definition of a collective investment undertaking, RES Projects can easily be covered by the definition and could therefore fall within this highly regulated field.

4.3.1 Definition of AIF

According to the Capital Investment Act (*Kapitalanlagengesetzbuch*) the AIFMD regulation of funds and fund managers applies when there is an alternative investment fund ("**AIF**") managed by an alternative investment fund manager ("**AIFM**"). The Retail Investor's Protection Act (*Kleinanlegerschutzgesetz*) does not affect this regulation.

The Capital Investment Act (*Kapitalanlagengesetzbuch*) provides that AIFs include a collective investment undertaking which:

- raises capital from a number of investors,
- with a view to investing it in accordance with a defined investment policy for the benefit of those investors;
- is not an operating company conducting business outside the financial sector; and
- does not require authorisation pursuant to Article 5 of Directive 2009/65/EC (UCITS).

4.3.2 Equity Model

4.3.2.1 Operating company seeking funding

German AIFMD regulation does not apply to operating companies outside the financial sector which do not invest with a defined investment policy.

RES Projects can often not benefit from the exclusion of operating companies within the meaning of the Capital Investment Act (*Kapitalanlagegesetzbuch*). This is due to the fact that RES Projects often do not operate the project/plant on their own but either merely collect the money of the investors or operate activities that are – according to BaFin – not sufficient to comply with the requirements of an *operating company* within the meaning of the Capital Investment Act (*Kapitalanlagegesetzbuch*).

BaFin clarifies in its interpretation guideline on the "Scope of application of KAGB / Interpretation of the term collective investment undertaking" that RES projects – BaFin explicitly mentions solar plants – are operating companies if they operate the facility or production themselves within their day-to-day business. However, BaFin states that an operating company can make use of the service of an intra-group company or an external service provider, as long as the day-to-day discretion remains at the company.

Taking this into account, RES Projects seeking funding by means of a Crowdfunding platform could only be operating companies outside the financial sector if:

- their business strategy is simply the commercial success of their business;
- they do not intend to follow any defined investment policy but want to finance their on-going day-to-day business; and
- they operate the facility, production or project themselves within their day-to-day business or make use of the service of an intra-group company or an external service provider (as long as the day-to-day discretion remains at the company)

In addition, the former German Federal Government stated in consultations during the legislative procedure of the Capital Investment Act (*Kapitalanlagengesetzbuch*):

"Companies that operate for example biogas, solar or wind power plants itself by means of an on-going business and which do not involve the outsourcing of their core business can be regarded as operating company. The awarding of individual service contracts within the current business operations should not affect this."

Besides those statements regarding the allocation of tasks in order to be considered as an operating company, BaFin makes some statements regarding the actual operations of the companies. For the real estate sector, BaFin explicitly expresses in its interpretation guideline that both the operation of real estate property, e. g. a hotel or

a health care facility (*Pflegeeinrichtung*) and project development (design, acquisition, development of real estate property and subsequent sale of self-developed real estate property) should be regarded as operative activities. On the other side, the acquisition, rental, lease, management and sale of real estate properties should not be regarded as operative activities.

Although regarding RES Projects BaFin only mentions the operation of solar plants it can be followed from the aforesaid statements regarding real estate projects that also the project development of RES Projects should be considered as an operating activity.

In summary, if a RES Project operates the energy plant by itself it should be regarded as an operating company conducting business outside the financial sector. In addition, if a RES Project develops the project (e. g. an energy plant) and – subsequently – sells the developed energy plant it should be regarded as an operating company. Therefore, it would not constitute an AIF within the meaning of the Capital Investment Act (*Kapitalanlagegesetzbuch*) and would fall outside the AIFMD regulation.

However, RES Projects are often simply "project companies" that are established to finance a single project such as a wind farm or a solar park and do not operate the facility or production themselves or by means of an outsourcing company leaving the day-to-day discretion to another company. Those "project companies" cannot qualify as operating companies within the meaning of the Capital Investment Act (*Kapitalanlagegesetzbuch*) and therefore constitute an AIF within the meaning of the German AIFMD.

4.3.2.2 "Two-tiered structures"

As already stated many RES Projects in Germany are structured as Citizen Participation Models (*Bürgerbeteiligungsmodelle*). Usually, these Citizen Participation Models (*Bürgerbeteiligungsmodelle*) are structured as so called "two-tiered structures" (*doppelstöckige Struktur*). There are different reasons for these structures, e. g.

- high complexity of the RES Project,
- to separate a large-scale investor (e. g. municipal energy supplier or community) from the citizens (*Bürger*)
- in most cases the bank wishes a separation of each project – in order to limit any possible risks

The first tier constitutes a citizen participation company ("**Citizen Participation Company**" – (*Bürgerbeteiligungsgesellschaft*) which pools the investments of the investing citizens (*Bürger*). This Citizen Participation Company (*Bürgerbeteiligungsgesellschaft*) then invests in one or several entities – sometimes parallel to another large-scale investor – that operates the RES Project (second tier).

The second tier entity then directly invests in the RES Project e. g. a heating and power station or in a company that replaces old lights with modern energy saving LED lights.

The first tier of these two-tiered structures (the Citizen Participation Company - *Bürgerbeteiligungsgesellschaft*) in this case might not qualify as an operating company since the operating activity is only executed in the second tier entity.

As a conclusion the first tier constitutes an AIF within the meaning of the Capital Investment Act (*Kapitalanlagegesetzbuch*) and therefore – generally – would need a licence with BaFin.

4.3.3 Lending Model

Investments by means of subordinated loans (*Nachrangdarlehen*) can generally be structured as non-AIF investments since the investors do not share liability for any losses – and therefore do not invest in a *collective investment* undertaking.

Due to the fact that the Crowdfunding Exception requires that the investments are made by means of subordinated loans (*Nachrangdarlehen*), profit-participating loans (*partiarische Darlehen*) or commercially comparable investments (*wirtschaftlich vergleichbare Anlagen*) anyway, most RES Projects that benefit from the Crowdfunding Exception are excluded from any possible regulation under the AIFMD.

4.3.4 Donations or Rewards Model

Some RES Projects do not offer any kind of revenue but instead (often small) non-financial rewards in return (Donations or Rewards Model). In the latter case (e.g. if the promised reward is electricity at a reduced price or a film regarding the activities of the RES project) it can be argued that the funds are not invested for the benefit of those investors and the funding therefore contains no collective investment undertaking and no AIF. BaFin has not yet commented on a possible application of the AIFMD regime to rewards based Crowdfunding.

4.3.5 Change of administrative practice of BaFin regarding cooperatives (*Genossenschaften*)

As already stated, the RES Crowdfunding Platforms that offer an equity based model are generally structured as cooperatives (*Genossenschaften*) and offer units in such cooperatives (*Genossenschaften*). However, cooperatives (*Genossenschaften*) were not explicitly excluded from the scope of the German AIFMD regulation. Therefore, they could only be excluded in case that they can qualify as an operating company.

However, recently, BaFin changed its above mentioned interpretation guideline regarding the applicability of the Capital Investment Act (*Kapitalanlagegesetzbuch*) to cooperatives (*Genossenschaften*).

According to BaFin, it will be no longer relevant if cooperatives (*Genossenschaft*) constitute an operating company since – as a rule – cooperatives (*Genossenschaft*) do not pursue any defined investment policy. Therefore, cooperatives (*Genossenschaft*) do not qualify as a collective investment undertaking within the meaning of the Capital Investment Act (*Kapitalanlagegesetzbuch*). The reason for this change of the administrative practice is – according to BaFin – that the mandatory purpose of a cooperative (*Genossenschaften*) according to the German Cooperatives Act (*Genossenschaftsgesetz*) excludes the intention of making profits – which is the characteristic feature of a collective investment undertaking.

Thus, cooperatives (*Genossenschaften*) should – generally – not constitute AIFs and therefore no longer fall under the Capital Investment Act (*Kapitalanlagegesetzbuch*).

4.3.6 Crowdfunding Platform

In general, due to the fact that an operator of a Crowdfunding platform does not raise capital from investors for its own business, he should not qualify as an AIF. Further, there are sound arguments to state that the Crowdfunding platform does not "manage" the underlying investment, but merely arranges investments into projects or companies.

Hence, the operator of a Crowdfunding platform should not be qualified as an AIF or an AIFM.

4.3.7 Pooling vehicle

In case the RES Project prefers funding by just one major investor instead of a large number of small retail investors, it is possible that the platform involves a pooling vehicle. A pooling vehicle is a company founded to concentrate a large number of investors. Such pooling vehicle is likely to be an AIF and therefore to be subject to the German AIFMD-regulation – provided that the pooling vehicle issues equity and no debt based investments. However, since the Crowdfunding Exception requires debt based investments, campaigns that want to benefit from the Crowdfunding Exception must offer debt instruments anyway. In this case also pooling entities can be implemented.

Further, a contractual pooling of the investors can be recommendable. In this structure no pooling *entity* is involved but rather the investors enter into a pooling agreement with the company itself or a third party.

4.4 Licence under the German Payment Services Supervisory Act (*Zahlungsdiensteaufsichtsgesetz*)

Any transfer of funds through the operator of a Crowdfunding platform generally constitutes money remittance services (*Finanztransfergeschäft*) within the meaning of the German Payment Services Supervisory Act (*Zahlungsdiensteaufsichtsgesetz*). Such transfer of funds could occur if the investors pay their investment amounts to the

operator of the Crowdfunding platform who then passes the funds to the entrepreneur.

In this context BaFin has decided that operators of internet platforms (such as Crowdfunding platforms) in general are not covered by the exemption for commercial agents.

In order to avoid such licencing requirements the operator of a Crowdfunding platform could cooperate with a bank or a licenced payment institution for the handling of payments rather than acting as an intermediary itself. However, the structure of this cooperation must meet detailed requirements by BaFin.

Another possible solution would be that the RES Project collects the funds from the investors on their own bank account. The power of disposal (*Verfügungsbefugnis*) over the funds collected would be limited until the respective RES Crowdfunding Platform agrees.

4.5 Possible additional regulations

Other common regulations to which the operator of a RES Crowdfunding Platform may be subject include:

- German Trade, Commerce and Industry Regulation Act (*Gewerbeordnung*);
- German Act on Money Laundering (*Geldwäschegesetz*);
- German Securities Trading Act (*Wertpapierhandelsgesetz*);
- Consumer Credit Regulation (Vorschriften für Verbraucherdarlehensverträge).

5 Regulation of RES Projects in Germany

5.1 Overview

Renewable energy regulation in Germany strives for a sustainable and ecological development and increase of renewable energy generation and is mainly driven by the concept of preferential grid access of new renewable energy power plants, the so called priority principle (*Vorrangprinzip*). Hence, grid operators are obliged to take over, transmit and distribute renewable electricity with priority over conventional electricity generation, currently also in case of grid congestion.

The Renewable Energies Act (*Erneuerbare-Energien-Gesetz*) sets as (non-binding) target that 40-45 per cent of power generation will be based on renewables by 2025. By 2035 this amount shall increase to 55-60 per cent and by 2050 at least to 80 per cent. In order to achieve these goals, specific quantitative targets for the expansion of renewable energies were set out. The increase of generation capacity of onshore wind

turbines for example should be 2,500 MW (net) each year. Hence, Sec. 29 German Renewable Energies Act (*Erneuerbare-Energien-Gesetz*) states flexible federal promotion rates for wind power electricity. In case the expansion of wind power plants grows slower or quicker than target, funding rates increase or decrease.

The most important codes containing renewable energy regulation are the German Energy Industry Act (*Energiewirtschaftsgesetz*), the German Renewable Energies Act (*Erneuerbare-Energien-Gesetz*) and various legislative decrees. Planning, construction and commissioning of new renewable energy power plants, however, is subject to the general building and environmental laws, e.g. the German Federal Immission Control Act (*Bundes-Immissionsschutzgesetz*), and additional federal and state legislation. The German Renewable Energies Act (*Erneuerbare-Energien-Gesetz*) contains most of the regulation relevant for the development and operation of RES Projects, e.g. preferential grid access and grid usage as well as statutory financial promotion provisions.

5.2 Feed-in management

Operators of renewable energy power plants benefit from a preferential grid access and usage, Sec. 8 and 11 German Renewable Energies Act (*Erneuerbare-Energien-Gesetz*). Moreover, grid operators are obliged to take off the electricity generated in renewable energy power plants. These provisions can only be limited under certain circumstances. In a grid congestion scenario, Sec. 14 German Renewable Energies Act allows the grid operator to reduce and regulate the feed-in process if necessary to ensure grid balance. However, in pursuance of Sec. 13 Par. 2a German Energy Industry Act, renewable power plants can only be limited as a measure of last resort in terms of feed-in management. In addition, in case of a limitation, the respective plant operator must be reimbursed.

5.3 Remuneration system

Since the first regulation of renewable energy was implemented with the German Electricity Feed-In Act (*Stromeinspeisungsgesetz*) in 1990, electricity generation from renewable energy sources has been financially promoted based on statutory feed-in tariffs. In 2012, a new remuneration scheme was implemented, the so called direct sales mechanism (*Direktvermarktung*), changing the remuneration system for renewable electricity significantly, but on an optional basis, granting financial incentives to enhance its enforcement without a statutory obligation. However, with the implementation of the novated German Renewable Energies Act 2014, the direct marketing mechanism became mandatory for new renewable power plants and increased requirements apply also for existing power plants after the transition period ended on 1 April 2015. Operators of existing plants with installed capacity below 500 kW (and 100 kW starting 1 January 2016) may still choose between the direct marketing and the statutory remuneration on a monthly basis.

With the implementation of the direct sales mechanism the German government aimed to allow – and to a certain extent force – operators of renewable energy power plants to increase market integration of the RES Projects by requiring operators to ensure balancing and sale of the generated electricity themselves or through a third party, a direct sales agent (*Direktvermarkter*), which can be anyone but the grid operator. Instead of a sole statutory feed-in tariff, as in the past, operators are only entitled to receive a market premium (*Marktprämie*) from the grid operator, which reflects the delta between the previously applicable feed-in tariff and the monthly average price applicable to the respective renewable electricity source at the electricity exchange spot market. The market value of the generated electricity remains subject to negotiation vis-à-vis the direct sales agent or end consumer, in case the operator decides to sell the generated electricity directly, and any deviation from the average monthly stock exchange price reflects a market upside or risk. Hence, since spot market prices are significantly lower than statutory feed-in tariffs, the market premium has a compensation or "subsidy" character.

Thus, feeding-in electricity during peak demand times can be highly profit-yielding, since the electricity exchange spot market's price is relatively high at this particular time. However, in case of fluctuating renewable energy sources and due to the fact that electricity cannot yet be stored either in significant volume or at a reasonable price, the same applies in time of low demand and low prices. Accordingly, renewable electricity generation from non-fluctuating sources, such as biomass or biogas benefit from being able to react on volatile demand and price levels and may also be used to render certain system services, e.g. participation at control reserve markets, which can increase profit margins of such RES Projects.

Even after the expiration of the statutory remuneration term, i.e. a funding period of twenty full calendar years plus the part of the year of commissioning as of the day of initial operation, the preferential grid access and usage prevails and, therefore, renewable energy plant operators have the option to continue to operate and sell the generated electricity to consumers or traders on a power purchase agreement (PPA) basis.

Currently, the remuneration scheme for new renewable energy projects is under revision and shall be substituted by a public tender based remuneration model as of 2017 (see 5.4 and 5.8 below), and the German Renewable Energy Act (*Erneuerbare-Energien-Gesetz*) shall be amended accordingly.

5.4 Current development concerning renewable energy regulation

The latest amendment of the German Renewable Energies Act (*Erneuerbare-Energien-Gesetz*) entered into force on 3 July 2015. With retroactive effect as of 1 August 2014 Sec. 25 of the German Renewable Energies Act (*Erneuerbare-Energien-Gesetz*) now again enables "mixed" wind farms using one joint metering unit. Before the amendment, wind farms with different commissioning dates and, hence, different applicable regimes were at risk to lose the financial promotion once the older wind

turbines chose the statutory feed-in tariff scheme. Due to the retroaction of this amendment, omitted remunerations from the past will have to be paid.

Currently, the relevance and potential consequences of Sec. 24 of the German Renewable Energies Act (*Erneuerbare-Energien-Gesetz*), as initially implemented with the 2014 novation, is being widely discussed between sponsors, financing banks and operators. Sec. 24 states that the market premium can temporarily decrease to zero if the market price at the electricity exchange spot market is negative for at least six continuous hours, taking retroactive effect as of the first hour of negative prices and as long as negative prices continuously occur. Even though this only applies to power plants which are commissioned after 31 December 2015 and exceed the installed power thresholds 3 MW for wind energy plants and 500 KW for other renewable energy plants, it currently causes a huge uncertainty when trying to obtain long-term project finance. The potential impact of this provision for new installations has been assessed several times; however, a secure forecast on the financial effect is currently not possible. Furthermore, the current draft of the Electricity Market Act (*Strommarktgesetz*), as published on 27 August 2015, shows yet another amendment whereas a negative market price for an hourly contract (*Stundenkontrakt*) shall only be taken into account for remuneration decrease purposes when occurring at the day-ahead spot market as well during the respective intraday market.

As initially stated above, the renewable remuneration system in Germany will change yet again significantly by 2017 based on the implementation of a public tender system. In pursuance of Sec. 55 German Renewable Energies Act (*Erneuerbare-Energien-Gesetz*), renewable electricity remuneration shall no longer be determined by legislation but based on a public tendering process, as of 2017 for all renewable energy sources. Currently, remuneration of electricity generated in new ground mounted solar plants is evaluated based on a public tender remuneration model administered by the Federal Network Agency (*Bundesnetzagentur*), which mainly serves as a pilot project to prepare for the wider roll-out by 2017. However, as per current discussions and publications by the German government, the tender system shall only apply for new solar and wind projects exceeding certain benchmarks, e.g. 1MW for new solar farms.

5.5 Technical standards

As stated in Sec. 9 and 35 German Renewable Energies Act (*Erneuerbare-Energien-Gesetz*), renewable energy power plants have to meet certain technical requirements, e.g., among others, being able to be remotely monitored (its instantaneous feed-in amount) and controlled, first and foremost by the grid operator to reduce feed-in capacity in case grid stability is at risk. Furthermore, also the direct sales agent needs to be entitled to reduce feed-in capacity to react to demand situation, i.e. to avoid negative spot market prices. Generally, such controllability ensures the market integration of renewable energy power plants.

5.6 Dismantling/Renaturation

A common way to build wind farms in Germany is to conclude land usage agreements with the land owners and to agree upon limited personal easements in favour of the plant operators, which are registered at the respective local courts, instead of buying the land parcels. Investors must observe that, besides the usage costs under the land usage or lease agreements, arrangements on dismantling and renaturation are often found in those contracts and arise from public obligations, e.g., are directly implemented in the operation permit pursuant to the German Federal Immission Control Act (*Bundes-Immissionsschutzgesetz*). Furthermore, certain bonds are regularly requested from operators as security relating to such obligations.

5.7 Other Market Opportunities

Not only in Germany, transmission system operators (TSO) are responsible to ensure grid stability and, hence, a constant energy balance between feed-in and off-take capacities. Among such system services, TSOs tender control reserve capacities in three different qualities, i.e. primary, secondary and tertiary reserve control. Reserve control, at least at secondary and tertiary reserve control markets, can either be provided positively, i.e. via increase of power generation, or negatively, i.e. via decrease of electricity generation or increase of power off-take. Since system services are highly sensitive, power plant operators interested in providing such services need to proof compliance with certain technical and operational requirements and need to pass a pre-qualification procedure administered by the TSOs.

Currently, as regards RES Projects, only remote-controlled and non-fluctuating biogas or biomass power plants participate at secondary or tertiary control reserve markets (the latter also called minute reserve), in most of the cases as part of virtual power plants (i.e. the virtual combination of power plants from different locations). However, various pilot projects currently proof that also fluctuating renewable power plants are technically able to provide control reserve services, at least as part of a mixed energy source portfolio.

5.8 Upcoming changes in energy regulation

Upcoming changes in energy policy and energy regulation relevant for RES Projects and, thus, potential Crowdfunding investments:

- In July 2015 the Federal Ministry for Economic Affairs and Energy (*Bundeswirtschaftsministerium*) published a so called white book concerning the future market design of German electricity markets. Its major target is a so called “Energy-Only-Market 2.0” in which prices are determined by market processes and not by legislation. It shall also enhance and implement increased grid integration policies and regulation for renewable energy power plants. Deviations from a balanced grid will be punished more severely, this shall promote better forecasts and prognosis by energy suppliers;

- A federal decree to determine critical infrastructure (*KRITIS*) within the scope of Sec. 8a Para. 1 Act on the Federal Office for Information Security (*Gesetz über das Bundesamt für Sicherheit in der Informationstechnik*) is expected to be published during the first quarter of 2016. Such critical infrastructure operators are obligated to undertake within two years after the publication of the federal decree various measures in order to increase power grid and data security. Until now it is uncertain what types of infrastructure will fall in the ambit of the decree and whether there will be exemptions for SMEs. However, facilities of the energy sector which are of high importance for the functioning of the (national) community are explicitly mentioned in the Act on the Federal Office for Information Security (*Gesetz über das Bundesamt für Sicherheit in der Informationstechnik*), because their outages affect the security of supply;

- An amendment to the German Renewable Energies Act (*Erneuerbare-Energien-Gesetz*) is scheduled for 2016 regarding public tender mechanisms for determining renewable energy financial promotion as from 2017. In July 2015 the Federal Ministry for Economic Affairs and Energy (*Bundeswirtschaftsministerium*) has published a key issues paper (*Eckpunktepapier*) concerning the upcoming steps. Until 1 October 2015 statements are gathered to be evaluated thereafter. Subsequently, a draft on a "German Renewable Energies Act 2016" shall follow and a respective legislative decision is scheduled for Summer 2016. The public tenders shall begin late 2016 with specific requirements for the different technologies on-shore wind power, off-shore wind power, photovoltaic, biomass, hydropower and geothermic;

- Currently, operators of renewable energy plants that benefit from the market premium or feed-in tariffs are not entitled to declare their electricity generation as "green" electricity and may neither use this commercially or are those operators entitled to respective certificates of origin, or the like. Such electricity is rather treated as non-green (so called grey) electricity. The reason is that the support mechanism is borne by all end consumers depending solely on the quantity consumed (irrespective of the actual energy source). Hence, the "green" label is paid by the end consumers through a (compulsory) levy, the so called renewable energies act levy (*EEG-Umlage*). However, the current legislation grants the possibility for renewable energy plant operators to sell green energy to third parties without any financial support. As the buyers of such green energy are, however, forced to pay the levy, such power purchase agreements appear very rarely. Therefore, it is discussed to re-implement a scheme called green power market model (*Grünstrom-Markt-Model*) where renewable energy plant operators are entitled to sell green energy without the levy for the end consumers. However, given the significance of the changes driven by the implementation of a public tender mechanism for all renewable energy sources, current discussion shows that those plans might be delayed until such tender has been successfully rolled out;

- The preferential grid usage and the corresponding obligation of the grid operator to take off the electricity ensures that renewable energy plants are taken off the grid or being remotely reduced last in the event of grid congestion. Moreover, when being reduced, they are reimbursed (see above 5.2). This situation is described as unfortunate as power generated of wind and sun is often due to its fluctuation the cause for such congestion management measures. In order to achieve grid parity of all energy sources and to strengthen the need of reducing the financial support for renewable energies as a whole, it is planned to diminish the preferential rights and to enqueue renewable energy plants in the shutdown order.

- Accordingly, based on the white book, the Federal Ministry for Economic Affairs and Energy (*Bundeswirtschaftsministerium*) published the first draft of a new Electricity Market Act (*Strommarktgesetz*) in form of an "umbrella law" (*Mantelgesetz*) on 27 August 2015, amending, among others, the Energy Industry Act and the Renewable Energies Act, e.g. including the abovementioned amendment of Sec. 24. Besides certain amendments to enhance harmonisation of electricity regulation throughout the EU, the draft strives for an optimised alignment of offer and demand in order to avoid negative prices and contains, among other novelties, a new provision according to which grid operators, for the purposes of grid expansion planning, may take into account that onshore wind and solar generation may be capped annually during peak times by up to 3% (*Spitzenkappung*) to ensure cost efficiency of the overall grid expansion and decrease the negative price impact at the electricity exchange. However, the current compensation mechanism in case of feed-in management measures shall not be limited. Furthermore, in order to increase transparency, the draft contains increased registration obligations in the market data register (*Marktstammdatenregister*).

6 Conclusion

RES Projects and RES Crowdfunding Platforms have to face different regulatory implications related to the first German Crowdfunding Regulation.

(Small) RES Projects which intend to collect money by means of a RES Crowdfunding Platform can benefit from the Retail Investors' Protection Act (*Kleinanlegerschutzgesetz*) since the Crowdfunding Exception exempts from most requirements under the German Investment Products Act (*Vermögensanlagengesetz*).

Furthermore, the new provisions on documentation, retail investor information and the extended powers of BaFin will – at least in the long run – restore or even increase the acceptance and trust of the investors in investment products (*Vermögensanlagen*) issued by RES Projects.

On the other side, the exception of cooperatives (*Genossenschaften*) from the prospectus requirement will de facto not result in a rise of cooperatives

(*Genossenschaften*) as an investment vehicle for RES Projects since a performance-based remuneration for marketing is now excluded. In turn cooperatives (*Genossenschaften*) are – as a rule – exempted from the Capital Investment Act (*Kapitalanlagegesetzbuch*).

In total, the Crowdfunding Exception exempts (small) RES Projects from most requirements under the German Investment Products Act (*Vermögensanlagengesetz*). Together with the changed administrative practice regarding cooperatives (*Genossenschaften*) this provides for a viable way for the young industry of RES Projects and RES Crowdfunding Platforms.

From a pan-European point of view the goal must be to reach a harmonised European Crowdfunding Regulation that enables RES Projects seeking for funding and investors to take part in Crowdfunding campaigns across the European Union. However, a growing number of countries plan to or have already implemented specific Crowdfunding Regulation. Therefore it is crucial whether this goal is achievable only by European Regulation or if the differing national regulations can be harmonised in a meaningful way.

Renewable energy regulation in Germany is also subject to significant changes:

The funding mechanism for new RES Projects will be shifted towards a public tender mechanism for the entire wind and solar generation, which remains subject to implementation in the Renewable Energies Act (*Erneuerbare Energien Gesetz*) 2016.

The current electricity market design, based on the most recent draft of the Electricity Market Act (*Strommarktgesetz*) dated 27 August 2015, shall also be amended in order to *inter alia* increase market transparency of electricity generation and grid expansion, optimise the alignment of offer and demand of renewable electricity generation to reduce times of negative prices at electricity exchange markets and allow for a more cost efficient grid expansion plan. To achieve this, based on the current draft, renewable energy generation may be capped during peak times by up to 3% per year, which might be by some as an initial step to diminish the fundamental priority principle (*Vorrangprinzip*) of renewable energy generation in Germany, at least in connection with grid congestion scenarios. However, according to others, this might be deemed necessary to achieve increased harmonisation of renewable electricity policies throughout the EU. In any case, this discussion just started and the effect on long term investment security will need to be monitored thoroughly.

7 Summary – Crowdfunding and RES Projects Regulation

Country / Summary	Germany
Recent developments in Crowdfunding regulation	• First Crowdfunding regulation (Retail Investors' Protection Act - *Kleinanlegerschutzgesetz*) entered into force on 10 July 2015 • Revised Investment Products Act (*Vermögensanlagengesetz*) centrepiece of the new regulation and subject to the most changes
Current Crowdfunding Regulation	
General regulation	• If Crowdfunding platform facilitates offering of securities, investment products (*Vermögensanlagen*) or shares in collective investment undertakings (*Investmentvermögen*), the operator of the platform provides financial services → BaFin authorisation required • Now: Qualification of subordinated loans (*Nachrangdarlehen*), profit-participating loans (*partiarische Darlehen*) and commercially comparable investments (*wirtschaftlich vergleichbare Anlagen*) as investment products (*Vermögensanlage*) • Exemption for investment broking and contract broking only regarding investment products (*Vermögensanlagen*) or shares in collective investment undertakings (*Investmentvermögen*) → straight forward licence sufficient for operator of Crowdfunding platform
Prospectus requirement	• Prospectus requirement for offering of securities or investment products (*Vermögensanlagen*) • General threshold: EUR 100,000 per issuer within 12 months (i. a.) • Qualification of subordinated loans (*Nachrangdarlehen*), profit-participating loans (*partiarische Darlehen*) and commercially comparable investments (*wirtschaftlich*

	vergleichbare Anlagen) as investment products (*Vermögensanlage*) • Increased regulatory requirements for prospectus for all investment products (*Vermögensanlagen*) • Exception from prospectus requirement for Crowdfunding under specific conditions — Total offering maximum: EUR 2.5 million; — Offering only of profit-participating loans (*partiarische Darlehen*), subordinated loans (*Nachrangdarlehen*) or commercially comparable investments (*wirtschaftlich vergleichbare Anlagen*); — Total amount for each investor per investment product (*Vermögensanlage*) of one issuer (project initiator) is restricted as follows: ➢ up to EUR 1,000: no restrictions ➢ more than EUR 1,000: cash deposits or financial instruments of the investor must exceed EUR 100,000 or maximum investment up to two monthly net incomes ➢ EUR 10,000 = absolute maximum investment per investor ➢ Corporations: no restrictions — Three-page fact sheet (VIB) — Ban of combination (*Kombinationsverbot*) with other exceptions
AIFMD-regulation	• RES Projects can constitute an AIF → extensive AIFMD regulation for AIF and its manager → manager (AIFM) requires BaFin authorisation • RES Projects that constitute *operating companies* are no AIF

	• Funding by means of subordinated loans (*Nachrangdarlehen*), profit-participating loans (*partiarische Darlehen*) or commercially comparable investments (*wirtschaftlich vergleichbare Anlagen*) does not entail an AIF • Cooperatives (*Genossenschaften*) shall – according to BaFin – not constitute a collective investment undertaking and therefore fall outside the AIFMD regulation
Payment services regulation	• Transfer of funds through operator may constitute money remittance service → BaFin authorisation required • cooperation with a payment institute / bank is required
Further possible requirements	• German Trade, Commerce and Industry Regulation Act (*Gewerbeordnung*) • German Act on Money Laundering (*Geldwäschegesetz*) • German Securities Trading Act (*Wertpapierhandelsgesetz*)
RES Projects Regulation	
Electricity regulation applicable to RES Projects	• The Renewable Energies Act (*Erneuerbare Energien Gesetz*) sets electricity generation targets from renewable energy sources at 40-45 per cent by 2025 up to 80 per cent by 2050 • RES Projects in Germany benefit from preferential grid access and usage (*Vorrangprinzip*). Grid operators are obliged to grant grid access to RES Projects and feed-in, transmit and distribute the generated electricity with priority • Currently, even in grid congestion scenarios, RES electricity generation may only be limited remotely by the grid operator as last resort measure and against payment of compensation • Planning, construction and commissioning of new RES Projects is subject to general building and environmental laws

Market Integration of RES Projects	• Since 1990, renewable electricity funding has been based on feed-in tariffs to be paid by the grid operator who grants grid access • Since 2012, market integration of RES Projects was increased by implementation of direct sales mechanism (*Direktvermarktung*). Plants operators are now obliged to ensure sale and balancing of the electricity themselves of via a third party (i.e. direct sales agent). Grid operators only pay a market premium (*Marktprämie*), i.e. the difference between the previous feed-in tariff and the average electricity price at the electricity exchange spot market. Furthermore, such direct sales agent needs to be entitled for remote control measures, e.g. limitation of electricity generation during times of negative prices • Furthermore, based on the recent draft of the new Electricity Market Act (*Strommarktgesetz*), as initially published on 27 August 2015 by the Federal Ministry for Economic Affairs and Energy (*Bundeswirtschaftsministerium*), RES Projects and renewable energy generation shall in the future underlie increased grid integration measures, e.g., a generation cap during peak times of up to 3% per year to inter alia decrease costs for grid expansion and negative market prices at the electricity exchange markets and to allow for further EU harmonisation of renewable energies' electricity generation and transmission
Transition to tender based allocation of new RES Projects	• In 2016, the Renewable Energies Act and the funding mechanism of renewable energy generation from new RES Projects will be amended and shifted towards a public tender mechanism to be implemented by 2017, *inter alia* to comply with the guidelines of the European Commission for environmental protection and energy subsidies
Further regulatory sources	• German Energy Industry Act (*Energiewirtschaftsgesetz*) • German Federal Immission Control Act (*Bundes-Immissionsschutzgesetz*)

Lessons learned – Crowdfunding / RES Projects Regulation

Lessons learned for a possible harmonized European Crowdfunding Regulation	
Role model ("dos")	• exception of Crowdfunding from most regulatory requirements (in particular prospectus requirement) • three-page fact sheet (*Vermögensanlageninformationsblatt VIB*) for investors • reduced regulation of the Crowdfunding platform • unlimited investment amounts for ”professional” investors
Aspects that should be avoided ("don'ts")	• limitation of the Crowdfunding Exception only to (profit-participating) subordinated loans ((*partiarische*) *Nachrangdarlehen*) or commercially comparable investments (*wirtschaftlich vergleichbare Anlagen*)) • limitation of EUR 1.000 per investor without additional statements regarding income / wealth for retail investors – should be increased. • ban of combination (*Kombinationsverbot*) – makes parallel investments of professional investors and the Crowd difficult • limitation of EUR 2.5 million. threshold regarding prospectus requirement instead of harmonisation with European Prospectus Directive (EUR 5 million.)
Lessons learned for a possible harmonized European RES Projects Regulation	
Role model ("dos")	• preferential grid access and marketing of renewable energy generation with cost leverage mechanism on Federal level • incentives for decentralised electricity generation and usage
Aspects that should be avoided ("don'ts")	• increased regulation for new RES Projects, e.g. by implementation of a challenging public tender mechanism potentially leading to reduced market opportunities for small project developers and citizen participation projects • delay of implementation of a green electricity market

	model

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XII. Greece

1 Greek market for RES Crowdfunding platforms

To the best of our knowledge, there are no existing RES Crowdfunding Platforms in Greece or Crowdfunding projects related to the energy sector.

2 Recent regulatory developments regarding Crowdfunding regulation in Greece

There are no legal developments in respect of Crowdfunding legislation in Greece. Greece still does not have a Crowdfunding regulation and Crowdfunding operates under the exemptions of the Prospectus Directive regarding private placement (see analysis below under 4.2).

3 Further recent developments considering RES Projects market in Greece

3.1 Introductory Comments

Renewable power plants in Greece sell their output to the market operator under a feed in tariff ("FIT") which differs between types of renewable plant and also between whether the plant is located on the mainland or at the islands which are not interconnected to the mainland. The FIT is payable to renewable plants by the market operator, LAGIE who operates a special account. Such account is funded (a) by a renewables levy payable by all consumers in their electricity bill depending on their category and consumption via a specific allocation methodology, (b) the system marginal price (and imbalances and other charges) payable in the ambit of the electricity pool, (c) public service obligation charges payable by suppliers in the non-interconnected islands, (d) by a levy of EUR 2/MWh of generated power payable by lignite fueled generators and (e) by the revenues derived from the auction of greenhouse emissions certificates (although under a recent law part of such revenues may be given as a subsidy to businesses which are in high risk of gas emissions according to EU Dir.2009/29; a further allocation of part of such revenues to projects described under Dir.2003/87 including energy saving and climate change protection schemes is expected under a bill which is presently before Greek Parliament).

Another source of income for the funding of renewable power plants has traditionally been the State subsidies which are funded by the Greek State or co-funded by the EU and the Greek State. Funding under the subsidies laws could reach under circumstances between 20 – 40% of the approved budget and was given through cash payments and/or tax benefits. Renewable plants were within the projects that were eligible for subsidies (although in the last few years photovoltaic ("pv") plants were excluded). However subsidies funding schemes have not been available in the last two years.

3.2 Recent developments in relation to Feed in Tariffs

As noted above, the feed in tariff payable to the renewable plants is funded mainly through a so-called renewables levy which is payable by the ultimate electricity consumers via their electricity bill. In the last few years LAGIE, the market operator responsible to pay the margins of the feed in tariffs to renewable operators through the renewables levy, had amassed a large debt which according to several estimates had reached the level of EUR 550 Million in 2014. In order to cover this debt the Greek Government introduced in April 2014 a drastic reduction in the FITs as well as a discount on the price payable for the energy sales of renewable energy plants for 2013.

As from 01.04.2014, all feed-in tariffs for power produced by stations already in trial or regular operation were readjusted and in most cases radically reduced. The new FITs differ between stations which have obtained a State subsidy for their construction and those which have not. The new law also abolished the annual readjustment of the FITs pursuant to the Consumer Price Index as it used to be the case before the introduction of the new law.

3.3 Retroactive discounts via the issuance of a special debit note.

In addition to the reduction of the feed in tariffs, all renewable plants were obliged to issue a credit note by virtue of which they provided a substantial discount on the total value of energy produced by their plants in 2013. For example in relation to pv plants such discount ranged between 37.5% - 20% depending on the capacity of the pv park and its time of connection to the grid.

We note that prior to the enactment of the abovementioned law which reduced the FITs, there was also in existence a particular tax imposed on renewable plants, called "Special Solidarity Contribution" in the region of 25% – 30% for pv plants and 10% for other renewable plants (such tax was increased for pv plants to up to 37% subsequently).

3.4 Extension and modification of contracts

The law reducing the FITs provided as a countermeasure for the automatic 7 year extension of certain PPAs. The contracts affected are all PPAs which have been in force for less than 12 years as of 01.01.2014 bringing the total duration of protected income of such projects to 27 years instead of 20 as initially provided in the law. However during the extension period (i.e. the last 7 years of the 27 years of the PPA) the FIT will not apply; the producers may instead elect one of the following compensation schemes:

a) The sale of electricity under a price to be calculated pursuant to a methodology to be decided by the Ministry of Development; or

b) The sale of any power produced on a priority basis at EUR 90/MWh for up to a certain maximum annual amount to be determined pursuant to the following formula:

Max Power Amount (KWh) = Installed Capacity (KW) x Rate of Production (KWh/KW)
where the Rate of Production is determined by station type (for photovoltaics on the mainland such as the Projects, it is 1500kWh/kW). It is particularly noted that producers retain no right of compensation for any surplus produced.

3.5 New Developments Expected

Further levies are to be imposed on renewable generation to support financially the introduction of the interruptible supply of industrial customers. The figures that are expected to be imposed are 3.6% for pv, 1.8% for wind and 0.8% on hydro calculated on their turnover.

In addition, one of the obligations that the Greek State has undertaken vis-à-vis its lenders (and has been enacted as such in law) is to revisit the Feed in Tariff system with a view of moving towards a new system of funding of renewable generation in the future. The proposals should have been formulated by the government by December 2015 but this deadline has not been met. The market expectation is that the new funding system will perhaps operate as a pool price plus premium funding.

In addition, other major commitment in the energy field included in the recent law is a prohibition to all electricity producers not to produce nor import power exceeding 50% of the total annual production including imports into the country. This prohibition shall apply from 1 January 2020. This measure is aimed to reduce the market share of the ex-incumbent, Public Power Corporation (PPC), which still has a large majority of the generation and supply market in Greece. The Competition Commission in Greece is to evaluate the progress towards achieving this target in the beginning of 2019 and propose necessary measures.

In the meantime, and although the way to achieve this target is not clarified in the new law either, there are some measures that are listed therein which could help to this direction:

- Discussion with the EU Commission with a view to introducing NOME type auctions (or measures of equivalent effect) in order to decrease PPC's dominance by reducing its market share by 25% in the supply and production, with the purpose of bringing it to less than 50% by 2020. If such agreement is not reached with the EU Commission by the end of October 2015, alternative measures will need to be introduced "immediately".

- Introduction of a temporary and of a permanent scheme of Capacity Certificates and prohibition of bidding at the wholesale pool below variable cost

- Reinforcing RAE's role

- Review of PPC Tariffs to reduce cross-subsidisation in industrial tariffs (20% discount in high-voltage customers) and bringing them closer to variable costs of each customer category

- Privatisation of ADMIE (Transmission Operator) or equivalent measures leading to full unbundling from PPC. Other measures to help the liquidity of the electricity market (review of taxation in the energy market, setoff between debts of Market and System Operators, implementation of EU Directive 27/2012 etc.)

- Introduction of an electricity Trading Market by December 2017 and a Balancing Market by June 2017.

4 Regulation of Crowdfunding in Greece

4.1 Requirement of a Banking / Financial Service license requirements

4.1.1 Equity Model

According to Law 3606/2007 implementing in Greece Directive 2004/39/ EC ("MiFID"), the offering of investment services and the performance of investment activities in Greece, in a professional capacity, is allowed in principle to investment firms licensed in Greece by the CMC or to investment firms from other European Union countries having the benefit of the European "passport" (i.e. following the notification procedure) to offer services either through a branch or on a cross-border basis without an establishment in Greece.

The provision of investment services includes, inter alia, the receipt, transmission and execution of orders on behalf of clients for performing transactions in financial instruments, the placement of financial instruments without commitment to take up those instruments and the provision of investment advice.

Financial instruments are, inter alia, securities, money market instruments, units in collective investment funds, options, futures, swaps, futures and other derivatives.

Where a Crowdfunding platform facilitates the offering of securities to the public and/or provides advice to investors on investment in securities, the operator of the platform may be considered to be providing the investment services of placing of financial instruments and/or investment advice, services which require the license by the CMC.

4.1.2 Lending Model

Although the Lending Model is not currently offered in Greece, the general rule is that according to Law 4261/2014 (implementing in Greek legislation EU Council Directives 2013/36/EE), the provision of loans or other credits, in a professional capacity, is allowed only to credit institutions and certain financial institutions (i.e. credit companies) licensed by the Bank of Greece ("BoG"), or alternatively to credit institutions and certain financial institutions established in other European Union (EU) countries having the benefit of the European "passport" to offer services either through a branch or on a cross-border basis without establishment in Greece.

4.1.3 Donations or Rewards Model

The structure of the Donations or Rewards Model is based on non-monetary returns/giveaways to the investors or on no return at all and no investment is involved. Based on said structure, the platforms operating this model may not be considered to be offering investment or banking services and thus fall outside the scope of the relevant regulations.

4.2 Prospectus requirements

Law 3401/2005 which implemented in Greece Directive 2003/71/EC (the "Prospectus Directive" as amended by Directive 2010/73/EE), provides that the public offering of securities in Greece requires the prior publication of a prospectus, which must be approved by the CMC.

There is an exemption from the obligation to publish a prospectus for securities offerings with total value of less than EUR 100,000 within a time period of twelve (12) months. This is the exemption that the Crowdfunding platforms of the Equity Model may try to use for offerings of securities.

Where the Crowdfunding platforms offer to the public instruments or investments, which do not constitute securities, within the meaning of Law 3401/2005, the aforementioned restrictions on the public offering do not apply.

4.3 Regulation of Crowdfunding under the AIFMD regime

In Greece, Directive 2011/61/EE on Alternative Investment Funds Managers ("**AIFMD**") has been implemented through the Law 4209/2013 (the **"AIFMD Law**").

According to Article 4 of the AIFMD Law, an AIF is defined as any collective investment under-taking, including investment compartments thereof, which:

a) raises capital from investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and

b) does not require authorisation pursuant to Article 4 of Law 4099/2012 on UCITS or pursuant to Article 5 of Directive 2009/65/EC ("**UCITS**").

On the basis of the aforementioned definition, Crowdfunding platforms could be subject to the provisions of the AIFMD law, if they qualify as collective investment undertakings which raise capital from investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors and are not UCITS. Under the AIFMD Law, the management of an AIF in Greece is currently subject, apart from certain exemptions set out in Article 3 and to the transitional provisions set out in Article 53 of AIFMD Law, to the prior authorization from the CMC or other EU competent authority.

4.4 Requirement of a License under the Payment Services regulation

As a general rule, any transfer of funds made by the operators of Crowdfunding platforms to the companies/projects could constitute money remittance services within the meaning of law 3862/2010 implementing Directive 2007/64/EC on payment services. Such transfer of funds could occur if the investors pay their investment amounts to the operator of the Crowdfunding platform who then passes the funds to the entrepreneur.

The provision of payment services in Greece is a regulated activity that may only be undertaken by specific categories of service providers, which are subject to prudential supervision, such as banks, payment institutions, etc. Companies which provide payment services in Greece are required either to be licensed as payment services providers by the BoG or be duly passported (i.e. operating through a Greek branch or on a cross-border basis).

It is not clear whether the platform operator could rely on the exemption for commercial agents under point b) of article 3 of Law 3862/2010. The applicability of such exemption should be confirmed with the BoG on an ad hoc basis.

As an alternative – in order to avoid such licensing requirements – the operator of a Crowdfunding platform could use an external provider or partner for processing payments rather than acting as an intermediary itself. However, even in this case the structure should be coordinated in cooperation with BoG.

4.5 Possible additional requirements such as anti-money laundering laws, data privacy laws, consumer credit regulation

Other common regulations to which the operator of a Crowdfunding platform may be subject include:

- Law3691/2008 on money laundering prevention, as currently in force;
- Laws 2472/1997 and 3471/2006 on data protection as currently in force;

- Law 2251/1994 on consumer protection and sales performed from a distance as currently in force;

- Law 2121/1993 on intellectual property as currently in force;

- Law 3862/2010 on payment services as currently in force.

5 Regulation of RES Projects in Greece

5.1 Feed in Tariffs

Renewable generation is subsidised in Greece in the form of a prescribed by law feed in tariff (FIT) payable for all power exported to the relevant grid by the renewable generation plant. Types of renewable generation include wind, photovoltaic, geothermal, biogas, hydro power and biomass. The renewable generation is guaranteed priority in dispatch pursuant to the Grid Code. The specific conditions and the procedure applicable for the granting of such priority are set forth in the Grid Operation Code applicable in Greece. Feed in tariffs are paid by the market operator, LAGIE.

Renewable generation enjoys priority in dispatch and all its output is sold to the system. The market operator, LAGIE, pays the renewable generators for the total of their absorbed output at the relevant FIT applicable to the project. Greece currently operates a mandatory pool system under which all generators are paid the System Marginal Price for each hour of operation and all suppliers (buyers) pay the SMP for their purchases during the same hour. Accordingly part of the feed-in-tariff is paid by suppliers through the SMP. LAGIE operates a special fund which is intended to cover the difference between the SMP of each hour and the fixed FIT as well as imbalances in the system. The aim of this special account is to make sure that LAGIE (and ADMIE as the grid operator) recover in full all amounts they pay in the operation of the daily pool and dispatch process.

For the developers of renewable plants to construct, connect and benefit from this feed in tariff scheme, they need to sign a:

- Power purchase agreement with the market operator, LAGIE, as mandatory off taker of the electricity within the ambit of the electricity pool in Greece;

- Connection Agreement with DEDIE, the distribution grid owner and operator or with ADMIE the transmission owner and operator, depending on whether the plant is connected to the distribution or transmission grid.

The law in force has changed many times and the applicability of the tariff which used to depend only on when the PPA was signed, has recently also changed to depend on other factors such as size and time of connection to the system.

A special levy called renewables levy (and renamed Levy for Reduction of CO2 emissions, "ETMEAP") is payable by consumers through a charge in their electricity supply bill, the level of which is regulated by RAE and differs per consumer category.

5.2 Community Benefits from RES

The law introduced in 2010 specific provisions which aim to appease the often hostile opinion of local communities towards renewable energy projects. Under the relevant provisions, the renewable plants are obliged to pay a special levy calculated at 3% of the price at which he sells electricity (before VAT). A portion (1%) of such levy is payable to household consumers in the relevant local area where the RES plant is situated by way of set-off from their electricity bills. The majority of the remaining levy is payable to the municipality where the plant is situated and to a lesser part to neighbouring municipalities.

6 Conclusion

Crowdfunding is still in its infancy in Greece and there is currently no specific applicable regulatory regime. Operating the Equity Model, depending on its actual form, may be subject to certain regulatory requirements, including but not limited to Law 3606/2007 on the provision of investment services as well as to Law 3401/2005 for the public offers of securities. Operating the Donations or Rewards Models is not subject to any regulatory provisions whereas the Lending Model may be subject to the provisions, among others, of Law 4261/2014 regarding lending activities.

7 Summary – Crowdfunding and RES Projects Regulation

Country / Summary	Greece
Recent developments in Crowdfunding regulation	• No recent developments
Current / planned Crowdfunding Regulation	
General regulation	• Financial Services license requirements • Equity Model: Financial Services license might be required according to Law 3606/2007Lending Model: Provision of loans or other credits requires authorisation according to Law 3601/2007 • Rewards or Donation Model: platforms may not be considered to be offering investment or banking services -> no requirements

Prospectus requirement	• Law 3401/2005 regulates prospectus requirement, exemption may be used
AIFMD-regulation	• Crowdfunding platforms could be subject to the provisions of the AIFMD law, if they qualify as collective investment undertakings which raise capital from investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors and are not UCITS
Payment services regulation	• Transfer of funds made by operators of Crowdfunding platforms could constitute money remittance services within meaning of law 3862/2010 -> license is required, not clear whether commercial agent exemption applies
Further possible requirements	• Law 3691/2008 on money laundering prevention; • Laws 2472/1997 and 3471/2006 on data protection; • Law 2251/1994 on consumer protection and sales performed from a distance; • Law 2121/1993 on intellectual property; • Law 3862/2010 on payment services
RES Projects Regulation	
Electricity regulation applicable to RES Projects	• Financing of RES is made via feed in tariff in conjunction with State/EU subsidies. Feed in tariffs are funded through a renewables levy, greenhouse emission auctions and levy on lignite generation
Market Integration of RES Projects	• The Greek government is obliged to prepare a new scheme for funding of RES which will not be based solely on FITs. Such scheme is expected shortly
Transition to tender based allocation of new RES Projects	• N/A

Lessons learned – Crowdfunding / RES Projects Regulation

Lessons learned for a possible harmonized European Crowdfunding Regulation

Role model ("dos")	• exception of Crowdfunding from most regulatory requirements (in particular prospectus requirement) • reduced regulation of the Crowdfunding platform especially regarding instruments or investments, which do not constitute securities
Aspects that should be avoided ("don'ts")	• limitation of EUR 1.000 per retail investor – it should be increased
Lessons learned for a possible harmonized European RES Projects Regulation	
Role model ("dos")	• sustainable funding system to enable project financing of RES projects • reliability of source of extra funding (i.e. currently market operator, LAGIE) to provide certainty for investment • reasonable (not excessive) return on investment
Aspects that should be avoided ("don'ts")	• increased regulation for new RES Projects, e.g. by implementation of a — challenging public tender mechanism potentially leading to reduced market — opportunities for small project developers and citizen participation projects • retroactive implementation of laws (i.e. reduction of feed in tariffs) decreasing investor confidence • implementation of new laws affecting turnover of project (i.e. recent law on additional charges to RES projects to compensate for interruptible supply) • new stricter requirements for RES Projects (bureaucracy, financing etc.) which could reduce the number of participants in the market and consolidate the market to the hands of a few big players

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XIII. Hungary

1 Hungarian Market for RES Crowdfunding Platforms

Taking into consideration the number of platforms and the transactions successfully funded, Crowdfunding platforms in general have not been that popular so far in Hungary, therefore, the start-ups which are interested in this type of financing are using mainly foreign sites.

This is especially true in the case of Crowdfunding concerning renewable energy sources projects ("**RES Projects**"). Therefore, the Hungarian market for Crowdfunding platforms specialised on funding RES Projects ("**RES Crowdfunding Platforms**") has not evolved to a considerable size. At this moment there are no operating RES Crowdfunding Platforms in Hungary.

There are few online Crowdfunding platforms that use the Donations or Rewards Model in Hungary but they may not be considered as RES Crowdfunding Platforms. Those online Crowdfunding platforms which operate in other areas of the market usually collect and dispose with a relatively limited amount of funds. The Equity and the Lending Model still does not yet have any presence in the Hungarian market.

2 Recent regulatory developments regarding Crowdfunding regulation in Hungary

Although, there have been major changes in the Hungarian legal system during the last few years in general, including the entry into force of the New Civil Code on 15 March 2014 and the entry into force of the new Hungarian Banking Act on 1 January 2014, no legislative changes have been implemented in relation to Crowdfunding. There is still no regulatory regime specifically addressing Crowdfunding in Hungary.

3 Further recent regulatory developments considering RES Projects market in Hungary

There have been no recent regulatory developments considering RES Projects market in Hungary which would be relevant from the perspective of RES Crowdfunding Platforms. For a general overview of the regulation of RES Projects please see paragraph 5 below.

4 Regulation of Crowdfunding in Hungary

4.1 Equity Model

If the online Crowdfunding platform facilitates the offering of financial instruments, such activity of the platform operator is likely to qualify as a licensable investment service under the Hungarian Investment Services Act. "Financial instruments" under the Hungarian Investment Services Act include, inter alia, transferable securities, such as stocks in public limited companies and private limited companies and debt

securities. Therefore, if the platform operator offers securities held in companies seeking Crowdfunding or bonds issued by such companies, such platform operators would very likely have to obtain an investment services licence from the Hungarian regulator.

Furthermore, structures in which the offering/placement of securities to the public is involved would likely require the publication of a prospectus approved by the Hungarian regulator in connection with such offering/placement, provided that no exemption is available under the Hungarian Capital Markets Act (for further explanation please see paragraph 4.4 below).

If the online Crowdfunding platform is structured as a collective investment scheme it would be subject to regulatory requirements applicable to collective investment funds and their managers.

Furthermore, depending on the structure used by the Crowdfunding platform, Hungarian payment services requirements and custodial services requirements referred to in paragraph 4.6 below could also apply to platforms applying the Crowdfunding Equity Model in Hungary.

However, we believe that a Crowdfunding platform using an Equity Model could be structured in a way which would possibly exclude the applicability of all or most of the Hungarian investment services regulatory requirements, investment funds regulatory requirements and prospectus publication requirements. Such platform could be structured in theory by using civil law contractual arrangements and/or civil law partnership arrangements pursuant to which the individual investors, platform operators and crowdfunded businesses agree on, inter alia, the terms of the profit and loss sharing methods between the parties involved and the distribution of interest on the investments of the individual investors based on the civil law principle of contractual freedom.

4.2 Lending Model

Lending is a regulated financial service under the Hungarian Banking Act. Therefore, a licence is required for the purposes of providing such regulated lending activities in Hungary. Although, a new Hungarian Banking Act entered into effect as of 1 January 2014, the new regulation has not changed the licensing requirements applicable to lending activities. Therefore, while structuring a Crowdfunding platform applying the Lending Model in Hungary, careful consideration should be given to avoid any licensing requirements that could apply either to the individuals lending to the crowdfunded business or to the operating platform which acts as an intermediary in such lending structure.

Lending is a licensable activity under Hungarian law only if it is a business activity carried out on a regular basis in the framework of an economic operation. The terms ‘business activities carried out on regular basis’ and ‘economic operation’ are not

specifically defined under the Hungarian Banking Act. According to the public guidelines of the Hungarian Financial Supervisory Authority, which merged into the Hungarian National Bank as of 1 October 2013, an activity qualifies as being performed in the framework of business activities carried out on regular basis if the activity is carried out on a regular basis, with the aim of entering into transactions that are not specified at the outset and with the aim of making a profit.

In general, individuals lending money to certain projects or businesses through Crowdfunding platforms do not provide funds on a regular basis with the aim of entering into transactions that are not specified at the outset. Furthermore, in most cases it is not the monetary return which is the most important driving factor for individuals when they provide loans to businesses through Crowdfunding platforms, even if a certain form of interest is payable on their loan.

Therefore, taking into consideration the very nature of Crowdfunding, it could be argued that that individuals lending money to a business through a Crowdfunding platform should not be considered as conducting a business activity on a regular basis as part of an economic operation. Therefore, we believe that the risk that the lending activity of the individuals qualifies as a licensable financial service and would require a financial service licence in Hungary is rather low. However, the Hungarian supervisory authority has historically followed a rather conservative approach as to the qualification of licensable financial services and in several cases qualified financial services as being conducted on a regular basis, even if the relevant transaction was only a one-off transaction. According to the public guidance of the Hungarian Financial Supervisory Authority, if the relevant entity expects future similar transactions to be realised at later dates and the entity takes measures to fulfil such transactions on a regular basis, even a one-off transaction may qualify as an activity carried out on a regular basis. Therefore, it cannot be absolutely excluded that a Hungarian platform using the Lending Model would trigger licensing requirements applicable to the individual lenders and/or the platform operators.

Moreover, given that in the case of the Lending Model the Crowdfunding platform operator collects funds from the investors and may later on repay those funds to the investors (together with interests or without interests), the activity of the Crowdfunding platform operator may be also qualified under the Hungarian Banking Act as a licensable deposit taking activity.

However, the Crowdfunding platforms using the Lending Model could possibly structure their services so as to eliminate or limit the risk of triggering Hungarian licensing requirements. For example, such models could stipulate that individuals do not receive interest on the loans provided to the crowdfunded business (thereby eliminating the profit oriented element), which would in turn limit the risk of triggering licensing requirements). Furthermore, the Crowdfunding platform could limit the number of the lending transactions that could be initiated by the individual. It may

effectively limit the applicability of the regularity element of the activity which would, in turn, also limit the risk of triggering licensing requirements.
In addition, depending on the structure used by the Crowdfunding platform, the Hungarian payment services requirements and custodial services requirements referred to in paragraph 4.6 below could also apply to platforms applying the Crowdfunding Lending Model in Hungary.

4.3 Donations or Rewards Model

The Donations or Rewards Model is used in Hungary for financing creative projects, art and design projects, civil initiatives and similar projects. Although no monetary return is involved in such financing, in most cases, the company or person carrying out the project offers non-monetary rewards in return for the donations (e.g. a product sample, tickets).
In general, Donations or Rewards Models do not raise any specific Hungarian regulatory issue. However, depending on the structure used by the Crowdfunding platform, the Hungarian payment services requirements and custodial services requirements referred to in paragraph 4.6 below could also apply to platforms applying the Crowdfunding Donations or Rewards Model in Hungary.

4.4 Prospectus requirements

Companies issuing securities to the public in Hungary might be subject to Hungarian prospectus requirements. According to the Hungarian Capital Markets Act, in such case a prospectus and a notice must be issued and approved by the competent Hungarian regulator.

However, in the case of Lending Model and Donations or Rewards Model, a Crowdfunding platform operator is normally not subject to such a prospectus requirement as it will not be responsible for the offering/placement of securities.

However, Equity Model Structures in which the platform operator is involved in the offering/placement of securities may require the publication of the prospectus/notice and approval by the Hungarian regulator in connection with such offering/placement, provided that no exemption is available under the Hungarian Capital Markets Act.

Such exemptions might include the following:

a) the offer of securities is addressed to fewer than 150 natural or legal persons in each Member State; and/or

b) an offer of securities where the a total consideration for securities in the European Union is less than EUR 100,000, which limit must be calculated over a period of 12 months.

However, even if an exemption is available, the offer/placement of securities in Hungary might constitute a private placement in Hungary triggering capital market

requirements under the Hungarian Capital Markets Act (e.g. notification must be submitted to the Hungarian regulator, formality requirements may apply to the documents relating to the offer/placement).

4.5 Regulation of Crowdfunding under the AIFMD regime

The European Union Alternative Investment Fund Managers Directive has been implemented under the Hungarian Collective Investment Schemes Act. The Collective Investment Schemes Act is applicable in general to all collective investment schemes, including alternative investment funds. An 'alternative investment fund' is defined under the Collective Investment Schemes Act as a collective investment scheme which does not qualify as 'Undertakings for Collective Investment in Transferable Securities' (UCITS).

The Collective Investment Schemes Act provides licensing and regulatory requirements applicable to the alternative investment funds and its managers (e.g. licences required for the provision of collective portfolio management services; registration and marketing of the relevant alternative investment funds). Therefore, if a Crowdfunding undertaking wants to structure its operation as an alternative investment fund (or manager thereof) it must comply with the requirements under the Collective Investment Schemes Act.

4.6 Licence under the payment services and custodial services regulations

In general, the individuals transfer money to the platform operator and not directly to the crowdfunded businesses. The platform operator first collects the payments from the individuals and distributes such funds only if the aggregated amount of the payments reaches or exceeds a specific threshold limit, or upon the satisfaction of other specified financing criteria. Therefore, in such cases the platform operator acts as an intermediary which collects funds from individuals holds such funds on escrow until the specified financing criteria are fulfilled and then transfers such funds to the crowdfunded businesses.

There is a risk that the collection and holding of such funds by platform operators on escrow may constitute a custodial service requiring a licence under the Hungarian Banking Act, provided that it is carried out as a business activity on a regular basis as part of an economic operation. However, Crowdfunding platforms could possibly avoid licensing requirements if the platforms structure their activities so as to rely on exemptions from the relevant custodial services licensing requirements, or by using an external financial institution or payment services provider for holding the amounts on escrow.

Once the financing criteria are fulfilled, the platform operator transfers the collected funds to the crowdfunded business. There is a risk that such transfer through the platform operator may qualify as a monetary remittance service and be subject to Hungarian payment services regulations if it is carried out as a business activity on a

regular basis as part of an economic operation. If so, the platform operator would require a licence from the Hungarian regulator to carry out payment services in Hungary. However, Crowdfunding platforms could possibly avoid payment services licensing requirements if they can rely on exemptions from the payment services licensing requirements (e.g. the commercial agent exemption) or by using an external financial institution or payment services provider for processing payments.

4.7 Possible additional regulations

A Crowdfunding platform operator may be subject to further Hungarian regulations, in particular:

- laws applicable to on-line marketing and contracts;
- laws applicable to electronic commerce and information society;
- anti-money laundering laws;
- data privacy and data protection laws;
- consumer credit regulations; and
- consumer protection regulations.

5 Regulation of RES Projects in Hungary

As discussed above, RES Crowdfunding Platforms are not relevant in respect of the Hungarian market.

In comparison to traditional ways of energy production, renewable energy production is not yet competitive under the current market conditions, primarily due to the higher investment costs of green technologies. Therefore, some form of support is required for renewable energy production to actually gain ground. Hungary also promotes the use of renewable energy sources and waste as an energy source and established a feed-in tariff system ("**KÁT**") which is a price-based incentive in the field of electricity.

The essence of feed-in tariff system is that the policymaker guarantees priority dispatch for electricity from renewable sources at market price or at a tariff above the market price. The purchase obligation lies with the balance group operators. As regards reception of electricity falling under feed-in tariffs, the task of MAVIR Hungarian Independent Transmission Operator Company Ltd. is to operate and balance the mandatory feed-in tariffs balance group, as well as to define, allocate and settle the amount of electricity to be purchased mandatorily by those mandated in compliance with relevant regulations.

The purchase price of electricity in the feed-in tariff system and the terms and conditions of purchase shall be decreed by the Government. Producers are granted the feed-in tariff for a certain period of time, stipulated in the resolution of the Hungarian Energy and Public Utility Regulatory Authority ("**HEPURA**"). The quantity of electricity shall be determined by the HEPURA also. In Hungary feed-in tariff may be maintained maximum for the payback period of a specific project at a specific purchase price.

In a feed-in tariff system, renewables projects do not have to compete with each other, as each one of them enjoys the benefits of the purchase obligation and the guaranteed price, without any quantity limits.

The amount of subsidy contained in the price of renewable energy is then charged to end consumers via the electricity bill. This way, renewable energy production, or more specifically, the part of the feed-in tariff in excess of the market price is financed by electricity consumers instead of the Government. The method of division seems to be fair, as each consumer bears a burden that is in proportion with their own electricity consumption, thus large consumers assume a larger share of these costs than those using only smaller amounts of electricity.

6 Conclusion

The Crowdfunding market is not well developed in Hungary. This is especially the case for RES Crowdfunding Platforms.

There are only a few Crowdfunding platforms in Hungary and those which exist may not be considered as RES Crowdfunding Platforms. The few Crowdfunding platforms which exist use the Donations or Rewards Model only. The Lending Model and the Equity Model currently have no presence in Hungary.

There is no regulatory regime adapted to Crowdfunding platforms or RES Crowdfunding Platforms in Hungary. However, depending on the structure used by the relevant platform operator, both the Lending Model and the Equity Model might trigger regulatory requirements in Hungary, including, inter alia, financial services requirements, investment services requirements, prospectus requirements and payment services requirements. In our view, the Donations or Rewards model is generally exempted from the Hungarian regulatory requirements. However, depending on the structure used by the platform and service provided by the company, they might trigger payment services and custodial services requirements.

Given the above uncertainties of the Hungarian regulatory requirements with regard to the Crowdfunding activities, unless the relevant Hungarian laws and regulations are amended we recommend to seek guidance from the Hungarian regulator on the interpretation of the relevant laws to clarify such ambiguities before using certain Crowdfunding methods and/or structures.

7 Summary – Crowdfunding and RES Projects Regulation

Country / Summary	Hungary
Recent developments in Crowdfunding regulation	• There have been no recent developments in the Hungarian Crowdfunding regulation
Current Crowdfunding Regulation	
General regulation	• If the Crowdfunding platform facilitates the offering of securities, the operator of the platform may be subject to investment services requirements → licence from the Hungarian supervisory authority required • If the Crowdfunding platform facilitates and/or intermediates the granting of loans to the crowdfunded business, such activity may trigger financial services requirements in relation to the platform operator and individuals granting loans → licence from the Hungarian supervisory authority required • Crowdfunding under both the Equity Model and Lending Model could possibly be structured so as to eliminate/limit the risk of triggering licensing requirements • The Donation or Rewards Model do not raise any specific Hungarian regulatory issues
Prospectus requirement	• Prospectus requirement for the offering of securities and certain other financial instruments (e.g. shares, bonds, certain derivatives) • Threshold: EUR 100,000 aggregated issue value for securities offered in all member states of the European Union within a period of 12 months
AIFMD-regulation	• If a Crowdfunding undertaking wants to structure its operation as an alternative investment fund (or manager

	thereof) it must comply with the requirements under the Collective Investment Schemes Act
Payment services regulation	• Transfer of funds through the platform operator may constitute money remittance service → licence from the Hungarian supervisory authority required • Collection and holding of funds as escrow by the platform operator may constitute financial service → licence from the Hungarian supervisory authority required
Consumer credit regulation	• Depending on the structure used by the platform, consumer credit regulations may be applicable
Further possible requirements	• Laws applicable to on-line marketing and contracts • Laws applicable to e-commerce and information society • Anti-money laundering laws • Data privacy and data protection laws • Consumer credit regulations • Consumer protection regulations
RES Projects Regulation	
Electricity regulation applicable to RES projects	• Hungarian renewable energy sources market is based on feed-in tariff system which is a price-based incentive in the field of electricity • The purchase price of electricity in the feed-in tariff system and the terms and conditions of purchase is decreed by the Government.
Market Integration of RES Projects	• Not relevant in the context of Crowdfunding
Transition to tender based	• N/A

allocation of new RES Projects	
Further regulatory sources	• Not relevant in the context of Crowdfunding

Lessons learned – Crowdfunding / RES Projects Regulation

Lessons learned for a possible harmonized European Crowdfunding Regulation	
Role model ("dos")	• There are no "do" recommendations in respect of the Hungarian legal framework
Aspects that should be avoided ("don'ts")	• Lack of detailed regulations applicable to Crowdfunding methods should be avoided
Lessons learned for a possible harmonized European RES Projects Regulation	
Role model ("dos")	• N/A
Aspects that should be avoided ("don'ts")	• N/A

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XIV. Ireland

1 Irish market for RES Crowdfunding Platforms

As far as we are aware as of the date of this report, there are no Crowdfunding platforms specialising in RES Projects in Ireland.

1.1 Investment models existing in Ireland

Notwithstanding the increase in the development and diversification of renewable energy generation in Ireland in recent years, the development of a Crowdfunding market and the regulation of Crowdfunding for RES projects, in Ireland, is at a very early stage. Reports indicate a very modest uptake of Crowdfunding for small scale RES projects at community level, The Drumlin Wind Energy Co-operative was the first community wind co-operative in Northern Ireland. GBP 3.9 million was raised via Crowdfunding to finance the 1.5MW project in 2012. By way of further example, BNRG Renewables, an Irish-based solar energy group, raised EUR 918,000 via Crowdfunding to refinance two solar farms in Kent, England, that power 82 homes in July 2014. While BNRG previously funded one of its solar developments using Crowdfunding, the project in Kent is its first project in which Irish resident investors (as well as those throughout the European Economic Area) were permitted to invest.

1.2 RES Projects

The period between 2007 and 2015 has seen significant advances in Ireland's renewable energy generation and use and obligations with respect to improving energy efficiency (both of which have been driven by European legislation and regulation and energy policy in Ireland). Specifically, renewable energy sources ("**RES**") (wind, hydro, landfill gas, biomass and biogas) accounted for nearly 23% of Ireland's electricity consumption in 2014, which is just over halfway to our 2020 target of 40%. Onshore wind continues to be the main contributor (18.2% of total generation and 81% of RES electricity).

2 Recent regulatory developments regarding Crowdfunding regulation in Ireland

In 2015 there have been no significant developments in Ireland regarding Crowdfunding.

In October 2014 the Irish Government published a National Policy Statement on Entrepreneurship. With regard to access to finance, the document noted that alternative financing activities like Crowdfunding can be valuable sources of funding to startups. This could be used as a complement to traditional bank funding or also an alternative means of finance if bank credit is declined to an enterprise. One of the action points in this document was to undertake a rolling review of new and innovative sources of funding for entrepreneurs, including Crowdfunding.

For the time being, there is no legislation or regulation in Ireland which specifically deals with Crowdfunding and for this reason the Central Bank of Ireland ("**Central Bank**") issued a consumer notice on Crowdfunding in June 2014. It alerted consumers that various protections do not apply to consumers of Crowdfunding. It noted that the Central Bank's codes of conduct do not apply to Crowdfunding platforms and it warned that complaints in relation to Crowdfunding cannot be made to the Financial Services Ombudsman as they are not regulated firms. The Central Bank also pointed out that consumers are not offered protection under the Irish Deposit Guarantee Scheme or under an Irish investor compensation scheme.

The Central Bank's notice sets out specific risks to consumers when participating in Crowdfunding. These include the risk of failure of the platform with a potential loss of some of all of their money. The Central Bank also pointed out the risk of misleading or insufficient information disclosure, unfair contract terms and misleading commercial practices. There is also the issue of the absence of dispute resolution and dispute mechanisms.

The Central Bank concluded its notice by stating that it intends to actively monitor developments in Crowdfunding and to work closely with the European authorities in this regard.

3 Further recent regulatory developments considering RES Projects market in Ireland

We have set out below some of the key recent developments in energy policy and energy regulation relevant for RES projects and, thus, potential Crowdfunding investments.

3.1 The White Paper

In May 2014, the Department for Communications, Energy and Natural Resources (the "**Department**") published a Green Paper on Energy Policy, commencing a public consultation process on the future of energy policy in Ireland for the medium to long-term. The White Paper on Ireland's Transition to a Low Carbon Energy Future which was published in December 2015 (the "White Paper") sets out the Irish energy policy for the coming years. It reaffirms the Government's commitment to the three energy policy pillars of security of supply, competitiveness and sustainability, and also the important contribution that energy policy makes to facilitating economic growth and job creation. It also highlights: (i) the importance of the citizen in having an input to energy related developments in their areas as well as an input into wider energy policy; (ii) continuing to work towards a largely decarbonised energy system by 2050; and (iii) continuing to provide certainty for investors as well as positioning Ireland to be at the heart of innovation for the high-tech solutions that will enable it to move away from dependence on fossil fuels. The White Paper sets out a clear shift in policy from an energy system that to date has been almost exclusively Government and

utility led, to one where citizens and communities are actively encouraged to participate in energy renewable generation, distribution.

3.2 The Introduction of the Integrated Single Electricity Market (the "I-SEM")

The Single Electricity Market (the "**SEM**"), which has been live since 1 November 2007, is a gross mandatory pool market through which most of the electricity generated on the island of Ireland (above a defined de minimus threshold) must be traded. While the SEM has generally been regarded as a success, its design is not consistent with the "European Target Model" that is being developed by the Agency for the Cooperation of Energy Regulators – the European energy regulator – on foot of the 2009 Third Energy Package of European legislative measures. The European Target Model imposes requirements on wholesale electricity markets across Europe, with a view to establishing common mechanisms for the trading of electricity across national borders, and the "coupling" of electricity prices in neighbouring regions. Since September 2014 the I-SEM project has entered into its final phase, namely the detailed design and implementation phase for "go-live" of the market which is now anticipated as being in Q4 of 2017.

The high level design of the I-SEM (the "I-SEM Design") sets out three exclusive routes for physical contract nomination and physical scheduling of generation (energy trading arrangements) namely: (i) the Day-ahead Market ("**DAM**"); (ii) the Intra-day Market ("**IDM**") and (iii) the Balancing Market ("**BM**"). Participation in the DAM will not be mandatory however all market participants will be mandated to participate in the BM, after the DAM stage.

The I-SEM Design seeks to ensure that all market participants in the I-SEM will be balance responsible which means that they are financially responsible for differences in volumes between their actual metered generation or load and the volumes traded in the DAM and IDM. The I-SEM Design incorporates an imbalance settlement mechanism pursuant to which settlement for imbalances will be done on a unit by unit basis for generation and the imbalance price will be determined for each imbalance settlement period and will reflect the marginal costs of energy balancing actions taken by the transmission system operators.

3.3 REFIT

The application deadline for REFIT 2 and REFIT 3 schemes closed as of 31 December 2015. The Department have advised that it is currently developing a new support scheme for RES to be available from 2016. The White Paper provides that the objective of the new support scheme will be to incentivise the introduction of sufficient renewable generation to deliver the broader policy objectives of security of supply, climate change and economic development in a cost effective manner.

3.4 Commercial Rates Revaluation

The Valuation Act 2001, as amended by the Valuation (Amendment) Act 2015 governs the law relating to the valuation of commercial and industrial properties for the purposes of calculating rates. In December 2014, the valuations office, the State body responsible for valuing commercial and industrial property for ratepayers and rating authorities, as part of a revaluation programme to update the valuation of all commercial properties in the State completed the valuation of all commercial properties in County Limerick. It has been reported that the revaluation has led to a substantial increase in commercial rates for windfarms from an average of EUR 6,333 per MW of installed capacity to between EUR 19,762 and EUR 20,485 per MW of installed capacity, representing an approximate increase of 218%. The valuations were reduced by 10% following the first stage valuation appeals process. The applicants have further appealed the valuations to the Valuations Tribunal which is scheduled for hearing in February. RES investors have raised serious concerns about the steep increase in commercial rates and the effect that it will have on both existing projects and future investment if such increases are implemented in Ireland by other local authorities.

3.5 Wind Farm Guidelines

In June 2006, the then Department of Environment, Heritage and Local Government Published Wind Energy Development Guidelines for Planning Authorities under Section 28 of the Planning and Development Act, 2000. Details of the revisions proposed were published on 11 December 2013 but the proposals have yet to be approved. The revised proposals include: (i) an increased mandatory setback distance of 500 meters between a wind turbine and the nearest dwelling; (ii) more stringent absolute outside noise limit of 40dB for all new wind farms, day and night; and (iii) restrictions in terms of shadow flicker. While details of the revisions proposed were published on 11 December 2013, the proposals (as at the date of this report) have yet to be approved.

4 Regulation of Crowdfunding in Ireland

In Ireland, the following types of Crowdfunding are possible:

4.1 The Equity Model (individuals make investments in return for a share in the profits or revenue generated by the company/project)

Crowdfunding platforms in Ireland do not currently focus on the Equity Model though some do offer it as an option available to companies / projects seeking funding. Lending to corporates in Ireland is not a regulated activity whereas the regulatory regime for the equity model is not as straightforward. Offers need to fall within the exceptions in the Prospectus Directive as discussed below.

4.2 The Lending Model (individuals lend money to a company or project in return for repayment of the loan and interest on their investment)

The Lending Model of Crowdfunding is the principal form of Crowdfunding currently being offered in Ireland. Lending to corporates is not a regulated activity in Ireland. The regulatory regime for lending focuses on lending to consumers. Under the Crowdfunding Lending Model a platform could fall within the meaning of "credit intermediary" set out in the Consumer Credit Act 1995 if it is deemed to be engaged in the business of arranging the provision of credit to a consumer. The Consumer Credit Act 1995 defines "consumer" as a natural person acting outside their business. It is feasible that a Crowdfunding platform could be engaged in the business of arranging credit for a project through a natural person rather than an incorporated body where that natural person's involvement is outside his / her business. It should be noted that it is not particularly difficult to obtain authorisation as a credit intermediary under the Consumer Credit Act 1995. The process is more of a notification rather than an application for authorisation of a financial institution which is more onerous.

4.3 The Donations or Rewards Model (individuals provide money to a company or project for benevolent reasons or for a non-monetary reward)

Rewards Crowdfunding is not currently regulated in Ireland, as it does not involve investment or lending. Crowdfunding has been discussed in parliament as an important future source of funding for charitable causes and community initiatives. However, there is no proposed legislation or regulation currently being considered.

It is worth noting that the credit union movement is particularly strong in Ireland. Credit unions are established for the purpose of providing low-cost credit to individuals who have a so-called "common bond" meaning a community connection usually based on a geographic area or workplace. A recently published Report of the Commission on Credit Unions suggested that credit unions be permitted to lend to small and medium sized enterprises and charitable / community initiatives within their common bond. If these initiatives are adopted credit unions could prove to be a more structured alternative to Crowdfunding with respect to certain activities.

4.4 Approval and licensing by the Central Bank

Irish law does not recognise or regulate Crowdfunding as a distinct means of raising finance.

A "banking business" requires an authorisation from the Central Bank. The legislative definition of banking business is very broad but the Central Bank focusses on deposit taking as the essential banking business which triggers the requirement for authorisation. If an entity is not taking deposits, while it may be caught by other licensing requirements it will not be required to hold a bank licence.

It should be noted that section 7 of the Central Bank 1971 contains a broad prohibition on holding oneself out to be a banker. Section 7(2) provides that a person shall be

deemed to hold himself out as a banker if, being a body corporate carrying on any business, the name of the body includes any of the words "bank", "banker" or "banking" or any word which is a variant, derivative or translation of or is analogous to any of those words. Therefore, a Crowdfunding platform is limited in the scope of the names it can use and must avoid any name that may infer that it conducts banking business.

There are no financial services rules in Ireland designed specifically for Crowdfunding. However, when a company pitches to investors on a crowd-funding platform, such a pitch is typically considered an "offer to the public". Equity Crowdfunding may be impacted by prospectus rules (as far as the issuer is concerned) and by financial promotion rules (as far as the issuer and platform are concerned).

4.5 Investment Services

It is illegal for a firm to "act as in investment firm, claim to be an investment firm or represent that the person is an investment firm in Ireland…" without the relevant authorisation/passport/exemption. An investment firm is a firm that provides investment services to third parties on a professional basis. Investment services under the Irish Regulations which implements the Markets in Financial Instruments Directive (the "**MiFID Regulations**") are the same as those set out in Annex 1 of MiFID. The Investment Intermediaries Act 1995 ("**IIA**") also regulates investment services and can apply to some activities not otherwise covered by MiFID. Investment advice is the most relevant IIA service in the case of Crowdfunding. Investment advice is regulated as an investment service under the IIA and MiFID, however, under the IIA advising a person on where they should get investment advice will itself constitute investment advice.

The reception and transmission of orders for financial instruments and the execution of orders on behalf of clients constitute "investment services" under the MiFID Regulations. The reception and transmission of orders for such instruments are core activities for Equity Crowdfunding. Such services can only be provided by authorised investment firms. The process of authorisation is expensive and lengthy, and the level of regulation and consumer protection is significant.

4.6 Prospectus Directive

The offering of securities to the public in Ireland is subject to the Prospectus Directive including the broad exemptions contained in that Directive. Note that the Prospectus Directive was a maximum harmonisation Directive and the Irish implementing regulations (SI No 324 of 2005) therefore one can assume that the Irish implementing regulations reflect the provisions of the Prospectus Directive itself.

Equity Crowdfunding may be impacted by prospectus rules (as far as the issuer is concerned) and by financial promotion rules (as far as the issuer and platform are concerned). An offer of securities to the public cannot be made without a prospectus,

unless one of the exemptions is applicable. The preparation and approval process for a prospectus is incompatible with the nature and objectives of Crowdfunding. Failure to issue a prospectus when one is required is a criminal offence. Offers are exempt where the total consideration of securities offered within Ireland is less than EUR 100,000 over a 12 month period.

4.7 Regulation of Crowdfunding under the AIFMD regime

The Alternative Investment Fund Managers Directive ("AIFMD") was implemented in Ireland on 16 July 2013 and applies in effect from 22 July 2013. During implementation in Ireland no additional requirement (i.e. gold-plating) was added to the requirements set out in the AIFMD itself.

An AIFM is a legal person whose regular business is managing one or more alternative investment funds or "AIF". An AIF is defined in Article 4(1)(a) as follows:

"AIF" means collective investment undertakings, including investment compartments thereof, which;

a) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and

b) do not require authorisation pursuant to Article 5 of Directive 2009/65/EC [the UCITS Directive]"

Given the above definitions, the provision of services relating to Crowdfunding is capable of constituting management of an AIF. However, there is an exemption in the AIFMD for managers with total assets under management of less than EUR 100 million.

4.8 Licence under the Payment Services Regulations

The business of money transmission is regulated by two statues in Ireland, the first is the European Communities (Payment Services) Regulations 2009, Statutory Instrument No. 383 of 2009 ("**PSD Regulations**") which implement the European Union's Payment Services Directive, Directive 2007/64/EC ("PSD"). The PSD was a so called "maximum harmonisation" Directive, that the Member States were required to implement in total and were not permitted to either add additional requirements (so called gold platting) or provide for measures that are less than those set out in the PSD. We can confirm that Ireland's implementation of the PSD through the PSD Regulations was consistent with this maximum harmonisation requirement and as such the PSD Regulations reflect very closely the requirements of the PSD itself.

Separately Part IV of the Central Bank Act, 1997 regulates a money transmission business which is defined as "… a business that comprises or includes providing a money transmission service to members of the public." "Money Transmission Service" is defined as meaning a service that involves transmitting money by any means, other

than such a service provided by a regulated entity or on an ancillary basis to other business conducted by an entity.

Therefore money transmission services which are not otherwise covered by the Payment Services Directive might be regulated by the Central Bank Act 1997 if they come with the definition of a "money transmission business".

However, it is possible for Crowdfunding platforms to avoid the provision of payment services or money transmission in the course of their services, and so avoid the necessity for registration or authorisation under the PSD Regulations or the Central Bank Act 1997. The current Crowdfunding platforms operating in Ireland use the services of regulated payment service providers as the means through which a potential investor can transmit fund to a company / project. In this way the Crowdfunding platforms do not transmit the funds themselves and are not required to be regulated to provide payment services.

5 Regulation of RES Projects in Ireland

5.1 Overview

Under Directive 2009/28/EC (the "**Directive**") Ireland has a binding national overall target for energy consumption made up of RES of 16% in 2020. In order to achieve this target, the Irish Government set out specific quantitative targets for three key sectors: 40% of electricity supply, 12% of heating, and 10% of transport. Ireland also has a target of a 20% improvement in energy efficiency by 2020.

In addition, as required under the Directive Ireland has adopted a national renewable energy action plan which sets out the Irish Government's strategic approach to delivery of our renewable energy target and the concrete measures undertaken to facilitate this delivery, including Government support schemes such as the Renewable Energy Feed in Tariff ("**REFIT**").

Although the Minister for Communications, Energy and Natural Resources (the "**Minister**") has the primary responsibility for the creation of renewable energy policy, the regulation of the energy sector is delegated to the Commission for Energy Regulation (the "**CER**"), as energy regulator. The CER has specific duties and functions in relation to renewable energy under the Electricity Regulation Act 1999, as amended (the "**1999 Act**"). Specifically, in carrying out its duties the CER must have regard to the need to promote the use of renewable, sustainable or alternative forms of energy and has duties to take account of the protection of the environment and to encourage research and development into methods of generating electricity using renewable, sustainable or alternative forms of energy and CHP. The CER also has a duty to require that the system operator gives priority dispatch to generating stations using renewable, sustainable or alternative energy sources.

By way of example, under 2011 Statutory Instrument No. 147 of 2011 was enacted to transpose aspects of the Directive. Here, the CER has duties in relation to access to and operation of the electricity grid, that to ensure that appropriate operational measures are taken by the Transmission Systems Operator or the Distribution Systems Operator to minimise the curtailment of electricity from renewable sources and also has a duty to establish a supervisory framework for the administration of renewable energy guarantees of origin in Ireland.

5.2 Support Scheme

The REFIT schemes are currently the primary means through which electricity from renewable sources and the development of RES is supported in Ireland operates by guaranteeing new renewable generation (and biomass co-firing in existing peat plants) a minimum price for electricity exported to the grid over a 15 year period. This minimum price is paid for through a Public Service Obligation ("**PSO**") payment (known as the "**PSO Levy**") made by every electricity customer in Ireland in their electricity bills (which necessitated State aid approval).

The Irish government has established three REFIT feed-in tariff support schemes, which between them are intended to support approximately 4,700MW of renewable electricity generation. The first REFIT scheme REFIT 1 was announced in 2006 and the closing date for applications under REFIT 1 has now passed since 31 December 2009. The scheme covered small and large scale onshore wind, biomass landfill gas, other biomass and small hydro less than 5MW. REFIT 2 is designed to cover small and large scale onshore wind, small hydro and landfill gas. REFIT 3 is designed to cover biomass technologies. Both REFIT 2 and REFIT 3 opened in March 2012 for projects built and operational between 1 January 2010 and 31 December 2017. This is to ensure that only new RES projects benefit from the scheme. In order to qualify for REFIT support the generator is required to enter into a power purchase agreement (the "PPA") with an offtaker for the sale and purchase of electricity.

Statutory Instrument No. 217 of 2002 made pursuant to the 1999 Act requires that the CER calculates and certifies the costs associated with the PSO, including each of the relevant PSO schemes, and sets the associated PSO Levy for the required period. The PSO levy year runs from 1 October to 30 September. Suppliers are required to inform the CER of any generators with whom it has entered into a PPA, on behalf of whom they will be eligible to receive REFIT payments in the upcoming PSO period. The CER then calculates the amount of the PSO related to REFIT on the basis of the information provided to it by suppliers and other relevant information as outlined in CER's PSO decision papers. On an annual basis, to coincide with the PSO levy year commencing 1 October, the Minister publishes a statutory instrument that contains a list of REFIT projects eligible for REFIT payments in the upcoming year.

6 Conclusion

There is no legislation or regulations in Ireland which specifically deals with Crowdfunding. The financial regulation legislation in place is designed to regulate other business models. Therefore, Crowdfunding platforms need to ensure that they do not inadvertently provide a service which is regulated as part of legislation regulating, inter alia, investment services, banking business and / or payment services.

In Ireland, the lending activities of Crowdfunding platforms can be provided to corporates without any requirement for regulation provided the platform does not also provide investment services or payment services. A Crowdfunding platform may require authorisation as a credit intermediary if it is engaged in the business of arranging credit for consumers, being persons acting outside their business. Crowdfunding platforms cannot use the term "bank" or represent themselves as carrying on the business of banking. Equity Crowdfunding may come within the scope of the Prospective Directive and the AIFMD Regulations unless the exemptions set out above can be availed of.

The development of a Crowdfunding market and the regulation of Crowdfunding for RES projects, in Ireland, are at a very early stage. However, given that the market is developing at a faster pace elsewhere in the European Union, and elsewhere, it would be timely for the EU Commission to propose legislation specific to this sector.

7 Summary – Crowdfunding and RES Projects Regulation

Country / Summary	Ireland
Recent developments in Crowdfunding regulation	• No recent developments regarding Crowdfunding regulation took place in Ireland during the last 12 months.
Current / planned Crowdfunding Regulation	
General regulation	• Lending to corporates is not a regulated activity. • Arranging credit for person acting outside his business may require authorisation as credit intermediary. • Crowdfunding platforms cannot use term "bank" or any variant of that term in their names or advertising. • Crowdfunding platforms must be careful not to provide MiFID investment services such as receipt and transmission of orders and / or investment advice. Non-MiFID investment services which are regulated under the

	IIA should also be avoided. Of these, provision of investment advice which includes advice on where to get advice would be relevant for Crowdfunding platforms.
Prospectus requirement	• Prospectus requirement may apply depending on structure and amounts raised by issuers however exemptions are available.
AIFMD-regulation	• AIFMD regulations may be applicable however Directive provides for exemption.
Payment service regulation	• Payment services regulations and Central Bank Act 1997 (regulation of money transmission) may be applicable, depending on money transmission route chosen.
Consumer credit regulation	• Arranging credit for person acting outside his business will require authorisation as credit intermediary.
RES Projects Regulation	
Regulation applicable to RES Projects	• Directive 2009/28/EC provides for a binding national overall target for energy consumption made up of RES of 16 % in 2020. • The system operator gives priority dispatch to generating stations using renewable, sustainable or alternative energy sources • REFIT is currently the primary means through which RES are supported in Ireland. • The minimum price payable pursuant to the PPA is paid for through a PSO payment.
Recent Developments in RES Regulatory Framework	• The recently published White Paper sets out the Irish energy policy for the coming years. • The I-SEM project has entered into its final phase "go-live" of the market is now anticipated as being in Q4 of 2017. • The application deadline for REFIT 2 and REFIT 3 schemes closed as of 31 December 2015. • Commercial rates increased by approximately 218% for

	windfarms in Limerick following a revaluation process. • The Wind Farm Development Guidelines focused around noise from turbines, proximity to dwellings and shadow flicker are currently under review by the Department.

Lessons learned – Crowdfunding / RES Projects Regulation

Lessons learned for a possible harmonized European Crowdfunding Regulation	
Role model ("dos")	• The harmonisation would bring the protections applicable to investors in or consumers of other financial products into the Crowdfunding space. • "Fintech" is becoming an increasingly important area of focus for business and regulatory attention which provides an opportunity to encourage a standardised approach across the common market • Consideration for internal Member State company law positions
Aspects that should be avoided ("don'ts")	• Over-regulation leading to a lack of innovation and ability to adapt which sets Crowdfunding apart from traditional products. • Ensuring that Crowdfunding regulation does not have the unintended effect of bringing it into scope of existing member state regulatory regimes
Lessons learned for a possible harmonized European RES Regulation	
Role model ("dos")	• Increased integration of the wholesale market • Pan- European approach to grid planning
Aspects that should be avoided ("don'ts")	• Delay in the introduction of the European Target Market.

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XV. Italy

1 Italian market for RES Crowdfunding Platforms

1.1 Overview

As general premises it has to be noted that under Italian law there is no specific regulation applicable to RES Crowdfunding platforms.

During the years 2014 and 2015, also as a result of the entering into force of the equity Crowdfunding law and regulation, there has been a dramatic increase of the number of platforms (currently there 20 equity Crowdfunding platforms and 4 lending platforms, while platforms dealing with reward and donation Crowdfunding are above 40 in total).

Real estate projects to be enhanced by mean of Crowdfunding platforms are of great interests and there are several market stakeholders looking into this kind of opportunity even if, so far, projects to raise funds online are still lacking.

It is likely that some of the existing equity Crowdfunding platforms, which need now to start differentiating their business model could decide to enter into this market and try to became the RES projects sector leaders.

2 Recent regulatory developments regarding Crowdfunding regulation in Italy

2.1 Law 33/2015

Since in Italy there is no specific regulation dealing with RES Projects and Crowdfunding we will briefly report about the major recent update to the Crowdfunding regulation.

Law n. 33/2015 has amended the provisions dealing with equity Crowdfunding transactions by allowing also Innovative SMEs and investment funds to raise funds by means of online Crowdfunding platforms.

Innovative SMEs are those referred to by the advice 2003/361/CE and to be allowed to raise online funding shall ask for an independent firm revision of the last available balance sheet; in additions these SMEs cannot have their shares be listed on a regulated market while can have the shares traded on MTF.

To be included in the Innovative SMEs register the companies shall have to meet at least two of the following three requirements:

a) expenses relating to R&D equal or above the 3% of the higher between turnover and cost of the production

b) a part of the employees shall have to be graduated with a three year research experience or with a university research experience

c) own IP rights referring to industrial patent, biotech, new plant-related kind or original software code.

Also UE based start-ups and SMEs can be enrolled in the innovative register held by the Companies Register if meeting the above listed requirements and upon condition that the company has a branch or a production facility in Italy.

The law has amended also the Italian Consolidated Financial Act (Law 58/1998) allowing collective investment undertakings (investment funds) and investment companies (holdings) which invest primarily in innovative start/ups and in innovative SMEs to raise online funding by means of equity Crowdfunding platforms.

The last important provisions enforced by this new law is the possibility that shareholders of start-ups and SMEs incorporated as limited liability companies may sell the units representing the share capital by means of the financial intermediaries or online platform so authorised and without the need to follow the provisions of article 2470 of Italian Civil Code and avoiding the payment of the relevant taxes and expenses.

2.2 CONSOB regulation

On December the 3rd 2015 Consob (the Italian Authority dealing with financial markets) has issued the draft of the amendments to the Regulation 18592/2013 applicable to equity Crowdfunding online platforms.
The main proposed amendments are the followings:

a) any platforms authorised by Consob which will not be starting its operation within 6 months from the granting of the license will lose the license and be prevented to perform the activity;

b) the professional investors definitions has been enlarged so that also business angels and ventur capitalists are included, upon prior assessment of this status by the platform

c) online platform will be allowed to perform MIFID assessments, if duly organised to do such activity;

The public consultation period will end mid-February and therefore the above are only envisaged amendments.

2.3 Bank of Italy regulation

As far as the lending Crowdfunding activity is concerned in Italy there is no specific regulation.

For those online platform willing to open and manage payment accounts, Bank of Italy has set the need to apply for the Payment Service Provider or Electronic Money issuer license or ask to passport the similar license granted by another European supervisory authority in the home member state.

Nevertheless, on November 2015 Bank of Italy has expressed its intention to adopt a regulation dealing with the lending Crowdfunding business and asked the stakeholders for comments or suggestions before to issue the relevant draft.

3 Further recent regulatory developments considering RES Projects market in Italy

In Italy, no new legislation has recently been passed or amended with regard to the RES Projects market. For a general overview of the regulation of RES Projects please see paragraph 5 below.

4 Regulation of Crowdfunding in Italy

4.1 Equity Model

4.1.1 Innovative start-ups / innovative SMEs

Under the Italian laws the possibility for companies to raise equity funds through a Crowdfunding campaign is limited only to:

a) innovative start/ups;

b) innovative SMEs;

c) collective investment undertakings (investment funds) and investment companies (holdings) which invest primarily in innovative start/ups and in innovative SMEs.

In particular:

a) innovative start-ups are companies (in general joint stock companies – "*Società per azioni*" and limited liability companies – "*Società a responsabilità limitata*") which: *(i)* are not listed on a regulated market; *(ii)* have started their activity by no more than 60 months; *(iii)* have their registered office in Italy or a branch or a production facility in Italy; *(iv)* have total turnover of maximum EUR 5,000,000; *(v)* have as exclusive company object the manufacturing and marketing of innovative products or services which are highly innovative.

Moreover to be considered as an innovative start-up a company have also comply at least with one of the following three requirements: *(i)* expenses relating to R&D equal or above the 15% of the higher between turnover and cost of the production; *(ii)* part of the employees shall

have to be graduated with a three year research experience or with a university research experience; *(iii)* ownership of IP rights referring to industrial patent, biotech, new plant-related kind or original software code;

b) innovative SME's are instead companies (in general joint stock companies – "*Società per azioni*" and limited liability companies – "*Società a responsabilità limitata*") which. *(i)* are not listed on a regulated market, but which can have the shares traded on MTF; *(ii)* have their registered office in Italy or a branch or a production facility in Italy; *(iii)* have independent firm revision of the last available balance sheet.

In addition to be considered as an innovative SME a company must also comply with at least two of the following three requirements: *(i)* expenses relating to R&D equal or above the 3% of the higher between turnover and cost of the production; *(ii)* part of the employees shall have to be graduated with a three year research experience or with a university research experience; *(iii)* ownership of IP rights referring to industrial patent, biotech, new plant-related kind or original software code.

The law, in order to promote the investments in innovative start-ups and SMEs, also provides for specific derogations to some of the provisions of the Italian Civil Code, such as the possibility to cover the losses which affect the corporate capital within two years (instead of one year) and the possibility for limited liability companies to issue specific class of quotas provided with different rights and, only for innovative start-ups, exemption from the application of the bankruptcy laws.

4.1.2 Crowdfunding platforms

According to the Italian Consolidated Law on Banking (Legislative Decree 24 February 1998 n. 58 - *Testo unico delle disposizioni in materia di intermediazione finanziaria* – the TUF) the Crowdfunding activity has to be performed only by authorized entities (such as banks and investment companies) and by platform managers expressly authorized by Consob and enrolled in a special register held by Consob itself.
Article 50-*quinquies* of the TUB, in particular, states that:

1. "*the platform manager is the subject who professionally manages platforms for the raising of capital for innovative start-ups, for innovative SMEs, for collective investment bodies and for companies which invest primarily in innovative start-ups and in innovative SMEs registered*" in the special register held by Consob (Paragraph 1);

2. "*the activity of platforms for the collection of capital for innovative start-ups, for innovative SMEs, for collective investment bodies and for companies which invest primarily in innovative start-ups and in*

innovative SMEs is reserved to the investment companies and banks authorised to provide the relative investment services and to the subjects registered on a special register held by Consob, providing that these latter transmit the orders regarding the underwriting and trading of financial instruments representing capital exclusively to banks and investment companies" (Paragraph 2).

In order to be registered on the special register held by Consob the platform managers must fulfil the following requirements:

a) be a joint stock company, a limited liability company or a cooperative;

b) have the registered and administrative office or, for companies based in any EU Member State, have a branch in Italy;

c) have a company's purpose the management of on-line platform for raising capital for innovative start-ups innovative SMES, for collective investment bodies and for companies which invest primarily in innovative start-ups and in innovative SMEs;

d) have the controlling shareholders and the directors and auditors fulfilling the integrity and professional requirements established by Consob.

Such platforms may not in any case hold sums or financial instruments pertaining to third parties. In this respect, Article 100-*ter*, Paragraph 2-*bis*, of the TUF expressly provides that for the subscription or purchase and subsequent sale of quotas representing the innovative start-up and innovative SME capital, constituted in the form of a limited liability company:

a) the subscription or purchase may be carried out through a bank of financial intermediary, which have to carry out the subscription or purchase of the stocks in their own name or on behalf of the subscribers that subscribe to the bid via the platform;

b) within 30 days from the close of the bid, authorized intermediaries shall notify the Companies Register of their ownership of stocks on behalf of third parties, incurring the relevant cost thereof; in this regard, the subscription conditions published on the platform must expressly provide that: should the subscription to the bid be successful and should the investor decide to make use of the alternative regime referred to the section above, this shall imply the concurrent and mandatory grant of a mandate to the appointed intermediaries so that they may;

1. register the stocks/units in their own name or on behalf of the subscribers, providing adequate proof of the latter's identity and the shares owned;

2. issue a confirmation certificate on behalf of the subscriber, proving ownership of the stocks; said confirmation certificate is needed only to legitimise the corporate rights, refers to the subscriber by name, is not transferable to third parties even on a temporary basis, for any reason, and does not constitute a valid instrument to transfer ownership of the stocks;

3. allow the subscribers that make application to sell the stocks pursuant to letter c) below;

4. grant subscribers the right to apply, at any time, for the relevant stocks to be registered directly in their name;

c) the subsequent sale of stocks/units pursuant to point b), number 3 is carried out by simply annotating the transfer in the registers held by the intermediary; the subscription and transfer do not result in costs or fees for the buyer or seller; the subsequent certification issued by the intermediary for the purposes of exercising corporate rights replaces and covers the formalities referred to under article 2470, section two of the Italian Civil Code.

4.2 Lending Model

As reported above the lending Crowdfunding activity is not specifically regulated in Italy.

The only requirement is for those online platform willing to open and manage payment accounts, which must apply for the Payment Service Provider or Electronic Money Issuer license or ask to passport the license granted by another European supervisory authority.

The terms to be granted with said licensed are set forth by the Italian Consolidated Law on Banking (Legislative Decree 385/1993 - *Testo unico delle leggi in materia bancaria e creditizia*) and the relevant Regulation issued by the Bank of Italy on 20 June 2012 – *Disposizioni di vigilanza per gli istituti di pagamento e gli istituti di moneta elettronica*.

Please note that under the Italian Consolidated Banking Act, the Bank of Italy has the power to reject the license request not only for the lacking of formal requirements but also if it, as a result of an assessment of the business, may deem that the company applying for the license has not enough technical and/or financial capabilities.

Peer to Business platforms may be required to enrol in the register of the credit mediators (in Italian "*Mediatori Creditizi*") if lenders admitted to lend through the platform are banks or financial intermediaries authorised to lend money to enterprises or individuals.

Moreover, the platforms shall have to comply also with the Regulations issued by the Bank of Italy on transparency of the contractual relationship between financial intermediaries and clients – Regulation dated 29 July 2009 as amended on 15 July 2015 – *Trasparenza delle operazioni e dei servizi finanziari, correttezza delle relazioni tra intermediari e clienti* (some exceptions are applicable in case the relationship is with a professional client).

4.3 Rewards and Donations Model

Donations and rewards model are not regulated in Italy.

4.4 Prospectus requirements

According to the TUF public offers of shares or of stocks of innovative start-ups and innovative SMEs made through an authorized online platform which does not exceed the overall amount of EUR 5,000,000 are not subject to the duty to publish a prospectus.

Article 100-*ter* of the TUB in particular states that "*public offers conducted exclusively via one or more online platforms dedicated to the raising of capital may have the sole purpose of the underwriting of financial instruments issued by the innovative start-ups, by the innovative SMEs, by the collective investment bodies or other companies which invest primarily in innovative start-ups and in innovative SMEs must have the total amount lower than the one determined by Consob*" (EUR 5,000,000).

Moreover, Article 100-*ter* of the TUB and Consob Regulation 18592/2013 provides also that:

1. public offers conducted via an online platform must also be underwritten for a percentage of at least 5% by professional investors;

2. if the majority shareholders of the innovative start-up or innovative SME transfer their own equity to third parties the underwriters shall have the right to withdraw from the company or co-sell their shares or quotas.

Moreover, according to Consob Regulation 18592/2013 the Crowdfunding platforms have only to provide to the public a short investment memorandum reporting information on the offering company (name, registered office, structure, name and role of the directors and auditors, description of the shareholdings), on the characteristics of the offer (type of shares or stocks offered, timing, relevant rights, etc.) as well as on the risks related to the offer.

4.5 AIFMD

Italian AIFMD discipline does not apply to Crowdfunding due to the fact that Crowdfunding platforms do not raise capital from investors for their own business and on a specific investment policy.

AIMFD is applicable to collective investment undertakings (investment funds) and investment companies (holdings) which invest primarily in innovative start/ups and in innovative SMEs raising capitals through equity Crowdfunding platforms, since in Italy AIMFD has been enforced without exemption with reference to the amount of investments collected by an investment funds or a holding company.

Therefore also small investment funds or holding company shall have to comply with AIFMD.

4.6 Possible additional regulations

Another regulation that is applicable to Crowdfunding are those referring to Anti Money Laundering (Legislative Decree 321/2007), Data Privacy (Legislative Decree 196/2003), and for consumer credit also the relevant provisions of the Consumer Code (Legislative Decree 206/2005).

5 Regulation of RES Projects in Italy

5.1 Overview

Renewable energy regulation in Italy strives for a sustainable and ecological development and increase of renewable energy generation and is mainly driven by the concept of preferential grid access of new renewable energy power plants, the so called dispatching priority principle.

The definition of renewable energy is set forth by Section 2 of the Legislative Decree no. 387/2003, implementing the EC Directive 2001/77/EC and listing the renewable energy sources such as "*wind, solar, geothermal, wave, tidal, hydro, etc…*".

Hence, grid operators are obliged to take over, transmit and distribute renewable electricity with priority over conventional electricity generation, currently also in case of grid congestion.

In accordance with the European targets and parameters, 40-45 per cent of power generation will be based on renewables by 2025. By 2035 this amount shall increase to 55-60 per cent and by 2050 at least to 80 per cent.

In addition, Legislative Decree no. 28/2011 provides the framework for incentives (i) to replace obsolete systems and fixtures with new more energy-efficient systems and fixtures (including thermal insulation of walls, replacement of transparent vertical structures, installation of shielding and shading, replacement of central heating with condensing boilers ('energy-efficient measures') and (ii) to promote the installation of systems for the production of thermal energy from renewable sources (solar thermal, biomass boilers, geothermal heat pumps, water heaters and heat pumps: the so called thermal RES).

Such provisions of the Legislative Decree no. 28/2011 were implemented though the Ministry of Economic Development Decree of 28 December 2012, which provides for an aggregate Euro 0.9 billion annual public funding to investment of both the private (Euro 0.7 billion) and public (Euro 0.2 billion) sectors in energy-efficient measures and thermal RES.

The most important sources containing renewable energy and distributed generation and regulation are the provisions: Legislative Decree no. 378/2003, Legislative Decree no. 115/2008, Legislative Decree no. 28/2011, Ministry of Economic Development Decree of 6 July 2012, Ministry of Economic Development Decree of 28 December 2012, AEEGSI Resolution no. 578/2013.

5.2 Green certificates

The Green certificate system was introduced by Legislative Decree no. 79/1999.

Green certificates are tradable instruments that GSE grants to qualified renewable-energy power plants which have been commissioned before 31 December 2012 according to Legislative Decree no. 28/2011 and as of today the scheme is not applicable to new installations.

The number of certificates issued is proportional to the electricity generated by the plant/system and varies depending on the type of renewable source used and of project (new, reactivated, upgraded, renovated system/plant).

The green certificate scheme is based on the legislation which requires producers and importers of non-renewable electricity to inject a minimum quota of renewable electricity into the power system every year.

Green certificates represent proof of compliance with the renewable quota obligation: each green certificate is conventionally worth 1 MWh of renewable electricity. Green certificates are valid for three years: those issued in respect of electricity generation in a given year (reference year) may be used towards compliance with the obligation also in the following two years.

To fulfil their obligation, producers and importers may inject renewable electricity into the grid or purchase an equivalent number of green certificates from green electricity producers.

Producers may apply for obtainment of green certificates after qualifying their plants as renewable-energy power plants/systems.

Producers whose plants/systems have a yearly average nominal capacity not exceeding 1 MW (0.2 MW for wind power plants/systems), excluding solar ones, may exercise the right of option between green certificates and the all-inclusive feed-in tariff.

GSE also creates ownership accounts in the name of producers and/or importers subject to the obligation specified in section 11 of Legislative Decree no. 79/1999 (upon receiving their self-certification concerning the non-renewable electricity that they have generated and/or imported), as well as in the name of parties wishing to trade green certificates.

5.3 Photovoltaic feed-in tariff

The feed-in scheme is the programme which grants incentives for electricity generated by photovoltaic plants connected to the grid.

Italy introduced this support scheme in 2005 (Ministerial Decree of 28 July 2005, the so called 1st feed-in scheme), followed by Ministerial Decree of 19 February 2007 (2nd feed-in scheme), by Ministerial Decree of 6 August 2010 (3rd feed –in scheme) and by Ministerial Decree of 5 May 2011 (4th feed-in scheme).

The Ministerial Decree of 5 July 2012 - the so-called 5th feed-in scheme - ceased to apply on 6 July 2013, after reaching an indicative cumulative cost of incentives of EUR 6,7 billion per year, communicated by AEEGSI Decision (250/2013/R/EFR).

In order to achieve savings on the electricity bills amounting to EUR 700 million, Law no. 9 introduced, *inter alia*, an optional re-modulation mechanism ("*Spalma Incentivi*") of the already granted incentives according to which the producers of electricity from renewable sources owing photovoltaic plants benefiting from tariff – in any manner named – can either:

a) continue to benefit from the same incentive regime due for the residual period, provided that, for 10 years from the due term for the incentives regime, any work carried out in the same site (e.g., increases in power of the plant, complete restructurings of the plant) will not be entitled to obtain any further incentives; or

b) opt for a re-modulation of the incentive regime already granted. In that case, the producer will be entitled to an incentive that is reduced by a certain percentage. Such reduction applies for the residual period for the incentives for the plant plus an additional seven years. Such reduction does not apply to energy produced by PV Plant with a nominal peak power up to 100 kW.

At this moment in time there is no incentive scheme based on a feed-in- tariff applicable to new photovoltaic plants.

The electricity fed into the grid may be purchased by Italian Energy Services Management ("GSE") (*ritiro dedicato*) or economically offset with the value of electricity withdrawn from the grid (net metering - *scambio sul posto*) service.

5.4 Ministerial Decree of 6 July 2012

The Ministerial Decree of 6 July 2012 establishes new procedures for supporting electricity generation by plants from renewable sources other than photovoltaic ones with a capacity of at least 1 kW.

The incentives covered by the mentioned Decree apply to new, totally rebuilt, reactivated, repowered/upgraded or renovated plants which will be commissioned on or after 1 January 2013.

To safeguard investments on projects under completion, the Decree provides that the following plants may apply for support on the terms and conditions specified in the Ministerial Decree of 18 December 2008: i) plants authorised before 11 July 2012 (date of enforcement of the Decree) and commissioned by 30 April 2013; and ii) plants authorised before 11 July 2012, fuelled by waste as per section 8, paragraph 4 c) of the Decree and commissioned by 30 June 2013.

The new Decree also covers the procedures under which plants already in service and supported under the Ministerial Decree of 18 December 2008 shall pass from the green certificates scheme to the new support schemes in 2016.

The Decree provides that the indicative cumulative cost of all types of incentives awarded to plants other than photovoltaic ones shall not exceed an overall value of EUR 5,8 billion per year.

In the light of the latest update released by the GSE, the counter of renewable sources other than photovoltaics throughout 2016 will not exceed the limit of EUR 5.8 billion, even in the worst case scenario, save the case of changing law and/or unexpected and exceptional events.

The new support scheme also introduces yearly supportable-capacity quotas, in each year from 2013 to 2015, divided by type of source and plant and in accordance with the applicable procedures for access to the incentives (auctions; registries of new, totally rebuilt, reactivated, repowered/upgraded and hybrid plants; Registries of renovated plants).

The net electricity generated and injected into the grid is the lower value between the net electricity generated and the electricity actually injected into the grid by the plant.

5.5 Implementation of Directive 2010/31/EU

Directive 2010/31/EU introduced the concept of “nearly zero-energy building”, meaning a building having a very high energy performance. The nearly zero or very low amount of energy required should be covered to a very significant extent by energy from renewable sources, including energy from renewable sources produced on-site or nearby.

These must cover heating, hot water, air-conditioning and large ventilation systems.

The Commission is responsible for establishing the methodology to calculate the optimal cost levels for the energy performance requirements.

New buildings must meet the minimum standards and contain high-efficiency alternative energy systems. Those owned and occupied by public authorities should achieve *nearly zero-energy status* by 31 December 2018 and other new buildings by 2 years later.

Existing buildings, when undergoing major renovation, must upgrade their energy performance to meet the European requirements.

National authorities operate an energy performance certification system. The certificates provide information for prospective purchasers or tenants of a building's energy rating and recommendations for cost-effective improvements. They must be included in all commercial media advertisements when the premises are offered for sale or rent.

National authorities must ensure schemes are in place to inspect heating and air-conditioning systems.

Such Directive was implemented in Italy by Law Decree no. 63/2013, converted into Law no. 90/2013.

The Commission will assess, by 1 January 2017, the progress made on the energy performance objectives and make further proposals if necessary.

5.6 Smart grid and self-consumption scheme (SEU)

Italy is a European leader in terms of financial resources committed to research projects on smart grids (accounting for 55 per cent of the aggregate) and was third in terms of number of research projects it leads or coordinates (5.5 per cent of an aggregate of 219 projects).

Since 2001, ENEL has been deploying a smart electronic metering system to its customer base, as well as providing other utilities capable of two-way real-time monitoring of input and consumption, which is now in operation with its 34 million customers (equal to 99 per cent of ENEL's customer base) and 4 million other utilities customers. Italy arguably has the largest operating smart grid in the world.

Legislative Decree no. 28/2011, specifically, entitles Terna to implement storage capacity as part of its dispatching systems to allow the grid to flexibly adapt to variable input from non-programmable renewable sources. Over the past year, AEEGSI passed three Resolutions concerning the operation of eight smart grid pilot projects in southern Italy, so as to test and experiment the technologies and better understand

costs, benefits, sizing and technical features of the storage systems. In relation to storage system, AEEGSI Resolution No. 574/2014 – as modified by AEEGSI Resolution No. 642/2014 - provides the mechanism of access and use the public grid, as well as the measure systems for storage systems. Such storage systems are considered to be as solutions to maximize self-consumption of photovoltaic systems.

AEEGSI Resolution No. 84/2012, as amended, introduced specific prescriptions for plants connected to the MV and LV grids, including retrofitted fixes to existing plants in order to prevent the occurrence of certain critical events on the network.

At the end of December 2013, AEEGSI issued a consultation document (No. 613/2013), aimed at defining, in respect of storage systems, the mechanisms to get into and use the grid.

Furthermore, Section 2 of Legislative Decree no. 115/2008 introduces the so called SEU (*Sistema Efficiente di Utenza* - Self-Consumption Scheme) defining the same as the system in which a plant producing electricity from renewables or in the form of high return cogeneration, with nominal power not exceeding 20 MWe and installed as a whole on the same site, even if owned by a subject other than the final customer, is directly connected, through a private connection without any obligation of connection by third parties, to the plant for consumption which is the property of the same single end customer and is realised within the area owned by, or under the control of, said consumer.

The relationship between the producer and the consumer is regulated by AEEGSI Resolution no. 578/2013 which sets forth the procedures for the purpose of connection, measurement, transmission, distribution, dispatching and sale of energy in the context of self-production and self-consumption systems, including the so-called SEU (net metering scheme).

At this regard, Section 24 of Law Decree no. 91/2014 (so called *Decreto Competitività*), converted into Law no. 116/2014, intervened incisively on the general costs linked to the maintenance of the grid (*oneri generali di sistema*) borne by self-production and self-consumption systems (*i.e.* SEU, SEESEU and RIU and SEESEU). With particular reference to such systems, starting from 1 January 2015, the general costs will be due not only for energy taken from the grid, but also for the self-produced and self-consumed energy. The before mentioned general costs - now borne also of SEU, SEESUE and RIU - are equal to around 5 per cent of energy taken from the grid price. Section 24 of Law Decree no. 91/2014 could supposedly (i) impact on SEESEU, SEU and RIU, for an amount of money equal to Euro 70 million per year, and (ii) be considered to be in breach of the European Directive no. 2009/72/EC (concerning common rules for the internal energy market in electricity) and European Directive no. 2012/27/EU (concerning energy efficiency).

5.7 White certificate

Public support to the achievement of energy efficiency goals (set forth by European Directive no. 27/2012) in furtherance of the EU climate and energy package objectives is three-pronged: a "white certificate" scheme, a programme of tax deductions on energy efficiency and conservation investment on buildings, and public funding to support better insulation, and energy-efficient heating and air conditioning systems as well as systems for the production of thermal energy from renewable sources.

White certificates (energy efficiency certificates, locally known as *TEEs*) were first introduced by the Ministerial Decree of 20 July 2004, and then the programme was overhauled by the Ministerial Decree of 21 December 2007 and the Legislative Decree no. 11/2008.

The Ministerial Decree of 28 December 2012 introduced further amendments to the mechanism.

Depending on the type of saved energy (electricity, gas, fossil fuels), there are five different types of white certificates.

Similar to green certificates, the incentives revolve around the obligation imposed on gas and electricity distribution service operators ""**DSOs**") with more than 50,000 customers to achieve certain minimum primary energy savings targets that are expressed in tons of oil equivalent (*toe*) and increased on a yearly basis (most recently by Ministerial Decree of 28 December 2012 for the 2013–2016 period). The cumulative target for 2012 was equal to 6 million toe. A DSO or a voluntary participant in the scheme (DSOs with less than 50,000 customers, energy service companies, DSO parents or affiliates or companies that have appointed energy managers pursuant to Section 19 of Law No. 10/91) may prepare and submit energy-efficiency projects with a view to obtain white certificates. The project must comply with the criteria set out by the AEEGSI and be validated from a technical and administrative standpoint by ENEA. The project, once validated, entitles the applicant to be issued by GME one white certificate for each toe saving achieved. The certificates may be traded on the platform operated by Gestore dei Mercati Energetici S.p.A. (managing and organising the trading and exchanging of electricity and gas, "**GME**") or sold to DSOs over the counter.

White certificates issued for projects submitted after 3 January 2012 cannot be combined with other subsidies that impact the electricity and gas bill.

5.8 Current developments concerning white certificates

Ministry of Economic Development published on 30 July 2015 a consultancy document aimed to modify the current system of white certificate scheme.

The document aims to illustrate the main issues of reform which the Ministry of Economic Development, in consultation with the Ministry of the Environment, recalled in order to achieve a more efficient and effective use of resources, in the light of the national targets to be reached by 2020.

The Italian Government undertook - by a formal resolution dated October 2015 - not to exclude from the white certificates scheme renewable energy sources.

The consultation period ended on 30 September 2015 and new changings are supposed to enter into force in the short-medium term.

5.9 Upcoming changes in energy regulation

On top of the already mentioned reform of the white certificates scheme, a new decree concerning incentives for non-photovoltaic renewable assets is supposed to be ratified in December 2015.

On 5 November 2015, Italy's Unified Conference of State and Regions, composed by representatives of the government and local authorities, approved a new draft decree (so called *Decreto FER*) on incentives concerning energy produced by renewable sources.

The regulation does not regard photovoltaic plants, which are provided by another law approved in 2014 ("*Spalma incentivi*", recalled at paragraph 5.3).

The new draft shall be examined by the European Commission and is likely to be officially published by the end of 2015 and to enter into force at the beginning of 2016. The European Commission, which needs to overlook the presence of illegal state aid, is also expected to give a positive feedback.

The draft decree confirms the cap for incentives at EUR 5.8 billion per year. Incentives will cease to be in effect 30 days after the cap is met, and will be withdrawn to new projects altogether by the end of 2016.

Both international and Italian funds will monitor the scenario of wind and solar market. Funds are now analysing the peculiarities of each single asset, carefully evaluating risks in order to avoid defaults.

6 Conclusion

Despite in Italy there is no specific regulation applicable to RES Crowdfunding platforms the RES Projects have to face different regulatory implications related to the Italian Laws and Regulations applicable to Crowdfunding, which limits the access to such form of financing only to innovative start-ups and innovative SMEs.

Having said that, RES projects to be enhanced by mean of Crowdfunding platforms are of great interests and there are several market stakeholders looking into this kind of opportunity even if, so far, projects to raise funds online are still lacking.

It is likely that some of the existing equity Crowdfunding platforms, which need now to start differentiating their business model could decide to enter into this market and try to became the RES projects sector leaders.

Moreover, renewable energy regulation in Italy is also subject to significant changes regarding - mostly - the White Certificates about which Ministry of Economic Development published on 30 July 2015 a consultancy document in the light of revising the actual framework of white certificate.

7 Summary – Crowdfunding and RES Projects Regulation

Country / Summary	Italy
Recent regulatory developments in Italy	• Law 33/2015: allowing also Innovative SMEs and investment funds to raise funds by means of online Crowdfunding platforms. • Proposed amendments of Consob Regulation 18592/2013: loss of the licence for inactive platforms; extension of the definition of professional investors in order business angels and venture capitalists; online platform will be allowed to perform MIFID assessments, if duly organised to do such activity • Proposed amendments of Bank of Italy regulation: introduction of specific regulation for lending Crowdfunding.
Crowdfunding Regulation	
General regulation	• Equity Crowdfunding is limited only to: (a) innovative start/ups; (b) innovative SMEs; (c) collective investment undertakings and investment companies which invest primarily in innovative start/ups and in innovative SMEs (Law 221/2012 and Law 33/2015). • Crowdfunding activity has to be performed only by authorized entities (such as banks and investment companies) and by platform managers expressly authorized by Consob.

Prospectus requirement	• Exception form prospectus requirements for public offers of shares or of stocks of innovative start-ups and innovative SMEs made through an authorized equity Crowdfunding platform which does not exceed the overall amount of EUR 5,000,000
AIFMD-regulation	• Italian AIFMD discipline does not apply to Crowdfunding.
RES Projects Regulation	
General regulation	• The most important sources are Legislative Decree no. 378/2003 and Legislative Decree no. 28/2011.
Ministerial Decree of 6 July 2012	• RES plants from renewable sources other than photovoltaic ones with a capacity of at least 1 kW. • Provision of the procedures under which plants already in service and supported under the Ministerial Decree of 18 December 2008 shall pass from the green certificates scheme to the new support schemes in 2016. • The indicative cumulative cost of all types of incentives awarded to RES plants other than photovoltaic ones shall not exceed an overall value of EUR 5,8 billion per year.
White Certificate	• The incentives under white certificates schemes revolve around the obligation imposed on gas and electricity DSOs with more than 50,000 customers The projects must comply with the criteria set out by the AEEGSI and be validated from a technical and administrative standpoint by ENEA. • The project, once validated, entitles the applicant to be issued by GME one white certificate for each toe saving achieved.
SEU	• The so called SEU (self-consumption scheme) is defined as the system in which a plant producing electricity from renewables or in the form of high return cogeneration, with nominal power not exceeding 20 MWe and directly connected, through a private connection without any obligation of connection by third parties, to the plant for consumption

Lessons learned – Crowdfunding / RES Projects Regulation

Lessons learned for a possible harmonized European Crowdfunding Regulation	
Role model ("dos")	• Specific regulation on Crowdfunding • Exception from publishing a prospectus • Short investment memorandum for investors.
Aspects that should be avoided ("don'ts")	• Limitation to specific type of companies for Crowdfunding • Limitation of EUR 5 Million for Crowdfunding investments
Lessons learned for a possible harmonized European RES Projects Regulation	
Role model ("dos")	• Complete the regulatory framework for electrical storage • Publish the new non PV RES incentive scheme • Publish the new white certificates guidelines
Aspects that should be avoided ("don'ts")	• Increase the grid related costs for energy generated locally and not withdrawn from the grid

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XVI. Latvia

1 Latvian market for RES Crowdfunding Platforms

As the Crowdfunding platforms are not commonly used in Latvia, currently we are not aware of any RES projects where Crowdfunding platforms would be utilised as financing mechanisms.

2 Recent regulatory developments regarding Crowdfunding regulation in Latvia

There were no significant regulatory developments regarding Crowdfunding regulation in Latvia in 2015.

However, there was a development of practice concerning Crowdfunding in general. Namely, a peer-to-peer loan platform mintos.lv (operating under the lending model) started operation in January 2015. It is considered to be the first platform of this type in Latvia. The Consumer Rights Protection Centre of Latvia took a conservative stance towards the peer-to-peer loan concept, requesting the platform to cease crediting consumers and publicly declaring that due to lack of regulation the investors who invest in loans offered on the platform are not protected by any of the financial schemes of protection existing in Latvia. The Financial and Capital Market Commission (the financial services regulator) of Latvia also endorsed this position.

The latest news is that the platform mintos.lv has transferred its activity to UK, although it seems that it remains largely connected to Latvia.

On the other hand, the Ministry of Finance is engaged in drafting amendments to the Financial Instrument Market Law jointly with the Financial and Capital Market Commission, aiming to regulate peer-to-peer lending platforms and equity-based Crowdfunding platforms. The Ministry of Finance is anticipating submitting the amendments to the Latvian Parliament in 2016 for subsequent adoption. According to the Ministry of Finance, the amendments will set requirements applicable to Crowdfunding platforms similar to those existing in respect of investment brokerage firms. In order to foster the entry into market and development of Crowdfunding platforms, it is anticipated that the prospectus requirement threshold (discussed in more detail in Section 4.2) will be reviewed in respect of Crowdfunding platforms. Moreover, it is envisaged that the new norms included in the amendments will make producing of the prospectus cheaper and easier for SMEs.

At the same time, amendments to the Law on the Prevention of Laundering the Proceeds from Criminal Activity (Money Laundering) and of Terrorist Financing aim to explicitly include Crowdfunding platforms in the list of persons to whom the provisions of the said law are applicable (and who are required to perform KYC checks, refrain from certain transactions, etc.).

To sum up, a reform of the Crowdfunding regulation is being awaited in 2016, but it is likely to put a compliance burden on those activities, the true extent of which remains to be seen.

3 Further recent regulatory developments considering RES Projects market in Latvia

To support production of electricity in RES power plants (except for hydroelectric power plants with capacity exceeding 5 MW), a state aid support system was implemented (please see a more detailed description of it in Section 5). Since 2009 three legal acts on implementation of state aid system were introduced, changing the actual amount of support, when finally it was stated that from 2011 until 1 January 2016 RES projects cannot apply for state aid. During the mentioned period there were discussions on necessity to implement new state support mechanisms and adopt a law on RES, however, up until now such legal regulation is not implemented and draft of this law is not submitted to the Parliament of Latvia.

Furthermore, draft amendments to the existing legal regulation were recently approved by the Cabinet of Ministers, stating that state aid support mechanisms is on hold also for next four years, namely, until 1 January of 2020. In addition, it was stated that in January 2016 the Ministry of Economics, together with the industry should propose amendments to the current state aid scheme, and coordinate such new aid scheme in with the European Commission. This proposal was also agreed with industry representatives. Therefore significant change to the legal regulation in the field of state aid for production of the electricity using RES is yet to come.

In the existing state aid system, the object of subsidies for feed-in-tariff is a difference between the price determined within the mandatory procurement and the market price (please see a more detailed description of it in Section 5). Such subsidies are covered by all electricity end users in Latvia in proportion to their electricity consumption by compensating the expenses of the procurement for a public trader. However, in July of 2015 a new regulation was approved, stating that energy-intensive manufacturing companies in accordance with the procedures specified by the Cabinet of Ministers will be able qualify for a reduced participation in the costs to the public trader. The mentioned Cabinet Regulations will come in force after the European Commission will confirm the compliance of this procedure to the internal market of the EU.

4 Regulation of Crowdfunding in Latvia

4.1 Licence under the Financial Instrument Market Law (in Latvian – *Finanšu instrumentu tirgus likums*)

4.1.1 Equity Model

Pursuant to the Financial Instrument Market Law ("**FIML**"), anyone intending to provide investment services in Latvia commercially or on a scale which requires a

commercially organised business undertaking requires a licence from the Financial and Capital Market Commission ("**FCMC**").

Investment services are, inter alia, the brokering of business involving the purchase and sale of financial instruments or their documentation (investment brokerage), the purchase and sale of financial instruments in the name of and for the account of others (contract brokerage) and the placement of financial instruments without commitment to underwrite those instruments (placement of financial instruments).

Under the FIML a "financial instrument" means an agreement, which concurrently creates financial assets for one person, but financial liabilities or capital securities for another. Transferable securities (in Latvian – *pārvedami vērtspapīri*) are covered by this definition of a financial instrument.

Transferable securities are, inter alia, (a) shares in joint stock companies and other securities equivalent to shares in companies (shares in private limited liability companies would not count as transferrable) including convertible securities; (b) bonds or other forms of securitised debt; or (c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures.

In summary, where an online Crowdfunding platform facilitates the offering of financial instruments, most likely, the operator of the platform will be deemed to provide investment services within the meaning of the FIML and therefore will require a licence by the FCMC. Where the securities in issue do not qualify as financial instruments to which FIML applies, this may well fall outside the scope of investment services regulation (although guidance from the FCMC would be advised since there are few, if any, precedents of such activity resembling investment services but dealing in non-financial instruments).

4.1.2 Lending Model

Depending on the structure in detail loans are considered as "debt" (in contrast to equity) and would not qualify as investment services under the FIML.
Where the borrowers are the consumers then the licence for consumer crediting must be obtained from the Consumer Rights Protection Centre.

4.1.3 Reward and Donation Model

Depending on the structure in detail there are good reasons to state that these kinds of investments do not qualify as investment services. Therefore, it should fall outside the scope of Latvian investment services regulation.

4.2 Prospectus requirements

4.2.1 General rule

Where transferable securities are offered to public (i.e., offer is expressed to more than 150 individuals in each EU Member State) it might be subject to a prospectus requirement, namely a requirement to publish a prospectus approved by the FCMC under the FIML. Again, if the equities in question do not qualify as transferable (negotiable) securities, then the prospectus requirement might not be triggered.

Depending on the structure, loans do not generally qualify as financial instruments under the FIML and therefore no prospectus is required. The same should apply to investments where individuals provide money to a company or project for benevolent reasons or for a non-monetary reward (Donations or Rewards Model).

4.2.2 Exceptions from prospectus requirement

The general prospectus requirement does not apply where (a) the offering of transferable securities does not exceed EUR 100,000 within a time period of 12 months, (b) only qualified investors are addressed, or less than 150 non-qualified investors per member state are addressed, (c) the offering is made in respect of transferable securities with the nominal value at least EUR 100,000, or (d) in offering each investor must acquire transferable securities with the nominal value at least EUR 100,000 and acquiring of one transferable security so that it belongs to several persons is prohibited.

Please note the anticipated reform of the Crowdfunding regulation which aims to ease the prospectus requirement for Crowdfunding platforms (Section 2).

4.3 Regulation of Crowdfunding under the AIFMD regime

Latvia implemented the AIFMD by adopting the "**Law on Alternative Investment Funds and its' Managers**" (in Latvian - *Alternatīvo ieguldījumu fondu un to pārvaldnieku likums*) ("**AIFM Law**") which entered into force on 7 August 2013.

According to the AIFM Law the extensive AIFMD regulation of funds and fund managers applies when there is an alternative investment fund ("**AIF**") managed by an alternative investment fund manager ("**AIFM**").

On most occasions a company seeking financing by means of Crowdfunding should not qualify as an AIF. At the same time, a project company established to finance a single project (such as for example a movie, a computer game, a wind farm or a solar park) that does not operate the facility or production itself might constitute an AIF within the meaning of the Latvian AIFMD regulation. The aforementioned applies if the project company seeks funding in return for a share in the profits or revenue generated by the project (within the Equity Model) provided that the funding is

envisaged for its own project and does not distribute the funding to other companies/entities to finance their projects.

As a general rule the operator of a Crowdfunding platform does not raise capital from investors for its own business. Therefore, the operator of a Crowdfunding platform should not qualify as an AIFM.

There is a lack of practice on the use of Crowdfunding platforms for fundraising in Latvia, hence there is also a lack of guidelines provided by the regulator on whether a Crowdfunding platform would qualify as an AIFM. The answer to this question will depend on the scope of services provided by a Crowdfunding platform in practice. A Crowdfunding platform might qualify as an AIFM if it performs investment management or other functions that under the law can be performed only by licenced or registered AIFMs. For instance, under the AIFM Law one of ancillary services of an AIFM is distribution of units or shares of an AIF. This could apply if the underlying investment (e.g. a project company) qualifies as an AIF and the relevant Crowdfunding platform in fact distributes the shares of that AIF. Each situation should be evaluated separately to establish whether a Crowdfunding platform qualifies as an AIFM.

4.4 Licence under the Payment Services regulation

Any transfer of funds through the operator of a Crowdfunding platform will generally constitute money remittance services within the meaning of the Payment Services and E-Money Law (in Latvian - *Maksājumu pakalpojumu un elektroniskās naudas likums*). Such transfer of funds could occur if the investors pay their investment amounts to the operator of a Crowdfunding platform which then passes the funds to the entrepreneur. The mentioned activity requires either a licence from, or registration with, the FCMC.

The platform operator might rely on the exemption for commercial agents under the Payment Services and E-Money Law, but this approach is untested in practice.

As an alternative - in order to avoid such licensing or registration, as the case may be, requirements - the operator of a Crowdfunding platform might use an external provider or partner for processing payments rather than acting as an intermediary himself.

We are not aware of any cases in Latvia where either of above exemptions have been applied to any Crowdfunding platform. Thus, in each situation where any of these exemptions is considered we strongly recommend that before starting the respective project advice from legal counsel is sought on the structure of each platform.

4.5 License under the Credit Institutions Law (in Latvian – *Kredītiestāžu likums*)

Besides, most likely an entity managing a Crowdfunding platform which is not a credit institution cannot hold sums of money belonging to third parties because such sums

might be qualified as deposits. Under the Credit Institutions Law (in Latvian – *Kredītiestāžu likums*) only credit institutions are permitted to advertise (in Latvian – *izsludināt*, which in English means to advertise, to announce, to proclaim) the acceptance of deposits and other repayable funds, and to receive them.

4.6 Possible additional Regulations

Other common regulations to which the operator of a Crowdfunding platform may be subject include:

- Civil Law (in Latvian – *Civillikums*);
- Commercial Law (in Latvian – *Komerclikums*);
- Law on the Prevention of Laundering the Proceeds from Criminal Activity (Money Laundering) and of Terrorist Financing (in Latvian - *Noziedzīgi iegūtu līdzekļu legalizācijas un terorisma finansēšanas novēršanas likums*);
- Natural Persons' Data Protection Law (in Latvian – *Fizisko personu datu aizsardzības likums*);
- The Cabinet of Ministers regulations and/or FCMC regulations in relation to investment services and payment institutions (where applicable);
- Consumer Rights Protection Law (in Latvian – *Patērētāju tiesību aizsardzības likums*).

5 Regulation of RES Projects in Latvia

5.1 General overview of state aid system

The goal that has to be achieved by 2020 is 40% share of gross final energy consumption, produced by RES, as determined in Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources. Latvian Energy long term strategy determines that one of the aims of policy performance indicators that will show an increased security of supply and sustainability is the widest possible use of RES. Therefore, the strategy set out a non-binding goal to provide a 50% share of RES in gross final energy consumption by 2030. This will be achieved by increasing the share of RES in heat, electricity and transport sectors. In 2011, the Latvian share of RES in gross final energy consumption was 33.1%.

General provisions for trade of the electricity or heat produced using RES are determined in the Energy law (*Enerģētikas likums*) and Electricity Market Law (*Elektroenerģijas tirgus likums*) and consequent Cabinet Regulations.

According to the provisions of Sections 29 of the Electricity Market Law, the energy producers that use RES can obtain rights to sell the electricity produced within mandatory procurement. The total amount of the electricity that should be purchased in such mandatory procurement is determined by the Cabinet of Ministers. Thus, by the Cabinet Regulations No.262 of 16.03.2010 "Regulations Regarding the Production of Electricity Using Renewable Energy Sources and the Procedures for the Determination of the Price", it is determined that for year 2010 and the subsequent ten years 54.57% of the total consumption of electricity end users in Latvia to be mandatorily covered by electricity, which is produced from RES (please note that it includes also 4.97% of electricity produced in biomass power plants and power plants in which biomass is used in combination with fossil fuel heating and 34.31% produced in hydroelectric power plants with capacity exceeding 5 MW).

So far production of electricity using RES (except for hydroelectric power plants with capacity exceeding 5 MW) in Latvia was stimulated by state aid. State aid mechanism is based on a feed-in-tariff issued for a definite quota in tenders organised by the Ministry of Economics. The other option of the state aid for RES projects is introduced for electric stations with electric capacity exceeding 1 MW that produce energy using biomass or biofuel. Namely, such projects may acquire rights to receive a guaranteed payment for the installed electric capacity in tenders organised by the Ministry of Economics.

In accordance with the decision of the Ministry of Economics on mandatory procurement, the public trader purchases electricity from such electricity producers at a specified price and in specified amount, as governed by the Cabinet Regulations. In case of feed-in-tariff, the object of subsidies is the difference between the price determined within the mandatory procurement and the market price of the electricity. Mandatory procurement obtains its funding for the mentioned subsidies from electricity end-user payments.

The amount of electricity produced from RES that mandatorily should be purchased, but is not purchased within mandatory procurement, must be purchased by a public trader from any producer that produces electricity using RES. Electricity from such producers is purchased by economic ranking principle and the contract (the producer and the public trader should agree on the power generation mode, electricity prices and the term (not less than five and not more than ten years). In general, the prices in such case are lower than if producer obtained rights to sell electricity within mandatory procurement.

The Latvian legislation in the field of RES and state aid has not been stable and predictable and has often changed (for instance, Cabinet of Ministers Regulations No.503 "Regulations on Production of Electricity from Renewable Energy", were in effect from 22 August 2007; then they were replaced by Regulations No.198, which were in effect as of 14 March 2009, which, in their turn, were replaced by Regulations No. 262, which are in effect as of 1 April 2010, but organization of tenders for feed-in

tariffs and guaranteed payments for the installed electric capacity according to these Regulations No. 262 has been suspended until 1 January 2020). Since the feed-in-tariff is on hold partly due to the lack of equitable and consistent support system, during last five years there are plans to introduce a new law on RES and new state aid mechanisms for RES projects. In the December of 2015 it was determined by the Cabinet of Ministers that in January of 2016 the Ministry of Economics, together with the industry should propose amendments to the current state aid scheme, and coordinate the new aid scheme in with the European Commission. Therefore RES projects regulation in Latvia is subject to significant changes.

Please note, that since 2014 a new tax for subsidized electricity producers receiving financial support for power generation from renewable energy sources or from CHP plants was introduced, thus limiting the actual amount of state aid being received by the electricity producers.

5.2 Access to the grid

Access of renewable energy plants to the grid cannot be prohibited and is subject to the general legislation. However, no priorities or special conditions are provided for RES projects.

Before a RES project design works are started, a future producer should acquire a permit of the Ministry of Economics for increasing electricity production capacities or the introduction of new production equipment, by providing information on technical data of the power plant and rights to use the land plot.

5.3 RES project implementation

A common way to build RES projects in Latvia is to purchase the land plot necessary for the project or conclude a lease agreement with the land owner. For the wind energy projects a most common form of land use is a lease agreement with construction rights for a term exceeding 10 years, determining also access to the objects of the tenant and obligation to register the agreement in the Land Book (public register). Registration to the Land Book is a guarantee that the respective agreement will remain in force in case the owner of the land changes. Based on the lease agreement, the tenant obtains ownership rights to the objects it constructs on the leased land. Such ownership rights to the buildings are registered in the Land Book for the term of validity of the lease agreement. Therefore, parties in the agreement should agree on main terms, as well as about dismantling of the building after the expiry of lease term. The other option is to agree that the ownership rights for the buildings (power plant) after the term of the agreement expires will pass to the land owner.

Construction of the RES project is subject to general building and environmental laws. What regards the issues that may prolong the term of implementation of the RES project, please note the following:

- in respect to definite types of the buildings (e.g. wind stations exceeding 20kW), safety zones are determined in the amount of 1.5x of the maximum height of the respective wind station. If such safety zones are situated on the land plot owned by third parties, it is subject to approval of such third party;

- the construction permit issued for implementation of RES project can be appealed by third parties (e.g. owners of the neighbouring land plot). Considering the period of time required for litigation proceedings in Latvia, the RES project implementation period can be extended even by several years;

- the place for connection to the grid being determined by the relevant TSO or DSO may be situated at a distance from the land plot where RES project is constructed. This may require receipt of the approval of the land owners for use of their land plot to ensure construction of such network connection.

6 Conclusion

- Crowdfunding is in the early stages of development in Latvia and the first projects have started only very recently. There is currently no regulatory regime that is specifically adapted to Crowdfunding in Latvia. In principle, Latvian law allows for the implementation of Crowdfunding projects. At the same time, up to date regulatory authorities have taken a restrictive stance regarding peer-to-peer lending.

- Nonetheless, draft legislative amendments aimed at regulating Crowdfunding will probably be submitted to the Latvian Parliament in 2016.

- In any event, in each situation we strongly recommend taking legal advice before any such project is started.

- So far production of electricity using RES (except for hydroelectric power plants with capacity exceeding 5 MW) in Latvia was stimulated by state aid. State aid mechanism is based on a feed-in-tariff issued for a definite quota in tenders organised by the Ministry of Economics. The other options of the state aid for RES projects is introduced for electric stations with electric capacity exceeding 1 MW that produce energy using biomass or biofuel, namely, such projects may acquire rights to receive a guaranteed payment for the installed electric capacity in tenders organised by the Ministry of Economics.

- The object of subsidies in the existing feed-in-tariff system is a difference between the price determined within the mandatory procurement and the market price. These subsidies are covered by all electricity end users in Latvia in proportion to their electricity consumption by compensating the expenses of the procurement for a public trader.

- The term during which new RES projects cannot apply for state aid has been prolonged from 1 January 2016 until 1 January 2020. However in January 2016 the Ministry of Economics, together with the industry should propose amendments to the current state aid scheme, and coordinate the new aid scheme in with the European Commission. Therefore RES projects regulation in Latvia is subject to significant changes.

- Since 2014 a new tax for subsidized electricity producers receiving financial support for power generation from renewable energy sources or from combined heat and power plants was introduced. Therefore, the actual amount of state aid received by the projects which obtained rights to sell the electricity produced from RES within mandatory procurement has decreased.

- Access of renewable energy plants to the grid cannot be prohibited and is subject to the general legislation. However, no priorities or special conditions are provided for RES projects.

- A common way to build RES projects in Latvia is to purchase a land plot necessary for the project or conclude a lease agreement with the land owner. Such agreement should at least include construction rights, registration in the Land Book, as well as dismantling of the building or acquisition of such building by the land owner after the expiry of lease term. Construction is subject to general provisions of territory planning, construction and environmental laws.

7 Summary – Crowdfunding and RES Projects Regulation

Country / Summary	Latvia
Recent developments in Crowdfunding regulation	• Draft legislative amendments to several laws aimed at regulating Crowdfunding will probably be submitted to the Latvian Parliament in 2016.
Crowdfunding Regulation	
General regulation	• No regulatory regime specifically adapted to Crowdfunding. In principle, Latvian law allows for the implementation of Crowdfunding projects. In each situation it is recommended to involve local counsel. • If Crowdfunding platform facilitates offering of securities or other financial instruments or holds money belonging to third persons, operator of the platform most likely provides investment or financial services → FCMC authorisation required

	• Where securities do not qualify as financial instruments, this may fall outside the scope of investment services regulation, although guidance from FCMC would be advised. • Depending on the structure in detail: there are sound arguments that loans and contributions under Donations/Rewards Model do not constitute provision of investment or financial services • Most likely an entity managing a Crowdfunding platform which is not a credit institution cannot hold sums of money belonging to third parties → sums might be qualified as deposits → Credit Institutions Law only permits credit institutions to advertise receipt of deposits and other repayable funds, and to receive them.
Prospectus requirement	• Prospectus requirement for public offer regarding transferable securities (i.e., offer is expressed to more than 150 individuals in one EU Member State) • Exemptions of Prospectus requirements (a) offering of transferable securities does not exceed EUR 100,000 within a time period of 12 months, (b) only qualified investors are addressed, or less than 150 non-qualified investors per member state are addressed, (c) the offering is made in respect of transferable securities with the nominal value at least EUR 100,000, or (d) each investor must acquire transferable securities with the nominal value at least EUR 100,000 and acquiring of one transferable security so that it belongs to several persons is prohibited. • Depending on the structure in detail: there are no prospectus requirements for loans or contributions under Donations/Rewards Model
AIFMD-regulation	• Typical start-up company in general does not constitute an AIF • A project company might constitute AIF

	→ extensive AIFMD regulation for AIF and its manager → manager (AIFM) requires FCMC authorisation • Depending on the structure in detail: funding by means of or contributions under Donations/Rewards Model should not entail an AIF • Depending on the scope of the services provided by the Crowdfunding platform, Crowdfunding platforms might qualify as AIFM.
Payment services regulation	• Transfer of funds through operator may constitute money remittance service → FCMC licensing or registration with the FCMC required. • "Commercial Agents" exemption probably not applicable to operators of Crowdfunding platforms • Other exemption might be that the operator of a Crowdfunding platform uses an external provider or partner for processing payments rather than acting as an intermediary himself
Consumer credit regulation	• If consumer borrowers are permitted on a platform (Lending Model) there are implications for licence for consumer crediting, form and content of the lending agreements.
Further possible requirements	• Civil Law (in Latvian – *Civillikums*) • Commercial Law (in Latvian – *Komerclikums*) • Law on the Prevention of Laundering the Proceeds from Criminal Activity (Money Laundering) and of Terrorist Financing (in Latvian - *Noziedzīgi iegūtu līdzekļu legalizācijas un terorisma finansēšanas novēršanas likums*) • Natural Persons' Data Protection Law (in Latvian – *Fizisko personu datu aizsardzības likums*) • The Cabinet of Ministers regulations and FCMC regulations in relation to investment services and

	payment institutions • Consumer Rights Protection Law (in Latvian – *Patērētāju tiesību aizsardzības likums*)
RES Projects Regulation	
Electricity regulation applicable to RES Projects	• Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources (determines target of 40% of RES in gross final energy consumption by 2020); • Energy law (*Enerģētikas likums*); • Electricity market law (*Elektroenerģijas tirgus likums*); • Regulation No. 262 of 16.03.2010 Regulations Regarding the Production of Electricity Using Renewable Sources and the Procedures for the Determination of the Price (*Noteikumi par elektroenerģijas ražošanu, izmantojot atjaunojamos energoresursus, un cenu noteikšanas kārtību*); • Regulations No. 395 of 14.07.2015 Regulations on how the energy-intensive manufacturing companies obtain rights for reduced participation in costs to the public trader (*Kārtība, kādā energoietilpīgi apstrādes rūpniecības uzņēmumi iegūst tiesības uz samazinātu līdzdalību obligātā iepirkuma komponentes maksājumam*); • Planning and construction and implementation of RES projects is subject to general territory planning, building and environmental laws.
Market integration of RES Projects	• Since 2007 state aid system is implemented, granting possibility to acquire rights to sell the electricity produced from RES within mandatory procurement (fee-in tariff) to be paid by public trader stated by law; • Since 2013 until 1 January 2020 new RES projects cannot apply for state aid; • Access of renewable energy plants to the grid is subject to the general legislation, with no priorities for RES projects.

Transition to tender based allocation of new RES Projects	• In January of 2016 the Ministry of Economics, together with the industry should propose amendments to the current state aid scheme, and coordinate the new aid scheme in with the European Commission. Therefore RES projects regulation in Latvia is subject to significant changes in the future.
Further regulatory sources	• Network code (*Tīkla kodekss*); • Law on pollution (*Par piesārņojumu*) (e.g. for CHP); • Law on Environmental Impact Assessment (*Par ietekmes uz vidi novērtējumu*)

Lessons learned – Crowdfunding/RES Projects Regulation

Lessons learned for a possible harmonized European Crowdfunding Regulation	
Role model ("dos")	• There is no special regulation governing Crowdfunding in Latvia
Aspects that should be avoided ("don'ts")	• There is no special regulation governing Crowdfunding in Latvia
Lessons learned for a possible harmonized European RES Regulation	
Role model ("dos")	• Development of new state aid support systems for RES • Increase development possibilities for RES projects
Aspects that should be avoided ("don'ts")	• Delay of implementation of new law on RES and related state aid mechanisms • Implementation of state aid support system that would impact the electricity prices for the electricity end users

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XVII. Lithuania

1 Lithuanian market for RES Crowdfunding platforms

Due to the fact that there are no Crowdfunding platforms in Lithuania, the market for Crowdfunding renewable energy sources ("**RES**") has not yet become a reality. Current regulatory environment for Crowdfunding platforms is unfavourable and carries excessive regulatory burden. Most likely, Lithuania will not have its market for RES Crowdfunding platforms unless and until the regulatory obstacles are eliminated.

1.1 Investment models existing in Lithuania

As mentioned above, due to the unfavourable regulatory regime Lithuania does not have any Crowdfunding platforms. Crowdfunding platforms based on donations or reward models could operate in Lithuania without any major regulatory burden; however, no RES Crowdfunding platforms have been established so far.

Nevertheless, the Bank of Lithuania (Lith. *Lietuvos bankas*), being the Lithuanian financial supervisory authority (the "**Lithuanian FSA**"), together with the Ministry of Finance of the Republic of Lithuania have presented to the market the very first draft Law on Crowdfunding of the Republic of Lithuania (the "**Law on CF**", Lith. *Lietuvos Respublikos sutelktinio finansavimo įstatymas*). It is expected that the draft Law on CF will be submitted to the Parliament at the beginning of year 2016 and will be adopted by the end of spring 2016. The Law on CF will eliminate unfavourable regulatory obstacles and set additional requirements for Crowdfunding platforms. This should leave a clear field for those who are planning to engage in Crowdfunding business. According to publicly available information, there already exist a few initiatives to launch Crowdfunding platforms in Lithuania. The most advertised project is debt/equity-based Lithuanian Crowdfunding platform "Lenndy" (for more information, please see: www.lenndy.com), which is aimed at raising funds specifically for real estate projects. Moreover, there are rumours in the media that few consumer credit providers and peer-to-peer lending platforms are planning to expand their activities in Crowdfunding sector. Unfortunately, there is no reliable information as to actual realisation of these plans as well as the plans to establish RES Crowdfunding platforms.

1.2 RES projects existing in Lithuania

As mentioned above, there are no RES project events in the fields of the market for RES Crowdfunding platforms in Lithuania. To our knowledge, in Lithuania there are only cases where securities (shares and/or bonds) of a RES project company are privately offered to private investors.

1.3 Other remarkable events in the fields of the market for RES Crowdfunding platforms in Lithuania

As stated above, there are no events in the fields of the market for RES Crowdfunding platforms in Lithuania. However, we believe that wider financing opportunities, such as RES Crowdfunding platforms in Lithuania, could spark a strong interest among local and foreign investors.

2 Recent regulatory developments regarding Crowdfunding regulation in Lithuania

The draft Law on CF is going to be presented for official coordination among Lithuanian market players at the end of 2016. Most likely, potential operators of Crowdfunding platforms, operators of peer-to-peer lending platforms, credit institutions, payment and e-money institutions as well as investment companies will participate in the upcoming legislative debates.

According to the draft Law on CF, debt and equity-based Crowdfunding models will be legalised. The regulatory regime will be changed so as to help organise easier ways for companies to attract funding through:

- Loans or in any other monetary form; and
- Issuance of financial instruments.

For example, Lithuanian public limited liability and private limited liability companies will be allowed to issue bonds and distribute them through Crowdfunding platforms. However, according to the draft Law on CF, shares could be issued and distributed through the Crowdfunding platform only by a public limited liability company.

The draft Law on CF provides limitations on the investment sums. According to the draft law, investors (either natural or legal persons) can freely invest up to EUR 1,000 in one single Crowdfunding project over a 12-month period. Such limitation does not apply to informed investors (ie high net worth individuals) and investors that have passed a suitability test. The operator of the Crowdfunding platform has to assess whether a particular investment is suitable for the investor, ie if the investor wants to invest more than EUR 1,000, it has to pass the suitability and appropriateness test.

According to the draft Law on CF, owner of a Crowdfunding project wishing to raise from EUR 100,000 to EUR 5,000,000 over a 12-month period, has to prepare an information document under the Law on Companies of the Republic of Lithuania (Lith. *Lietuvos Respublikos akcinių bendrovių įstatymas*). This information document has to be approved by the operator of the Crowdfunding platform before the Crowdfunding campaign is launched. If the owner of the Crowdfunding project seeks to raise more than EUR 5,000,000 over a 12-month period, it should issue securities in accordance

with the requirements set in the Law on Securities of the Republic of Lithuania (the "**Law on Securities**", Lith. *Lietuvos Respublikos vertybinių popierių įstatymas*).

The proposed regulation determines that a secondary market for a Crowdfunding platform is qualified as a multilateral trading facility which falls under the regulation of the Law on Market in Financial Instrument of the Republic of Lithuania ("**Law on MFI**", Lith. *Lietuvos Respublikos finansinių priemonių rinkų įstatymas*) which implements MiFID. Therefore, the operator of a Crowdfunding platform that is willing to launch a secondary market should be additionally regulated under a separate regulation.

Also the draft Law on CF determines specific requirements for the operator of a Crowdfunding platform. Only legal entities (ie public limited liability companies and private limited liability companies) will be allowed to act as operators of Crowdfunding platforms. Furthermore, such operators must – prior to the commencement of their activities – be included in the Public List of Operators of Crowdfunding Platforms managed by the Bank of Lithuania. Operators included in the said list will be considered to be financial advisory firms under the Law on MFI (in other words, a financial advisory firm is a firm that enjoys exemption from Article 3 of the MiFID). According to the Law on MFI, a financial advisory firm is entitled to provide execution-only services (ie reception and transmission of orders) and offer investment recommendations. According to the proposed legislation, the right to provide the latter investment services will enable legal persons to operate equity-based Crowdfunding platforms in Lithuania. The draft law specifically determines that an operator who wishes to provide investment services other than execution-only services and investment services has to be licenced under the Law on MFI as an investment firm.

Furthermore, the draft Law on CF sets forth additional requirements for capital of the operator of a Crowdfunding platform, requirements for risk management, information to be disclosed to investors, requirements for the investment agreements, management reputation etc. Some of these requirements have already been questioned by the market players; therefore, it is likely that they will be adjusted.

Unfortunately, Lithuania has only a raw draft law, therefore it is not clear how the current draft Law on CF will be amended and/or supplemented after the official consultations with various market players, project stakeholders and members of the Parliament. As mentioned above, the final Law on CF should be adopted in the mid2016.

3 Further recent developments considering RES Projects market in Lithuania

As already stated, since no relevant RES projects regulation regarding RES Crowdfunding exists in Lithuania, it is important to review recent developments in the RES market itself. In 2014, the installed capacity of the power plants producing and supplying energy generated from RES in Lithuania to the networks reached 564 MW: (i) the installed capacity of the solar power plants was 69.3 MW, (ii) the wind power

plants – 285 MW, (iii) the hydro power plants – 127 MW, (iv) the biofuel power plants – 62 MW, (v) the biogas power plants – 20.5 MW. The biggest share in the market structure of the total installed capacity was held by the wind power plants – 50.4 percent, the smallest – by the biogas power plants (3.2 percent). For more information, please see the table below reflecting the tendencies in the Lithuanian RES market.

The production of RES-generated energy is supported through the Public Service Obligations (PSO or feed-in-tariff). In 2014, this amount was equal to EUR 64.79 million.

In 2014, the investments in the RES sector reached EUR 7.8 million, out of this amount 82 percent were the investments in the electricity production facilities, 1.4 percent – the investments made to connect the producers to the transmission and distribution networks, 16.7 percent – other investments related to electricity production.

Currently, the new Lithuanian National Energy Strategy is being developed and hopefully it will be adopted in the middle of the next year. The new Lithuanian National Energy Strategy will highlight the problems that Lithuania is facing in the field of RES at the moment and will show what developments could be expected in the near future.

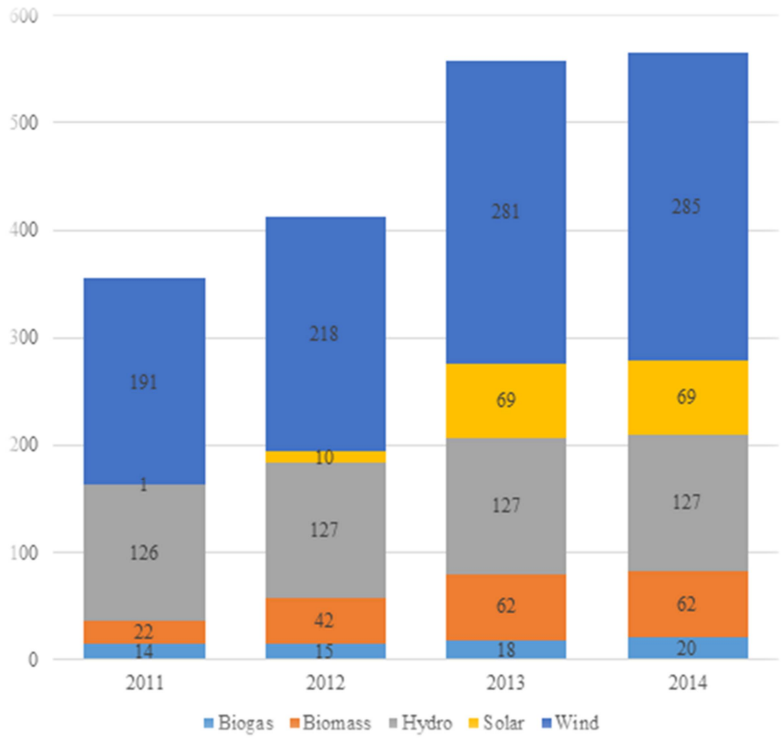

Table No. 1: Tendencies in the Lithuanian RES market (different RES in MW).

4 Regulation of Crowdfunding in Lithuania

Since, Lithuania has not yet established a special Crowdfunding regulation, please find below the analysis as to how the different Crowdfunding models could be implemented in Lithuania based on the currently effective legal acts.

4.1 Banking / Financial service licence requirements

4.1.1 Equity Model

The equity-based Crowdfunding could be put into life in Lithuania. Such platform could be designed through a public offering of equity securities (shares) of a public limited liability companies after publishing a prospectus (with several exemptions, please refer to Paragraph 4.2 below). Such offering and acquirement would be subject to the provisions of the Law on Securities.

The above activities of the operator of a Crowdfunding platform would most likely be qualified as the provision of investment services, in particular reception and transmission of orders in relation to one or more financial instruments, execution of orders on clients' behalf, provision of investment advice and placing of financial instruments without a firm commitment basis as described in the Law on MFI. Under the Law on MFI, investment services could only be provided by investment firms (brokerage companies), financial advisory firms (only execution of orders and provision of investment recommendations) and commercial banks. Therefore, the operator of a platform would need to obtain a particular license.

If a public limited liability company decides to offer its shares on its own initiative, ie without a special platform operated by a third person, licensing requirements are not triggered. However, a public limited liability company has to comply with the prospectus requirements (with several exemptions, please refer to Paragraph 4.2 below).

4.1.2 Lending Model

The lending model could be implemented in Lithuania through the public offering of non-equity securities (bonds). Since, bonds can be publicly offered only by a public limited liability company and only after the publication of a prospectus (with several exemptions, please refer to Paragraph 4.2 below), the above requirements for the equity model should be applicable.

The lending model could also be designed on the basis of loans to be granted under loan agreements with or without the use of a Crowdfunding platform. When structuring the lending model such as loans granted under loan agreements, it should be noted that according to the Law on Financial Institutions of the Republic of Lithuania (the "Law on FI", Lith. *Lietuvos Respublikos finansų įstaigų įstatymas*) acceptance of repayable deposits or other repayable funds from non-professional market participants is allowed for credit institutions only and is subject to the licensing

requirements established by Lithuanian law. This particular legal obstacle is the reason why Lithuania does not have any Crowdfunding platforms. With the upcoming legislation on Crowdfunding, the Law on FI will be amended accordingly, and the said obstacle will be eliminated.

Therefore, the intended business model should be carefully assessed in each individual case, and advance consultations with the Bank of Lithuania may also be needed. However, most likely, the Crowdfunding platform based on lending model and financing through loan agreements would fall under the banking regulation.

4.1.3 Donations or Rewards Model

The donations and rewards model does not involve any form of investment services. The Crowdfunding platform based on donations or rewards is governed by the Civil Code of the Republic of Lithuania (the "Code", Lith. *Lietuvos Respublikos civilinis kodeksas*). Under the Code, relationships between the parties where individuals provide money to a company or project for benevolent reasons can be qualified as a contract of gift, and those provided for a non-monetary reward can be qualified as a sale and purchase agreement. Tax implications for the recipient of funds should be assessed when implementing the donations or rewards model since the received funds would likely be considered as taxable income.

4.2 Prospectus requirements

If securities (shares and/or bonds) are publicly offered to investors, the company issuing the securities has to publish a prospectus. The prospectus can be published only with the approval of the Bank of Lithuania. The requirements for the preparation, submission and approval of the prospectus as well as the exemptions from the requirement to publish the prospectus are established in the Law on Securities.

Where the securities (shares and/or bonds) are publicly offered via the Crowdfunding platform, the operator of the platform is not responsible for publishing the prospectus. However, according to the draft Law on CF, the operator would be responsible for publication of the prospectus on the platform making it easily accessible to each investor. In addition to this, the draft Law on CF determines additional exceptions for publication of the prospectus (please refer to Paragraph 2 above).

The obligation to publish a prospectus does not apply in the presence of at least one of the following conditions:

- An offer of securities addressed solely to professional investors;
- An offer of securities addressed to fewer than 150 natural or legal persons in each Member State of EEA, other than professional investors;

- An offer of securities addressed to investors who acquire securities for a total amount of at least EUR 100,000 for each separate offer;

- An offer of securities with the nominal value amounting to at least EUR 100,000 per unit;

- An offer of securities with a total amount less than EUR 100,000 calculated over a period of 12 months.

4.3 Regulation of Crowdfunding under the AIFMD regime

RES projects might deal with a possible application of the AIFMD regime which was implemented in Lithuania by means of the Law on Managers of Collective Investment Undertakings for Professional Investors of the Republic of Lithuania (the "**Law on Managers of Funds**", Lith. *Lietuvos Respublikos profesionaliesiems investuotojams skirtų kolektyvinio investavimo subjektų valdymo įmonių įstatymas*). As collective investment undertakings are defined in a very comprehensive way, RES projects can easily serve the purpose of such definition and could therefore fall within this highly regulated field. However, there is no such practice in Lithuania, neither are there any regulatory explanations in this connection. Therefore, below please find the analysis based on our professional understanding.

4.3.1 Definition of alternative investment fund

According to the Law on Managers of Funds, the AIFMD regulation of funds and fund managers applies when there is an alternative investment fund ("**AIF**") managed by an alternative investment fund manager ("**AIFM**"). The Law on Managers of Funds provides that AIFs include a collective investment undertaking which:

- Raises capital (through equity-based securities) from a number of investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors;

- Is not an operating company conducting business outside the financial sector; and

- Does not require authorisation pursuant to Article 5 of Directive 2009/65/EC (UCITS).

4.3.2 Equity model

Lithuanian AIFMD regulation should not apply to companies issuing equity securities through the Crowdfunding platform that qualify as operating companies outside the financial sector. Taking this into account, RES projects that are seeking funding by means of a Crowdfunding platform could be qualified as operating companies outside the financial sector, if:

- Their business strategy is simply the commercial success of their business;

- They do not intend to follow any defined investment policy, but want to finance their on-going day-to-day business; and

- They operate the facility, production or project themselves within their day-to-day business or make use of the service of an intra-group company or an external service provider (as long as the day-to-day discretion remains at the company).

The above list of criteria is non-exhaustive and in practice might be amended and/or supplemented accordingly by the Bank of Lithuania.

4.3.3 Lending model

Investments by means of non-equity securities, ie bonds, and loans can generally be structured as non-AIF investments, since the investors do not share liability for any losses – and, therefore, do not invest in a *collective investment* undertaking. Consequently, such RES projects should be excluded from any possible regulation under the AIFMD.

4.3.4 Donations or rewards model

RES projects may offer in return some non-financial rewards as an alternative to any kind of revenue. In such event it can be argued that the funds are not invested for the benefit of those investors and the funding therefore contains no collective investment undertaking and no AIF. Thus, such RES project should be excluded from any possible regulation under the AIFMD.

4.3.5 Crowdfunding Platform

In general, a Crowdfunding platform arranges investments into projects or companies. Since, an operator of a Crowdfunding platform usually does not raise capital from investors for its own business, it should not qualify as an AIF. Therefore, the operator of a Crowdfunding platform should not be qualified as an AIF or an AIFM.

4.4 Licensing requirement under the payment services regulation

The transfer of funds through a Crowdfunding platform may be considered as a payment service under the Law on Payments of the Republic of Lithuania (the "**Law on Payments**", Lith. *Lietuvos Respublikos mokėjimų įstatymas*) which implements the Payment Service Directive.

The provision of payment services is subject to the licensing requirements in Lithuania. Since, the establishment of a new payment service provider may take three to six months to complete, and includes a significant amount of paperwork (operating programme, business plan, organisational structure, internal control procedures etc.),

EU-licensed payment service providers may choose to provide payment services on a cross-border basis without establishing a branch, through a branch or an intermediary (which would generally require notification of the intention to provide payment services in Lithuania through its home Member State supervisory authority to the Bank of Lithuania).

Following the pattern of the Payment Services Directive, the Lithuanian law provides certain exemptions from the licensing and other regulatory requirements applicable to payment services. However, the possibility to apply such exemptions should be carefully assessed on a case-by-case basis; additional consultations with the Bank of Lithuania may also be needed.

Furthermore, according to unofficial position of the Bank of Lithuania, if funds of users of a Crowdfunding platform are held in the account of the operator of a Crowdfunding platform for indefinite period, the operator is required to have a licence of at least an e-money institution. Such requirement is based on the above mentioned provision of the Law on FI, which determines that acceptance of repayable deposits or other repayable funds from non-professional market participants is allowed for credit institutions only and is subject to the licensing requirements established by Lithuanian laws. E-money institution's licence also allows the provision of payment services referred to in the Law on Payments.

4.5 Possible additional requirements

Other common regulations, to which the operator of a Crowdfunding platform may be subject, include:

- Law on the Prevention of Money Laundering and Terrorist Financing of the Republic of Lithuania (Lith. *Lietuvos Respublikos pinigų plovimo ir teroristų finansavimo prevencijos įstatymas*);

- Law on Legal Protection of Personal Data of the Republic of Lithuania (Lith. *Lietuvos Respublikos asmens duomenų teisinės apsaugos įstatymas*).

- Law on E-money and E-money Institutions of the Republic of Lithuania (Lith. *Lietuvos Respublikos elektroninių pinigų ir elektroninių pinigų įstaigų įstatymas*).

Please note that the Law on Consumer Credit of the Republic of Lithuania (the "**Law on CC**" Lith. *Lietuvos Respublikos vartojimo kredito įstatymas*) establishes regulation on peer-to-peer lending with the effect from the 1st of February 2016. The Law on CC is applicable when consumer loans are being issued through peer-to-peer lending platforms.

5 Regulation of RES Projects in Lithuania

In Lithuania, RES-based electricity is mainly promoted through a feed-in tariff and grants. RES for heating and cooling purposes are exempt from environmental pollution tax and are eligible for grants. Moreover, heat suppliers are obliged to prioritise purchase of heat produced from RES. Transport sector is promoted through reimbursement of raw materials for biofuel production and an exemption from excise tax and environmental pollution tax.

The operators of RES plants are entitled to a priority connection to the grid. The transmission and distribution of electricity from RES are given the priority. Heating devices using RES are connected according to non-discriminatory principles.

Currently, there are only a few legal provisions on policies aiming at promoting the development, installation and use of RES installations.

5.1 Electricity sector

Support schemes

In Lithuania, electricity from RES is promoted mainly through a feed-in tariff. Furthermore, the producers of renewable electricity may apply for grants from the Lithuanian Environmental Investment Fund (LEIF) and the Fund for the Special Programme for Climate Change Mitigation and are exempt from excise tax.

Grid issues

The operators of RES plants are entitled to priority connection to the grid. The grid operator has to ensure priority transmission and distribution of electricity from RES. The grid operators are obliged to optimise, boost or expand their grids if this is required for RES plant connection.

Policies

Currently, there are only a few legal provisions on the certification of RES installations, the exemplary role of public authorities and an RES-H building obligation promoting the development, installation and use of RES installations.

5.2 District heating sector

Support schemes

In Lithuania, heating and cooling from renewable energy sources is promoted through several support schemes. These include the suppliers' obligation to purchase all heat produced from RES, grants in the form of subsidies from the LEIF, as well as environmental pollution tax reliefs.

Grid issues

Heating devices using renewable energy sources are not given a priority connection. RES heating devices of independent heat producers are connected to the heat transmission network according to conditions set up and issued by the heat supplier. The heat supplier will, adhering to non-discriminatory principles, select the connection point for an RES heat generation device of an independent heat producer. The heat supplier has to purchase all RES heat produced by devices connected to the heating network that is cheaper than the heat produced by the heat supplier himself and which satisfies quality, supply security and environmental requirements, unless the supply of RES heat generated by independent heat producers exceeds the consumers' heat demand.

Policies

Currently, there are only a few legal provisions on the certification of RES installations, the exemplary role of public authorities and a RES-H building obligation promoting the development, installation and use of RES installations.

5.3 Support schemes in transport

In Lithuania, RES use in the transport sector is promoted through several support schemes. These include the reimbursement – by the National Paying Agency of the Ministry of Agriculture –, of raw materials for biofuel production, an excise tax relief and an exemption from environmental pollution tax.

5.4 Summary of support schemes

- Feed-in tariff. In Lithuania, electricity from RES is promoted mainly through a feed-in tariff. The tariffs for RES plants with a capacity exceeding 10 kW are awarded through tenders. The National Control Commission for Prices and Energy (the NCC) quarterly sets tariff rates for the RES plants with a generating capacity of up to 10 kW and maximum tariff levels for the RES plants exceeding 10 kW. The operators of RES plants are entitled against the electricity company designated by the Ministry of Energy – a public electricity supplier serving the area in which the RES producer is operating or an independent electricity supplier – to payment for electricity exported to the grid. There is a technology-specific cap for the total amount of electricity eligible for promotion through the feed-in tariff.

- Subsidies by the LEIF. LEIF subsidies projects that aim to reduce environmental damage in the long term, including RES-E projects with the exception of geothermal energy.

- Subsidies and loans from the Fund for the Special Programme for Climate Change Mitigation. The Fund for the Special Programme for Climate Change

Mitigation supports projects aiming to reduce greenhouse gas emissions. All technologies used for RES generation are eligible for this scheme. This fund provides support in the form of loans and subsidies.

- Excise Tax Relief. In Lithuania, electricity from RES is exempt from excise tax.

Statutory provisions:

- Law on Energy from Renewable Sources of the Republic of Lithuania (Lith. *Lietuvos Respublikos atsinaujinančių išteklių energetikos įstatymas*);

- Law on Financial Instruments for Climate Change Management of the Republic of Lithuania (Lith. *Lietuvos Respublikos klimato kaitos valdymo finansinių instrumentų įstatymas*);

- Law on Excise Taxes of the Republic of Lithuania (Lith. *Lietuvos Respublikos akcizų įstatymas*);

- Resolution No. O3-333/2014 of the NCC on the Tariffs for Electricity Produced from Renewable Energy Sources for 2014 Q IV (Lith. *Dėl elektros energijos, pagamintos naudojant atsinaujinančius energijos išteklius, tarifų nustatymo 2014 metų IV ketvirčiui*);

- Resolution No. O3-233/2011 of the NCC on the Tariff Setting Methodology for Electricity Generated from Renewable Energy Sources (Lith. *Elektros energijos, pagamintos naudojant atsinaujinančius energijos išteklius, tarifų nustatymo metodika*);

- Resolution No. 916/2012 of the Government of the Republic of Lithuania on the Rules for the Provision of Services of Public Interest in the Electricity Sector (Lith. *Viešuosius interesus atitinkančių paslaugų elektros energetikos sektoriuje teikimo tvarkos aprašas*);

- Resolution No. 827/2012 of the Government of the Republic of Lithuania on the Description of the Procedure for the Support of Renewable Energy Sources for the Use of Energy Production (Lith. *Atsinaujinančių energijos išteklių naudojimo energijai gaminti skatinimo tvarkos aprašas*);

- Order No. D1-275/2010 of the Ministry of Environment on the Guidelines for the Use of the Fund for the Special Programme for Climate Change Mitigation (Lith. *Klimato kaitos specialiosios programos lėšų naudojimo tvarkos aprašas*);

- Order No. 437/2003 of the Ministry of Environment on the Description of the Procedure for Financing and Supervising Projects Funded by the LEIF (Lith.

Lietuvos aplinkos apsaugos investicijų fondo programos lėšomis finansuojamų investicinių projektų įgyvendinimo ir priežiūros tvarkos aprašas).

6 Conclusion

While there are no legal grounds for Crowdfunding in Lithuania, the market for RES Crowdfunding platforms in Lithuania will not be established and developed. Hopefully, the upcoming regulation on Crowdfunding will bring changes in the situation on the Lithuanian market.

Also, the new Lithuanian National Energy Strategy is currently being developed. The new Lithuanian National Energy Strategy will highlight the problems that Lithuania is facing at the moment and will show what developments could be expected in the near future. As mentioned above, the new Lithuanian National Energy Strategy will set a course for future directions in the RES sector, but we are sceptical regarding the introduction of new rules of RES Crowdfunding platforms in the very near future.

7 Summary – Crowdfunding and RES Projects Regulation

Country / Summary	Lithuania
Recent developments in Crowdfunding regulation	• The regulation on Crowdfunding has not yet been established in Lithuania. However, the very first draft of the Law on Crowdfunding of the Republic of Lithuania (Lith. *Lietuvos Respublikos sutelktinio finansavimo įstatymas*) was prepared by the Bank of Lithuania, and soon market players will be officially invited to provide their comments and suggestions as to how the draft law could be improved. It is expected that the new law will be adopted by mid-2016. • The draft Law on Crowdfunding establishes regulation for equity- and lending-based Crowdfunding models. The regulation applies also to the lending-based model when financing is made through loan agreements.
Current Crowdfunding Regulation	
General regulation	• If the activities of a Crowdfunding platform are related to public offering of securities, operator of a platform has to be licensed, except for individual initiatives. To operate a Crowdfunding platform under the current regulation, the Crowdfunding platform's operator should be licenced as a commercial bank, an investment firm or a financial advisory firm. The Bank of Lithuania issues these licences in

	accordance with the Law on Banks of the Republic of Lithuania (Lith. *Lietuvos Respublikos bankų įstatymas*) or the Law on Market in Financial Instrument of the Republic of Lithuania (Lith. *Lietuvos Respublikos finansinių priemonių rinkų įstatymas*), respectively. • Due to the obstacles determined in the Law on Financial Institutions of the Republic of Lithuania (Lith. *Lietuvos Respublikos finansų įstaigų įstatymas*), the Crowdfunding platform based on lending model and financing through loan agreements would fall under the banking regulation. • Donations or rewards model is not qualified as licensed activity, but tax implications for recipient of funds should be assessed.
Prospectus requirement	• Prospectus requirement for the public offering of securities. The obligation to publish a prospectus does not apply in the presence of at least one of the following conditions: — An offer of securities addressed solely to professional investors; — An offer of securities addressed to fewer than 150 natural or legal persons in each Member State of EEA, other than professional investors; — An offer of securities addressed to investors who acquire securities for a total amount of at least EUR 100,000 for each separate offer; — An offer of securities with the nominal value amounting to at least EUR 100,000 per unit; — An offer of securities with a total amount of less than EUR 100,000 in all Member States calculated over a period of 12 months.
AIFMD-regulation	• As collective investment undertakings are defined in a very comprehensive way, RES projects can easily serve the purpose of such definition and could therefore fall within the AIFMD regulation which is implemented in Lithuania through the Law on Managers of Collective Investment Undertakings for Professional Investors of the Republic of

	Lithuania (Lith. *Lietuvos Respublikos profesionaliesiems investuotojams skirtų kolektyvinio investavimo subjektų valdymo įmonių įstatymas*). However, there is no practice in Lithuania, nor are there any regulatory explanations as to how AIFMD could be applied with respect to RES projects.
Payment services regulation	• Transfer of funds via the operator may be considered as payment services, thus, may be subject to licensing requirements in Lithuania in accordance with the local legislation on payment services, which implements the Payment Service Directive.
Further possible requirements	• Law on Prevention of Money Laundering and Terrorist Financing of the Republic of Lithuania (Lith. *Lietuvos Respublikos pinigų plovimo ir teroristų finansavimo prevencijos įstatymas*). • Law on Legal Protection of Personal Data of the Republic of Lithuania (Lith. *Lietuvos Respublikos asmens duomenų teisinės apsaugos įstatymas*). • Law on E-money and E-money Institutions of the Republic of Lithuania (Lith. *Lietuvos Respublikos elektroninių pinigų ir elektroninių pinigų įstaigų įstatymas*).
RES Projects Regulation	
Electricity regulation applicable to RES projects	• Law on Energy from Renewable Sources of the Republic of Lithuania (Lith. *Lietuvos Respublikos atsinaujinančių išteklių energetikos įstatymas*). • Resolution No. 827/2012 of the Government of the Republic of Lithuania on the Description of the Procedure for the Support of Renewable Energy Sources for the Use of Energy Production (Lith. *Atsinaujinančių energijos išteklių naudojimo energijai gaminti skatinimo tvarkos aprašas*).
Market Integration of RES Projects	• Feed-in tariff. In Lithuania, electricity from RES is promoted mainly through a feed-in tariff. The tariffs for RES plants with a capacity exceeding 10 kW are awarded through tenders. The National Control Commission for Prices and Energy (the NCC) quarterly sets tariff rates for RES plants with a generating capacity of up to 10 kW and maximum tariff levels for RES plants exceeding 10 kW. The operators

	of RES plants are entitled against the electricity company designated by the Ministry of Energy – a public electricity supplier serving the area in which the RES producer is operating or an independent electricity supplier – to payment for electricity exported to the grid. There is a technology-specific cap for the total amount of electricity eligible for promotion through the feed-in tariff. • Subsidies by the LEIF. LEIF subsidies projects that aim to reduce environmental damage in the long term, including RES-E projects with the exception of geothermal energy. • Subsidies and loans from the Fund for the Special Programme for Climate Change Mitigation. The Fund for the Special Programme for Climate Change Mitigation supports projects aiming to reduce greenhouse gas emissions. All technologies used for RES generation are eligible for this scheme. This fund provides support in the form of loans and subsidies. • Excise Tax Relief. In Lithuania, electricity from RES is exempt from excise tax.
Transition to tender based allocation of new RES Projects	• The new Lithuanian National Energy Strategy will set a course for future directions in the RES sector.
Further regulatory sources	• Law on Energy of the Republic of Lithuania (Lith. *Lietuvos Respublikos energetikos įstatymas*). • Law on Electricity of the Republic of Lithuania (Lith. *Lietuvos Respublikos elektros energetikos įstatymas*).

Lessons learned – Crowdfunding / RES Projects Regulation

Lessons learned for a possible harmonized European Crowdfunding Regulation	
Role model ("dos")	• Considering the legal uncertainty on Crowdfunding regulation, it is impossible to make an assessment.
Aspects that should be avoided ("don'ts")	• Considering the legal uncertainty on Crowdfunding regulation, it is impossible to make an assessment.

Lessons learned for a possible harmonized European RES Projects Regulation	
Role model ("dos")	• As the new Lithuanian National Energy Strategy will highlight the problems that Lithuania is facing in the field of RES projects regulations and will show what developments could be expected in the near future, it is impossible to make an assessment.
Aspects that should be avoided ("don'ts")	• As the new Lithuanian National Energy Strategy will highlight the problems that Lithuania is facing in the field of RES projects regulations and will show what developments could be expected in the near future, it is impossible to make an assessment.

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XVIII. Luxembourg

1 Luxembourgish market for RES Crowdfunding Platforms

So far no Crowdfunding platforms specialized on funding RES projects ("**RES Crowdfunding Platforms**") have been established and, generally speaking, at this point in time, Luxembourg only has one functional Crowdfunding platform that is based on the Donations or Rewards Model and aims to fund the launch of start-up companies.

2 Recent regulatory developments regarding Crowdfunding regulation in Luxembourg

To date, there are no specific Crowdfunding regulations in place in Luxembourg and we are not aware of any further general regulation developments that might have any effect on Crowdfunding in Luxembourg.

3 Further recent regulatory developments considering RES Projects market in Luxembourg

We are not aware of any recent regulatory development considering RES Projects market in Luxembourg, especially none that could affect RES Crowdfunding Platforms in Luxembourg.

4 Regulation of Crowdfunding in Luxembourg

4.1 License under the law on the financial sector dated 5 April 1993, as amended

4.1.1 Equity Model and Lending Model

The law on the financial sector dated 5 April 1993, as amended, was originally aimed at credit institutions and professionals of the financial sector and sought to regulate the access to financial activities in the financial sector via making them subject to an authorisation granted by the Luxembourg Commission for Supervision of the Financial Sector (*Commission de Surveillance du Secteur Financier*) ("**CSSF**"). Depending on the services offered by the Crowdfunding platform, be it under the Equity or the Lending Model, it is possible that the law on the financial sector could be applicable, which would mean that the Crowdfunding platform could be required to obtain a specific licence to be delivered by the CSSF in order to execute its activities. This would be the case if the Crowdfunding platform was to offer investment or banking services. In particular, the Crowdfunding platform could be considered a credit institution or possibly a professional carrying out lending activities if it was to grant loans under the Lending Model.

In that respect, investors, if they invest through a Crowdfunding platform operating under the Lending Model (depending on the manner they are financed), might also be considered to provide banking or lending services for which a licence could in theory be required.

4.1.2 Donations or Rewards Model

Most probably, Crowdfunding under the Donations or Rewards Model should not fall within the scope of the law on the financial sector. No licence would therefore be required.

4.2 Licence under the law on financial markets dated 13 July 2007, as amended

4.2.1 Equity Model and Lending Model

Depending on the services offered by the Crowdfunding platform, the platform might be considered to constitute a Multilateral Trading Facility and the law on financial markets would become applicable. The platform would have to obtain a licence from the minister, having in his competences the CSSF, before beginning its activities.

4.2.2 Donations or Rewards Model

A platform operating under the Donations and Reward Model should probably not fall within the scope of the law on financial markets and therefore no licence would be required.

4.3 Prospectus requirements

By offering to investors to subscribe to transferrable securities, the Crowdfunding platform (depending on its exact form) could be required to publish a prospectus, which would have to get approved by the CSSF. The obligation to publish a prospectus will depend on the type of the offer and the type of securities offered.

4.4 Possible additional Regulations (depending on the use of proceeds)

Other common regulations to which the operator of a Crowdfunding platform may be subject include:

- Amended law on undertakings for collective investment dated 17 December 2010;
- Amended law on specialised investments funds dated 13 February 2007;
- Amended law relating to the investment company in risk capital ("SICAR") dated 15 June 2004;
- Anti-money laundering law dated 12 November 2004, as amended;
- Law regulating the access to the occupations of craftsman, tradesman, industrialist and certain liberal professions dated 2 September 2011;

- Law of 10 November 2009 on payment services, on the activity of electronic money institution and settlement finality in payment and securities settlement systems (the "**PSD**").

4.5 Possible regulation of Crowdfunding platforms under the AIFMD regime in Luxembourg

4.5.1 Definition of an alternative investment fund ("AIF")

Article 1 paragraph 39 gives the following definition: "Alternative Investment Funds (AIFs)": collective investment undertakings, including investment compartments thereof, which:

- raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and

- do not require authorization pursuant to Article 5 of Directive 2009/65/EC.

4.5.2 Equity Model

Under the Equity Model it is possible that the Crowdfunding platform could be considered to fall within the definition of an alternative investment fund and, thus could fall within the scope of the law on alternative investments fund managers, whereby licence requirements could apply.

4.5.3 Lending Model

In accordance with the interpretation provided by ESMA, it is rather unlikely that a Crowdfunding platform operating under the Lending Model (and being financed through loans) would be considered an alternative investment fund.

4.5.4 Donations or Rewards Model

In our opinion a Crowdfunding platform operating under the Donations and Rewards Model would not be considered an alternative investment fund and should therefore not fall within the scope of the law on alternative investment fund managers.

5 Regulation of RES Projects in Luxembourg

We are not aware of any regulation concerning RES Projects Crowdfunding Platforms in Luxembourg.

6 Conclusion

Although welcome, Crowdfunding has yet to arrive in Luxembourg. Neither the legislator nor the financial authority have given any indications as to how Crowdfunding will be organised on the field or what laws and regulations will be

applicable. It has to be noted that the CSSF ensures the respect of applicable laws which might potentially apply to the Crowdfunding platforms. Nevertheless, it has to be kept in mind that the CSSF, generally speaking, is very flexible and will probably deal in a pro-active way with prospective Crowdfunding platforms on a case-by-case basis.

It may also not be ruled out that, should Crowdfunding become a popular and wide-spread tool, the Luxembourg legislator would be keen to put in place an attractive legislation in this respect.

7 Summary – Crowdfunding and RES Projects Regulation

Country / Summary	Luxembourg
Recent developments in Crowdfunding regulation	• N/A
Current Crowdfunding Regulation	
General regulation	• If the Crowdfunding platform operates banking, lending or investment services -> a license from the minister, having in his competence the CSSF, could in theory be required • If the Crowdfunding platform operates as a multilateral trading facility -> a license from the minister, having in his competence the CSSF, could in theory be required required
Prospectus requirement	• Prospectus requirement for offers of securities to the public and admission of trading of securities on a regulated market • Exceptions: (a) an offer of securities addressed solely to qualified investors; and/or (b) an offer of securities addressed to fewer than 150 natural or legal persons per Member State, other than qualified investors; and/or (c) an offer of securities addressed to investors who acquire securities for at least the total amount laid down in Article 3(2)(c) of Directive 2003/71/EC and in the delegated acts adopted in accordance with Article 24a of

	this Directive, per investor, for each separate offer; and/or (d) an offer of securities whose denomination per unit amounts to at least the amount laid down in Article 3(2)(d) of Directive 2003/71/EC and in the delegated acts adopted in accordance with Article 24a of this Directive; and/or (e) an offer of securities with a total consideration in all Member States of less than the amount laid down in Article 3(2)(e) of Directive 2003/71/EC and in the delegated acts adopted in accordance with Article 24a of this Directive. Such limit shall be calculated over a period of 12 months.
AIFMD-regulation	• If the Crowdfunding platform would be considered as an AIF, the AIFMD could apply and licencing requirements thereof would have to be complied with. Depending on the form of the Model and the investments, exceptions or derogations might apply.
Payment service regulation	• The Crowdfunding undertaking may fall within the scope of the PSD. The envisaged services may constitute either (i) money remittance (in the event that no account is being created in the name of the payer or the payee) or (ii) payment transaction, which implies an existence of a payment account, at least, in the recipient's side. • In the event that the Crowdfunding does fall within the scope of the PSD, potential exemption methods would have to be addressed on a case-by-case basis.
Consumer credit regulation	• With regard to consumer credit regulations, it is possible that Crowdfunding platforms might be considered to perform a banking activity which would in theory require for them to have a licence under the Law on the financial sector (see above).
Further possible requirements	• Anti-money laundering law dated 12 November 2004, as amended; • Law regulating the access to the occupations of craftsman, tradesman, industrialist and certain liberal professions dated 2 September 2011;

RES Projects Regulation	
Electricity regulation applicable to RES Projects	• There does not exist any relevant RES legislation with regards to Crowdfunding in Luxembourg.
Market Integration of RES Projects	• There does not exist any relevant RES legislation with regards to Crowdfunding in Luxembourg.
Transition to tender based allocation of new RES Projects	• There does not exist any relevant RES legislation with regards to Crowdfunding in Luxembourg.
Further regulatory sources	• There does not exist any relevant RES legislation with regards to Crowdfunding in Luxembourg.

Lesson learned – Crowdfunding / RES Projects Regulation

Lessons learned for a possible harmonized European Crowdfunding Regulation	
Role model ("dos")	• As there is currently no Crowdfunding platform operating in Luxembourg, there are no lessons learned from Luxembourg
Aspects that should be avoided ("don'ts")	• As there is currently no Crowdfunding platform operating in Luxembourg, there are no lessons learned from Luxembourg
Lessons learned for a possible harmonized European RES Projects Regulation	
Role model ("dos")	• There does not exist any relevant RES legislation with regards to Crowdfunding in Luxembourg.
Aspects that should be avoided ("don'ts")	• There does not exist any relevant RES legislation with regards to Crowdfunding in Luxembourg.

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XIX. Malta

1 Maltese market for RES Crowdfunding platforms

The growth in the use of Crowdfunding platforms (typically online platforms) has presented plenty of opportunities for those with money to invest, for those seeking funds and for those administering the platforms alike. Malta has recently acceded to this rising trend, with the launch of the first local Crowdfunding platform in 2015. Whereas the launching of the first local Crowdfunding platform was a recent realisation, the funding of local projects through other non-locally based Crowdfunding platforms was still pursued by local entrepreneurs, with two projects being so funded in 2014[1]. This is in addition to various local entrepreneurs independently seeking financing for their projects/ideas through Crowdfunding platforms abroad such as Kickstarter or Indiegogo[2].

Malta's first local Crowdfunding platform, "***ZAAR***"[3], utilised the donations and rewards model, whereby investors can make a donation with a possible reward return should the fund raising be concluded with success. The preference of such model might be due to the lack of formal legislative framework regulating Crowdfunding in Malta as outlined later on. However, the interest towards crowd funding financing models is gaining ground with local authoritative bodies such as the Malta Business Bureau and the University of Malta forming collaborations to support such alternative ways of financing.

At present, Malta does not have any on-going Renewable Energy Sources Projects ("**RES Projects**") which are being funded via a Crowdfunding platform financing model. The current RES Projects in Malta are being financed through private methods, most of them being partially financed by governmental subsides as well as the Horizon 2020 schemes. The vast majority of renewal energy within Malta is produced through photovoltaic solar panels, and therefore on-going projects are primarily focused on this energy resource. The Malta Environment and Planning Authority ("**MEPA**") has issued a solar farm policy in November 2014, encouraging RES Projects in abandoned quarries and large industrial rooftops, highlighting the local need for such projects[4].

2 Recent regulatory developments regarding Crowdfunding regulation in Malta

The Malta Financial Services Authority ("**MFSA**"), the single regulator for financial services in Malta, is still in the process of formulating a policy with respect to Crowdfunding and is currently assessing all the licensing implications that may arise

[1] European Commission; Crowdfunding: mapping EU markets and events study, page 81; 30th September 2015.
[2] Teodor Reljic; "The art of asking: Crowdfunding and Malta"; www.maltatoday.com.mt, last access 12/01/2016.
[3] http://www.zaar.com.mt
[4] https://www.mepa.org.mt/file.aspx?f=11943

from such an activity. As a result, presently there is no formal position on the regulatory status of Crowdfunding financing and therefore there is no rulebook in this respect. Nonetheless, further to an analysis of the present Maltese financial services legislation, the potential impact on the prospective Crowdfunding platforms can be explored further.

3 Further recent regulatory developments considering RES Projects market in Malta

As previously mentioned, the Malta Environmental and Planning Authority together with the Ministry of Energy and Health published a new policy framework in 2014 to provide guidance for the location of new solar farms while identifying design criteria and mitigation measures to address their potential impact. The policy document was aimed to facilitate Malta's achievement of its 2020 EU target of 10% Renewable Energy.

The existing targets which Malta has committed to in regards of Horizon 2020, as well as the local assistance being published by Governmental Authorities, highlights not just a need for new RES projects, but also a local appetite being headlined by authorities. Therefore, the market is open for new opportunities as a high demand is being instigated by the Government itself.

4 Regulation of Crowdfunding in Malta

Currently, there is no existing regulatory framework which specifically regulates Crowdfunding. However the carrying out of Crowdfunding activities might fall within the licensable activities covered under various titles of local legislation. The main legislative documents worth noting are the Malta Investment Services Act[5], the Companies Act[6] and the Financial Institutions Act[7].

4.1 Donations and Rewards Model

The donations model involves people backing up a project or activity which they want to support without receiving any return, whilst with the rewards model there is a certain element of expected return in the form of reward, service or product. These activities fall foul of any regulatory requirements and are also perceived as posing a lower regulatory risk than the other models of Crowdfunding.

In fact the local Crowdfunding platform ZAAR follows this model, where ZAAR is a corruption of the '*zaghar*' in Maltese meaning 'small change' whereby the underlying concept is that prospective investors that believe in a project will contribute the equivalent of spare change to donate to the idea that they believe in. The mentioned established platform takes an all-or-nothing approach to the fund raising, whereby all

[5] Chapter 370 of the Laws of Malta
[6] Chapter 386 of the Laws of Malta
[7] Chapter 376 of the Laws of Malta

donations are refunded to the investors when a project does not manage to reach its pre-established funding targets.

4.2 Equity/Investment Model

4.2.1 Implications under the Investment Services Act

4.2.1.1 Separate individual investments

The Investment Service Act ("**ISA**"), regulates the carrying out of "Investment Services" in or from Malta when in relation to an "Instrument", granting the discretion and the power of issuing such a licence to perform such activities to the MFSA.

Equity Crowdfunding platforms perform the investment activities of "reception and transmission of orders in relation with one or more instruments" and "execution of orders on behalf of other persons"[8]. The equity Crowdfunding platforms intermediate and execute orders in relation to "transferable securities"[9]. In particular, equity Crowdfunding platforms intermediate the acquisition by investors of "shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares". Having regard of the fact that the equity Crowdfunding platforms are deemed to provide an "Investment Service" in relation to an "Instrument", such platforms will fall within the realm of the ISA requiring the authorisation of such businesses as investment service providers by the MFSA. The most appropriate licence category would be the Category 2 Investment Services Licence since it covers the provision of the above described investment services activities as well as providing for the holding or controlling of clients moneys. For comparison purposes, the equity Crowdfunding business is analogous with a securities brokerage business which intermediates private equity transactions, with the key common factors being the Fintech element (the reliance on technology, in particular the internet), and the tendency to focus on smaller, retail investors.

4.2.1.2 Collective investments

The ISA also regulates the issuing or creating of any units by any collective investment scheme ("**CIS**") or carry on any activity in or from Malta.

A CIS is defined under the ISA as "any scheme or arrangement which has as its object or as one of its objects the collective investment of capital acquired by means of an offer of units for subscription, sale or exchange and which has the following characteristics:

a) the scheme or arrangement operates according to the principle of risk spreading; and either

[8] First Schedule of the Investment Service Act, 1994

[9] Second Schedule of the Investment Services Act, 1994

b) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; or

c) at the request of the holders, units are or are to be repurchased or redeemed out of the assets of the scheme or arrangement, continuously or in blocks at short intervals; or

d) units are, or have been, or will be issued continuously or in blocks at short intervals."

This definition is quite broad and does encompass various operation scenarios. Ultimate discretion on whether the proposed activity falls within the definition of a CIS lies with the MFSA. The typical equity Crowdfunding operation implicates that every investor holds a separate account with the platform and therefore the investment is not collectivized. In such equity Crowdfunding operations, a collective investment scheme will not be deemed to be setup in terms of the ISA. However, where the equity Crowdfunding operation result in a company whose capital is owned by the investor in proportion to the amount committed by them, this could fall within the definition of a CIS under the ISA.

In fact, since the MFSA has not as yet determined its position in relation to Crowdfunding platforms, it does in practice recommend that prospective companies of such nature do consider revising the proposed operational setup in terms of the existing regulatory framework for collective investment schemes.

4.2.2 Offering of Securities

The offering of securities (such as shares and bonds) to the public is an activity which is subject to regulation under the Companies Act ("**CA**"). The public offering of securities is subject to stringent regulation and whilst such regulation is appropriate and crucial, it may not be proportionate to the circumstances of businesses seeking to raise finance through Crowdfunding platforms. The CA already provides for a number of exemptions from the rules associated with a public offer of securities; any further flexibility would be welcome and helpful in this context.

4.3 Lending Model

The lending Crowdfunding model is used to raise funds for a project in the form of a loan agreement, with a promise to repay with (or in certain cases without) interest. Certain platform may also use institutional money or their own balance sheet to finance such loans.

4.3.1 Implications under the Financial Institutions Act

Theoretically, one would expect the regulation of loan based Crowdfunding operations to fall under the provisions of the Financial Institutions Act. In order to clearly analyse the specific activity which the lending Crowdfunding platform would fall under, the services offered by the platform as well as its involvement in the lending of funds must

be examined. Activities covered by the FIA include inter alia lending, factoring, money transmission services, payment services and electronic money.

The lending Crowdfunding platform does not typically lend money directly to projects and is also not a party within the lending agreements between lenders and fund raising borrowers. The platform serves to provide a framework in order to; (1) enhance the visibility and enable the interaction between the lenders and the borrowers, (2) facilitate the contractual terms and conditions, (3) provide the necessary contracts to the related parties, and (4) coordinate payments and repayments.

4.3.2 Implications under the Investment Services Act

A lending Crowdfunding operation with a collective investment element can also fall within the CIS regime. On the 2nd of April 2014 the MFSA issued 'Standard License Conditions applicable to Collective Investment Schemes authorised to invest through Loans' ("Rules") which appear to be influenced by the Regulation on European Venture Capital Funds and the Europe 2020 strategy.

For the purposes of the Rules the term 'investing through loans' is understood to mean:

- the direct origination of loans by the Scheme; or
- the acquisition by the Scheme of a portfolio of loans or a direct interest in loans which gives rise to a direct legal relationship between the Scheme as lender and the borrower.

The Rules include an important restriction which state that Malta Loan Funds can only issue loans to 'unlisted companies and SMEs'. The Rules include an anti-abuse provision which states that 'any entity receiving a loan shall be prohibited from transferring such loan to a third party'. The Rules also require the fund to be a closed-ended fund;

- which does not raise capital through the continuous sale of units or shares;
- has a fixed duration;
- the units of which can only be redeemed at the end of the duration of the scheme.

4.4 Regulation on Crowdfunding under the AIFMD Regime

The transposition of the AIFMD in Malta has been effected through the amendment of the Investment Service Act and its subsidiary legislation. Platforms which are seen to collectivise investments and fall within the regulatory definition of CIS might also fall within the scope of the AIFMD Regime.

4.4.1 Definition of AIF

The definition of an Alternative Investment Fund ("**AIF**") which is found in Article 2 of the ISA, specifies any "*collective investment scheme, including sub-funds thereof, which raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors, and which does not qualify as a UCITS Scheme in terms of the UCITS Directive*".

Therefore should the elements of a collective investment scheme as outlined above, the elements of an AIF be fulfilled and the thresholds outlined by the AIFMD are reached, the MFSA would be open to consider such an arrangement as falling within the AIFMD.

5 Regulation of RES Projects in Malta

5.1 Overview

The energy market in Malta is very particular due to the small size and the remoteness of the island. This remoteness was recently surpassed with the construction of an electricity submarine interconnector with Sicily. This interconnector became operational in April 2015.

Malta agreed with its European partners to achieve a 10% of renewal energy sources in the National action plans for 2020[10]. As part of the combination in the energy resources, Malta has projected that around 15% of its electricity will be generated by renewal sources. Also, the Government is committed to develop Gozo[11] as an eco-friendly island. The Government is exploring private-public partnerships and even locating places to develop small on-shore wind farms in the island of Gozo[12]. A RES Crowdfunding project may be a good opportunity for the funding of such development. The Maltese Government is promoting the inclusion of renewal of energy sources in Malta mainly in three areas, electricity generation throw solar panels, water solar heating and the using of biofuels in the transport systems.

Public support is achieved through different ways. Electricity generated by domestic PV installations is mainly supported through a feed-in tariff. Malta promotes solar water heating systems for domestic use through a subsidy scheme with covers the 40% of the installation costs up to EUR 400, this program will continue until 31st December 2016[13]. Support for renewable energy sources used in transport is provided through tax relief. The Malta Resources Authority is proposing that the existing system of tax exemption on biofuels is partly replaced by a mandatory substitution obligation. When the new regulation enters into force, importers will be obliged to blend a specific percentage of biofuels into their product.

[10] Malta Resources Authority, "Report on Plans to Achieve the set RES target of 10% by 2020", 14th January 2010.
[11] Gozo is an island within the Maltese Archipelago.
[12] Ministry for Gozo, "Eco-Gozo A better Gozo", page 19; November 2009.
[13] Government Notice 1272 of 2015, 29th December 2015.

Additionally, electricity generated by renewable energy plants must be given priority transmission. According to the regulations in place, new grid capacity will be offered through a tendering procedure where required.

There is also a registration scheme for RES installations and a training programme for installers in Malta.

5.2 Feed-in Management

Like in other European jurisdictions renewal energy operators benefit for priority access to distribution system of electricity[14]. The distribution system operator shall give priority to generating installations using renewal energy resources and shall provide to the new producers with all the information required in relation with the grid connection including a detailed estimate about the costs and an indicative timetable for the proposed connection.

5.3 Remuneration system

Malta introduced the feed-in tariffs for photovoltaic panels in September 2010 through the Feed-in Tariffs Schemes (Electricity generated from photovoltaic installations) Regulations[15]. This Regulation is only applicable for solar photovoltaic ("**PV**") installations in domestic premises or institutional households and it establishes two schemes of which the energy producer may benefit:

- Full-export – the energy producer export all the electric production to the grid.
- Partial-export – the energy producer only exports the energy which is produced but not consumed.

In order to benefit from one of the above schemes, the energy producer has to submit an application form to the Regulator for Energy and Water Services, agreeing which Scheme shall be applicable. For PV installations made for third parties only the first option is available.

The distribution system operator is responsible to install the meters and calculate the amounts to be paid to the producers. The Government fixes the amounts to be paid for the electricity input in the grid and for the period such prices are guaranteed. The Government updates the prices annually with a guarantee period of 20 years. Also, there is a cap for the payment of the feed-in tariff, which is calculated as the kWp capacity installed multiplied by 1600kWh for each system connection. However, this cannot exceed 4800kWh/annum for residential PV's and 160,000kWh/annum for non-residential PV's. Units sold above the cap are paid by the operator at the marginal price set up on the fourth schedule of the above mentioned Regulation.

[14] Electricity Market Regulations, Article 25(b)
[15] Subsidiary Regulation 423.46

Since 2011 the feed-in tariff schemes are available for micro-turbines with a capacity of 20kW or less. The Full-export and the Partial-export schemes are available and the prices are regulated in the fourth schedule of the Regulation.

6 Conclusion

Crowdfunding, being an extremely innovative and revolutionary financing option, has increased its popularity particularly for projects which are either innovative in themselves or merely projects which encounter constant hurdles to access traditional financing methods. Its popularity increased so exponentially that the legislation was not given enough time to keep up with the demand for the setting such Crowdfunding operations. There is no existent harmonisation and the each jurisdiction regulates with Crowdfunding under its own legislative framework.

Crowdfunding operations intrinsically raise concerns specifically on the investor protection side (including suitability and appropriateness of specific products to different investors) and due diligence on the fund-seeking entities/businesses. With respect to suitability and appropriateness, basic rules of investor protection require operators to assess the suitability and appropriateness of financial products to the needs of investors. This means that one should not promote a high risk product to an unsophisticated, retail investor. Having said that, Crowdfunding is almost by definition focused on high-risk / high-return opportunities which are marketed to potentially unexperienced investors. With respect to due diligence, even though reputable Crowdfunding operators might already seek to carry out due diligence on the fund-seeking entities/businesses that are promoted on their platform in order to protect their reputation, this market practice is not officially formalised in all jurisdictions.

It is clear that the existing local legislative framework pre-dates the development of Crowdfunding as a viable source of finance, and therefore does not adequately address the specific concerns raised by the sector. This is a significant lacuna, since Crowdfunding presents some very particular challenges, and without a bespoke rulebook to address these challenges it may be difficult for the local sector to flourish.

Malta needs a diversification of financial instruments which is especially important in relation to RES projects, due to the high level political commitments which Malta has made in this area and also the ever growing need of sustainably utilising alternative forms of energy. This is more apparent having regard to the success of various Crowdfunding platforms for RES projects in other European jurisdictions.

The issuing of a Crowdfunding rulebook or the specific tailoring of exiting legislation to cater for Crowdfunding operations would be an important first step towards opening Malta for such business, and would almost certainly serve to encourage growth in the area, having also due regard to the proper protection of investors. Malta can now take the opportunity and seek advantage of the experience of other jurisdictions to issue a compelling proposal.

7 Summary – Crowdfunding and RES Projects Regulation

Country / Summary	Malta
Recent developments in Crowdfunding regulation	• N/A
Current Crowdfunding Regulation	
General regulation	• If a Crowdfunding platform facilitates offering of securities, or shares in collective investment schemes, it will be considered as providing an investment service under the the local investment services act. • An MFSA authorisation would be required for such an offering,
Prospectus requirement	• If a Crowdfunding platform facilitates offering of shares in collective investment schemes, it will be considered as providing an investment service under the the local investment services act. As part of this, an offering Memorandum would need to be provided to investors. • An MFSA authorisation would be required for such an offering
AIFMD-regulation	• If a Crowdfunding platform facilitates offering of securities, or shares in collective investment schemes, and falls it will be considered as providing an investment service under the the local investment services act. The collective investment scheme would be considered an AIF should the thresholds outlined by the AIFMD are reached. • An MFSA authorisation would be required for such an offering
Payment services regulation	• If a Crowdfunding platform intermediates payment transactions between the investors and the fund seekers, this may constitute as a payment service such as money remittance under the local Financial Institutions Act. • An MFSA authorisation would be required for such an offering

Further possible requirements	• N/A
RES Projects Regulation	
Electricity regulation applicable to RES Projects	• The Malta Resources Authority Act establishes the primary authority for the regulation of all energy processes and activities in Malta, as well as subsidiary laws including the Electricity Supply Regulation, the Electricity Market Regulations, the Natural Gas Market Regulations, and the Promotion of Energy from Renewable Sources Regulations.
Market Integration of RES Projects	• 2010: Promotion of Renewable Energy Sources in the Domestic Sources; The RES support scheme provided financial support to cover part of the investment costs of domestic RES equipment (solar water heaters and PV panels). • 2013: Promotion of Renewable Energy Sources in the Domestic Sources (2012); The RES support scheme provides financial support to cover part of the costs of PV systems installed for domestic use. The scheme was open to all energy consumers in the domestic sector and available funds were allocated on a first come first served basis. • 2014: Solar farm Policy in November 2014. Encouraging RES Projects in abandoned quarries and large industrial rooftops, highlighting the local need for such projects. • 2015; The RES support scheme provided financial support to cover part of the investment costs of domestic RES equipment (solar water heaters and PV panels).
Transition to tender based allocation of new RES Projects	• N/A
Further regulatory sources	• N/A

Lesson learned Crowdfunding / RES Projects Regulation

Lessons learned for a possible harmonized European Crowdfunding Regulation	
Role model	• Reduced regulation in order to enhance investment

("dos")	through Europe and assist the intention behind the Capital Markets Union.
Aspects that should be avoided ("don'ts")	• Onerous regulation which is not proportionate to the size of firms seeking funding.
Lessons learned for a possible harmonized European RES Projects Regulation	
Role model ("dos")	• N/A
Aspects that should be avoided ("don'ts")	• N/A

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XX. Netherlands

1 Netherlands market for RES Crowdfunding Platforms

The Netherlands is bound by the general EU target of 20% renewable energy consumption in 2020. This target has been 'translated' for the Netherlands in a binding obligation to achieve by 2020 at least 14% of renewable energy sources ("**RES**") in gross final energy consumption. The coalition government set in 2013 an even a more ambitious target of 16% renewable energy production in 2023.

Although this target applies to the Dutch government, it is up to the market parties to realize these targets. Consumer impact is limited and is generally restricted to a free choice of supplier. Therefore suppliers are required to inform consumers of the types of energy they produce and supply. Consumers may also actively participate in the production of energy, i.e. in renewable energy sources projects ("**RES projects**"). They can establish solar panels on their roofs or invest in RES projects. More recently, policies are being developed to promote such active participation in RES projects as this may lead to more public acceptance of energy projects, which have often been obstructed as consumers do not wish to have a wind turbine or other type of energy infrastructure 'in their back yard'.

As the production of energy is taking place in a liberalized energy market and the Dutch government aims at a 'freedom of energy production' there are few restrictions to establishing a RES project. The owners/developers of a RES project can thus be a traditional energy company (usually a shareholding company in which customers may holds shares), an energy cooperative, an investment fund and the public via Crowdfunding. The interest in the latter is increasing (see for example oneplanetcrowd.nl, duurzaaminversteren.nl and greencrowd.nl).

In 2015, the overall Crowdfunding market in the Netherlands had a value of EUR 128 million.[1] Approximately 9% thereof, amounting to EUR 11,5 million, was crowdfunded for purposes of the renewable energy sector. 75% thereof, amounting to EUR 8,7 million, related to investments in RES projects and the remaining EUR 2,8 million was successfully raised for initiatives commenced by consumers for the production of energy, by means of – mainly – solar panels (EUR 660.000), biomass (mainly wood pellets for private use – EUR 560.000) and within the built environment (such as amendments to a building in order to make it energy neutral) (EUR 1,2 million). The number of projects in the renewable energy crowdfunding sector is still relatively small (83 projects in 2015), but the market itself is growing expansively since the first project in 2012.

[1] All numbers in this paragraph are based on a report made available on the website of Douw&Koren Crowdfunding Consultancy, 'Crowdfunding voor duurzame energie: 11,5 miljoen in 2015', posted on 10 March 2016 (Crowdfunding voor duurzame energie: 11,5 miljoen in 2015 | Douw&Koren).

1.1 Different investment models

Due to the relatively high costs involved in RES projects, Crowdfunding is generally used as a partial source for funding a RES project. Generally, a Crowdfunding campaign in relation to a RES project is combined with different types of funding, such as bank financing, investments of business angels and/or subsidies of the Dutch government, such as the SDE+ regime.

For the Crowdfunding part of the total financing needs, all four models of Crowdfunding are used to crowdfund RES projects.

In respect of RES projects, a fairly common structure used when Crowdfunding such project is that investors obtain an entitlement to the energy that was produced by, for example, the wind turbine or solar park pro rata to their investment in the project. This entitlement to their own produced energy could be provided as a reward for the investment made. In order to prevent the investors jointly holding ownership of RES, investors generally participate in a cooperative (*coöperatie*) or other legal entity which legal entity in turn uses the investments to set up a RES project. The cooperative owns the energy infrastructure, such as the wind turbine or the solar park; the investors generally have an indirect interest in such renewable energy source, pro rata to the investment made by the investor in the legal entity. A great example of this model is the Crowdfunding campaign of the Windcentrale in 2012. EUR 7 million was raised to finance 2 new wind turbines. The 5500 households that invested in this Crowdfunding project obtained a pro rata share in the ownership of the wind turbines and receive their pro rata share in the energy (generally via the cooperation of a traditional energy company) that is produced by the wind turbines on a continuous basis. Each of the investors also pays a pro rata part of the exploitation costs of involved.

In case the lending model is used, the lenders (jointly) provide a loan to a legal entity that initiates a RES project through the intermediation of a Crowdfunding platform. The lenders do not receive any for of direct or indirect ownership, but simply the repayment of the loan in full and interest accrued on the loan. A good example of such a Crowdfunding platform is OnePlanetCrowd. OnePlanetCrowd is with 16.000 investors/lenders one of the biggest sustainable Crowdfundingplatforms in Europe. They offer fundraising entities the possibility to initiate a Crowdfunding campaign for a RES project by means of a (convertible) loan, the offering of a reward or to request for donations from the crowd, or a combination of these models.

1.2 RES Projects

The main RES in the Netherlands are wind energy (onshore and increasingly also offshore) and biomass. In 2013 the share of renewables in electricity generation was 12.1% only. The major source of RES were biomass (5.9%) and wind energy (5.6%). The amount of solar energy and geothermal heat has been increasing but is still at negligible levels (0.5%). In addition, there are four medium-sized hydropower plants in

the rivers Maas and Lek but their share in electricity generation is very limited (only 0.1%).

Most Crowdfunding is organised in order to develop onshore wind parks (for example wind park Netterden) and solar PV projects (for example Zelfstroom, Rooftop Energy en Yellow Step Solar). In addition, the development of an offshore wind park is stimulated via Crowdfunding (for example Meewind) and even a small hydropower station (for example Dobbelstroom).

2 Recent regulatory developments regarding Crowdfunding regulation in the Netherlands

In December 2014, one of the Dutch regulators, the Netherlands Authority for the Financial Markets (the "**AFM**"), published a report on crowdfunding, titled 'Crowdfunding – Towards a sustainable sector'. In the report, regulatory bottlenecks are identified by the AFM which could impede a sustainable development of crowdfunding in the Netherlands. The report provides some insight of the reasoning of the AFM and includes the AFM's recommendations how the crowdfunding market in the Netherlands can develop into a sustainable one.

Subsequently and in response to the report of the AFM, the Dutch Ministry of Finance published a draft decree providing for a more specific regulatory framework for crowdfunding in the Netherlands, in particular in respect of the lending model and the equity model. This draft decree was open for consultation until 29 April 2015, following which the draft decree needed to go through the regular procedure for adoption. Main part of this procedure is the advice of the Dutch Council of State (*Raad van State*). This advice was only recently published on 29 February 2016 in the Government Gazette (*Staatscourant*) together with the draft decree including some further amendments on the basis of the advice of the Council of State. Although it was contemplated to have the draft decree enter into force as per 1 January 2016, this deadline was not satisfied. The Dutch Ministry of Finance informed the market on 14 December 2015 that the entering into force of this new 'Crowdfunding Decree' is expected ultimately as per 1 April 2016.[2]

In anticipation of the entering into force of the new Crowdfunding Decree, the AFM published a newsletter on 10 December 2015 listing new provisions applicable to crowdfunding platforms using the equity model or the lending model only. These new provisions were partially amended on 21 January 2015.

In this report, we will describe both the contemplated amendments to existing rules and regulations on the basis of the draft 'Crowdfunding Decree' and the new provisions set by the AFM and applicable to equity and lending based crowdfunding

[2] Although not formally announced on the date of closing copy (10 March 2016), the expectation is that this deadline of 1 Apri 2016 shall not be met by the Dutch government due to recent publication of the amended decree in the Government Gazette on 29 February 2016.

platforms.[3] We explicitly warn the reader that the final decree to be adopted can deviate from the text of the draft 'Crowdfunding Decree' as described below. Moreover, the AFM has relatively broad discretionary power to determine and amend the provisions applicable to lending based crowdfunding platforms because these platforms currently need a dispensation from a specific prohibition under Dutch law (we refer you to paragraph 4.1.7 below for a more detailed description of this regime applicable to lending based crowdfunding platforms). These dispensations are provided on an individual basis by the AFM to the applying lending based crowdfunding platform. When providing this individual dispensation the AFM will subject the crowdfunding platform to specific provisions. Due to the individual character of the dispensation, these specific provisions can differ between lending based crowdfunding platforms.

Ultimately as per 1 April 2016,[4] the following amendments are expected:

- Investment limits applicable to the Equity model and the Lending model are raised. The current limits per investor per platform are up to EUR 20.000 in equity crowdfunding investments and EUR 40.000 in lending crowdfunding investments. These are each doubled to EUR 40.000 (equity) and EUR 80.000 (lending) respectively. It is emphasized that these limits apply per platform including its subsidiaries and/or sister companies. When posing questions in relation to the geographical scope of this provision, AFM confirmed to us that these provisions are only applicable to platforms that are active in the Netherlands on the basis of a license or dispensation provided by the AFM. However, the investment limits apply to any investor investing through such a platform supervised by the AFM and therefore irrespective of such investor's residency.

- Crowdfunding platforms using the Equity model or the Lending model need to conduct an investors test in order to assess whether the investment is sound (*verantwoord*) for this particular consumer. The investors test, to be developed by the platforms themselves, should survey whether the consumer has sufficient knowledge and experience to understand the risks involved in crowdfunding in general, in the specific project the consumer contemplates to invest in and in the specific platform. Furthermore, from the investors test it should become apparent that the consumer invests a sound part of his/her freely available assets for investment. The AFM holds the view that a consumer should not invest more than 10% of his/her freely available assets for investments in crowdfunding projects. The crowdfunding platform has the responsibility to determine the outcome of the investors test. The

[3] The AFM confirmed in a newsletter on 10 December 2015 that it does not supervise crowdfunding platforms using the donations or rewards model. We do note that such platforms could still potentially fall under the supervision of the Dutch Central Bank, for example if the platform qualifies as a payment services provider. Moreover, depending on the exact structure used by a platform using the rewards model, we do note that in limited situations the reward could qualify as an investment property (*beleggingsobject*). If it does, the platform will require a license and will be supervised by the AFM.

[4] Please see footnote 2.

crowdfunding platform notifies the investor of the outcome in an objective manner (not as a recommendation) and, if the outcome is negative, the platform should emphasize the risks involved by means of an explicit warning. The outcome is non-binding.

- The crowdfunding platform needs to conduct such test (i) prior to the initial investment of such consumer through the crowdfunding platform in excess of EUR 500[5] and, (ii) if the consumer already invested through the platform prior to these new rules becoming effective, prior to the first investment of such consumer in excess of EUR 500 after the investors test becoming applicable. Moreover, the crowdfunding platform needs to re-assess whether any investment exceeding the first EUR 5000 as well as any multiple of EUR 5000 thereafter through the platform is sound by re-determining whether the consumer has sufficient freely available assets for investment.

- The investor should be provided a reflection possibility. The crowdfunding platform should provide the investor either the opportunity to actively confirm the investment within 24 hours, failing which the investment will be cancelled, or the opportunity to terminate the investment in an easy manner without any costs being charged within 24 hours.[6]

- The dispensation regime applicable to crowdfunding platforms using the Lending model and focusing on business loans only will be intensified in order to create a more level playing field in respect of the regulatory regime applicable to these type of crowdfunding platforms compared to crowdfunding platforms using the Equity model. We will describe the amendments in more detail in paragraph 4.1.8 below.

- Some regulatory impediments will be taken away by amending the Market Conduct Supervision (Financial Institutions) Decree (*Besluit Gedragstoezicht financiële ondernemingen* (Wft)). We will describe the amendments applicable to the crowdfunding platform in more detail in paragraphs 4.1.5 and 4.1.8 below.

  One of the regulatory impediments that was identified and announced to be taken away but for which no draft amendment bill was published as yet relates to a prohibition applicable to borrowers who, in the pursuit of their profession

[5] One of the members of lower house of Parliament (Tweede Kamer) submitted a motion to increase the first threshold of EUR 500 for applicability of the investor test to an investment of EUR 1000, which motion was accepted by the lower house of Parliament. By press release of 22 February 2016, however, the AFM informed the Dutch Minister of Finance that the AFM does not agree to a further increase of the threshold and maintains EUR 500.

[6] We note that there is a discrepancy between the Crowdfunding newsletter dated 10 December 2015 of the AFM and the new requirements applicable to crowdfunding platforms using the Lending model as published on the website of the AFM. The newsletter refers to a period of only 24 hours to cancel an investment, whereas the requirements refer to a period of 14 days. At our request the AFM clarified to us that a termination period of only 24 hours suffices and that this does not affect the protection offered to consumers by means of a 14 days withdrawal period on the basis of Directive 2002/65/EC (Distance Marketing of Consumer Financial Services Directive) and Directive 2011/83/EU (Consumer Rights Directive). The AFM notified us, however, that they prefer to exclude loans provided via a crowdlending structure from that 14 days withdrawal period.

or business, attract, receive or have the disposal of redeemable funds from the public in the Netherlands. This prohibition is laid down in Article 3:5 of the DFSA. Generally, this prohibition applies to each business that obtains a loan from consumers, including through the intermediation of a crowdfunding platform. The Dutch Central Bank (De Nederlandsche Bank, "**DCB**"), the relevant regulator in respect of this prohibition, currently does not take any enforcement measures against any such borrower. This apparent – not published or officially communicated – tolerance policy would be replaced by a clear exception from the prohibition applicable to lending based crowdfunding. As no formal draft language for such exception has been made available as yet, we cannot guarantee this exception to become effective nor that the tolerance policy will be maintained by DCB.

In a RES project the fundraising entity that raises (part of) the required funding for the RES project by means of requesting a loan from consumers (lending based crowdfunding campaign), such fundraiser will violate this prohibition. The safest way to deal with this prohibition is to either obtain a written confirmation from DCB that it will not take any enforcement measures against the fundraising entity on the basis of violating Article 3:5 DFSA or to structure its financing needs in another manner. For example, if the fundraising entity attracts, receives or has the disposal of the redeemable funds by means of the issuance of negotiable securities (*effecten*), such as notes, bonds and other negotiable debt securities, in accordance with the regulatory regime applicable to the issuance of securities to the public (described in more detail in paragraph 4.2 below), the fundraising entity will be excepted from this prohibition of Article 3:5 DFSA. However, this also limits the fundraising entity in a great extent in respect of potential crowdfunding platforms it can choose from. Once the loan becomes negotiable (*verhandelbaar*), another regulatory regime becomes applicable to the crowdfunding platform. As from that moment, a dispensation from the prohibition to act as intermediary in respect of redeemable funds (as described in more detail in paragraph 4.1.7) no longer suffices; the crowdfunding platform will generally be considered to provide investment services (in particular the investment service of 'in the pursuit of a profession or a business, receiving and transmitting orders of clients in relation to one or more financial instruments')[7] if it acts as a broker between the fundraising entity on the one hand and the investors on the other hand. As a consequence, the platform would require a license as an investment firm (*beleggingsonderneming*) and will become subject to the heavy 'MiFID' framework (as described in more detail in paragraph 4.1.1 below). Although there may be ways to circumvent this burdensome regulatory framework to become applicable, the AFM has explicitly informed the market that it intends to review its position in order to prevent any such circumvention. The AFM is already discussing this with the relevant crowdfunding platforms active in the Netherlands without a license as an investment firm.

[7] Please see the definition of 'providing an investment service' (*verlenen van een beleggingsdienst*) in Article 1:1 of the DFSA.

- In addition to crowdfunding platforms using the Lending model and having obtained a dispensation to act as intermediary in respect of redeemable funds (we refer to paragraph 4.1.7 below in which this regulatory regime is explained in more detail), any crowdfunding platform using the Equity model or the Lending model needs to fill in the monitoring form made available on the website of the AFM[8] on a semi-annual basis. The monitoring forms enable the AFM to literally monitor the crowdfunding market (albeit only the lending based and investment based types of crowdfunding) in terms of (i) size of the platform, (ii) financial situation of the platform, (iii) number of investors actively investing in crowdfunding projects on the platform, (iv) number of requests for crowdfunding financing, (v) number of accepted crowdfunding projects on the platform, (vi) number of successfully financed crowdfunding projects, (vii) peculiarities of projects such as (a) type of loans (consumer, business, mortgage) and (b) defaults, including insolvencies. The AFM contemplates to inform the market on the basis of the input provided in the monitoring forms once every two years.

3 Further recent regulatory developments considering RES Projects market in the Netherlands

Given the slow development of RES in the Netherlands, the government and all other stakeholders involved (regional and local governments, employers' associations, environmental organisations, the energy industry and consumer organisations) concluded in 2013 the Energy Agreement for Sustainable Growth (*Energieakkoord voor duurzame groei*), hereafter referred to as the "**Energy Agreement**". This agreement provides a range of measures agreed upon by all parties involved and, inter alia, aims at increasing the use of RES in order to reach the earlier mentioned renewable energy targets.

This Energy Agreement has led to additional regimes incentivizing the development of wind and solar energy. Following this Agreement, the Dutch Wind Energy Association ("**NWEA**"), in cooperation with three environmental NGOs (*Stichting De Natuur- en Milieufederaties, Stichting Natuur en Milieu, Greenpeace Nederland*) has drafted and signed a Code of Conduct in 2014 to be used vis-à-vis the people living near potential wind energy project sites. This Code of Conduct aims at increasing and promoting public participation (especially neighbourhood participation) in onshore wind energy projects. In addition, the Energy Agreement led to a regime promoting RES projects (so far only solar projects) by House Owners Associations and Cooperatives. Both the Code of Conduct and the Energy Agreement have a positive influence on the development of Crowdfunding as a partial source of funding RES projects.

In 2015 a new act governing the production of offshore wind energy entered into force after almost two decades of discussion on the most suitable regime governing this

[8] https://www.afm.nl/nl-nl/professionals/onderwerpen/crowdfunding-overig

particular type of RES. Instead of a 'first come, first served' regime applying to the entire Dutch exclusive economic zone, the new regime introduces a regime of tendering pre-qualified suitable offshore areas.

4 Regulation of Crowdfunding in the Netherlands

Up until now, crowdfunding is not specifically dealt with in the Dutch Financial Supervision Act (*Wet op het financieel toezicht*, the "**DFSA**"). As a consequence, the existing regulatory patchwork 'decorates' crowdfunding initiatives in the Netherlands. Depending on the structure of a crowdfunding initiative, the parties involved (investors, the platform and the fundraiser) may be confronted with license obligations and regulatory prohibitions as laid down in the DFSA and lower rules and regulations. Determining factors in respect hereof are mainly the crowdfunding model used (equity, lending, donations or rewards) and the identity of the fundraiser (legal entity or consumer). In this report we will mainly focus on the regulatory regime applicable to the crowdfunding platform.

The Dutch regulatory two tier supervisory model distinguishes between (i) prudential supervision by the DCB on the one hand and (ii) market conduct supervision by the AFM on the other hand. The prudential supervision by DCB focuses on safeguarding the solidity of financial market parties and contributes to the stability of the financial sector. The market conduct supervision by the AFM focuses on the conduct of the financial market parties. The supervision of the AFM aims to ensure that the conduct of financial market parties is orderly, transparent, clear and careful. Depending on the crowdfunding model used and the manner in which the crowdfunding platform is structured, the parties involved may be confronted with DCB and/or the AFM.

4.1 Requirement of a Banking / Financial Service licence

Equity model

Under the DFSA, a distinction can be made between the overall term 'financial product' (*financieel product*), the more limited term 'financial instrument' (*financieel instrument*) and the most limited term 'security' (*effect*). Each of these terms is defined in Article 1:1 DFSA. The term 'financial product' is the broadest term used in the DFSA to catch any type of financially related product that falls under the Dutch regulatory framework. Any financial instrument is a financial product, but not the other way around. Furthermore, any security is a financial instrument and therefore a financial product, but it cannot be upheld that any financial instrument, let alone any financial product, is a security. In this report, we will focus on securities (each also being a financial instrument and a financial product) as these type of financial products generally play the leading role in investment based Crowdfunding.

Securities are defined as '(a) a negotiable share or similar negotiable equity instrument or right excluding an apartment right, (b) a negotiable bond or similar negotiable debt instrument, or (c) any other negotiable instrument issued by a legal entity, company or

institution which entitles the holder of it to a security as described under (a) or (b) above upon such instrument being exercised or converted or which instrument can be settled in funds'.[9]

The main characteristic of a security under Dutch law is the fact that such instrument should be negotiable (*verhandelbaar*). An instrument becomes negotiable if it is (i) transferable (*overdraagbaar*) and (ii) exchangeable (*uitwisselbaar*) which means that the instrument is standardized to a certain extent (*standaardisatie*) resulting in (iii) the instrument being tradable (*verhandeling*). A share in a Dutch private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) or a Dutch public company (*naamloze vennootschap*) is negotiable by definition. Even a limitation of transferability under a contract or the company's articles of association (*statuten*) does not result in the shares in that company not being negotiable. The vast majority of companies in the Netherlands is structured as a private company with limited liability. As such, the vast majority of fundraising entities through a Crowdfunding platform using the Equity model in the Netherlands are private companies with limited liability the shares of which are considered securities within the meaning of Article 1:1 the DFSA.

4.1.1 License as an investment firm

A Crowdfunding platform using the Equity model is generally considered to provide investment services within the meaning of Directive 2004/39/EC ("**MiFID**") as implemented in the DFSA. It should be noted that also Crowdfunding platforms that use the Lending model may become subject to this regulatory approach. We refer you to paragraph 4.1.10 for more detail.

Pursuant to the DFSA, it is prohibited to provide investment services (*verlenen van beleggingsdiensten*) or to carry out investment activities (*verrichten van beleggingsactiviteiten*) without a MiFID license. Providing investment services is defined in Article 1:1 DFSA and includes, among other things, the service of receiving and transmitting orders of clients in relation to one or more financial instruments in the pursuit of a profession or a business and the service of placement of financial instruments without a firm commitment when these are being offered by the issuer in accordance with the prospectus rules and regulations under the DFSA.

Whether or not a Crowdfunding platform offering a fundraiser to crowdfund a RES Project via its website falls under the MiFID regime, depends on the manner in which the platform is structured and to the type of investment that can be made by the investors in a RES Project via the Crowdfunding platform. There are only limited platforms that hold a MiFID license at this stage in the Netherlands, one of which is duurzaaminvesteren.nl.

[9] Please see the definition of '*effect*' in Article 1:1 DFSA.

4.1.2 Circumventing the MiFID regime?

Naturally, next to a private or public company, other structures can be used to set up a business in the Netherlands, such as the cooperative (*coöperatie*) and limited partnership (*commanditaire vennootschap*). The cooperative is an association (*vereniging*) established by a notarial deed and acts in the interest of its members. A limited partnership is an example of a commercial partnership (*vennootschap onder firma*) with two types of partners: general partners (*beherend vennoten*) and limited partners (*stille vennoten*). The limited partners are not entitled to carry out any management activity (*daden van beheer*); the general partners are exclusively entitled to 'run' the business. Limited partners are generally the financiers of the business. A limited partnership can be established by means of a private deed (*onderhandse akte*). Both in respect of the cooperative and the limited partnership, from a legal perspective a bit more flexibility can be assumed when setting up such a business. These structures may however have tax consequences.

For example, the transferability of the membership rights in relation to a cooperative or of the participation rights in relation to a limited partnership can be limited or excluded. As a result, such rights in a cooperative or limited partnership would not qualify as a security within the meaning of Article 1:1 DFSA. The positive result thereof is that the fundraising entity does not fall under the scope of the prospectus rules and regulations as described in more detail in paragraph 4.2 below. Another result is that - other than a participation right in an investment fund – such a right in a cooperative or limited partnership does not qualify as a financial instrument either. As a consequence, the intermediary activities of such a Crowdfunding platform do not fall under the scope of MiFID as implemented in the DFSA. However, in the report 'Crowdfunding – Towards a sustainable sector' the AFM has indicated that it finds this potential conclusion undesirable and that it will review its position in this respect.

Despite the MiFID regime potentially being circumvented, other regulatory queries arise. Such a cooperative or limited partnership could qualify for example as an investment fund, resulting in a different regulatory framework to become applicable. We refer you to paragraph 4.3 in this respect.

We highly recommend any Crowdfunding platform using or contemplating to use the Equity model in the Netherlands to pre-discuss this business model and Crowdfunding structure with Dutch counsel and/or the AFM prior to becoming operational.

Although not mainly used in RES projects, we will focus in this report on the most common structure of investment based Crowdfunding in the Netherlands. We will limit this description to the rules applicable to a Crowdfunding platform using the Equity model and acting as a broker or underwriter in respect of shares offered by a fundraising Dutch private company with limited liability to investors through the website. The platform will then require a license as an investment firm as described above. The fundraising issuer will be confronted with the prospectus rules and regulations as described in more detail in paragraph 4.2.

4.1.3 Operating a multilateral trading facility

It should also be noted that the operation of a multilateral trading facility requires a license as an investment firm as well. A multilateral trading facility is defined to be 'a multilateral system, operated by an investment firm, which brings together multiple third party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with the DFSA'.[10] It seems to be a matter of time that Crowdfunding platforms, or other market parties, create a trading venue for investors in respect of their Crowdfunding investments. Depending on the structuring of such trading venue, the trading venue could qualify as a multilateral trading facility. More likely, however, is that the trading venue will be a bilateral trading facility. In order to qualify as a multilateral trading facility, a uniform price must be set on the trading venue. As such, a mere digital bulletin board facilitated by the platform on which investors can list their buying and selling interests does not qualify as a multilateral trading facility. However, we do recommend any platform that considers setting up a trading venue for Crowdfunding investments to take special notice of these provisions as well as any future rules and regulations, such as Directive 2014/65/EU ("**MiFID II**") and Regulation no. 600/2014 ("**MiFIR**").

4.1.4 Passporting opportunities under the MiFID framework

The great advantage of a MiFID license is the opportunity to passport the license into other Member States of the European Economic Area ("**EEA**"). This enables a Crowdfunding platform to become active within the EEA with just one license obtained from the regulator of the platform's home Member States. Other host Member States will generally welcome the Crowdfunding platform without taking supervisory responsibility themselves. However, it should be noted that there is not an harmonized view of the regulatory bodies within the EEA whether or not a platform using the Equity model falls under the scope of MiFID (to be replaced by MiFID II and MiFIR). As such, irrespective of the passporting opportunities of a license as an investment firm, Dutch investment based Crowdfunding platforms having obtained such license from the AFM may be confronted with local restrictions in other EEA Member States when passporting their license into such other jurisdiction. Formally, if the investment firm provides its services on a cross border basis, a regulator of a host country Member State can only impose restrictions under limited circumstances. Such regulator, however, has a bit more leeway if the investment firm wishes to provide investment services in such Member States on a branch office basis.

4.1.5 Upcoming in respect of crowdfunding platforms using the Equity model

In anticipation to MiFID II an inducement ban (*provisieverbod*) already applies to investment firms under Dutch law. As such, a crowdfunding platform using the Equity model will – subject to it qualifying as an investment firm – not be entitled to provide or receive, directly or indirectly, any inducement in respect of the investment services

[10] Please see definition of '*multilaterale handelsfaciliteit*' in Article 1:1 DFSA.

provided by it other than directly from its client and subject to a limited number, generally not applicable, exceptions. Crowdfunding platforms using the Lending model are not subject to this inducement ban. In order to create a level playing field between these two types of crowdfunding platforms, the draft 'Crowdfunding Decree' includes a new exception to this inducement ban for crowdfunding platforms having a MiFID license. The draft exception was recently further amended. As per the date of closing copy (10 March 2016), it is expected that a crowdfunding platform that requires a license as an investment firm will be excluded from the inducement ban if and to the extent it complies with the conditions set for a platform in order to be able to rely on this exception. The main conditions are that (i) the services of the platform are limited to investment services as defined under section 1 (reception and transmission of orders), (ii) the services of the platform relate to securities issued in a crowdfunding campaign and (iii) the platform has notified the AFM that it wishes to provide these investments services (and as such wishes to rely on this exception). Moreover, a definition for crowdinvesting is introduced and provides for a further limitation to the potential reliance on this exception by a platform.

Lending model

Most of the regulated Crowdfunding platforms in the Netherlands use the Lending model. This model is also used in Crowdfunding campaigns in relation to RES projects. There are several potential regulatory approaches in the lending model, all depending on the exact structure and business model of the Crowdfunding platform.

4.1.6 License as consumer credit provider

A distinction can be made in respect of the identity of the borrower. If the borrower qualifies as a consumer within the meaning of Article 1:1 DFSA[11] the Crowdfunding platform requires a license as a financial services provider (*financiëledienstverlener*), more specifically as a consumer credit provider on the basis of Article 2:60 DFSA. As this will generally not be the case in RES projects, we will not go into detail in respect of this license obligation under Dutch law.

4.1.7 Dispensation for prohibition to act as intermediary in respect of redeemable funds

The vast majority of Dutch Crowdfunding platforms using the Lending model do not have a license as financial services provider as described above. If the borrower does not qualify as a consumer – as is the case in RES projects – the Crowdfunding platform does not need such a license. However, the Crowdfunding platform does become confronted with a specific prohibition included in the DFSA. Article 4:3 DFSA prohibits anyone in the Netherlands who acts in the pursuit of his/her business or profession to

[11] A consumer (*consument*) is defined to be 'a natural person who does not act in the course of his business or profession to whom a financial undertaking provides its financial service'. A Crowdfunding platform providing or intermediating in respectof the provision of credit to a natural person who does not act in the course of his/her business or profession is considered a financial undertaking providing a financial service to a consumer.

provide services as an intermediary in connection with attracting or obtaining redeemable funds from the public.

A Crowdfunding platform provides such services as an intermediary between the investors/lenders and the borrower acting in the course of his business of profession (i.e. a non consumer borrower). This prohibition does not provide for a possibility to obtain a license granted by the regulator. However, the AFM does have the discretionary power to grant any person who foresees to violate this prohibition a (temporary) dispensation for such prohibition.

In order to be eligible for obtaining such a dispensation, currently a crowdfunding platform needs to comply with the following requirements on the basis of Article 2 of the Market Conduct Supervision (Financial Institutions) Decree (*Besluit Gedragstoezicht financiële ondernemingen* (Wft)):

- the reliability (*betrouwbaarheid*) of each policy maker and co-policy maker (including, according to the AFM, majority shareholders) and, if applicable, each member of the supervisory board of the applying crowdfunding platform, should be beyond doubt;
- pre-contractual information requirements apply to the crowdfunding platform requiring the platform to inform the counterparty of its rights and obligations under the agreement in a clear and complete manner.

In addition, the AFM developed further requirements on the basis of its discretionary powers to impose such requirements on a crowdfunding platform applying for a dispensation of the prohibition as described above. Due to the individual character of a dispensation, these additionally imposed requirements could differ between applicants. However, the AFM published the main list of additional requirements on its website. The AFM distinguishes requirements in respect of the business operations and requirements in respect of the provision of information. The AFM currently imposes the following additional requirements to a crowdfunding platform using the Lending model that applies for a dispensation:

- an investment limit of EUR 40.000 per consumer per platform (this limit is to be increased to EUR 80.000 as per 1 April 2016, we refer to paragraph 2 above);

- the platform can only accept a consumer to invest more than EUR 5.000 per project on the platform, after the platform has actively pointed out the risks involved to the consumer, preferably in a personal manner in order to ensure that the consumer is aware of such risks. The platform should hold records of the warning provided to the relevant consumer. This requirement is to be replaced by the investors test as described in paragraph 2 above as per 1 April 2016;

- the platform should recommend the consumer to only invest a sound part of his assets in loans;

- the platform should continuously recommend the consumer to diversify his assets in different loans;

- the platform should have a policy in place which forms the basis for the platform's assessment of a loan application;

- the platform should retain any information obtained from a loan applicant and the loan agreement in respect of which the platform acted as intermediary at least five years following the date of settlement of the respective loan agreement;

- the platform should provide sufficient information in order to enable the consumer to take an informed investment decision. The AFM recommends to provide at least an auditor's statement including the financial information of the borrower, a business plan of the borrower and information of other and/or prior indebtedness of the borrower and yield figures;

- the platform should take into account the payment behavior and payment morality of the borrower when making a risk assessment;

- the platform should have a policy in place which forms the basis for the risk classification of the loan. The risk classification should be determined on both the repayment capabilities of the borrower and other characteristics. Only loans applied for by borrowers who have sufficient repayment capabilities from the outset can be published on the website of the crowdfunding platform;

- the platform should record the risk classification of a loan in a written manner and in such a way that it can explain at hindsight why the loan was classified in the specific risk category;

- the platform should continuously make consumers aware of the risks involved in a crowdfunding investment on its website and in any advertising publications. Messages from borrowers in respect of the loans on the platform should at all times be accurate, clear and not misleading;

- the platform should apply ranges of risk percentages corresponding to the risk classification of the loans. This enables the consumer to determine whether the requested yield is realistic;

- the platform must segregate the funds from the investors/lenders and borrower from its own assets either by means of the incorporation of a

separate foundation (stichting) with an independent board, or by making use of a payment services provider or an electronic money institution;

- the platform should enable the AFM to monitor the market by informing the AFM on a semi-annual basis of (i) the size of the platform, (ii) the financial situation of the platform, (iii) the number of investors actively investing in crowdfunding projects on the platform, (iv) the number of requests for crowdfunding financing, (v) the number of accepted crowdfunding projects on the platform, (vi) the number of successfully financed crowdfunding projects, (vii) the peculiarities of projects such as (a) the type of loans (consumer, business, mortgage) and (b) defaults, including insolvencies. As per 1 April 2016, this monitoring requirement becomes applicable to crowdfunding platforms using the Equity model as well; and

- the platform should inform the AFM in respect any material changes of its business operations and business structure. The AFM recently clarified that this should be done prior to effectuating any such material changes.

The crowdfunding platform using the Lending model (and focusing on non-consumer credit only) should have obtained a dispensation from the AFM before it can become operational.

4.1.8 Upcoming amendments in respect of dispensation regime Lending model

The AFM identified regulatory bottlenecks in its report 'Crowdfunding – Towards a sustainable sector' published in December 2014. Some of these bottlenecks are tackled in the draft 'Crowdfunding Decree' and the amended requirements imposed on crowdfunding platforms by the AFM as referred to above in paragraph 2.

The dispensation regime applicable to business lending crowdfunding platforms will be amended ultimately as per 1 April 2016.[12] The amendments will result in a more intensified dispensation regime; a crowdfunding platform applying for a dispensation of the prohibition as described above will be subjected to more specific market entrance rules in order to be able to obtain a dispensation. The new regime introduces a set of rules which is comparable to the market entrance rules applicable to financial services providers. The character of the new set of rules applicable to business lending based crowdfunding platforms that is expected to enter into force ultimately on 1 April 2016 becomes more aligned with the regulatory framework involved as if there would be a license obligation rather than an individual dispensation regime. The main amendments are the following:

- the daily policymakers (i.e. directors) and the persons responsible for supervising the crowdfunding platform need to be eligible (*geschikt*) within the meaning of the Policy Rule on Eligibility 2012 (*Beleidsregel Geschiktheid 2012*)

[12] Please see footnote 2.

of the Dutch regulators. A person's eligibility appears from his/her knowledge, skills and professional conduct. This eligibility test entails that such a person shows that he/she has (i) sufficient administrative skills required to determine the (daily) policy of the platform, (ii) sufficient executive skills in a hierarchical setting, and (iii) sufficient general and specific subject matter knowledge. At least one daily policymaker and, if applicable, at least one member of the supervisory board, needs to have specific subject matter knowledge gained during demonstrable experience in respect of assessing business credit risks and repayment capacity of the borrower. These skills and knowledge should be gained in a relevant working environment during at least two years, one of which was uninterrupted. The crowdfunding platform has the responsibility to prepare an eligibility judgment in respect of each daily policymaker and, if applicable, each member of its supervisory board. This eligibility judgment should be motivated and may not exceed one A4 paper per person.

- if the 'Crowdfunding Decree' becomes effective in an unchanged form compared to the amended draft that was published in the Government Gazette recently, crowdfunding platforms applying for a dispensation for the prohibition to act as intermediary in respect of redeemable funds will need to comply with the following new rules:

  — pursue an adequate policy safeguarding the sound (*integer*) conduct of business. This policy should be aimed at preventing the crowdfunding platform and/or its employees from committing (criminal) offences or other transgressions of the law that could damage confidence in the platform or in the financial markets. Moreover, the crowdfunding platform must ensure that the reliability of its employees and of other natural persons directly engaged in performing intermediary services in respect of redeemable funds under the responsibility of the platform is beyond doubt. This entails that such persons must summit a certificate of good behaviour (*verklaring omtrent het gedrag*) and have not been declared bankrupt.

  — the crowdfunding platform may not be affiliated to persons in a formal or actual control structure which is impenetrable to such an extent that it constitutes or may constitute an impediment to the adequate exercise of supervision by the AFM of the crowdfunding platform;

  — construct the business operations in such a way that a controlled and ethical running of the business is safeguarded. As part of a controlled and ethical running of its business, the crowdfunding platform must inform the AFM forthwith in respect of any incidents and it should adopt certain procedures and measures with regard to dealing with and recording of an incident. These procedures and measures should at the bare minimum safeguard that suitable measures are taken aimed at

managing the occurred risks and preventing re-occurrence of such risks; and

— ensure an adequate handling of complaints of any persons for whom the intermediary services in respect of redeemable funds are performed by the crowdfunding platform (i.e. both the investors/lenders and the borrower). As part of this requirement, the crowdfunding platform should have an internal complaints procedure aimed at a speedy and careful handling of complaints.

These new rules will also apply to crowdfunding platforms that already obtained a dispensation for the prohibition to act as intermediary in respect of redeemable funds prior to the date that these new rules become effective. As such, each of these platforms need to ensure to satisfy these new rules as per such date in order to prevent enforcement measures to be taken by the AFM, including the possibility to lose their dispensation. In respect of the newly to be introduced eligibility test applicable to the daily policymakers (i.e. directors) and, if applicable, supervisory directors of such a crowdfunding platforms, the platform needs to evidence to the AFM that each of such persons is eligible within the meaning of the Policy Rule on Eligibility 2012 (*Beleidsregel Geschiktheid 2012*) prior to the date that the new rules become effective. When assessing any such person's level of experience, the experience gained during the preceding period during which the platform was already active may be taken into account. If those directors cannot satisfy the eligibility criteria, the platform should urgently look for new eligible directors. The platform should take special notice of the already applicable requirement to notify the AFM in advance of any such change in the composition of the board and, if applicable, the supervisory board and should take into account the potential requirement – in addition to evidencing that such person is eligible – to have the AFM determine that the reliability of any new daily policy maker or supervisory director is beyond doubt. We refer you to paragraph 4.1.7 above for more detail.

4.1.9 Banking license

None of the Crowdfunding platforms active in the Netherlands currently hold a banking license. Currently they do not need any such license because they do not qualify as a bank within the meaning of Article 1:1 DFSA. A bank under Dutch law is defined to be a credit institution within the meaning of Article 4 of Regulation (EU) nr. 575/2013 (the "**Capital Requirements Regulation**"). As such, a bank under Dutch law is an undertaking the business of which is to take deposits or other redeemable funds from the public and to grant credits for its own account. Dutch Crowdfunding platforms do not grant credit for their own account. They generally intermediate in respect of the provision of credit by the investors/lenders to the borrower. For that reason, Crowdfunding platforms are not subjected to a banking license as yet.

4.1.10 License as an investment firm

A Crowdfunding platform that uses the Lending model and - instead of private loans[13] – acts as an intermediary in respect of financial instruments within the meaning of Article 1:1 DFSA, such as negotiable debt instruments (including bonds and notes) and money market instruments, the regulatory framework applicable to the Crowdfunding platform 'changes colors'. The Crowdfunding platform will generally be considered an investment firm (*beleggingsonderneming*) that provides the investment service of 'receiving and transmitting orders of clients in relation to one or more financial instruments'[14] if it acts as a broker between the borrower on the one hand and the investors/lenders on the other hand. As a consequence, the platform would generally be required to obtain a license as an investment firm and will become subject to the heavy 'MiFID' framework (as described in more detail in paragraph 4.1.1 above).

This may be the reason that the loans made available by the crowd to a borrower through a Crowdfunding platform using the Lending model are generally not negotiable (*verhandelbaar*) as yet. If they would, the platform would need to comply with a much heavier regulatory framework compared to the requirements that apply to the platform on the basis of the dispensation regime. However, this is a undesirable conclusion for the lending based Crowdfunding market: the platforms are generally start ups and have not yet achieved their break-even point. In order for the lending based Crowdfunding market to scale up and become more mainstream, Crowdfunding investments should be negotiable. Not only would that contribute to extending the geographical scope of the Crowdfunding market, it would also result in institutional investors becoming more and more interested in these type of assets. Although it is questionable whether the *Crowdfunding* market is actually waiting for institutional investors to step into these investments, making these type of assets interesting for institutional investors will definitely assist in providing a wanted alternative manner of financing for start-ups and SMEs.

Donations or Rewards model

Provided that the investor does not become entitled to any kind of financial product or money-based yield, Crowdfunding platforms using the donations or rewards model generally fall outside the scope of the regulatory framework. The same was confirmed by the AFM in its latest Crowdfunding newsletter dated 10 December 2015. It may, however, like all Crowdfunding models, have tax consequences which should be taken into account when structuring this type of Crowdfunding model. Moreover, any type of Crowdfunding entails the applicability of certain other Dutch rules and regulations, such as, most importantly, the Dutch Civil Code.

[13] The term 'financial product' is the broadest term used in the DFSA to catch any type of financially related product that falls under the Dutch regulatory framework. Private loans (*onderhandse leningen*) are considered redeemable funds. Redeemable funds in itself is not a financial product within the meaning of Article 1:1 DFSA. Consumer credit, however, is a financial product under the DFSA. Furthermore, any 'financial instrument' is a financial product. A financial instrument is, for example, any security (such as a negotiable share and negotiable bond), participation right in an investment fund, money market instrument and derivative. Consumer credit is a financial product but not also a financial instrument.

[14] Please see the definition of 'providing an investment service' (*verlenen van een beleggingsdienst*) in Article 1:1 of the DFSA.

4.2 Prospectus requirements

Equity model / Lending model

When the fundraising entity offers securities to the public, it will be confronted with the prospectus rules and regulations as included in part 5 of the DFSA. For a definition of securities, we refer you to paragraph 4.1. Only investment based Crowdfunding projects will potentially face these rules and regulations. Investment based Crowdfunding relates to Crowdfunding platforms using the Equity model and, to the extent the investment relates to a negotiable debt instrument, such as a bond or a note, to Crowdfunding platform using the Lending model.

Pursuant to Article 5:2 DFSA an issuer that offers securities to the public in the Netherlands must publish a prospectus as approved by the AFM. The prospectus needs to comply with the detailed content requirements as laid down in the Directive 2010/73/EC amending Directive 2003/71/EC (the "**Prospectus Directive**"), as implemented in the DFSA, and Regulation no. 809/2004 (the "**Prospectus Regulation**").

4.2.1 Passporting opportunities under the Prospectus framework

A prospectus approved by the AFM can be easily passported to other Member States of the EEA, enabling the issuer to offer the securities to the public in those other jurisdictions as well without having to have the prospectus approved by the local regulator as well. However, it should be noted that additional local rules may apply, such as the requirement to translate the summary into the local language. Provided that the prospectus is drawn up in the English language, the AFM does not impose any such additional local rules on an issuer of securities on the basis of a prospectus approved by the regulator of the issuer's home Member State.

4.2.2 Exemption from prospectus requirement

An issuer of securities is exempt from the obligation to publish an approved prospectus if, for example, the total offering size of the securities offered by the issuer and any of its group companies in the Netherlands and other EEA Member States is less than EUR 2.500.000 per annum provided that the issuer includes a prescribed warning text and pictogram in accordance with Dutch rules and regulations as set by the AFM in any offering document, marketing document or other document in which the prospect of the offer of securities is being held out. This limit of EUR 2.500.000 relates to a category of securities, i.e. shares versus bonds. The issuer can therefore raise from the public in the Netherlands up to EUR 2.499.999 through an issuance of shares as well as up to EUR 2.499.999 through an issuance of bonds per annum, taking into account any issuance of securities by any of its group companies and taking into account the geographical scope of the whole EEA.

There are other exceptions and exemptions possible to prevent the issuer being required to publish an approved prospectus, but these do not match the general

points of departure in respect of Crowdfunding. The exception that the offer is limited to less than 150 persons other than qualified investors for example cannot be relied upon if the Crowdfunding project is published on the website of the Crowdfunding platform. From a Dutch law perspective, this exception does not relate to the amount of investors having accepted an offer to invest, but to the amount of persons having reached an offer to invest. It is generally believed that an offer published in a newspaper or on the internet will, by definition, reach more than 150 persons other than qualified investors. Other exceptions, such a an offering of securities with a nominal value or denomination of (at all times) at least EUR 100.000 or an offering of securities in packages against a consideration (at all times) at least EUR 100.000, does not seem easily applicable in Crowdfunding projects where the crowd will generally be offered the opportunity to invest against much lower prices.

4.2.3 Informed investment decision

Irrespective of the possibility that a fundraising entity is exempt from the obligation to publish an approved prospectus within the meaning of part 5 DFSA, the fundraising entity does have a civil law obligation to provide the investors with all such information required to enable the investors to make an informed investment decision in an accurate, complete, comprehensible, not misleading and timely manner. The Crowdfunding platform has a responsibility in this respect as well.

In respect of the information provided on the website of the platform on the basis whereof an investor should make his investment decision, several transparency rules apply to both the platform and the fundraising entity. Because of the online nature of Crowdfunding, the platform qualifies as an information society (*informatiemaatschappij*) which triggers the provisions of Directive 2000/31/EC ("**E-Commerce Directive**") to be applicable.

The platform needs to provide minimum information in an easy, direct and permanent manner, commercial communications should be clearly identifiable as such, and the platform needs to be fully transparent as regards the information it obtains from the fundraising entity and which is made available on the website of the platform in order to enable the investor to make an informed investment decision. Such information should be accurate, complete and not misleading (neither by omission) and it should be presented unambiguously in an easily comprehensible manner and should be easily accessible. The latter responsibility is primarily borne by the fundraising entity (being the owner of the information).

Although the platform - in its capacity as information society and under limited circumstances only – cannot be held liable for merely passing on information provided by a fundraising entity, other applicable Dutch laws and regulations could cause the platform to face liability risks irrespective of the aforementioned exception. From a regulatory perspective for example the platform is generally believed to have a duty of care to some extent to the investors to ensure that the fundraising entity has complied

with the applicable rules and regulations when providing such information to be published on the website of the platform.

Donations or Rewards model

Fundraisers raising funds through a Crowdfunding platforms using the Donations or Rewards model do not fall under the scope of the prospectus rules and regulations because the fundraisers do not offer securities to the public in the Netherlands. Under limited circumstances, fundraisers raising funds through a Crowdfunding platform using the Rewards model could potentially be confronted with the prohibition to offer investment properties (*beleggingsobjecten*) in the Netherlands without a license granted by the AFM. An investment object is defined to be 'an object (*zaak*), a right to an object or a right to the full or partial monetary yield or a part of the proceeds of an object (other than any other financial product as defined in Article 1:1 DFSA), acquired other than for no consideration, at the time of acquisition the prospect of a monetary yield is provided to the investor and in respect of which the management will mainly be carried out by another person than the investor'.[15] The offering of any such investment properties will be subject to a license obligation applicable to the Crowdfunding platform using the Rewards model. Moreover, a prospectus needs to be published relation to the investment properties. This is not a prospectus within the meaning of part 5 DFSA, and therefore within the meaning of the Prospectus Directive and Prospectus Regulation. Such an 'investment properties prospectus' does not need to be approved by the AFM either. However, specific content requirements apply pursuant to Dutch rules and regulations.

As energy itself is generally not considered an object (*zaak*) within the meaning of the Dutch Civil Code (or the DFSA), the entitled to energy produced in a RES project cannot qualify as an investment property. However, an entitlement to monetary yield or part of the proceeds of a RES, such as a wind turbine or solar park, could potentially qualify as an investment property if it does not already qualify as another financial product, such as a security or a participation right in an investment institution.

4.3 Regulation of Crowdfunding under the AIFMD regime

4.3.1 Definition of an AIF

An investment institution (*beleggingsinstelling*) is defined to be an investment institution within the meaning of Article 4, section 1, part a of Directive 2011/61/EC ("**AIFMD**") in the form of an investment fund (*beleggingsfonds*) or an investment company (*beleggingsmaatschappij*).[16]

'AIFs' (alternative investment funds) are defined to be 'collective investment undertakings, including investment compartments thereof, which: (i) raise capital from

[15] Please see the definition of '*beleggingsobject*' in Article 1:1 DFSA.
[16] Please see the definition of '*beleggingsinstelling*' in Article 1:1 DFSA.

a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and (ii) do not require authorisation pursuant to Article 5 of Directive 2009/65/EC' (the "**UCITS Directive**").[17]

Under Dutch law, a distinction is made between an investment fund and an investment company. The main difference between these two types of investment institutions is that an investment fund does not have legal personality (*rechtspersoonlijkheid*) and an investment company does have legal personality. A typical Dutch investment fund is the mutual fund (fonds voor gemene rekening) which is established by means of a tripartite agreement between the participants, the manager (*beheerder*) and the custodian (*bewaarder*). Due to the fact that an investment fund, such as a mutual fund, does not have legal personality, the fund itself cannot hold the ownership of the assets of the fund. The custodian generally holds the ownership of the assets of the fund for the purpose of management and custody (*ten titel van beheer*).

A distinction can be made between an open-end investment institution and a closed-end investment institution. An open-end investment institution is characterised by the fact that investors are offered an exit possibility by offering the participation rights in the investment institution to the investment institution. A closed-end investment institution does not offer that exit possibility to the holders of its participation rights.

4.3.2 Operating company versus investment institution

A distinction is made between an operating company and an investment institution. The AFM issued a policy rule 'operating a business or investing' (*Beleidsregel Ondernemen of beleggen*) before but this policy rule was withdrawn upon AIFMD being implemented in the DFSA. The AFM now follows the interpretation as provided by the European Securities and Markets Authority ("**ESMA**") in its Guidelines on key concepts of the AIFMD.[18] In these Guidelines, it is made clear that an undertaking only qualifies as an AIF within the meaning of the AIFMD, and therefore within the meaning of an investment institution as included in the DFSA, if it does not have a general commercial or industrial purpose. A general commercial or industrial purpose is defined to be 'the purpose of pursuing a business strategy which includes characteristics such as running predominantly i) a commercial activity, involving the purchase, sale, and/or exchange of goods or commodities and/or the supply of non-financial services, or ii) an industrial activity, involving the production of goods or construction of properties, or iii) a combination thereof'.[19]

Equity Model

[17] Please see the definition of 'AIFs' in Article 4, section 1, part a of the AIFMD.

[18] Please see: https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-611_guidelines_on_key_concepts_of_the_aifmd_-_en.pdf

[19] Please see footnote 18.

In the event that a two-step structure is used in which the platform, or an entity established for this purpose, such as an investment cooperative, obtains funds from the investors for collective investment in, for example, one or more of the (businesses of) the fundraising entities with the aim of providing the investors an opportunity to share in the yield on such investment, the platform, or such special purpose vehicle ("**SPV**"), may qualify as an investment institution within the meaning of AIFMD as implemented in the DFSA. It is important to note that the platform or, more likely, the SPV (or its separate manager) should be able to make investment decisions for the investment institution - and therefore on behalf of the investors - on a discretionary basis within the boundaries set in the investment policy of the SPV. As such, the mere pooling of funds in an SPV to jointly invest in one Crowdfunding project does not automatically result in such SPV qualifying as an investment institution within the meaning of the AIFMD (or UCITS Directive).

In RES projects, a common structure is the two step structure where the investors invest in a cooperative or other legal entity that in turn invests in the RES project or the energy infrastructure. To our understanding, none of these cooperatives (or its manager) currently hold a license under the AIFMD regime in the Netherlands. The reasoning behind it could be that indeed such cooperative does not have any discretion as regards the investment decisions to be made: the cooperative only serves to pool the funds from the investors and to hold the ownership of the RES to the benefit of the investors jointly.

4.3.3 License as an AIF Manager

Pursuant to Article 2:65 DFSA, it is prohibited to manage a Dutch investment institution, offer participation rights in an investment institution in the Netherlands or act as a Dutch manager in respect of an investment institution or in respect of the offering of participation rights in an investment institution without a license granted by the AFM.

Depending on the exact structure and subject to such structure falling under the scope of the AIFMD framework as described above, the manager of the investment institution, or the investment institution itself, will need to obtain a license from the AFM unless it may rely on the de-minimis exception as described below.

4.3.4 De-minimis exception

A Dutch manager of an investment institution does not need a license as an AIF Manager is the de-minimis exception applies to such manager. This will generally be the case if the manager has (i)(a) up to EUR 100 million assets under management or (b) up to EUR 500 million assets under management on an unleveraged basis and without offering the participant an exit opportunity by means of redemption or repayment within a period of the first 5 years after acquiring such participation rights, and (ii) provided that the participation rights in the investment institution as managed by such Dutch manager (x) are not offered to more than 150 persons, (y) can only be

acquired against a consideration of at least EUR 100.000 per participant, or (z) have a nominal value of at least EUR 100.000 each, or (iii) provided that the participation rights are offered to professional investors only.

The latter requirement makes this de-minimis exception practically unusable by a Crowdfunding platform, as the offer shall generally be done on the internet and the minimum investment amounts are not conceivable by a natural person investing in a Crowdfunding campaign.

A registration requirement with the AFM as well as some other ongoing obligations apply to the Dutch manager if it wishes to rely on the de-minimis exception. These obligations include a monitoring obligation to the DCB and the inclusion of a pre-described pre-described warning text and pictogram in accordance with Dutch rules and regulations. A manager relying on this exception does not have the benefit of the passporting opportunities under the AIFMD framework as described below.

4.3.5 Prospectus requirements for investment institutions

Negotiable participation rights in a closed-end investment institution qualify as securities within the meaning of Article 1:1 DFSA. As a consequence, the investment institution, as issuer of those participation rights, is subject to the obligation to publish a prospectus as approved by the AFM, unless and exception or exemption applies. We refer to paragraph 4.2 for more information. Any other participation rights in an investment institution (i.e. non-negotiable participation rights in a closed-end investment institution and any participation right in an open-end investment institution) qualify as financial instruments but not as securities within the meaning of Article 1:1 DFSA. The offering of such participation rights is still subject to a prospectus requirement, but this does not need to be approved by the AFM. Dutch rules and regulation do include specific content requirements for such a prospectus of an investment institution.

4.3.6 Passporting opportunities under the AIFMD framework

An advantage of a license under the AIFMD framework as implemented in the DFSA is that a licensed manager can manage multiple investment institutions and offer participation rights in those investment institutions in the different Member States of the EEA without being subjected to extensive additional local rules and regulations being applicable.

Comparable to the MiFID passporting regime as described in paragraph 4.1.5, a foreign (EEA) licensed AIF manager can manage a Dutch investment institution and offer participation rights in an (EEA) AIF managed by such foreign (EEA) manager in the Netherlands, either on a cross border basis of on a branch office basis, after the notification procedures have been satisfied. The manager should provide the regulator of its host Member State with specific information as included in Articles 32 and 33 AIFMD. The regulator of the host Member State will subsequently inform the AFM and

it will notify the manager in conformity therewith. Thereafter, the manager can act in the Netherlands on the basis of its AIFMD passport.

In line with MiFID, a distinction can be made between becoming active in the Netherlands on a cross border basis (no physical presence in the Netherlands) or on a branch office basis (with physical presence in the Netherlands). Other than in respect of becoming active on a cross border basis, a foreign (EEA) licensed AIF manager on a Dutch branch office basis will be subjected to certain local rules.

Lending Model

Plain vanilla lending based Crowdfunding platforms do not qualify as AIFs and do not fall under the scope of the AIFMD framework.

Complex structures can be created to circumvent the applicability of the AIFMD to a special purpose vehicle established in connection with one or more Crowdfunding projects. An example is a hybrid Crowdfunding model where the SPV is financed with debt only and the proceeds of which are used to invest in Crowdfunding projects. Irrespective of the possibility that the applicability of the AIFMD regime could be averted, we emphasize that other Dutch rules and regulations as described in this report may be applicable.

Donations or Rewards Model

Crowdfunding platforms using the donations or rewards model do not qualify as AIFs and do not fall under the scope of the AIFMD framework.

4.4 Requirements of a License under the Payment Services regulation

It is conceivable that a Crowdfunding platform takes the role of structuring the payment flows, such as interest payments on the loan or dividend payments on shares, through the platform. This may, for example, take away administrative issues for the recipient. In such case, the platform should be careful not to violate the prohibition to render payment services without a license. In a letter from the Minister of Finance, reference was made to the apparent view of the DCB that the Directive 2007/64/EC (the "**Payment Services Directive**") is not applicable to Crowdfunding platforms. The DCB however has not published any formal notification in this respect. In order for a Crowdfunding platform to be subject to a license obligation as a payment services provider, it needs to make its *main* business of providing payment services as listed in the Annex to the Payment Services Directive. This is a higher threshold than the more common phrase 'in the pursuit of a profession or business' which is generally used to subject parties to a license obligation or prohibition under the DFSA. Presumably the DCB takes the view that a Crowdfunding platform does not make its main business of providing payment services as a consequence of which the platform is not subjected to a license obligation as a payment servicer provider under Dutch law.

We emphasize that pursuant to the additional requirements of the AFM applicable to Crowdfunding platforms using the Equity model or the Lending Model, as described in more detail in paragraph 4 above, Crowdfunding platforms have the obligation to segregate the funds from the investors and project owner from its own assets either by means of the incorporation of a separate foundation (*stichting*) with an independent board, or by making use of a payment services provider or an electronic money institution. Although this does not form conclusive evidence on non-applicability, a Crowdfunding platform complying with these rules has, in our view, a valid argument that it does not make its main business of providing payment services and therefore is not subject to the license obligation as a payment services provider. Whether or not the separate foundation which is specifically incorporated for the purpose of segregating the assets of the platform from the assets of the investors and the project owner does make its main business of providing payment services is yet an interesting question…

4.5 Possible additional regulations

In addition to the regulatory framework described above, a Crowdfunding platform in the Netherlands could also be subject to numerous other Dutch rules and regulations. The main ones are:

- The Dutch Civil Code (*Burgerlijk Wetboek*);
- Personal Data Protection Act (*Wet bescherming persoonsgegevens*);
- Money Laundering and Terrorist Financing (Prevention) Act (*Wet ter voorkoming van witwassen en financieren terrorisme*);
- The Telecommunication Act (*Telecommunicatiewet*); and
- Consumer Credit Act (Wet op het consumentenkrediet).

Violation of any applicable Dutch laws, rules or regulations may result in civil law liabilities and claims for monetary damages initiated by investors, project owners and potentially prejudiced third parties pursuant to the Dutch Civil Code and the Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*). Moreover, administrative measures and under limited circumstances criminal measures could be taken against a party violating Dutch laws, rules or regulations on the basis of, mainly:

- General Administrative Law Act (*Algemene Wet Bestuursrecht*);
- Consumer Protection (Enforcement) Act (*Wet handhaving consumentenbescherming*); and
- Economic Offences Act (Wet op de economische delicten).

5 Regulation of RES Projects in the Netherlands

5.1 Renewable targets

The development of RES projects in the Netherlands is basically influenced by EU policies on climate change and supply security and the need to implement in EU legislation. The EU goal to reduce greenhouse gas emissions by 20% in 2020 has a direct effect on the energy sector and the use of primary energy sources. In addition the Netherlands is bound by the renewable energy consumptions targets set by the 2009 Renewable Energy Directive (Directive 2009/28/EC replacing Directive 2001/77/EC or RES Directive). This Directive requires the Netherlands to achieve by 2020 at least 14% of RES in gross final energy consumption and the new coalition government set in 2013 even a more ambitious target of 16% renewable energy production in 2023.

Given the slow development of RES in the Netherlands, the government and all other stakeholders involved (including regional and local governments, employers' associations, environmental organisations, the energy industry and consumer organisations) concluded in 2013 the Energy Agreement for Sustainable Growth (*Energieakkoord voor duurzame groei*), hereafter referred to as the 2013 Energy Agreement or Energy Agreement. This agreement provides a range of measures agreed upon by all parties involved and which aim at increasing the level of energy efficiency and the use of RES in order to reach the earlier mentioned renewable energy targets. The need for such an agreement and further action is evident as in 2014 only 5,6% of all consumed energy in the Netherlands was produced from renewable sources.[20]

However, two recent developments are worthwhile mentioning as they may impact the promotion of RES projects. Both the ruling of the Court of The Hague of 24 June 2015 (the Urgenda ruling) and the outcome of the conference of the parties of the UN Climate Change Convention in Paris in November 2015 (COP 21) seem to have an influence on Dutch politics and a renewed focus on RES projects. Both call for more and/or intensified CO2 reductions, which in the Netherlands would lead to closing down coal-fired electricity plants. Together with a 30% reduction of gas production from the Groningen field following the increasing number of earthquakes in the area, there might be a need for the development of more RES projects in order to safeguard supply security.

Legal Framework

The main RES in the Netherlands are wind energy (onshore and increasingly also offshore) and biomass (including biogas). Solar energy is gradually increasing as is geothermal heat. In addition, there are four medium-sized hydropower plants in the rivers Maas and Lek but their share in electricity generation is very limited (only 0.1%).

[20] Hernieuwbare Energie in Nederland 2014, p. 3 (Report on Renewable Energy in the Netherlands in 2014).

The Netherlands does not have a specific sectoral law governing the development of these RES. Consequently, the Dutch Electricity Act (*Elektriciteitswet 1998*) and the 2000 Gas Act (*Gaswet*) and the Royal Decrees and Ministerial Regulations attached to these Act together form the main corpus of law applicable to the development of most RES, i.e. onshore wind energy, solar energy and biogas. In addition, the 2003 Mining Act (*Mijnbouwwet*) applies with regard to the production of geothermal heat and the 2015 Act governing Offshore Wind Energy (*Wet windenergie op zee*) governs the production of offshore wind. In addition to these acts, developers need to take into account environmental, planning and tax laws as these also play a role in the realisation of RES in the Netherlands. The Environmental Management Act provides a licensing regime governing CO2 emitters and the legal basis for CO2 emissions trading.

Whereas the Mining Act and the Offshore Wind Energy Act provide for a specific licensing regime based on a system of tendering, the Dutch Electricity Act ("**E-Act**") does not require that the production of electricity is based on a specific electricity production licence and subsequently the Dutch government has few possibilities to directly influence the fuel choice of energy producers. Some guidance can be found in the Energy Reports (*Energierapport*), which are published every four years. Be that as it may, there are few restrictions regarding the production of RES apart from the unbundling restrictions, which entail that energy system (network) operators may not be involved in the production and supply of energy.

The promotion of RES in the Netherlands is based on indirect stimuli. The 2009 RES Directive (as the 2001 RES Directive) identifies a number of measures for promoting the use of RES. In addition to removing administrative obstacles (and creating a one-stop shop for permitting), the 2009 RES Directive allows for the award of financial support mechanisms (which make RES competitive with the use of fossil fuels and thus are not considered as a State aid measure) and a regime for priority access to the grid for RES as an exemption to the basic rule on non-discriminatory access to the grid. The 2009 RES Directive also provides for some additional measures like international projects and statistical transfer of RES. So far the Netherlands has not made use of such cooperation measures.

5.2 Legal instruments promoting RES projects

5.2.1 Guarantees of Origin

Following the Electricity Directive the Netherlands has introduced Guarantees of Origin, which prove that specific quantities of energy are produced from renewable sources (including combined heath and power). CertiQ, a subsidiary company of TenneT, manages an electronic system where the origin of energy sources is registered and also issues the guarantees of origin. The certificates issued by CertiQ can be used by producers of renewable energy to show that they are eligible for subsidies (see below), by suppliers to prove the origin and the characteristics of the energy they sell and by traders to buy and sell energy certificates in the EU. Although on EU level there is no requirement for issuing guarantees of origin for biogas/biomethane, the

Netherlands has established an organization similar to CertiQ to do so. Vertogas is a subsidiary of Gasunie and issues certificates as proof that gas has been produced from biomass and has the same quality as natural gas and can thus be injected into the grid. Although the Gas Act initially provided no legal basis for issuing guarantees of origin, a provision has been included in the Gas Act on 18 December 2013.

5.2.2 RES support mechanisms

To support the development of RES production capacity, the Netherlands has since 2003 developed various subsidy regimes. The first subsidy regime called MEP, lasted from 2003 until 2007 and was replaced by another system, the Decree governing the promotion of renewable energy (*Besluit stimulering duurzame energieproductie* or SDE). In 2011, the SDE regime was amended into the current regime, known as SDE+. In terms of typologies, SDE+ falls with the category of feed-in premiums, which means that producers of renewable energy receive a premium on top of the market price of the electricity they produce. The purpose of this premium is to compensate for the difference between the average production costs of electricity from renewable sources and the average wholesale price of electricity (art. 2 (a) SDE). Such a measure is not considered as a State aid measure. The exact premium is based on the annual electricity price and is as such variable (art. 14 (1) SDE).

Annually, a Ministerial Regulation provides further details on the categories of production facilities that may be eligible for a subsidy and on how the available resources are to be distributed over the applicants. All renewable energy projects receive their subsidy out of one general budget as this promotes inter-technology competition. However, to ensure a minimum spread of the available resources, base amounts are set for various technologies such as onshore wind, offshore wind, solar energy, hydropower, geothermal heat, biogas and combined heat and power based on biomass. Currently, it is standard practice that the subsidy is allocated on a 'first come, first serve' basis. The subsidy is in most cases awarded for a period of 15 years under the condition that the subsidised installation is taken into operation within 5 years after the subsidy has been awarded. In order to stimulate the production of geothermal energy, the Dutch government has introduced a sector-specific subsidy to promote geothermal (*Regeling nationale EZ subsidies - Risico's dekken voor aardwarmte*) that applies in addition to the SDE+ scheme.

In addition to subsidies, the Netherlands also has a system of tax incentives in place to promote RES production. First of all, there it the Environmental Investment Allowance (*milieu-investeringsaftrek (MIA)*) which allows investors to deduct up to 36% of the cost of an environmentally friendly investment from their fiscal profit. Secondly, there is the Arbitrary Depreciation of Specific Environmentally Friendly Investments (*willekeurige afschrijving milieu-investeringen (Vamil)*), that opens up the possibility for investors to decide on a voluntary ad hoc depreciation of their environmentally friendly investments in technologies and equipment listed in the so-called 'Environmental List', which is published in the Government Gazette. Thirdly, the returns on investments in green funds and projects (*Groen Beleggen*) may be

exempted from taxes. A precise overview of which funds and projects qualify as green investments can be found in the income tax legislation. Fourthly, it is also possible for investors to get a discount on their taxable profits. Under the energy investment tax credit system, taxable profits can by discounted by 41.5% in case the concerned energy investment is listed in the Minister of Finance's 'Energy List', which is published in the Government Gazette. From 2014 onwards investors can no longer make use of SDE+ subsidies and energy investment tax credits for the same project.

5.2.3 Grid access

Following the basic principle in EU law, network operators (transmission system operators and distribution system operators) are required to provide all system users (i.e. producers and consumers) non-discriminatory access to the grid. This rule applies in principle equally to energy producers using RES and non-RES sources. However, a special regime applies in case there in not sufficient capacity on the grid to facilitate all users. For this purpose the Netherlands has introduced a regime of congestion management. This regime follows the basic network balancing requirement that the transmission system operator needs to ensure that the amount energy (electricity and gas) injected into the system equals the amounts take from the system. If not, there is a danger of black-outs and brown-outs. In case of congestion and when balancing the system, the transmission system operators may thus require that the production of energy in a congested area has to be scaled and production outside the congested areas has to increase at the same time. RES are prioritized as conventional power plants are scaled first and energy from RES the last. At the same time the system operator has to buy capacity outside the congestion area. These congestion costs are passed on to the end-consumer via the transportation tariff. This regime congestion management provides RES with a de facto guaranteed access to the energy system. The system operators need to inform the national regulatory authority, the Authority for Consumer and Market (*Autoriteit Consument en Markt*), about any refusal to prove parties access to the system.

The system operators also need to provide every person, on a non-discriminatory basis, with a connection to the grid at the required voltage level and an estimate of the costs involved. Custom-made connections of more than 10 MVA can be established by others than the system operator and can be offered at a point in the system where there is sufficient capacity available (and which is not necessarily the nearest connection point). Connections involving renewable energy production have to be established within a period of 18 weeks.

5.3 Energy production from RES

5.3.1 General issues relating to RES production

The Netherlands has an ambitious renewable energy target of 16% in 2023 and drastic measures are required to meet this goal as in 2014 only 5,6% of all consumed energy came from renewable sources. The production of these renewable sources has to

come from the market and as the Netherlands has an oversupply of generation capacity using coal and/or gas, the Minister of Economic Affairs cannot manage the production of energy via a tendering regime as provided for by Article 8 of Directive 2009/72/EC as the latter is directly connected to a situation of a lack of energy security.

The earlier mentioned Energy Agreement aims at promoting the use of RES and provides for specific measures to do so. These measures apply to a wind range of RES of which onshore and offshore wind, solar energy and biomass are the most important ones. When discussing biomass one needs to distinguish between the use of biomass for electricity or gas production. When biomass is used for electricity production it is primarily used as co-firing in large combustion plants also using imported coal. The Energy Agreement limits the amount of biomass to be used as co-firing in coal-based power plants. Quantitatively, the limit is set at 25 PJ and co-firing is limited to generators constructed since the 1990s. In terms of the qualitative characteristics of the biomass, the Energy Agreement also recognises the need for stricter sustainability criteria taking into consideration aspects such as carbon debt, indirect land use effects and sustainable forest management. The closure of the coal-fired generators as envisaged by the Energy Agreement and currently stimulated by Parliament will directly impact the use of biomass and may even proof a measure that makes it more difficult to reach the earlier mentioned RES target. The electricity production plants used for co-firing biomass are mainly operated by large 'traditional' generators like RWE and EON and are basically not financed via a system of Crowdfunding. Moreover these plants are all connected to the transmission system (upper end of the grid), whereas most RES projects are connected to the distribution system (lower end of the grid). However, if biomass used for producing biogas and turned into biomethane, the situation differs. This process of more often done by small-scale producers (e.g. farmers) and gas is usually injected in the distribution system.

5.3.2 Onshore wind energy

Wind energy has traditionally been a major energy source in the Netherlands in the 17th and 18th century and re-emerged in the 1970s following the energy crises. The development of wind energy, however, has been limited due to public opposition and the national government's wind energy targets were therefore not met. In 2013 the Association of Provinces of the Netherlands (*Interprovinciaal Overleg*) and the national government have agreed on a new target of 6000 MW of onshore wind energy in 2020. In order to reach this target, the government has designated 11 areas for the development of large-scale onshore wind parks in the national spatial policy plan (*Structuurvisie Windenergie op Land*). To accelerate the permitting of these wind parks, use can and will be made of the integrated permitting procedure for infrastructure projects of national interests (*Rijkscoördinatieprocedure*). All onshore wind parks with a capacity larger than 100 MW are considered as being of national interest and eligible to make use of this procedure, which means that the Minister of Economic Affairs may intervene in the permitting process and, if necessary, overrule regional and local governments.

In order to increase public support for onshore wind, the Energy Agreement provides that wind farm developers will introduce a participation model in order to enable active participation of the local residents in the planning and operation of wind turbines. In 2014, the Dutch Wind Energy Association (NWEA), in cooperation with three environmental NGOs (*Stichting De Natuur- en Milieufederaties, Stichting Natuur en Milieu, Greenpeace Nederland*) has drafted and signed a Code of Conduct to be used vis-à-vis the people living near potential wind energy project sites. The Minister of Economic Affairs supports the NWEA Code of Conduct but has not made the Code legally binding. The reason being that the new Environmental Code, which currently is being drafted, will make the use of a Code of Conduct and participation plans a requirement.

The Code of Conduct requires project developers to establish a participation plan prior to the start of the spatial planning procedures. The size and content of this plan can be customised to the characteristics of the project at hand and will be drafted in cooperation with the responsible authorities and all stakeholders involved. In terms of content, a participation plan should at least describe how the neighbourhood will be involved and how the local community can financially benefit from the proposed wind energy project. This Code of Conduct does not provide for any financial compensation for any decrease in value of property for persons living near the wind park. Such compensation needs to be based on other, exiting regimes (*planschade*). Persons living near a wind farm can also be involved directly via a participation in a wind turbine. The wind park 'Wieringermeer' is, for example, developed on the basis of such a participation plan.

5.3.3 Offshore wind energy

Given the public opposition toward wind energy onshore, the focus is now on offshore wind energy. With regard to offshore wind, the Energy Agreement establishes a target of 4450 MW production capacity in 2023. To meet that target, three areas (Borssele, Hollandse Kust Zuid-Holland and Hollandse Kust Noord-Holland) have been designated for the development of offshore wind energy projects. The development of offshore wind energy has been slow due to uncertainty with regard to the existing legal regime. In order to accelerate the development of offshore wind energy the Dutch legislature passed in 2015 the Offshore Wind Energy Act (*Wet windenergie op zee*). This Act replaces a permitting regime based on a 'first come, first served' regime with a regime where specially selected areas will be tendered. The first tender is expected to take place early 2016 (Borssele) and depends on the entry into force of an Act governing the construction of the offshore cables bringing the electricity to shore.

So far the cables bringing the electricity to shore have to be constructed by the wind park developer (=producer). It is envisaged at an Act will entire force in April 2016 that will charge the transmission system operators TenneT with the task of connecting the wind park to the transmission system offshore. Consequently, TenneT will be appointed as the offshore system operator.

5.3.4 Solar energy

The share of solar energy is gradually increasing. This is partly due to the number of small – usually household - consumers installing solar panels. Usually these consumers can either sell the energy they produce or use the electricity they produce for their own consumption. This particular category of consumers is also referred to as 'prosumers'.

In case a consumer is not using the electricity for its own needs, the electricity will be sold to the market, i.e an energy supplier. Energy supply companies are obliged to accept any offer for the delivery of RES produced by a small consumer (art. 95c (2) E-Act). Moreover, it has to pay this prosumer a reasonable tariff for the electricity they purchase from the prosumer (art. 31c (3) E-Act). In the Netherlands, this prosumer is limited in its choice of buyers. Given that only licensed energy suppliers can supply small/household customers, the prosumers can in practice only sell their electricity to a supply company. However, they can choose the company that gives the best offer.

Prosumers that also use the electricity they produce can offset the electricity they purchase from the electricity supplier with the electricity they produce themselves. This possibility of net-metering only applies in case the prosumer is connected to the electricity grid through a connection with a throughput value smaller than or equal to 3 x 80 Ampère. Consequently, the prosumer only pays the net amount of electricity purchased from the supply company (art. 31c (1) E-Act). In Dutch, this phenomenon is called 'salderen'. Historically, the deduction amount was fixed at 5000 kWh, but in 2014 the E-Act has been amended to remove this restriction from the law. Although the rules governing net-metering will be reviewed as of 2017, the Minister has announced that the regime will remain until 2020.

As not all consumers have the possibility to install solar powers, the Energy Agreement has initiated a regime that enables the production and use of RES in clearly defined neighbourhoods, i.e. within an area of specific ZIP-codes (*postcoderoos*). The 2015 Decree on decentralised sustainable electricity generation experiments (*Besluit experimenten decentrale duurzame elektriciteitsopwekking*) provides associations of house owners and cooperatives with the possibility to be exempted from provisions in the E-Act provisions that normally would prohibit them to act as both producer and supplier and to apply their own tariff structure and conditions. Additionally, a tax relief of 9 (originally 7.5) eurocents per kWh for a period of 15 years (originally 10 years) applies to all members of the associations of house owners or cooperatives. Although this regime now only applies to solar projects it applies to all renewable energy projects developed by associations of owners and cooperatives. This offers a positive boost to Crowdfunding RES projects.

5.3.5 Biogas

Biogas is usually the result of a digestion process of biomass or is produced by way of 'gasification' of solid biomass such as wood. Biogas can be used as a standalone option

(for example to heat a swimming pool) or can be injected into the gas grid. In order to be fed into the natural gas grid the biogas needs to become biomethane, which means that it has to be treated (purified) and upgraded to natural gas quality. The Dutch Gas Act explicitly requires that biomethane needs to have the same features as natural gas. These requirements are further detailed in secondary legislation, most particularly the Connection and Transport Conditions for Gas Distribution System Operators, as biomethane basically is injected into the distribution grid. These conditions on grid connections aim at guaranteeing that the connections to the grid as well as the transport of gas through the grid are safe. In 2011 there were some 130 biogas plants in the Netherlands.

5.4 Some relevant developments

The Minister of Economic Affairs has been developing a Bill integrating the current Electricity and Gas Acts. The aim was to modernize the existing legislation and to align it with the terminology used in EU energy law. The Bill also aimed at amending the concept of producer and more flexibility for the energy prosumers to trade energy. Although the Bill passed the lower House of Parliament, it was denied by the Upper House of Parliament. It is not very likely that the Bill will be resubmitted by the current Government.

In addition, there is a proposal for a new Environmental Planning Act (*Omgevingswet*). The Bill is currently discussed in the lower House of Parliament and if it passes the upper House of Parliament it may take effect in 2018. The new Environmental Planning Act will accelerate and streamline the environmental planning procedures in the Netherlands as the Act will combine and replace 26 of the environmental and planning Acts currently in place. In terms of substance, the new Environmental Planning Act will increase the policy discretion of Dutch municipalities as leading planning authorities in allowing for, inter alia, the realisation of renewable energy production facilities. The new Act will furthermore enhance public participation in an attempt to limit public opposition against especially RES infrastructures such as wind turbines and bio-digesters (art. 5.51 proposal Environmental Planning Act of July 2015).

6 Conclusion

The development of RES projects in the Netherlands is not governed by one single act but will depend on the renewable energy source. Depending on the energy sources the E-Act, Gas Act, Mining Act or the Act governing Offshore Wind Energy may apply. In addition there are additional decrees such as the Decree on the promotion of solar panels in specific ZIP code areas and policy plans/codes of conduct (onshore wind). However, all RES are stimulated by a subsidy regime (feed-in premium). As the development of these RES take place in a liberalized energy market there are no restrictions as regard the person developing these projects or investing in RES projects, apart from general obligations following from Company Law or the Civil Code.

However, when an online platform intermediates between investors on the one hand and a fundraising entity on the other hand, the Dutch regulatory framework may become applicable to the Crowdfunding platform and, under limited circumstances, the fundraising entity. The exact regulatory framework applicable to a Crowdfunding platform in the Netherlands facilitating the (partial) funding of RES projects highly depends on its business model and the manner in which it is structured. Moreover, unfortunately, due to the fact that Dutch law does not provide for a specific regulatory framework applicable to Crowdfunding, the exact regulatory framework is highly subject to change.

7 Summary – Crowdfunding and RES Projects Regulation

Country / Summary	Netherlands
Recent developments in Crowdfunding regulation	• It is contemplated that as per 1 April 2016 a more crowdfunding specific set of rules becomes effective, applicable to crowdfunding platforms using the Equity model and the Lending model.
Current Crowdfunding Regulation	
General regulation	• Equity model: the platform is generally held to be an investment firm (*beleggingsonderneming*) and required to obtain a MiFID license. • Lending model: the platform requires a dispensation from the prohibition to intermediate in respect of redeemable funds. If the platform offers or intermediates in the offering of consumer credit, it requires a license as a consumer credit offeror. As the platform generally does qualify as a credit institution because it does not make its main business from (i) attracting redeemable funds (itself) from the public and (ii) providing credit on its own account, the platform using the Lending model does not require a banking license. • Donations and Rewards models: the AFM confirmed that it currently does not supervise any Crowdfunding platforms using the donations model or the rewards model.
Prospectus requirement	• Equity and Lending models: if a fundraiser offer securities, such as shares in a private or public company or bonds, the fundraiser is subjected to a prospectus requirement under the Prospectus Directive as implemented in the Dutch Financial Supervision Act. The prospectus needs to be

	approved by the AFM. The main exemption applicable in Crowdfunding campaigns is the exemption to offer one category of securities to the public in the Netherlands up to a total offering size of less than EUR 2.500.000 provided that a prescribed warning text and pictogram is included in any offering or marketing document. • Donations and Rewards models: the prospectus requirement does not apply if a donations based or rewards based Crowdfunding platform is used.
AIFMD-regulation	• Equity model: under limited circumstances a platform could qualify as a manager of an investment institution, for example when a investment vehicle is incorporated for the purpose of the Crowdfunding campaign. This could be done in order to maintain the legal ownership of a good, such as a wind turbine or solar park, with one entity and offering the investors a beneficial entitlement pro rata to their investment. However, the mere pooling of funds in an investment vehicle does not automatically result in the AIFMD regime to become applicable. The de-minimis exception available if the assets under management remain under EUR 100 million or even EUR 500 million on an unleveraged basis, will generally not apply to Crowdfunding platforms because it cannot satisfy the condition that the participation rights are offered to less than 150 persons or against a consideration of at least EUR 100.000 each of per investor. • Lending, Donations and Rewards models: the AIFMD regulation generally does not apply to a lending based, donations based or rewards based Crowdfunding platform.
Payment services regulation	• Although not formally published, the DCB currently holds the view that the Payment Services Directive does not apply to Crowdfunding platforms.
Further possible requirements	• Besides the Dutch Financial Supervision Act which forms the basis of the Dutch regulatory framework, Crowdfunding platforms are also subject to numerous other Dutch rules and regulations, irrespective of the Crowdfunding model used. These include the Dutch Civil Code, the Personal Data Protection Act and the Money Laundering and Terrorist Financing (Prevention) Act.

RES Projects Regulation	
Electricity regulation applicable to RES Projects	• In the absence of a specific law governing RES projects it is necessary to distinguish between the different types of RES in order to see which legal framework applies. Whereas the E-Act and the G-Act provides a general legal basis for developing RES projects one has to turn to the Mining Act for developing geothermal heat and the Act governing Offshore Wind Energy for the development of Offshore Wind. • Pursuant to the 2013 Energy Agreement a Decree entered into force governing the development of solar panels in specific ZIP code area. • A Code of Conduct agreed upon between the Dutch Wind Energy Association NWEA, market parties and NGOs aims at promoting onshore wind and limiting public resistance with regard to the development of onshore wind parks. It also provides for public participation in the development of onshore wind parks. • As of 2015 a special Act governs the development of offshore wind energy. • Planning and constructing RES projects onshore is subject to general spatial planning and environmental laws. Most RES projects are considered as being of national interest and may be subject to a special regime which aims at speeding up the procedures.
Market Integration of RES Projects	• Following a number of different support schemes the Dutch government introduced the SDE+. This provides for a feed-in premium (a premium on top of the market price). Different premiums apply to the individual RES. • The Dutch regime also takes into account the need to prioritise RES in case there is insufficient capacity on the grid. Such a guaranteed access is based on a system of congestion management.
Transition to tender based allocation of new RES Projects	• A tender mechanism only exist for offshore wind energy pursuant to a new law that entered into force in 2015. The first tender is scheduled for spring 2016.

Further regulatory sources	• Provinces and muncipalities may also play a role in the development of RES projects and thus provincial and municipal legislation may apply.

Lessons learned – Crowdfunding / RES Projects Regulation

Lessons learned for a possible harmonized European Crowdfunding Regulation	
Role model ("dos")	• Develop a harmonized European Crowdfunding regulation for Lending model and Equity model by means of a regulation rather than a directive. • Provide clear (broad) definitions for the Crowdfunding models and the relevant market parties. • The regime should provide for the requirement to obtain license for the platform only and provide for the possibility to easily passport it into other Member States. • Crowdfunding investments should be tradable without the platform becoming subject to another regulatory regime. • Exceptions to license requirement in the event of: — projects offered to professional market parties including individuals who invest at least EUR 100.000; — offering size limited to a certain amount subject to the compliance with a minimum set of rules, such as requirement to: • segregate third party funds from own funds; • inform the market in a transparent, comprehensible, accurate, complete and not misleading manner; • act professionally and do not violate any applicable rules and regulations. • No regulatory requirements applicable if the Donations or Rewards models are used subject to the above mentioned minimum set of rules.

	• No regulatory requirements applicable to the fundraiser (or the investor) except those to enable the platform to abide by the rules applicable to the platform.
Aspects that should be avoided ("don'ts")	• Limit the possibility for platforms to scale up and expand its business in other Member States. • Limit the possibility of tradability of Crowdfunding assets.
Lessons learned for a possible harmonized European RES Projects Regulation	
Role model ("dos")	• Crucial so far have been the provisions in the RES Directive as it has led to some sort of guaranteed access and more streamlining of administrative procedures. • The support schemes for RES.
Aspects that should be avoided ("don'ts")	• The Dutch feed-in regime is 'national oriented' and has as effect that it is not possible to feed in a network of another Member State. This limits cross-border projects. • The Netherlands has not made use of the mechanisms included in the RES Directive for statistical transfer, joint support schemes and joint projects.

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XXI. Poland

1 Polish market for RES Crowdfunding platforms

In Poland, despite the growing popularity of renewable energy sources projects ("**RES Projects**"), the share of renewable energy in national energy consumption is still relatively minor compared with other EU member states. As a result, relatively few Crowdfunding platforms specialised in funding RES Projects ("**RES Crowdfunding Platforms**") have emerged.

In fact, as of December 2015, strictly speaking the handful of companies that finance RES Projects from crowd-gathered funds cannot be called RES Crowdfunding Platforms. To begin with, they often do not even explicitly refer to "Crowdfunding". More importantly, the companies' role is not that of intermediary. Instead, they both gather funds from the crowd and develop RES Projects.

In other words, these companies simultaneously act as platform and project initiator. Consequently, the companies can be described as RES Crowdfunding Platforms, but in a broader sense.

Unfortunately, there is no reliable data on their overall funding volume. Again, the reason for this is that the Crowdfunding market for RES Projects in Poland is still being developed.

1.1 Different investment models

Crowdfunding investments in RES Projects are financed primarily on the basis of the equity Crowdfunding model, where individuals make investments in return for a share in the profits or revenue generated by the company/project. The majority of projects use a special purpose vehicle ("**SPV**") in the form of a limited liability company (*spółka z ograniczoną odpowiedzialnością*), where individual investors obtain shares (*udziały*) in the company. These SPVs are established by the existing RES Crowdfunding Platforms themselves. Some of the RES Crowdfunding Platforms admit that their business model was inspired by the German energy cooperatives model.

So far, no significant RES Projects in Poland have been financed on the basis of the lending model (individuals lend money to a company or project in return for repayment of the loan and interest on their investment) or donations or rewards model (individuals provide money to a company or project for benevolent reasons or for a non-monetary reward).

1.2 RES Projects

Most of the RES Projects are investments in construction projects and concern the operation of commercial wind turbines. Usually a single SPV is responsible for erecting and managing a single wind farm by using both investors' funds as well as bank loans.

There is no independent data on average interest rates for investors in RES Projects in Poland. The RES Crowdfunding Platforms claim rates up to 14% average annual interest over the life of a turbine, which is a few decades.

2 Recent regulatory developments regarding Crowdfunding regulation in Poland

In 2014, the Polish government published its position on Crowdfunding and its potential regulation in the future. In the same year, a new Public Collections Act was also enacted, which nonetheless, and despite dealing with similar themes, does not regulate Crowdfunding. More recently, in October 2015 the Coalition for Polish Innovations suggested several amendments to existing legislation specifically intended to facilitate Crowdfunding.

The Polish government's position was adopted in association with the European Commission Communication dated 27 March 2014 entitled "Unleashing the potential of Crowdfunding in the European Union". The position was prepared by the Ministry of Administration and Digitization. Poland supported the main points in the Commission's Communication and the designated direction of activity, being the development and use of Crowdfunding potential within the European Union. It was stressed that there is currently no need to introduce binding legal regulations, because the Crowdfunding market in Poland is still in its early stage of development.

Similarly to the Commission, the Polish government has stressed the need for continued monitoring of the situation on the market, in particular for investment Crowdfunding (by which is understood equity and lending based Crowdfunding). Attention was also drawn to the significant differences between investment and non-investment Crowdfunding (different purposes, use in different sectors, difference in legal regulations, different risks, etc.), which might bring different regulations in the future for different types of Crowdfunding.

In Poland, Crowdfunding is sometimes compared to public collections. The comparison of Crowdfunding and public collections was particularly popular before the entry into force of the new Public Collections Act of 2014, which replaced the Public Collections Act of 1933. Nonetheless, Crowdfunding is not subject to these new regulations stemming from the new Public Collections Act.

The exclusion of Crowdfunding from the scope of the Public Collections Act is of crucial importance for participants in social financing, and in particular for entities obtaining financing and owners of the platforms used for this purpose. These do not have to meet the requirements imposed by the Public Collections Act for involvement of additional financial resources and, above all, hold back obtaining of financing until these have been fulfilled. This is because organising a public collection requires, in particular, notification to the public administration affairs minister and publication of details in the public collections portal maintained by that minister, and also drawing-up a report on the collection, which also has to be published on the public collections portal.

The failure by the new Public Collections Act to encompass Crowdfunding adheres to the aforementioned government's position, which stated that at the present stage of market development there is no need to introduce specific Crowdfunding regulations. It should be noted that the government changed after the elections in Q3 2015, but it has not, so far, taken any official position on Crowdfunding.

Finally, the Coalition for Polish Innovations published a draft bill in October 2015, which amends several items of legislation in order to facilitate Crowdfunding. The bill, which was drafted with the participation of representatives of the Polish Crowdfunding community (Wardyński & Partners coordinated the working group), aims to introduce exemptions for Crowdfunding in several legal acts. The exemptions focus on equity Crowdfunding and aim to ease its regulatory burden related to public offering regimes and requirements for trade in financial instruments. The bill also proposes introducing an exemption related to the payment services regime, which should facilitate the growth of all types of Crowdfunding.

3 Further recent regulatory developments considering RES Projects market in Poland

On 4 May 2015, the Renewable Energy Sources Act of 20 February 2015 came into force (the "RES Act"). The aim of the RES Act is to comprehensively regulate the renewable ener-gy sources ("RES") sector. It also introduces numerous amendments to other legal acts, in-cluding the Energy Law Act of 10 April 1997 ("Energy Law").

The RES Act is based on Guidelines on State aid for environmental protection and energy 2014-2020, 2014/C 200/01, issued by the European Commission. It introduces limitations on the use of the current support system based on certificates of origin and energy purchase obligation by so called ex officio sellers (obliged sellers in the new RES Act). Current pro-ducers of electricity from RES, as well as producers from modernised RES installations, are to be offered a choice between maintaining the current support rules and a new auction-based support system. The auction system would be applied with respect to new installations put into operation on or after 1 January 2016 (these shall not be eligible to receive certificates of origin).

The bill also provides for support for prosumer generation, which involves generators using electricity for their own needs and selling the excess into the power grid. Under the proposal, an obligated seller would be required to buy the excess electricity.

Parliament also introduced feed-in tariffs for the smallest newly constructed micro installations (up to 10 kW) in order to accelerate their development.

The core regulations amending the current support system and introducing the new one shall enter into force on 1 January 2016. Nevertheless, the European Commission announced recently that the RES Act needs to be notified in order to obtain approval. No decision has been made as to whether entry into force of the new regulations should be postponed or whether they will enter into force as anticipated, with the

notification procedure being handled concurrently. It is, however, possible that the Commission will request changes to the RES Act as an outcome of the notification process which in turn may lead to amendments to RES regulations described in this memorandum in the near future.

4 Regulation of Crowdfunding in Poland

4.1 Requirements related to financial services

4.1.1 Equity Model

Licence under the Polish Trading in Financial Instruments Act (*ustawa o obrocie instrumentami finansowymi*)

Under the Polish Trading in Financial Instruments Act (*ustawa o obrocie instrumentami finansowymi*) of 29 July 2005 ("**TFIA**"), respective activities are regulated and require a licence. TFIA is essentially an implementation of the MiFID directives. Equity Crowdfunding can potentially fall within the scope of TFIA. This depends on two factors: (i) whether the instruments involved in Crowdfunding qualify as financial instruments and (ii) whether the activities of an RES Crowdfunding Platform are investment services as defined in MiFID, referred to in TFIA as brokerage activities (*działalność maklerska*) – as defined by TFIA.

Financial instruments

TFIA divides financial instruments into two groups: securities (*papiery wartościowe*) and other instruments that are not securities, such as units of ownership in collective investment schemes (*tytuły uczestnictwa w instytucjach wspólnego inwestowania*) or derivatives (*instrumenty pochodne*). In most cases, equity Crowdfunding consists of trading in company shares, which fall into the category of securities. However, it is crucial to remember that not all kinds of company shares are considered securities under TFIA. It depends on the type of company used as Crowdfunding vehicle.

The shares (*akcje*) of a joint-stock company (*spółka akcyjna*) and of a limited joint-share partnership (*spółka komandytowo-akcyjna*) are securities under TFIA. On the other hand, the shares (*udziały*) of a limited liability company (*spółka z ograniczoną odpowiedzialnością*) are not considered to be securities, so their trading falls outside the scope of TFIA.

To sum up, a RES Crowdfunding Platform will not be regulated under TFIA if the investors participate in RES Projects by obtaining shares in a limited liability company, but it may be regulated if the shares belong to a joint-stock company or a limited joint-share company.

Brokerage activities

If equity Crowdfunding involves financial instruments in the above meaning, the activities of a RES Crowdfunding Platform must be carefully evaluated to determine if they are brokerage activities. Usually, one of two types of brokerage activities comes into play.

Firstly, if a RES Crowdfunding Platform's role is to bring together the two parties in order to conclude a transaction between them, such as sale of securities (shares), this may be considered to be brokerage activity that consists of accepting and transmitting orders to acquire financial instruments.

Secondly, if a RES Crowdfunding Platform's role is to present the possibility of acquiring shares on behalf of a SPV and carry out collection of funds in the name of the RES Project's initiator, this may be considered to be brokerage activity that consists of offering financial instruments (the so-called placing of securities).

To summarise, some types of equity Crowdfunding may fall into the scope of TFIA and constitute investment services. In the context of current Polish RES Crowdfunding market, the RES Crowdfunding Platforms are unlikely to provide investment services as long as they simultaneously perform the roles of both platform and project initiator.

Licence under the Polish Investment Funds Act (*ustawa o funduszach inwestycyjnych*)

Currently, activities based on investing funds in certain rights (e.g. securities, receivables, derivatives), where these funds have been gathered from other persons through a proposal to enter into an agreement, the object of which is participation in such an undertaking, can be performed solely through the form of an investment fund on principles regulated by the Polish Investment Funds Act (*ustawa o funduszach inwestycyjnych*).

Thus, should a RES Project initiator seek to make use of Crowdfunding to obtain funds which would then be invested in rights to assets such as shares, securities or derivatives, for the purpose of increasing the value of the funds obtained, it should carry out a thorough analysis of the planned activity from the point of view of the requirements specified in the Investment Funds Act. The regulations concerning investment fund activity will not, on the other hand, constitute a barrier to obtaining resources through Crowdfunding for financing commercial undertakings based on manufacturing, trading or services activity, or in other words the activities typically undertaken by start-ups (other than investment activities).

4.1.2 Lending Model – licence under the Polish Banking Law (*prawo bankowe*)

Under the Polish Banking Law (*prawo bankowe*), a number of activities are reserved for banks, which receive their licences from the Financial Supervision Commission (*Komisja Nadzoru Finansowego*). One of these activities is the gathering of funds from natural and legal persons in order to use them to grant credits, loans or to otherwise expose the funds to risk.

Whether the above regulations apply to lending-based Crowdfunding depends on the manner of operation. If a RES Crowdfunding Platform first aggregates the investors' funds and then grants a loan to fund a RES Project initiator, this is likely to be considered an activity reserved for banks. This is usually done to simplify the legal relationships by replacing numerous loan agreements with one. However, as a result the funds are exposed to risk – there is no guarantee of their return. In such case, the Platform must obtain a banking licence and meet the regulatory requirement of Banking Law. Gathering funds in order to expose them to risk without a licence is a crime subject to a fine up to PLN 10,000,000 (approx. EUR 2,304,147) and a penalty of imprisonment for up to 5 years.

On the other hand, if the loans are granted directly by the investors to a RES Project initiator (there are multiple loan agreements) and the Platform limits its role to that of an intermediary, its activities fall outside the scope of Banking Law and are not regulated.

4.1.3 Donations or Rewards Model

In Poland, there is no dedicated regulatory regime applicable to a donation- or rewards-based Crowdfunding. Therefore, RES Crowdfunding Platforms can do business in this model without the need to obtain additional regulatory approval and to fulfil special regulatory burdens, by simply complying with the general legal framework for doing business in Poland.

4.2 Prospectus requirements

4.2.1 Equity Model

RES Project initiators that make a public offering of securities to investors can be obliged to prepare and publish a prospectus under the Polish Public Offering, Conditions for the Introduction of Financial Instruments to Organised Trading, and Public Companies Act (*ustawa o ofercie publicznej i warunkach wprowadzania instrumentów finansowych do zorganizowanego systemu obrotu oraz o spółkach publicznych*) ("Public Offering Act"). Again, the notion of 'securities' does not include shares in a limited liability company, but it applies to shares of joint-stock company.

This is a significant burden for initiators, since the prospectus, which contains extensive information, must be prepared in a formal procedure, with the intermediation of an investment firm, and receive approval from the Financial Supervision Commission.

Under the Act, a public offering is defined as "*making available to at least 150 persons or to an unspecified addressee, in any form and by any means, information about securities and conditions for their acquisition, that constitute a sufficient basis for making a decision to acquire these securities*." Therefore, if a RES Project initiator

directs his offering to fewer than 150 persons, he does not have to prepare a prospectus, because such an offering falls outside the scope of the Public Offering Act.

Additionally, there are a number of exemptions from the prospectus requirement. The initiator does not need to prepare a prospectus if, among others:

- the offering is addressed to professional investors only;
- the shares are of high value – at least EUR 100,000 per share; or
- the acquired financing is of relatively low value – up to EUR 100,000 over a 12-month period.

Advertising

In general, advertising of the offered securities is prohibited, but there are exceptions. In the words of the Public Offering Act, "*it is forbidden to make available information, in any form and by any means, in order to promote, directly or indirectly, the acquisition of securities as well as to encourage, directly or indirectly, their acquisition*".

However, advertising is possible if promotional materials refer to prospectus or, if prospectus is not required, if the materials have been pre-approved by the Financial Supervision Commission. The Commission can withhold or even prohibit advertising that does not conform to the requirements of Public Offering Act.

4.2.2 Lending Model / Donations or Rewards Model

As long as RES Project initiators obtaining funding on the basis of a lending (other than under debt securities), donations or rewards model and do not make a public offering for securities, the prospectus requirements are not applicable.

4.3 Regulation of Crowdfunding under the AIFMD regime

At the time of writing, the AIFMD has not yet been implemented in Poland. The implementing bill was submitted to parliament at the beginning of December 2015. Under the current wording, it cannot be excluded that some RES Projects initiators will fall under the scope of the bill and will have to comply with the regulatory requirements – this needs to be monitored in 2016.

4.4 Licence under the Polish Payment Services Act (*ustawa o usługach płatniczych*)

4.4.1 Equity Model / Lending Model / Donations or Rewards Model

RES Crowdfunding Platforms, as do all Crowdfunding platforms, usually first gather the investors' funds and transfer the lump sum to the project initiator afterwards. Sometimes they may also transfer funds in the other direction, that is, from project

initiators to investors (e.g., in the scope of equity or loan Crowdfunding). All of the above activities can be qualified as executing a payment transaction within the meaning of the Polish Payment Services Act (*ustawa o usługach płatniczych*). Executing payment transactions is one of the regulated payment services and generally requires a licence.

However, it should be assumed that in most cases the Platforms will not have to obtain a licence, because they will be able to rely on a specific exemption envisaged in the Payment Services Act. Under this exemption, the requirements of the Act do not apply to payment transactions executed by the person acting to bring about conclusion of an agreement between the payer and payee, or concluding such an agreement on behalf or in the interest of a payer or payee. Undoubtedly, in facilitating the presentation of project initiator's offer on the platform, the Platform is a person acting to bring about conclusion of an agreement between the initiator and the investor.

Even though this exemption should allow many RES Crowdfunding Platforms to evade the Payment Service Act requirements, its practical application raises numerous controversies. These controversies led to its amendment in the revision of Payment Services Directive 2007/64/EC, on which the Polish Act is based. The revision, called PSD2, has already been adopted and will now have to be implemented by Member States, which is likely to affect the application of the above exemption.

If a RES Crowdfunding Platform cannot take advantage of any exemptions in the Payment Services Act, it must either apply for a payment institution licence itself or employ the services of another licenced company to gather and transfer the funds.

4.5 Possible additional regulations

Other common regulations to which the operator of a RES Crowdfunding Platform may be subject include the following:

- Electronic Services Act (*ustawa o świadczeniu usług drogą elektroniczną*);
- Anti-Money Laundering and Terrorism Financing Act (*ustawa o przeciwdziałaniu praniu pieniędzy i finansowaniu terroryzmu*);
- Consumer Credit Act (*ustawa o kredycie konsumenckim*);
- Commercial Companies Code (*kodeks spółek handlowych*);
- Foreign Currency Law (*prawo dewizowe*).

5 Regulation of RES Projects in Poland

The RES regulatory framework consists of the following acts:

- Renewable Energy Sources Act of 2015 and implementing regulations thereto;
- Energy Law Act of 1997 and implementing regulations thereto.

Zoning, environmental and construction issues concerning RES can be found in the following acts:

- The Zoning and Planning Act of 2003;
- Construction Law Act of 1994;
- The Environmental Protection Act of 2001;
- Act on making information on the environment and its protection accessible, participation of society in environment protection and on environment impact assessment of 2008.

Work has been underway in Poland for several years on the draft Renewable Energy Sources Act. The original draft, presented in 2011, sparked much debate and controversy. During the social consultation process, more than 2,500 comments were submitted, and some of them were implemented. The draft was also discussed in inter-ministerial consultations. As a result of the work at the Ministry of Economy, a final version was adopted in 2015. The main amendments to the current support system and introduction of the new support system shall enter into force on 1 January 2016.

Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC sets out the target for 2020 for Poland at the level of 15% of RES energy in total power generation. As at 2014, the achieved level amounted to 11%. Nevertheless, the investment pace was significantly reduced recently as the RES industry was waiting for the final wording of the RES Act and due to the significant price decrease for certificates of origin which is at the core of the current Polish RES support system.

As the energy sector is the most significant source of greenhouse emissions in Poland (42%) and taking into account the anticipated Polish emissions reduction target by 2050 (37%, compared with 2010), it is highly probable that the RES portion in the Polish energy mix would have to be increased in order to meet EU climate policy targets.

5.1 Certificates of origin

The current RES support system is based on trading property rights to certificates of origin known as "green certificates." Green certificates confirm the quantity of electricity physically generated at a renewable energy source. The registered certificate has financial value tradable on the market. The platform for trading certificates is the Polish Power Exchange (*Towarowa Giełda Energii S.A.*).

Energy companies involved in generation of electricity or sale of electricity to end users connected to the national power grid are required to obtain and present for redemption an appropriate number of green certificates or, alternatively, to pay a substitution fee in an amount specified during the given year.

The RES Act introduced amendments and limitations on the use of the current support system. First and foremost, it eliminated indexation of the substitution fee to account for the inflation rate, instead fixing the unit substitution fee at PLN 300.03 per MWh, EUR 70). The bill also restricts the possibility of paying the substitution fee. If the average weighted price of green certificates on the Polish Power Exchange during a period of 3 months is less than 75% of the substitution fee, it is not permissible to comply with the obligation to purchase certificates of origin by paying the substitution fee.

The level of the obligation to purchase green certificates is set at 20% (with an exception for 2015 – 14% and 2016 – 15%) of energy sold to end users or purchased at their request on the Polish Power Exchange (depending on the entity being obliged to redeem certificates or pay the substitution fee[1]). The Minister of Economy would be empowered to reduce the level of required purchase (by 31 August of the given year). Hydroelectric installations with a total installed capacity greater than 5 MW would be excluded from the support system, as would multifuel installations until 31 December 2020, up to the value of half of one certificate of origin per MWh produced, except for dedicated installations (after that date an adjustment factor would be used, as specified in the Council of Ministers regulation).

In the case of existing power installations, electricity generated from RES would be subject to a purchase obligation on the part of an obligated seller (i.e., the seller of electricity with the highest sales volume in the area of the given distribution network). The electricity purchase price shall amount to 100% of the average electricity price on the competitive market in the last quarter published by the Chairman of the Energy Regulatory Office (currently PLN 170.19 per MWh, EUR 40).

Certificates of origin for electricity from RES for current producers would continue to be used for 15 years, but no later than 31 December 2035, with this period being counted from the date of the first production of such electricity confirmed by an issued certificate of origin.

[1] The basis for calculating the 20% amount has been simplified to maintain clarity of explanation how the scheme works.

The obliged seller is obliged to purchase electricity from a renewable energy source installation as referred to above, for a period of 15 successive years calculated from the date this installation is handed over for operations.

The RES Act also provides for changes to the existing support scheme for so-called industrial end users – industry producers using quantities of energy for their dominant business activity in specified industry fields. Support consists of the ability to obtain certificates of origin and to present them for redemption for only a portion of the electricity they purchase.

The aim of the amendments and limitations introduced in the new RES Act is addressing the problem of oversupply of certificates, which caused a significant price decrease at the turn of 2012 and 2013. The price has not reached the amounts recorded before the crash (approx. PLN 284, EUR 65) and on 3 December amounted to approx. PLN 120 (EUR 28). The sudden and unexpected price decrease and maintaining price levels after the crash has put many RES projects into a difficult situation by significantly lowering their anticipated revenues and has caused a reduction in the pace of new RES investments.

5.2 Auction system of support

An auction support system is provided for new RES installations where electricity is produced for the first time on or after 1 January 2016 and where the equipment included in the installation was produced no later than 48 months (or 72 months in the case of offshore wind installations) before the date of initial generation of power, and also optionally for existing power producers and producers at modernised installations. The new system is based on the Guidelines on State aid for environmental protection and energy 2014-2020, 2014/C 200/01, issued by the European Commission.

The auction mechanism is designed to support installations using renewable energy sources cost-effectively. Thus the funds earmarked for support of generation of electricity from RES would go first to producers who accept the lowest price per unit of electricity. In auctions conducted by the President of the Energy Regulatory Office at least once per year, producers would be selected who offer to produce a given quantity of electricity from renewable sources at the lowest price.

Auctions would be conducted separately for facilities with an installed capacity of up to 1 MW and those with an installed capacity of above 1 MW. At least 25% of the quantity of electricity from RES sold through the auction would be expected to be generated at RES installations with a total installed capacity of up to 1 MW.

The rate established as a result of the auction would remain unchanged, but would be subject to annual adjustment based on the consumer price index. The subject of the auction would be the energy quantity specified by the President of the Energy Regulatory Office for a period of no longer than 15 years from the date of initial

production of power at an RES installation. A producer of electricity from renewable sources with an installed capacity of up to 500 kW would be required to sell all of its offered output at the established price (up to the quantity of production declared in the auction), even if the market price for electricity is higher. Other producers would be entitled to receive from a newly established energy clearinghouse (*Operator Rozliczeń Energii S.A.*) the difference between the price they could have obtained by selling power on the Polish Power Exchange (average daily price weighted by volume) and the price at which the producer won the auction. Nevertheless, the producer will eventually be liable to pay back the difference on terms and conditions stipulated in the RES Act if the auction price proves to be lower than the average daily price on the power exchange.

The auction would be based on a reference price per electricity unit specified taking into account the installed electrical capacity. With respect to new RES, the reference price would be calculated by the Minister of Economy separately for each RES technology and announced 60 days before the first auction in each calendar year. In establishing the reference price, the Minister of Economy would be required to take into consideration the results of economic analyses conducted by advisory or R&D units concerning the average costs for generation of electricity from renewable sources.

For existing and modernised sources, the reference price would be determined with consideration of the average sale price for electricity on the competitive market in the preceding quarter, announced by the President of the Energy Regulatory Office, as well as the average weighted price of property rights under green certificates in 2011-2013 on the Polish Power Exchange (which was PLN 239.83, EUR 55).

Under the RES Act, the obliged seller would be required to purchase electricity produced at an RES installation from the producer at the price established in an auction decided no later than 30 June 2021, although the support itself could last through to 31 December 2035.

The following would be excluded from the auction mechanism:

- Hydro-energy installations with a total installed capacity above 5 MW;
- RES installations with a total installed electrical capacity above 50 MW using biomass, biofuels, biogas or agricultural biogas to generate electricity from renewable sources, except for RES installations using biomass, biofuels, biogas or agricultural biogas to generate electricity generated through high-efficiency cogeneration with a heat capacity of up to 150 MWth;
- Installations fired by multifuel combustion, except for dedicated multifuel-fired installations.

5.3 Support for small energy producers

The RES Act also provides for support for prosumer generation, which involves generators using electricity for their own needs and selling the excess onto the power grid. Under the proposal, an obligated seller would be required to buy out the excess electricity.

Prosumers eligible for support would be individuals generating electricity at micro installations (with a total installed capacity no greater than 40 kW connected to the power grid with a rated voltage less than 110 kV or an achievable associated heat capacity no greater than 120 kW).

Under the bill, generators of electricity at a micro installation could sell the excess unused electricity at a price equal to 100% of the average price for electricity on the competitive market from the prior quarter. The quantity of electricity would be settled during a six-month period as the excess of electricity produced at the micro installation of the prosumer or enterprise (in the case of the latter, only for electricity produced at a micro installation for the first time on or after 1 January 2016) and introduced into the grid, over the amount of electricity taken from the grid during the same six months. This mechanism creates “official” price for all micro installations, combined with a mechanism for calculating the balance of electricity purchased and sold on the grid (i.e. a net metering mechanism).

Parliament also introduced feed-in tariffs for the smallest newly constructed micro installations in order to accelerate their development. The obliged sellers would have to buy energy from solar, wind and hydro-energy micro installations up to 3 kW at a price of PLN 0.75 per 1 kWh (EUR 0.17) until the total electricity capacity of such energy sources exceeds 300 MW. The Minister of Economy may change the capacity cap taking into account the terms and conditions set in the RES Act. A similar feed-in tariff support scheme is provided for micro installations over 3 kW to 10 kW. The total capacity cap is set at 500 MW and electricity prices are as follows:

- biogas from agricultural resources - PLN 0.70 per 1 kWh (EUR 0.16);
- biogas from waste storage facilities - PLN 0.55 per 1 kWh (EUR 0,13);
- biogas from sewage works - PLN 0.45 per 1 kWh (EUR 0.1);
- hydro-energy, solar and wind - PLN 0.65 per 1 kWh (EUR 0,15).

The bill also provides an exemption for individuals generating electricity at RES micro installations from the obligation to conduct business activity, and also an exemption for all producers of electricity at RES micro installations and small installations from the obligation to obtain a licence (economic activity involving production of energy at small installations would be a regulated activity).

Businesses producing electricity at a micro installation or small installation would also be eligible to use the certificate system (provided that the electricity was generated for the first time prior to 1 January 2016, or, in the case of micro installations or small installations modernised on or after 1 January 2016, after meeting the conditions set forth in the act) as well as the auction system. Producers of electricity at a micro installation or small installation which produced electricity prior to 1 January 2016 (or which were modernised in accordance with requirements set forth in the act) could also decide on the auction system. In the event of winning the auction, such installations would lose the right to benefit from the certificate system. Another option for businesses producing electricity at a micro installation is shifting to net metering settlements, also at the cost of obtaining certificates of origin in the future.

5.4 Changes to other acts

The RES Act in particular modifies the existing Energy Law by amending its provisions to the wording of the RES Act and shifting some of them to the RES Act. For example, the priority of RES installations was foreseen in the grid connection procedure. The grid connection agreement should also foresee the deadline for initial provision of electricity to the network that is generated at RES installation whereby this deadline cannot be longer than 48 months and, in the case of offshore RES installation, 72 months from the date of concluding such agreement. Failure of electricity supply by the deadline stipulated in the grid connection agreement constitutes a basis for its termination. Grid connection agreements concluded prior to the date of the RES Act entering into force on the basis of which no grid connection was made by the date of the RES Act taking effect should be adapted to the above requirements concerning deadlines within six months from the date of the RES Act entering into force. Failure to adapt agreements constitutes a legal basis for their termination after such deadline. Another notable change in the Energy Law is specification of provisions regarding the issue of co-generation certificates.

All RES installations that (i) wish to benefit from the support system based on certificates of origin, (ii) must obtain a licence, and (iii) those where construction work began after the RES Act came into force should provide the documents specified in the Energy Act Law to prove existence of the incentive effect. The documents should be attached to an application to obtain a promise for a licence or to an application to amend an existing licence promise.

5.5 RES Act amendments

On 13 July 2015, the Ministry of Economy announced a draft amendment of the recently adopted RES Act. The amendment is associated mainly with changes to the Act introduced by Parliament concerning feed-in-tariffs for micro RES installations up to 10 kW. The aim of the amendment is to adjust the wording implemented by Parliament to the wording in the rest of the Act and to ensure compliance of the feed-in-tariff system with EU state aid guidelines and regulations.

In order to benefit from feed-in-tariffs, micro RES installations in which electricity was generated for the first time on or after 1 January 2016 cannot use any aid for the purchase, setup, exploitation or modernization of the installation. Electricity producers must also declare that the amount of subsidy granted through feed-in-tariffs shall not exceed *de minimis* levels for state aid (currently EUR 200,000 within three fiscal years). Otherwise the energy price shall amount to the average price for electricity on the competitive market from the prior quarter. The prices for feed-in-tariffs in 2016 shall be at the levels provided for above, whereas for subsequent years they will be determined by the Minister of Economy by 15 December of the previous year.

The second amendment of RES Act was prepared by the members of Parliament. Its aim is to support the RES installations producing electricity from agricultural biogas by introducing a separate obligation (besides the existing one at the level of 20%) to purchase green certificates generated from these RES installations at the level of 0.35%.

As the amendments to RES Act were prepared prior to the elections which took place in October 2015 as a result of which the opposition party came into power, their final wording or even continuation of proceedings cannot be determined at this point of time.

6 Conclusion

No exemptions or regulations dedicated to Crowdfunding have been enacted in Poland so far. While the lack of overreaching legislative intervention is welcomed, as it prevents overregulation, refraining from any intervention at all may prove just as harmful.

At the moment, RES Projects and RES Crowdfunding Platforms face a challenging task – they must identify which regulatory applies to their activities and comply with its requirements. In many cases it may turn out that many such regimes apply simultaneously, which further increases the regulatory burden on Crowdfunding. For example, in case of equity Crowdfunding a RES Crowdfunding Platform might have to obtain licences to provide payment services and to carry on brokerage activities, whereas a RES Project might have to comply with the prospectus requirements.

It comes as no surprise, therefore, that RES Crowdfunding in Poland has focused on a specific equity model where the platforms themselves establish SPVs in the form of limited liability companies. This helps to avoid the hindrance of these numerous requirements, because shares of limited liability companies fall outside the scope of Trading in Financial Instruments Act and public offering requirements.

Therefore, to help foster the development of not only other models of equity Crowdfunding (especially through the use of joint-stock companies), but also all other types of Crowdfunding, these burdens should be removed. As a start, we suggest

introducing a number of Crowdfunding exemptions in the legal acts imposing the most stringent requirements.

First of all, an exemption for Crowdfunding platforms should be introduced in the Trading in Financial Instruments Act which would exclude the application of trading in financial instruments rules to such platforms. The exemption should apply only to particular types of activities carried out by online platforms – it would be useful to include them in a definition of a Crowdfunding platform. Basically, the definition should cover the assistance in obtaining shares (equity Crowdfunding), conclusion of loan agreements (load-based Crowdfunding) and intermediation in online gathering of funds – given by platform users to project initiators – for economic, charitable, and social purposes, and any other lawful needs of the initiator. This would help remove doubts in regard to Crowdfunding platform's status as an investment firm and the need to obtain a licence.

Secondly, collecting funds by issuing shares should be exempt from prospectus requirements if the public offering is made through a Crowdfunding platform (as defined above) and the acquired funds do not exceed EUR 1,250,000 over 12 months. Introducing such an exemption would be beneficial to Crowdfunding by helping fill the financing gap for innovators that are unable to obtain bank credit and too large to start their project without a public offering, yet too small enough to manage the prospectus requirements.

Finally, Crowdfunding platforms described as above should be clearly exempted from the Payment Services Act and its licencing requirements. This could be achieved through an exemption under which the platforms' services are not payment services as long as all transaction initiated by their users (investors), in connection with using the platform, are executed by licenced payment service providers.

In contrast with Crowdfunding, the renewable energy regulation in Poland has been subject to an essentially complete makeover in recent months and many of the changes will only become binding in 2016, so they have not even entered into force at the time of writing. This makes it hard to predict their effect on RES Projects and RES Crowdfunding Platforms. Therefore, only a quick glance at the Polish RES Act – the key element of new regulation, the arduous adoption of which has actually caused the market to freeze in anticipation for a while – could be presented in this memorandum without certainty how the new support system shall influence RES development in Poland.

First of all, the new regulation aims to fix the oversupply of green certificates, whose recent price crash has put many RES Projects in a difficult position. Hopefully, once the price picks up it will become more profitable to produce renewable energy, which should obviously help existing RES Crowdfunding Platforms.

Secondly, the new energy auction system should not only provide RES Projects with additional funding (at least as intended by its authors), but also encourage the development of cost-efficient project, since the funds will be provided only to those producers that offer the lowest price. Small RES Projects will particularly benefit due to obligatory threshold under which 25% of energy sold at the auction must have been produced at installations up to 1 MW.

Finally, a new interesting venue for RES Crowdfunding should soon appear, since the new RES Act extends support for prosumer installations and exempts them from regulatory requirements. However, it may take a while for the regime to become stable – the relevant provisions were highly controversial at the date of adoption and some amending bills were filed even in the previous parliament. Whether the new parliament (and government) follows in these footsteps remains to be seen. Moreover, the RES Act was notified to the European Commission at its request in order to assess compliance of RES support system with public aid regulations. It is probable that RES Act will have to be amended as a result of the notification process.

7 Summary – Crowdfunding and RES Projects Regulation

Country / Summary	Poland
Recent developments in Crowdfunding regulation	• In 2014, the government's position endorses refraining from regulating Crowdfunding while it is still developing • In 2015, a proposal for several Crowdfunding-related exemptions in various legal acts put forward by a local lobbying group
Current Crowdfunding regulation	
General regulation	• If a Crowdfunding platform facilitates trade in financial instruments, especially securities such as shares of joint-stock companies or limited joint-share partnerships, by either: (i) bringing together the two parties in order to conclude a transaction between them or (ii) carrying out collection of funds in the name of a project's initiator, the operator of the platform provides brokerage services, respectively accepting and passing on instructions for the acquisition of financial instruments or offering financial instruments → Financial Supervision Commission's authorization required • If a project initiator places funds gather on a

	Crowdfunding platform in certain rights (e.g., securities, receivables, derivatives), where these funds have been gathered from other persons through a proposal to enter into an agreement, the object of which is participation in such an undertaking, the operator of the platform carries out activities reserved for investment funds → Financial Supervision Commission's authorization required • If a Crowdfunding platform gathers funds from natural and legal persons in order to use them to grant credits, loans or to otherwise expose the funds to risk, it carries out banking activities, but only if the loans are granted by the operator of the platform (as opposed to loans granted directly by the investors) → Financial Supervision Commission's authorization required
Prospectus requirement	• Prospectus requirement for offering of securities • General threshold: EUR 100,000 per issuer within 12 months (i.a.)
AIFMD-regulation	• AIFMD not implemented in Poland as of yet • Implementation likely to be enacted in 2016 – to be monitored
Payment services regulation	• Transferring funds through an operator may constitute execution of payment transactions → Financial Supervision Commission's authorization required • Many platform operators can rely on an exemption related to facilitation of contract conclusion to avoid the need for authorization • Exemption subject to change in the future due to PSD2 implementation
Further possible requirements	• Electronic Services Act (*ustawa o świadczeniu usług drogą elektroniczną*)

	• Anti-Money Laundering and Terrorism Financing Act (*ustawa o przeciwdziałaniu pra-niu pieniędzy i finansowaniu terroryzmu*) • Consumer Credit Act (*ustawa o kredycie konsumenckim*) • Commercial Companies Code (*kodeks spółek handlowych*) • Foreign Currency Law (*prawo dewizowe*)
RES Projects Regulation	
Electricity regulation applicable to RES projects	• EU law sets out the target for 2020 for Poland at the level of 15% of RES energy in total power generation • Existing RES Projects in Poland benefit from a system of green energy certificates which are tradable on the market and obligation to purchase energy by ex officio sellers (obliged sellers under new RES Act) • RES Act introduces new auction support system for RES installations which shall start to generate energy on or after 1 January 2016. RES installations with an installed capacity of up to 500 kW would be required to sell all of its offered output at the established price. Other producers would be entitled to receive the difference between the price they could have obtained by selling power on the Polish Power Exchange and the price at which the producer won the auction. Nevertheless, the producer will eventually be liable to pay back the difference on terms and conditions stipulated in the RES Act if the auction price proves to be lower than the average daily price on the power exchange • Planning, construction and commissioning of new RES Projects is subject to zoning, building and environmental laws • Priority in the grid connection procedure was introduced for RES installations with adoption of the RES Act in 2015
Market Integration of RES Projects	• Market integration of RES Projects should be accelerated by the auction system, especially as regards installations with an installed capacity above 500 kW which shall

	receive only a difference between the price they could have obtained by selling power on the Polish Power Exchange and the price at which they won the auction (or give back the difference when the auction price proves to be lower than the power exchange price)
Transition to tender based allocation of new RES Projects	• New support system based on auctions shall enter into force at the begin-ning of 2016. Existing RES installations may resign from the old support system based on green certificates and join the auction system instead
Further regulatory sources	• Renewable Energy Sources Act of 2015 (*ustawa o odnawialnych źródłach energii*) • Energy Law Act of 1997 (*ustawa Prawo energetyczne*)

Lessons learned – Crowdfunding / RES Projects Regulation

Lessons learned for a possible harmonized European Crowdfunding Regulation	
Role model ("dos")	• exempt Crowdfunding from most regulatory requirements → exemptions from licencing for all types of Crowdfunding platforms in the Trading in Financial Instruments Act as well as in the Payment Services Act → exemption for project initiators from the prospectus requirement if the public offering is made through a Crowdfunding platform with a threshold of EUR 1,250,000 per issuer within 12 months • adapt existing regulations to the specific characteristics of Crowdfunding
Aspects that should be avoided ("don'ts")	• refrain from overly comprehensive regulation of Crowdfunding at this stage
Lessons learned for a possible harmonized European RES Projects Regulation	
Role model ("dos")	• exempting smaller RES installations from regulatory requirements • ensuring grid connection priority for RES installations

	• preferential treatment of RES energy, especially as regards production from smaller RES installations
Aspects that should be avoided ("don'ts")	• overregulation of RES Projects • instability and frequent changes of RES regulation and support systems

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XXII. Portugal

1 Portuguese market for RES Crowdfunding Platforms

As occurred in the rest of Europe, also in Portugal the RES Projects have collected supporters in the last years. However, as the Crowdfunding market is still incipient in Portugal and the specific legislation of Crowdfunding has only been approved in 2015, and the most adequate model of Crowdfunding to the RES Projects is the Equity or Lending Model, we have evidenced a small adherence of RES Projects to this type of fund raising (despite the existence of small projects that could eventually be qualified as RES Projects).

We have two main projects in Portugal in the RES market. The company "Boa Energia" and the cooperative "Coopérnico", both of them partners of Citizenergy, the first European portal to bring together renewable energy Crowdfunding platforms and cooperatives from across Europe, however, these projects are mainly based in a cooperative model and not in Crowdfunding.

In fact, the most adequate models of Crowdfunding for RES Projects are Equity and Lending models which, until last October were very difficult to implement in Portugal due to the lack of specific legislation, that would make these projects fall within the scope of financial intermediation. That is why some of these projects have implemented cooperatives instead of Crowdfunding platforms.

The approval of a specific legal framework for Crowdfunding, besides the protection of the inves-tors and the regulation of the activity, brought up the possibility to implement Crowdfunding plat-forms based in the Equity or Lending models, once it ruled specifically on the access to the activity and created a specific registry at CMVM for this type of intermediation.

As so, we anticipate that the next years will be crucial for the development of the Crowdfunding in Portugal and also to the development of the Crowdfunding in RES Projects.

2 Recent regulatory developments regarding Crowdfunding regulation in Portugal

2.1 Approval of Crowdfunding legal framework

On 2015 was approved the Law nr. 102/2015, dated August 24th that approved the legal framework applicable to the Crowdfunding, governing the types of Crowdfunding that may be adopted, the requirements to access the activity, the platforms, its property and the access to it by the benefi-ciaries, the investors, the supervision of the activity and the sanctions legal regime.

There are four broad types of Crowdfunding established in Law nr.102/2015, dated August 24th:

a) **The Donations Model**

In the Donations Model, individuals make a financial contribution to a project, with or without a non-financial return.

b) **The Rewards Model**

In the Rewards Model foreseen by the new Legal framework, individuals make a financial contribu-tion to a project in exchange for the delivery of the funded product or service.

The law approved the Rewards Model as a usually so-called **Pre-sale Lending Model** that is often combined with the pure Rewards Model[1]. In this Pre-sale Lending Model, finished product or ser-vice is promised in return for and according to the contributor's loan (usually through an assess-ment of the fair market value of the product/service).

c) **The Equity Model**

The Equity Model implies, in exchange for a contribution or investment, the assignment of shares or warrants to buy shares of the company or the granting of a percentage share or fixed return from any revenues (or profits) generated by the company in the future.

This Model is already possible to implement in Portugal due to the approval of the specific legisla-tion on this subject. Until August 2015, the offering of shares or any kind of equity interest in share companies would probably imply the compliance with the requirements of the Portuguese Securi-ties Exchange Commission ("CMVM") including the registry of the platform as a financial intermediary at the CMVM and (eventually) the approval of a prospectus (according to the requirements established in the Portuguese Securities Code).

d) **The Lending Model**

The Lending Model involves a loan to fund the project, with an expectation of monetary reim-bursement in the form of interest. This model has been very difficult to implement in Portugal in the last years, once it would be qualified as a credit or financial transaction (which may only be carried out in Portugal by duly authorised credit or financial institutions), but now the new Legal Framework for Crowdfunding has created specific and faster registration procedures at the CMVM.

[1] In the „Pure" Rewards Model, individuals make a financial contribution to a project without any expectation of a financial return on that contribution. This is the most common model in Portugal, where the individuals that fund the project are often recognized for their support with rewards that can increase according to the amount of money provided by each individual.

In Portugal, the two main types of Crowdfunding platforms operate under the Pre-sale Lending Model and the Rewards Model. But with the approval of the legal framework of Crowdfunding the Equity and Lending Model may see more development in the next years.

2.2 Essential Provisions

Essentially, the new legal framework sets the following:

- A mandatory written agreement to adhere to a Crowdfunding platform (this agreement must be disclosed at the platform and should contain the parties' identification, the models of Crowd-funding to be used, the identification of the project or the activity to be funded and the amount and time period established for the fund raising.

- In case the total amount is not raised within the established deadline, all the agreements exe-cuted with the investors will be null and void, being the beneficiaries obliged to return all the received amounts, except if the offer expressly foresees the possibility of alteration of the total amounts and deadlines and that fact is duly communicated in the offer to all investors. In this event, the platforms must notify all investors of the subsequent alteration of the maximum amount to be raised and/or the new deadline for subscription. The extension of amounts and deadline for fundraising can only be executed once per offer and must be given to the investors a deadline to cancel the investments already made.

- The legal regime applicable to the agreements executed between the investors and the benefi-ciaries of the fund raising will depend on the type of agreement executed (donation, sell an purchase, services agreement, shares subscription or loan agreement).

The new legal framework also establishes the requirements to access this activity, depending on the model of Crowdfunding to be developed by the platforms (Donations/Rewards or Equi-ty/Lending):

a) **Donation and Rewards Crowdfunding Platforms:**

The access to the activity for Donations and Rewards Crowdfunding Platforms will imply a prior notice procedure at the Portuguese Authority for Consumer's Protection ("*Direcção Geral do Con-sumidor*") just for information purposes. This prior notice procedure is made online and is free, and the requirements and forms to be submitted will be approved by a regulation.

Each offer made through the donation and rewards Crowdfunding platforms is subject to a limit for the fund raising of 10 (ten) times the global amount of the activity to be funded and each offer may only be offered by one Crowdfunding platform.

Information requirements to be provided by the beneficiaries to their investors concerning each offer:

aa) Activity or product description to be funded and the purpose of the fund raising;

bb) The amount and the deadline for the fund raising;

cc) The price of each unit to be subscribed or the method for calculation of the price.

All information to be provided to the investors must be complete, true, actual, objective and lawful, to allow informed decisions by all investors.

b) **Equity and Lending Crowdfunding Platforms:**

According the new legal framework the access to the activity of Equity or Lending Crowdfunding Intermediation is made through a prior registry of the platforms operators at the CMVM, being this entity responsible for the regulation and supervision of their activity.

CMVM will control the compliance with requirements for the access to the activity, the causes of rejection, the supervision and will assure the integrity of the platforms operators, deadlines, sus-pension, cancellation of the registry, as well as establish the annual limit for investment in Crowd-funding per investor.

A project of regulation has already been made public by CMVM, which we will analyse in the next chapter.

2.3 Project of Crowdfunding regulation (for Equity and Lending Models):

To regulate Law nr. 102/2015, dated August 24th CMVM made public a project of Regulation that will be only applicable to Equity and Lending Crowdfunding platforms.

In general terms this new Crowdfunding regulation establishes several information requirements applicable to the Crowdfunding beneficiaries (including transparency obligations), limits to the amounts invested (applicable to the investors, either per project as per year) and means to prevent conflicts of interest applicable to the platforms operators.

As already said above, the access to the activity of Equity or Lending Crowdfunding Intermediation is made through a registry of the platforms operators at the CMVM, being this entity responsible for the regulation and supervision of their activity. This Regulation, once approved, will establish the requirements to be complied with to obtain such registry, as well as the causes for its rejection, suspension or cancelation.

The Regulation also governs the requirements to guarantee the integrity of the platforms operators, the transparency of the operations and to avoid any conflict of interests.

In order to guarantee an informed decision by the investors (i) a list of Crowdfunding platforms duly registered at CMVM will be disclosed at CMVM's website, (ii) several information requirements are established to be disclosed at the Crowdfunding platforms and (iii) a list of essential information to be disclosed to the investors, prior to each offer, will be mandatory to Crowdfunding platforms.

The investors will also be subject to the following investment limits: (i) 3.000,00 euros/per offer and (ii) EUR 10.000,00 of total Crowdfunding investment/per year. These limits are not applicable to companies and to investors with an income of EUR 100.000,00 or more.

The Regulation (if approved) will also establish a maximum limit for fund raising through Crowd-funding per each 12 months (by a single offer or by the total of offers within the European Union: EUR 1.000.000,00 (one million euros). Except if the offers are subscribed only by companies or inves-tors with an income of EUR 100.000,00 or more, in which case, the maximum limit will be of EUR 5.000.000,00 (five million euros).

3 Further recent regulatory developments considering RES Projects market in Portugal

On January 2015 has entered into force the Decree Law nr. 153/2014, dated October 20th that established the new legal framework applicable to the electricity production of Small Production Units that replaced the remuneration regime previously applicable to micro and mini generation units.

4 Regulation of Crowdfunding in Portugal

4.1 General regulation

According to Law nr. 102/2015, the Equity and Lending Crowdfunding Models will be registered and supervised by CMVM and the Reward and Donations Crowdfunding Models will only be subject to a prior notice to Portuguese Authority for Consumer's Protection ("*Direcção Geral do Consumidor*").

Nevertheless, as the law applicable to the relationships underlying the Crowdfunding will be defined by the type of agreements executed between the parties in each specific model (donation, purchase and sale, services agreement, etc.) the Bank of Portugal or other Portuguese supervision entities may also step in to intervene where necessary.

a) **Equity and Lending Model**

Nowadays it is much easier to implement this model in Portugal, due to approval of the legal framework of Crowdfunding and the Regulation to be issued by CMVM regarding the Equity and Lending Crowdfunding Models.

The operators of the Crowdfunding platforms must be duly registered and comply with the regula-tion of the supervising entity (CMVM) regarding activity licencing and integrity of the operators, duties of conduct, information requirements to investors, maximum amounts of fund raising, in-vestment limits applicable to the investors and prevention of conflict of interests.

b) **Donations or Rewards Model**

This is the most common model in Portugal, where the individuals are recognized for their support with rewards that can increase according to the contribution of each individual.

This model does not require any licence/authorisation, nor fall under the supervision of CMVM or Bank of Portugal, however in must be given a prior notice to the Portuguese Authority for Consumer's Protection ("*Direcção Geral do Consumidor*"). This prior notice procedure is made online and is free, and the requirements and forms to be submitted will be approved by a regulation.

The new legal framework adopted the Pre-Sale Lending Model combined with the Rewards Model and therefore is subject to the same requirements, obligations and supervision of the latter.

4.2 Requirement of a Banking / Financial Services requirements

No banking or financial services license is applicable once the approval of the new legal framework created a specific registry at CMVM to access the activity of Crowdfunding intermediation, which will be applicable to Crowdfunding platforms that adopt the Equity or Lending models.

4.3 Prospectus requirements

According to the new legal framework, the issuance of an offer through a Crowdfunding Plat-form must comply with the following:

a) Description of the activity or product to be funded and the purpose of the funds to be raised;

b) Amount and deadline for the raising of funds;

c) Price of each unit to be subscribed or method to calculate such price;

d) Other information requirements to be established by Regulation of CMVM.

Further to the above, the offers also have to comply with a maximum limit of fund raising, which may not be the global value of the project to be funded; these limits will be established by specific CMVM regulation.

4.4 Regulation of Crowdfunding under the AIFMD regime

The implementation of the Alternative Investment Fund Managers Directive (AIFMD) has not been executed in Portugal, although all EU member states should implement this Directive until July 22, 2013.

According to the text of AIFMD Directive, Crowdfunding platforms may be deemed as offers of AIF's, however we will have to wait for the implementation to take a position on this matter.

4.5 Requirement of a License under the Payment Services regulation

According to article 10 number 3 of Law n.º 102/2015, this legal framework does not prejudice the application the exercise of the supervision by Bank of Portugal whenever the activity of the opera-tors determines such supervision (which would be the case if the Crowdfunding platforms opt for receiving and handling directly the amounts received by the investors instead of according with a bank or a licensed financial institution to handle the payments).

4.6 Possible additional requirements (such as anti-money laundering laws, data privacy laws, consumer credit regulation)

Other common regulations to which the operator of a Crowdfunding platform may be subject in-clude:

Portuguese Civil Code – concerning the specific legal frameworks applicable to purchase and sale agreement, donation and services agreement;

Law nr. 25/2008, dated June 5th, concerning the prevention of money laundering;

CMVM Regulations to be issued as development of Law nr. 102/2015, dated August 24th.

5 Regulation of RES Projects in Portugal

During the year 2015 it was approved the following legislation on RES Projects in Portugal con-cerning electricity RES Projects:

- Administrative Rule nr. 60-E/2015, dated March 2th amending Administrative Rule nr. 14/2015, dated January 23th

- Administrative Rule nr. 15/2015, dated January 23th developing the Decree Law nr. 153/2014 dated October 20th

- Administrative Rule nr. 14/2015, dated January 23th developing the Decree Law nr. 153/2014 dated October 20th

- Decree Law nr. 153/2014, dated October 20th – legal regime applicable to the electricity pro-duction through RES, for self consumption and to sell to the public service

Further regulation of RES Projects in Portugal within the areas of Biomass, Wind, Hydro, Ocean, Solar and Geothermal energy:

Biomass:

- Decree Law nr. 5/2011, dated January 10th, as amended by Decree Law nr. 179/2012, dated August 21st and Decree Law nr. 166/2015, dated August 21st;

- Decree Law nr. 49/2009, dated February 26th;

- Decree Law nr. 89/2008, dated May 30th as amended by Rectification nr. 35-A/2008 dated June 27th, Decree Law nr. 142/2010, dated December 31st and Decree Law nr. 214-E/2015, dated September 30th;

- Decree Law nr. 225/2007 dated May 31st, as amended by Rectification nr. 71/2009, July 24th, Decree Law nr. 51/2010 dated May 20th, Decree Law nr. 215-B/2012, dated October 8th, Decree Law nr. 94/2014, June 24th;

- Decree Law nr. 62/2006, dated March 21st, as amended by Decree Law nr. 89/2008, dated May 30th, Decree Law nr. 49/2009, dated February 26th and Decree Law nr. 117/2010, dated October 25 th;

Wind:

- Decree Law nr. 225/2007, dated May 31st as amended by Rectification nr. 71/2007, dated May 31st, Decree Law nr. 51/2010, dated May 20th, Decree Law 215-B/2012, dated October 10th and Decree Law nr. 94/2014, dated June 24 th.

Hydro:

- Decree Law nr. 226-A/2007, dated May 31st as amended by Decree Law nr. 82/2010, dated May 2nd, as amended by Decree Law nr. 391-A/2007, dated December 21st, Decree Law nr. 93/2009, dated June 4th, Decree Law nr. 107/2009, dated May 15th, Decree Law nr. 137/2009, dated June 8th, Decree Law nr. 245/2009, dated September 22nd , Decree Lae nr. 82/2010, dated July 2 nd and Decree Law nr. 44/2012 dated August 29th.

Ocean:

- Decree Law nr. 238/2008, dated May 12th, as amended by Decree Law 15/2012, dated January 23rd.

Geothermal:

- Decree Law nr. 54/2015, dated June 22nd.

6 Conclusion

During the last years, as the legal regime of Crowdfunding was not yet approved, only the Dona-tions or Rewards Model and the Pre-sales Model have seen development among Portuguese Crowdfunding platforms.

However, we expect that the approval of the legal framework of Crowdfunding and the subsequent regulations from CMVM will develop the Equity and Lending Models that until today would just fall under the legal regime of financial institutions or financial intermediaries.

The online registration procedures and the supervision of CMVM will certainly cause developments in this activity and will give confidence to the operators and investors to adopt such models, especially in what concerns RES Projects where the development of Equity and Lending Models are mandatory for the application of Crowdfunding to this particular area. This is why we expect this regulatory framework to have great developments in the next years in this specific area.

7 Summary – Crowdfunding and RES Projects Regulation

Country / **Summary**	**Portugal**
Recent developments in Crowdfunding regulation	• Approval of specific legal regime applicable to Crowdfunding platforms • Adherence of start-up companies as an alternative to traditional financing models
Current Crowdfunding Regulation	
General regulation	• Crowdfunding Platforms operating under the Donation and Rewards Model (including pre-sales model) are subject to a prior notice to DGC • Crowdfunding Platforms in Portugal that offer services under Lending and Equity Models must be registered at

	Securities Exchange Commission (CMVM) and be subject to the supervision of this entity.
Prospectus requirement	• Description of the activity or product to be funded and the purpose of the funds to be raised; • Price of each unit to be subscribed or method to calculate such price; • Other information requirements to be established by Regulation of CMVM.
AIFMD-regulation	• AIFMD Directive has not been implemented in Portugal until now. • According to AIFMD, companies that submit projects to Crowdfunding platforms could be deemed as AIF's, and therefore their management qualified as AIFM's.
Payment services regulation	• Transfer of funds through operator may constitute money re-mittance service, and therefore an authori-sation from Bank of Portugal would be required
Consumer credit regulation	• If consumer borrowers are permitted on a platform (Lending Model) there are implications for the form and content of the lending agreements.
Further possible requirements	• Portuguese Money Laundering Regime
Current RES Projects Regulation	
Electricity regulation applicable to RES Projects	• Administrative Rule nr. 60-E/2015, dated March 2th amending Administrative Rule nr. 14/2015, dated January 23th • Administrative Rule nr. 15/2015, dated January 23th developing the Decree Law nr. 153/2014 dated October 20th • Administrative Rule nr. 14/2015, dated January 23th developing the Decree Law nr. 153/2014 dated October 20th • Decree Law nr. 153/2014 dated October 20th – legal regime applicable to the electricity production through

	RES, for self consumption and to sell to the public service
Market Integration of RES Projects	• Decree Law nr. 153/2014, dated October 20 entered into force in January 2015 to establish a sole legal framework applicable to the small electricity production for self consumption and to the small production units that sell all their production to the grid. • This new legal framework replaced the remuneration regime for micro and mini generation units that foresees the possibility to inject the excess produced into the grid. • Also the licensing procedures up to 1MW were simplified through the portal SERUP (Electronic Registry System for Production Units). • Small Production Units use single production technology and have a capacity of up to 250kW (article 2 nr. 2).

Lessons learned – Crowdfunding / RES Projects Regulation

Lessons learned for a possible harmonized European Crowdfunding Regulation	
Role model ("dos")	• Possibility to implement the lending and equity models due to the approval of the Crowdfunding new legal regime.
Aspects that should be avoided ("don'ts ")	• CMVM project of regulation establishes investment limits to the investors with an income of less than EUR 100.000,00: (i) 3.000,00 euros/per offer and (ii) EUR 10.000,00 of total Crowdfunding investment/per year. • The project of Regulation also establishes a maximum limit for fund raising through Crowdfunding per each 12 months (by a single offer or by the total of offers within the European Union: EUR 1.000.000,00 (one million euros). Except if the offers are subscribed only by companies or investors with an income of EUR 100.000,00 or more, in which case, the maximum limit will be of EUR 5.000.000,00 (five million euros).
Lessons learned for a possible harmonized European RES Projects Regulation	
Role model ("dos")	• New legal regime applicable to Small Production Units has simplified the licensing procedures. The production units

	up to 1MW is only subject to prior registry (and needs an exploitation certificate).
Aspects that should be avoided ("don'ts")	• The new remuneration regime of Decree-law nr. 153/2014 dated October 20, establishes that the Producer must "deliver the entire energy produced in the UPP, net from the consumption of auxiliary services". It should also clarify the procedure in the event the energy consumed by auxiliary services is higher than the energy produced by the UPP.

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XXIII. Romania

1 Romania market for RES Crowdfunding platforms

The projects dealing with renewable energy sources („**RES**") became more and more popular over the past years in Romania due to the fact that, until recently, Romanian RES market offered a good deal opportunity for foreign investors.

Romania was, in 2014 one of the leading European states as regards implementation of RES, but due to a major reduction in the annual mandatory quota of electricity produced from renewable energy versus the values set out in the applicable law, the RES market reduced significantly in 2015.

As of this moment, Romania has no Crowdfunding platform specialized on funding RES Projects, although certain projects are occasionally presented on Crowdfunding platforms.

1.1 Different investment models

Investment models usually used are either equity based addressing small to medium-size companies (individuals make investments in return for a share in the profits or revenue generated by the company/project) or debt based (individuals lend money to a company or project in return for repayment of the loan and interest on their investment).

Also, the donation and reward model become more popular and developed gradually in the previous years. The donation based Crowdfunding platforms operates under the law governing sponsorships and donations, therefore the project initiators can only be individuals or non-governmental organizations ("**NGO**").

1.2 RES Projects

The most important outgoing Projects regarding RES in Romania include several investments in:

- Biomass power plant – a biomass power plant with a nominal power of 4.13 MWe will be located in Horezu, Valcea County;
- Gas plant – the project involves the development of electricity production units fuelled by natural gas, thermal power plants located inside the former thermoelectric Fantanele;
- Solar projects – the projects involve development of several photovoltaic projects with capacity below 500 KW;

- Waste recovery – production facility of electricity and thermoelectric by municipal waste recovery;

- Wind power plants and wind farms.

In 2014 a group of 70 students sought support to build o solar house on crestemidei.ro platform. The solar house was designed in order to build an energy efficient, sustainable and intelligent house that does not destroy the environment (EFdeN solar house).

The purpose of the fund-raising was to collect 8,000 lei (i.e. approx. EUR 1,777) in order to participate to an innovation contest in France. Unfortunately, Romania did not win the contest, but at the moment, this is the most important RES Project that was implemented by Crowdfunding.

2 Recent regulatory development regarding Crowdfunding regulation in Romania

A draft proposal of the law for participatory financing development ("**Crowdfunding Project**") was launched for public discussions by the Department for SME Business Environment and Tourism on September 2014 and since then, no development happened.

On the other hand, on July 17, 2015 Law no. 120/2015 on stimulating individual investors – business angel ("**Law no. 120/2015**") entered into force regulating the requirements for an individual to benefit from tax exemptions in relation to the acquisition of shares through investments in small and micro enterprises.

3 Further recent regulatory developments considering RES Projects market in Romania

Following the example of other EU member states that implemented various measures to reduce the support mechanism for renewable energy, Romania decided to abrogate the legal mandatory quotas set by Law 220/2008 on renewable energy ("**Law 220/2008**") available from 2014 until 2020 (i.e. from 15% to 20%) and give the Regulatory Authority for Energy ("**ANRE**") the freedom to propose a mandatory quota each year depending on the developments on the market and the impact of the support mechanism on the end-users.

4 Regulation of Crowdfunding in Romania

Once approved, the Crowdfunding Project is intended to be applicable only to the equity and lending models and entails that the investor receives shares, stocks or receivables generating interests for a period of time. The amount that can be collected is limited to EUR 1,000,000 for each project. An investor may participate in each project with maximum EUR 1,000 and, cumulatively, EUR 5,000 in all projects on each platform within a 12 month-period.

The Crowdfunding Project included the "all or nothing" principle, which means that if the financing is not raised, the amounts will be reimbursed to the investors. Besides, for the security of the investment, the developer shall contribute with an initial capital of minimum 5% to the project.

The entities operating Crowdfunding platforms shall have a minimum share capital of EUR 25,000, shall maintain professional liability insurance and shall be registered with the register held by the Romanian Financial Supervisory Authority ("**FSA**").

The Crowdfunding Project provides that the investors may be individuals or legal entities which are expected to obtain a profit as result of the venture. The project developer can only be a legal entity.

The Crowdfunding platform must provide the following features:

- To be able to receive and publish announcements for Crowdfunding projects;
- To be able to provide potential investors with direct contact with the financed entities;
- To be able to collect funds from investors and to transfer them to financed entities.

The Crowdfunding Project shall not apply to on-line platforms that require funding through donations and sponsorships.

There are specific bans regarding the activity of the financial platforms, including interdictions to perform activities reserved to investment services firms, credit institutions, electronic payment institutions or any other activities for which an authorization is required.

As regards business angels, the Law no. 120/2015 sets certain requirements that the financed entities must met for an investor to benefit from tax exemption, including:

- to be set up as limited liability companies under art. 2 of the Company Law no. 31/1990, republished, as amended and supplemented ("**Company Law**");
- to be independent companies under the dispositions of Law no. 346/2004 regarding small and medium enterprises, as amended and supplemented;
- to not fall under insolvency or bankruptcy law or to be subject to court proceedings for composition or winding up of assets.

An individual can become a business angel in small and micro enterprises, if all of the following conditions are cumulatively met:

- the investor is not involved in the companies' businesses and becomes the shareholder of either by cash or an in-kind contribution to the share capital;

- the investor makes an investment ranging between EUR 3,000 and EUR 200,000;

- the investment is strictly aimed at financing the main business activity of the company and the business plan prepared for the purpose of the investment;

- the investor has no tax record as of the date of the investment;

- the investor does not hold, either directly or indirectly, more than 49% of the share capital of the target company.

Investments of any kind in companies active in sectors such as banking, insurance and reinsurance, capital markets, financial brokerage services and any other financial transactions; real estate transactions, rental of real estate, real estate brokerage, real estate development; betting and gambling; steel manufacturing and trading activities; coal manufacturing and trading activities; construction of sea-going and river-going vessels; production or trade with weapons, munitions and war material, tobacco, alcohol, restricted substances and plants, narcotic drugs and psychotropic substances; and consultancy services in any other areas, do not fall within the scope of Law 120/2015.

According to the Law no. 120/2015 the business angels individuals benefit of tax exemptions, as follows:

- exempt from income tax for a period of 3 years as of the purchase of the shares for dividends on acquired shares;

- exempt from tax for income tax under art. 66 para. (3) of Law no. 571/2003 on the Fiscal Code, for the transfer of shares performed after at least 3 years following acquisition.

4.1 Licence under the Romanian Banking Law

The lending activity in Romania, conducted habitually, is subject to supervision by the National Bank of Romania ("**NBR**") and may be carried out only by financial institutions, as well as non-banking financial institutions ("**IFN**").

The main regulation applicable to financial institutions is the Government Emergency Ordinance no. 99/2006 regarding credit institutions and capital adequacy as further amended, (the "**Banking Law**"), as well as a series of laws, ordinances, decisions and special regulations issued by the NBR. Similarly, the operation of IFN acting in the field of granting loans (such as leasing companies and non-banking financial institutions) is

subject to dispositions of Law no. 93/2009 regarding non-banking financial institutions ("**IFN Law**").

Further, the Banking Law provides for the possibility of the financial institutions to carry out activities with financial instruments, such as trading of financial instruments and other transferable securities on own account and/or on behalf of its clients (contract broking), participation to issuance of securities and other financial instruments (investment broking), as well as custody and administration of financial instruments.

Crowdfunding platforms in Romania do not provide financing pursuant to this lending regulation.

The Lending Model is theoretically possible, provided that the investor is a regulated entity and the initiator of the project complies with the applicable requirements of the financial institution and the general regulations applicable to lending activity.

4.2 Prospectus requirements

According to Romanian laws, public offering of securities as well as the admission to trading on a regulated market of company shares is subject to the approval of a prospectus by the FSA, pursuant to Law no 297/2004 on capital markets ("**Capital Markets Law**"). In order to be listed on the capital markets, a company must be a joint stock company or a public company (i.e. a percent of its stocks are owned by public). The Capital Markets Law applies to offers of securities in Romania, irrespective of where the issuer is located.

Preparation and publication of a prospectus is not required for the offer of securities (i) addressed solely to qualified investors; and/or (ii) addressed to fewer than 150 natural or legal persons other than qualified investors for each Member State; and/or (iii) addressed to investors who acquire securities each the equivalent in RON of EUR 100,000 at the most, for each separate offer; and/or (iv) whose denomination per unit is the equivalent in RON of EUR 100,000 at the most; and/or (v) whose total amount in the EU is lower than the RON equivalent of EUR 100,000, calculated for a period of 12 months as well as in relation to certain securities (such as securities offered, allotted or to be allotted in connection with a merger or division, for dividends paid in the form of shares to existing shareholders in the same class as those which give right to such dividends) and in other cases specified by regulations issued by ASF, under the law.

Content of the prospectus

The prospectus includes information regarding the issuer and the securities which are offered to public or admitted to trading on a regulated market. The minimum contents of the information to be included in the prospectus, their presentation form, according to the type of securities forming the object of the offer and the documents which must accompany the prospectus is established through the applicable European regulations

regarding the contents and publication of prospectuses, and dissemination of publicity-related releases or, as the case may be, through FSA regulations.

The Capital Market Law defines securities as shares in companies and other securities equivalent, traded on the stock market, bonds and other debt securities, including government securities with maturity more than 12 months, negotiable on the capital market as well as any other securities normally dealt in, giving the right to acquire any such transferable securities by subscription or exchange, giving rise to a cash settlement, excluding instruments of payment. Therefore, a donation, even with financial return, will not be considered to fall within the public-offering rules.
In Romania, there are no exceptions from the content of the prospectus for Crowdfunding and/or RES Projects.

4.3 Regulation of Crowdfunding under the AIFMD regime

The Directive 2011/61/EU of the European Parliament and of the Council on Alternative Investment Fund Managers („**AIFMD**“) was transposed in Romania by Law no. 74/2015 on managers of alternative investment funds („**Law no. 74/2015**”), which lays down the rules for the authorisation, on-going operation and transparency of the managers of alternative investment funds (AIFMs) which manage and/or market units of alternative investment funds (AIFs).

Under Law no. 74/2015, AIFs are those NON-UCITS (undertaking for collective investment in transferable securities) established in Romania which raise capital from at least two investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors and which meet the conditions stated by the law**.**

Law no. 74/2015 does not apply to the AIFMs established in Romania in so far as they manage one or more AIFs whose only investors are the AIFMs, the parent undertakings or the subsidiaries of the AIFMs or other subsidiaries of those parent undertakings, provided that none of those investors is itself an AIF.

Also, Law no. 74/2015 does not apply to holding companies, institutions for occupational retirement provision, voluntary pension funds, privately managed pension funds, Romanian Lawyers Insurance House, other pension systems not integrated in the public system, and pension products the purpose of which is the provision of benefits upon the retirement age including, as appropriate, authorised entities responsible for the management of such institutions, funds or products and which act in their name, provided that they do not manage AIFs, supranational institutions (such as the European Central Bank, the European Investment Bank etc.), NBR, national, regional and local governments and bodies or other institutions which manage funds supporting social security and pension systems, employee participation schemes or employee savings schemes, or securitisation special purpose entities.

According to the law, there is of no significance whether the AIF belongs to the open-ended or closed-ended type, whether the AIF is constituted under trust law, under statute, or has any other legal form, or which is the legal structure of the AIFM.

Under the new law, some collective investment undertakings will be reclassified as AIF, which will imply stricter and transparent rules for investments in unlisted companies. Further regulations should be issued by FSA for implementation of dispositions of Law no. 74/2015.

In brief, since there are no exceptions or special legislation regarding Crowdfunding or RES Projects, any company that develops RES Projects may fall under the provisions of Law no. 74/2015.

4.4 Licence under the Romanian Payment Services Law

The Payment Services Directive 2007/64/EC was transposed in Romania by the Government Emergency Ordinance no. 113/2009 regarding payment services ("**Payment Services Law**") and the NBR Regulation no. 21/2009 regarding the payment institutions.

In Romania, payment services may be provided by payment services providers, including credit institutions, entities issuing electronic money and payment institutions, authorized by the NBR. The authorization to provide payment services is not applicable to entities licensed as deposit-taking banks, e-money issuers or IFN.
A payment institution authorized in another EEA member state can use the EEA passport system under the payment Services Directive 2007/64/EC by making a notification in its home member state in accordance with the procedures in that member state.

No Crowdfunding platform in Romania currently provides payment services. However, should the investors pay their investment amounts to the operator of the Crowdfunding platform who then passes the funds to the entrepreneur, such transfer of funds could occur and the operator of the Crowdfunding should be licenced as a payment services provider.

As an alternative, to avoid licensing requirements the operator of a Crowdfunding platform may use an external provider for processing payments rather than acting itself as a services provider.

4.5 Possible additional regulations

Other common regulations to which the operator of a Crowdfunding platform may be subject include:

4.5.1 Regulation of marketing and distance selling

Marketing and distance-selling (including through web-sites, telephone, fax, e-mail) are subject to dispositions of Law no. 365/2002 on electronic commerce, Government Emergency Ordinance no. 34/2014 on consumers protection in contracts concluded with professionals, which transpose the Directive no. 2011/83/UE regarding the consumer rights, and Government Ordinance no. 85/2004 on consumers protection in case of distance contracts for financial services as well as the Consumer Code.
If the financed entity is a professional, an investor may receive goods in exchange to its contribution to a project.

However, the provisions of Government Ordinance no. 21/1992 regarding the consumer protection may apply and in order to avoid sanctions imposed by the National Authority for Consumer Protection, any Romanian Crowdfunding platform must observe the restrictions set by the marketing and distance-selling regulations.

4.5.2 Anti-money laundering ("AML") requirements

According to the Law no. 656/2002 on preventing and sanctioning money laundering and instituting measures for preventing and fighting against financing the acts of terrorism („**Law no. 656/2002**"), financial institutions, financial investment service providers as well as individuals or corporate traders of goods and/or services with a minimum EUR 15,000 cash turnover must observe the AML requirements, therefore operators of Crowdfunding platforms falling under the dispositions of Law no. 656/2002 must comply with AML rules and perform anti money laundering or terrorist financing checking.

AML requirements include rules on client identification, obtaining information about the purpose and intended nature of the business relationship, identification of the beneficial owner etc. Further, any transaction suspected of involving money, laundering or terrorist financing must be reported.

4.5.3 Data Protection

A personal data operator gathering information related to an individual either identified or identifiable must obtain the explicit and unequivocal consent of the individual concerned and register with the National Authority for the Surveillance of Personal Data Processing (the "**NASPDP**").

Any Crowdfunding platform should notify the NASPDP about any sensitive information about its users, before processing of personal data. Moreover, if the personal data is transferred outside Romania, an additional approval must be obtained from the NASPDP in respect of the transfer abroad.

5 Regulation of RES Projects in Romania

5.1 Overview

The Romanian market regarding electricity has been fully liberalized since July 1st, 2007.

The new Law no. 122/2015 approving measures promoting electricity production from renewable sources entered into force on the June 6th, 2015 and enables economic operators that have an output power capacity from 125 MW to 250 MW to enter the market directly without a separate and individual approval from the European Commission, if they are accredited by the Regulatory Authority for Energy.

5.2 Existing scheme for renewable energy in Romania

The existing scheme for renewable energy in Romania is the combined compulsory quotas with trading of green certificates ("**GCs**"). The generators of electricity from renewable sources, receive a number of GCs for each MWh delivered into the grid, while the electricity suppliers are under the obligation to buy GCs offered for sale by the generators up to a certain mandatory quota calculated as a percentage of the number of MWh that each supplier delivers to end consumers in one year, the aim being that a certain share of final energy consumption is renewable. Suppliers recover costs through the purchase of GCs and include these costs in the rates.

The GCs have minimum and maximum regulated trading prices and the households and large industrial consumers have to pay for the GCs. As a consequence, in 2013, the Government adopted several measures aiming at cutting back the subsidies to this support scheme and thus, reduced the renewable energy investments.

Although the initial quotas have been fixed until 2020, after entry into force of Law No. 23/2014, the fix quotas have been cancelled and are now established yearly, by the Government, at the proposal of Energy Department. For the year 2015, the quota was reduced from 16% at 11.9% and for 2016 the quota was set to 12.15% instead of the initial regulated quota of 17%.

The GCs support scheme was adjusted to lower the impact on the end-consumers, implying a reduction of the maximum price, which generated thoroughly lowering the RES investments.

5.3 Current development concerning renewable energy regulation

Pursuant to Government Decision No. 994/2013, the GCs support scheme was changed by reducing the number of GCs to be allocated to the RES producers from wind, solar and small hydro power plants, commissioned after January 1st, 2014. The number of green certificates varies depending on the renewable source as follows:

a) new hydropower plants of up to 10 MW: 2.3 GCs (instead of 3 GCs) for each MWh fed into the grid;

b) 1.5 GCs (instead of 2 GCs) until 2017 and 0.75 GCs (instead of 1 GC) starting 2018 for each MWh produced by new wind farms;

c) new photovoltaic projects receives 3 GCs instead of 6 GCs.

Certain measures with implications in RES have been adopted through Law no. 23/2014 approving Government Emergency Ordinance no. 57/2013 amending and supplementing Law no. 220/2008, whereby a certain number of GCs have been suspended from trading for the period between July 1st, 2013 until April 1st, 2017 for the solar and micro-hydro technologies and until January 1st, 2018 for the wind technology. Also, the validity period of the GCs has been reduced from 16 months to 12 months.

Further, Government Decision No. 495/2014 establishing a state aid scheme exempting certain categories of end users from application of Law no. 220/2008 brought a partial exemption of large industrial energy consumers operating mainly in the steel, aluminium and fertiliser industries, from the obligation to purchase a certain number of GCs (between 40% to 85% of the total number of GCs that was required to acquire in order to meet its quota). The GCs reduction scheme entered into force on December 1st, 2014 expiring on December 31st, 2024.

Another disposition with implication in RES projects is a 1% tax on "special constructions" (including buildings in industrial parks) introduced through Law no. 11/2015 for the approval of Government Emergency Ordinance no. 102/2013 amending and supplementing Law no. 571/2003 regarding the Fiscal Code and regulation of financial and tax measures.

On the other hand, by the implementation of Law no. 122/2015 and the ANRE Order no. 60/2015 for approval of the organization and functioning of the market for green certificates, producers of RES from power plants with an installed capacity of up to 1 MW per producer and up to 2 MW per producer for high efficiency cogeneration biomass power plants are allowed to conclude sale-purchase agreements and sale-purchase pre-agreements for GCs by direct negotiation with the suppliers of end consumers outside the OPCOM (the green certificates centralised markets operator) markets.

Likewise, RES producers having the statute of small and medium enterprise, operating power plants with an installed capacity between 1 MW and 3 MW per producer and between 2 MW and 3 MW per producer for high efficiency cogeneration biomass power plants, may conclude sale-purchase pre-agreements for GCs by direct negotiation outside the OPCOM markets.

5.4 Technical standards

As stated in the Law no. 220/2008, renewable energy power plants have to meet certain technical requirements, i.e., among others, to ensure that the interconnection of the project to the grid does not imply risks to the safety of the national power system, to feed the electricity into the grid at a certain voltage, not to exceed the capacity approved for the project in the ATR, to provide for standard measurement equipment.

5.5 Dismantling/Renaturation

Usually, in order to build wind farms or photovoltaic projects in Romania, investors seek to conclude land usage agreements or superficies agreements with the land owners and to agree upon a certain limited usage of the land by the land owners. The land usage agreements must be registered with the Real Estate Register (the Romanian public register for Real Estate) and with the local council in order to be opposable towards third parties. Alternatively, the investors may buy the respective lands used for the wind farms or photovoltaic projects. Pursuant to the building permits issued for the wind farms or photovoltaic projects, the environment authorities may impose requirements on dismantling/renaturation of the lands.

5.6 Other Market Opportunities

According to the Romanian Transmission and System Operator (TSO) which plays a key role in the Romanian electricity market 6,187 MW have been installed in RES as of October 1, 2015 in hydropower plants, 2,906 MW in wind power plants and 595 MW in photovoltaic power plants, while 30MW have been installed in biomass.

Therefore, we see an opportunity to develop biomass projects, considering the lack of such projects in Romania.

5.7 Upcoming changes in energy regulation

It is expected that in the following period the opening of the GCs support scheme to imports of RES coming from other Member States shall be implemented. As such, RES producers from other Member States shall be able to apply for subsidies based on GCs for the energy exported to Romania and otherwise, producers in Romania will benefit from the support schemes applicable in other Member States when they export energy consumed in the respective Member States. This scheme will be applicable based on reciprocity agreements to be further concluded between Romania and the respective Member States.

Since Romania is a not an electricity exporter, the new regulations are expected to have a significant impact on the Romanian electricity market.

A recent report on the national electricity market, released on March 3rd, 2015 by the Romanian Competition Council (covering the period between 2008 and 2013)

recommends that RES projects should focus on diversifying the electricity generation capacities in order to become more competitive, that the obligation to trade the electricity exclusively on the centralised markets operated by OPCOM should be eliminate and that regulations allowing the electricity market participants access to financial instruments used in other Member States should be further implemented.

6 Conclusion

Currently, there is no Crowdfunding regulation in place in Romania.

Most Crowdfunding projects in Romania are financed through donations, although, in principle equity and lending model projects are also possible.

Considering the recent cuts in the GCs and the other changes affecting the renewable energy system, the RES market in Romania decreased significantly in the last year. As a consequence, only one RES project has been funded through Crowdfunding in 2015.

Also, most of the investors have a tendency to invest their money directly in the collector fund, without contacting platform operators to intermediate the transfer.

The new regulation allowing RES producers from other Member States to apply for subsidies based on GCs for the energy exported to Romania and producers in Romania to benefit from the support schemes applicable in other Member States is expected to have a positive impact on the Romanian electricity market.

7 Summary – Crowdfunding and RES Projects Regulation

Country / Summary	Romania
Recent developments in Crowdfunding regulation	• The draft proposal of Crowdfunding law launched for public discussions on September 2014 has not been adopted yet; • Law no. 120/2015 on stimulating individual investors – business angel regulates the acquisition of shares through investments in small and micro enterprises.
Current Crowdfunding Regulation	
General regulation	• Romania has no regulatory framework of Crowdfunding in force; • Most of the projects are financed through donations, with very few RES projects; • There are few Equity model projects and Lending model is

	only theoretically possible; • Individuals may invest in small and micro enterprises, if certain requirements are fulfilled, in order to become shareholder of such company and benefit from tax exemptions.
Prospectus requirement	• Law no 297/2004 on capital markets requires approval of a prospectus by the FSA; • The prospectus includes information regarding the issuer and the securities which are offered to public or admitted to trading on a regulated market; • There are no exceptions from the content of the prospectous for Crowdfunding and/or RES Projects.
AIFMD-regulation	• Romania is among the last countries to transpose the AIFMD into national law; • Any company that develops RES Projects may fall under the provisions of Law no. 74/2015; • Extensive AIFMD regulation for AIF and its manager; • AIF Manager requires FSA authorisation; • In the following period, FSA should issue regulations for implementation of Law no. 74/2015.
Payment services regulation	• Payment services may be provided only by payment services providers authorized by the NBR or authorized in another EEA member state; • No Crowdfunding platform in Romania currently provides payment services; • External provider for processing payments may be used.
Further possible requirements	• Regulation of marketing and distance selling; • Anti-money laundering requirements; • Data Protection.

RES Projects Regulation	
Electricity regulation applicable to RES projects	• The existing scheme for renewable energy in Romania is the combined compulsory quotas with trading of green certificates; • Measures cutting back the subsidies and reducing the renewable energy investments have been recently adopted; • The Government establishes yearly targets for renewable energy sources; for 2016 the quota was set to 12.15%; • Planning, construction and commissioning of new RES Projects is subject to general building and environmental laws.
Market Integration of RES Projects	• The Romanian electricity market has been affected by the cuts in the GCs; • The validity period of the GCs has been reduced from 16 months to 12 months; • A 1% tax on "special constructions" (including buildings in industrial parks) was introduced in 2015; • RES projects should focus on diversifying the electricity generation capacities in order to become more competitive.
Transition to tender based allocation of new RES Projects	• N/A
Further regulatory sources	• N/A

Lessons learned – Crowdfunding / RES Projects Regulation

Lessons learned for a possible harmonized European Crowdfunding Regulation	
Role model ("dos")	• Certain limitations on investment amounts protect the interest of small investors.
Aspects that	• Regulation at European Union level should concentrate on

should be avoided ("don'ts")	removal of existing barriers between the member States.
Lessons learned for a possible harmonized European RES Projects Regulation	
Role model ("dos")	• Opening of the GCs support scheme to imports of RES coming from other Member States to be implemented.
Aspects that should be avoided ("don'ts")	• Changes to the existing regulation to be implemented less frequently as to provide investors with more comfort to finance RES Projects; • Transition to tender based allocation of new RES Projects to be implemented.

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XXIV. Slovakia

1 Slovak market for RES Crowdfunding Platforms

1.1 Overview

Slovak market witnessed a boom of renewable energy sources projects ("**RES Projects**" or "**RES**") with its peak in 2010 when the public financial support of the RES Projects reached its regulated maximum. The willingness of the Slovak Government to financially support RES Projects has decreased since then up to the current point where it seems that the whole RES market is stagnating due to various reasons explained below.

Purely Slovak Crowdfunding platforms are still not common sight. In last 4 years there has been a significant increase of start-up investment in Slovakia, however, predominantly in the IT sector. There is a notable number of funds, investors, incubator platforms and business angels in the Slovak IT sector.

The Crowdfunding is still at early stage in Slovakia although small Crowdfunding platforms are beginning to emerge more often. However, Slovak start-ups usually use well established foreign Crowdfunding platforms (e.g. Kickstarter or Indiegogo) or newly established Crowdfunding platforms in the Czech Republic (e.g. HitHit). We are not aware of Crowdfunding platforms specialized on funding of RES Projects ("**RES Crowdfunding Platforms**") in Slovakia.

1.2 Different investment models

Although there are virtually no RES Crowdfunding Platforms operating in Slovakia all different types of investment models are available in Slovakia and recognized under Slovak law.

1.3 Equity Model

Offering of securities by the company would constitute a public offer of securities under the Act No. 566/2001 Coll., on Securities and Investment Services (the "**Securities and Investment Services Act**") implementing the MIFID I Directive and Prospectus Directive among others. A public offer of securities is usually subject to the obligation to publish a prospectus. The issuer may be exempt from such obligation, if the total value of shares issued within the EU would be less than EUR 100,000 calculated over the period of 12 months with certain other standard exemptions exist, but these are unlikely to apply in this case).

If the Crowdfunding platform facilitates the offering of securities, this activity constitutes an in-vestment service. Subject to Section 54 of Securities and Investment Services Act, the Crowd-funding platform would have to obtain a license to provide such investment services from the National Bank of Slovakia (the "**NBS**"). There are no

specific exemptions from this obligation available to Crowdfunding platforms. However, the Securities and Investment Services Act allows passporting of the relevant license from other EEA Member States.

1.4 Lending Model

In the Lending Model a person lends certain amount of money and expects to receive the principal with interest. Two legal frameworks are theoretically applicable, depending on the nature of lenders. Lending is in general a regulated business that may not be performed without a license under the Slovak Banking Act. It is however possible to be engaged in lending services based on a simple 'trade license', if performed in a non-banking manner – i.e. using personal funds of the lender. If the respective loan agreement is concluded by entrepreneurs who are acting within their regular business, upon the entrepreneurs' own responsibility, independently with the intention to make profit, the loan would be governed by the Act No. 513/1991 Coll., the commercial code, as amended (the "**Commercial Code**"). Interest is a mandatory element of such relationship, which may or may not be mentioned expressly, but will nonetheless accrue.

By contrast, if the loan is provided as a one-off investment by a private person, i.e. is not provided systematically as a business of the lender, the relationship will be governed by Act No. 40/1964 Coll., the civil code, as amended (the "**Civil Code**"). Interest may or may not be agreed under such relationship and its regulation under the Civil Code is rather liberal.

Depending on the manner in which the Crowdfunding platform would function, it may be classified as an agent, assisting in the conclusion of the loan agreement between the parties. A simple trade licence for such activities would be required. However, it has to be noted that there is not sufficiently clear line between the scope of the relevant simple trade licenses of 'economic, business and organisational advisory services' and 'brokering loans or borrowings from funds received exclusively without a public call' and regulated activities such as provision of investment advisory or ancillary services under the Securities and Investment Services Act.

1.5 Donations or Rewards Model

Two alternatives are in theory possible. The first one would be via the conclusion of donation agreement. Pursuant to Section 628 of Civil Code, the donator transfers something or promises to transfer something free of charge and the donee accepts such gift or promise. The donation agreement has to be in written form, if the gift is real estate, or if the gift is not transferred at the time of the agreement's conclusion.

A second option would be via the collection of funds. A Crowdfunding platform which would organise collection of funds under donations or rewards Model would have to obtain a simple trade licence. The requirements of a relatively new Act No. 162/2014 Coll. on public collections (the "**Public Collections Act**") may apply to the donations

model. However, the public collections, as defined in the Public Collections Act and as more explained in part 5 below are restricted to publicly beneficial purposes only.

1.6 RES Projects

The most common from RES Projects in Slovakia are solar energy RES Projects. In comparison with neighbouring countries, Slovakia has a very small number of wind energy RES Projects. Under certain conditions RES Projects can enjoy public financial support known as the surcharge payment paid to the energy producers via regional distribution system operators ("**DSO**") which is subject to price regulation by the Regulation Office for Network Industries ("**RONI**").

2 Recent regulatory developments regarding Crowdfunding regulation in Slovakia

The most notable development regarding Crowdfunding regulation in Slovakia is the Public Collections Act. As regards the regulation of the Crowdfunding introduced by the Public Collections Act please see point 5 below.

3 Further recent developments considering RES Projects market in Slovakia

'Loss of support' case

In 2014, a significant development shattered the whole RES market in Slovakia known as the 'loss of support' case. Based on initiative of the Slovak Government the relevant legislation on support of RES was amended as of 1 January 2014. Prior the amendment producers of electricity from RES were required to annually notify to their regional DSOs forecasted supply characteristic for the following year. Without such notification the producers could not benefit from the support in the form of, among others, the surcharge payment for the following year. However, the amendment introduced a requirement to notify the same information also to RONI each year by end of August – non-compliance of which was also sanctioned by loss of support for the following year including the surcharge payment. This rather administrative requirement went largely unnoticed by the producers and resulted in unprecedented number of loss of support cases for 2015. It stems from publicly available sources that almost 1,200 producers lost support in 2015 with the overall estimated direct damage in the form of loss of surcharge payment in amount of app. EUR 60 million and further estimated consequential damages of app. EUR 12 – 13 million. Apart from number of litigations on general courts the relevant amendment of the legislation is currently being analyzed by the Slovak Constitutional Court based on an initiative of a group of members of the parliament.

This case highlights decrease of the Slovak Government's appetite to financial support RES Projects. As mentioned above, the surcharge payment, regulated and updated annually by RONI, reached its maximum in 2010 at the level of 425,12 EUR/MWh. Those RES Project which became fully approved and operational by the end of 2010 are able to enjoy this level of surcharge payment for the period of 15 consecutive

years. After 2010, the access to surcharge payment has been gradually restricted and the level of surcharge payment has also been lowered on annual basis. The access to surcharge payment has been restricted by limiting the eligible installment outputs, type of RES Projects and also indirectly by the Ministry of Economy not issuing the necessary certificate of conformity (with the energy policy of the Slovak Republic) without which most of the RES Projects cannot be constructed. The Slovak Government has also publicly proclaimed it does no longer wish to financially support RES Projects (by reference to the surcharge payment).

4 Regulation of Crowdfunding in Slovakia

4.1 License under the Securities and Investment Services Act

4.1.1 Equity Model / Lending Model

General Rules

The Securities and Investment Services Act governs, among others, provision of the investment services and so-called 'ancillary services' which are subject to the license issued by the NBS. Investment services include:

a) reception and transmission of client orders in relation to one or more financial instruments;

b) execution of orders on behalf of clients;

c) dealing on own account;

d) portfolio management;

e) investment advice;

f) underwriting or placing of financial instruments on a firm commitment basis;

g) placing of financial instruments without a firm commitment basis;

h) operation of multilateral trading facilities.

The ancillary services include:

a) safekeeping and administration of financial instruments for the account of clients,

b) custodianship and related services, such as cash/collateral management;

c) granting credits or loans to an investor to allow him to carry out a transaction in one or

d) more financial instruments, where the provider of the credit or loans is involved in the transaction;

e) advice on capital structure and business strategy, and advice and services relating to the merger, consolidation, transformation or splitting of undertakings or the purchase of undertakings;

f) foreign exchange services where these are connected to the provision of investment services;

g) investment research and financial analysis or the other forms of general recommendation relating to transactions in financial instruments;

h) services related to the underwriting of financial instruments;

i) services and activities mentioned in paragraph (1)(a) to (f) related to the underlying of the derivatives included in under Article 5(e) to (g) and (j), where these are connected to the provision of investment or ancillary services.

"Financial instruments" within the meaning of the Securities and Investment Act include:

a) transferable securities;

b) money market instruments;

c) fund shares or securities issued by foreign collective investment undertakings;

d) options, futures, swaps, forwards and any other derivate contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash;

e) options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event);

f) options, futures, swaps and any other derivative contract relating to commodities that can be settled in cash provided that they are traded on a regulated market or a multilateral trading facility;

g) options, futures, swaps, forwards and any other derivative contracts relating to commodities that can be settled in cash and are not mentioned in subparagraph (f), and not being for commercial purposes, which have the characteristics of other derivative financial instruments,

having regard to whether they are cleared or settled through the clearing and settlement system or are subject to regular margin calls;

h) derivative instruments for the transfer of credit risk;

i) financial contracts for differences;

j) options, futures, swaps, forwards and any other derivates concerning climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled at the option of one of the parties (otherwise than by reason of insolvency or other termination event), as well as any other derivatives concerning assets, rights, obligations, indices and other factors not otherwise mentioned in subparagraphs (a) to (i), which have the characteristics of other derivative financial instruments, having regard to whether they are traded on a regulated market or multilateral trading facility, are cleared or settled through the clearing and settlement system or are subject to regular margin calls.

Exemption from licensing requirements

Generally, there is no explicit exemption for RES Crowdfunding Platforms from the licensing requirements. For the sake of completeness, we select number of exemptions from the licensing requirements which could be theoretically at least used by the RES Crowdfunding Platforms under certain (quite limited) situations. Of course, relying on any of the below exemptions is always recommended only after prior consultation with the NBS. The license is not required in respect of the following:

a) persons which provide investment services exclusively for their parent undertakings, for their subsidiaries or for the subsidiaries of their parent undertakings;

b) persons dealing on own account in financial instruments or providing investment services in commodity derivatives or derivative contracts to clients, provided this is an ancillary activity to their main business, when considered on a group basis, and that main business is not the provision of investment services within the meaning of this Act or banking services under a separate law; or

c) persons providing investment advice in the course of providing another professional activity not covered by this Act provided that the provision of such advice is not specifically remunerated.

4.1.2 Donations or Rewards Model

The donations or rewards models are not specifically regulated. However, one cannot exclude risk that large scale rewards model could be viewed by the NBS as a circumvention of the Securities and Investment Act if facilitated without regulatory

license. As mentioned above, there is not a sufficiently clear line between the scope of permitted activities under the relevant simple trade licenses and for example, investment advice or other regulated investment or ancillary services.

4.2 Prospectus requirements

4.2.1 Equity Model / Lending Model

Any public offering of securities is subject to the prospectus requirements. The the most relevant exemptions from this requirement under the Securities and Investment Act are:

a) an offer of securities addressed solely to qualified investors;

b) an offer of securities addressed to fewer than 100 natural persons or legal persons per Member State, other than qualified investors;

c) an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 50,000 per investor;

d) an offer of securities having a denomination per unit of at least EUR 50,000; or

e) an offer of securities with a total consideration of less than EUR 100,000, which limit shall be calculated over a period of 12 months.

Content of the prospectus

Generally, the prospectus content requirements are in line with the requirements under Prospectus Directive. These requirements are implemented into Section 120 of the Securities and Investment Act.

Advertisement

It is prohibited under the Securities and Investment Act to use false or misleading information or conceal facts relevant when deciding on the purchase of securities when promoting the issuance of its securities. In particular it is prohibited to offer benefits which cannot be guaranteed. The provisions of the Commercial Code on unfair competition are not affected by the Securities and Investment Act.

Public offering of securities without prior publication of an approved prospectus is forbidden. Prospectus can be published in number of ways:

a) the publication in a daily newspaper with nationwide circulation or sufficient dissemination in the Member States in which the public offer of securities will or is asking for admission to trading on a regulated market;

b) the publishing in writing form that is free of charge, at the premises of the regulated market on which the securities are admitted to trading, or at the registered office of the issuer and the premises of financial institutions placing or selling the securities and the premises of persons guaranteeing repayment of nominal value of securities and payment of the proceeds of securities;

c) access in electronic form on the web site of the issuer or the web site of financial institutions placing or selling the securities and persons on the web site of ensuring the repayment of the nominal value of securities and payment of yields from securities;

d) access in electronic form on the web site of the regulated market on which the application for admission to trading, or e) publishing in electronic form on the web site of the National Bank of Slovakia where the National Bank of Slovakia decided to provide this kind of service.

Only the above is recognized as publishing of the prospectus, however, it is not prohibited to publish the prospectus in other ways (e.g. via social media) complied with the above methods.

4.2.2 Donations Model / Rewards Model

Similarly as mentioned above, there is no explicit requirement to provide and publish prospectus in case of donations or rewards models. As a prudent advice mitigating theoretical risk of NBS considering these models to be certain forms of regulated activities, it is recommended to nevertheless provide investors with prospectus information under these models as well, although such a risk is currently very low.

4.3 Regulation of Crowdfunding under the AIFMD regime

AIFMD Directive has been implemented into the Act No. 203/2011 Coll., on the collective investment, as amended (the "**Collective Investment Act**"). Due to the complex definition of the collective investment undertaking it cannot be ruled out that RES Crowdfunding Platforms might also trigger regulatory requirements under the Collective Investment Act. In general, it has to be noted that investment funds including the alternative investment fund (the "**AIF**") do not have separate legal personality in Slovakia and all acts on behalf of them shall be undertaken via its managers (the "**AIFM**") which require license issued by the NBS in order to operate.

It stems from our informal discussions with representatives of the NBS that they are aware of non-sufficient regulatory framework and guidance in respect of Crowdfunding in general and view it as an EU-wide problem while fragmentation is their main concern. NBS is aware of number of small Crowdfunding platforms (not RES-specific) already being established in Slovakia, however, no official standpoint or approach towards them has been adopted by the NBS as of yet because of the above. However, the particular representatives of the NBS we communicated with suggested

that from all different regulatory regimes the AIFMD regime would seem to them as the most relevant and applicable.

4.3.1 Definition of AIF

The AIF under the Collective Investment Act is either:

a) Special common fund, i.e. a common fund which is not a standard common fund and into which funds are collected through public offer or private offer in order to invest such funds in assets determined by this Act or by a special common fund's rules. For the purposes of the Collective Investment Act, special common fund is a common fund which is not subject to a legally binding act of the European Union governing collective investment undertakings in transferable securities; or

b) Domestic collective investment undertaking with legal personality, being a commercial company or a cooperative having its registered office in the territory of the Slovak Republic collecting funds from multiple investors in order to invest them according to a defined investment policy in favour of those investors.

4.3.2 Equity Model

Whether on the RES Crowdfunding Platforms triggers the above definition of the AIF also depends on the general test in the Section 2 (3) of the Collective Investment Act which provides collection of funds for the purpose of their further investment is generally prohibited, if:

a) the return of such collected funds or a profit of entities whose funds have been collected, shall, even if partially, depend on the value of returns on assets acquired for the funds raised, and

b) it is not carried out on the basis of an authorization under this Act or under the conditions provided by the Collective Investment Act.

In the explanatory report to the Collective Investment Act the NBS admits that this general prohibition clause is very wide and it is therefore required that certain regulated activities on the financial market, financing of the common business activities or potentially other common business activities shall be excluded from the scrutiny of the Collective Investment Act. As to the explicit exceptions mentioned in the Collective Investment Act these are, among others:

- collection of funds by the holding company (presumably intragroup financing – although not explained in more detail);

- collection of funds by the municipality, higher territorial unit or foreign public authority of territorial self-administration;

- collection of funds, the main objective of which is to finance an activity having the nature of the production, research or provision of services, other than financial services, and is financed primarily from the own resources of the entity that is raising the funds.

It can be argued that above exemptions could be relied on by the RES Crowdfunding Platforms in certain situations but does not serve as a blanket exemption, mainly having regard to our informal discussion with the NBS.

4.3.3 Lending Model

As mentioned above, the purpose of the Collective Investment Act should not be to regulate financing of the common business activities. However, the above mentioned exceptions are more restrictive in a sense that they only cover intragroup financing, certain municipality financing or financing where (by literal interpretation) half of the funds are collected from own resources. Therefore, one cannot exclude that the lending model would not trigger the requirements under the Collective Investment Act.

4.3.4 Donations or Rewards Model

Generally, the Collective Investment Act is construed in a way that certain profit or return from the investment is expected. We would assume this is not the case of donations or rewards model and therefore requirements under the Collective Investment Act would not be triggered under these scenarios.

4.4 Requirements of a License under the Payment Services regulation

The Act No. 492/2009 Coll., on payment services, as amended (the "**Payment Services Act**") implementing the Payment Directive requires that any provider of payment service shall obtain payment services license from the NBS. The payment services under the Payment Services Act include, among others any money remittance services or execution of payment transactions on behalf of the client. However, there are number of exemptions which could, depending on circumstances, be relied upon by the RES Crowdfunding Platforms in our view.

4.5 The Public Collections Act

The Public Collections Act governs 'public collections' which are defined as acquiring and collecting of the voluntary payment contributions (i) by legal persons entitled to do so in accordance with the Public Collections Act (ii) from prior determined scope of contributors and (iii) for the prior determined publically beneficial purpose. Crucial determinant of whether Crowdfunding can be covered by the Public Collections Act is whether the purpose of the Crowdfunding can be regarded as publically beneficial. According to the Public Collections Act the following purposes are regarded as publically beneficial:

a) Development and protection of the religious values;

b) Protection of the human rights;

c) Protection and creation of the environment;

d) Preservation of natural and cultural values;

e) Health protection;

f) Development of the social services, science, education and sport;

g) Development of volunteering activities;

h) Humanitarian and development activities;

i) Protection of rights of disadvantaged groups;

j) Support of work with children; or

k) Individual humanitarian support of individuals.

Public collection for the purpose of RES Projects may potentially fall under the above mentioned publically beneficial purpose of protection and creation of the environment. If so, Crowdfunding platform would need to be prior registered in the register of public collections maintained by the relevant District Authority or by the Ministry of Interior if the scope of the collection reaches beyond one district. The Public Collections Act further regulates types of legal persons which can organize public collections. However, the most common corporate forms such as limited liability companies and joint stock companies are excluded from such list. The list of allowed types of legal persons includes among others: civil associations, non-investment funds, non-profit organizations, association of municipalities and purpose association of legal persons. These persons are specifically regulated and some of them are country-specific types of legal persons, however, they all have a common feature – having a purely non-profit character. In general, these persons can generate profit but cannot distribute it to its founders but must only use it for the purpose for which such persons where established. This practically means that should a Crowdfunding platform operate under the Public Collections Act it could only do so on a non-profit basis.

As to the forms in which funds can be collected by the Crowdfunding platforms under the Public Collections Act, these are:

a) Bank transfers on a specified bank accounts;

b) Via SMS or phone call;

c) Physical collections to moneyboxes (stationary or portable);

d) By selling goods or tickets.

All the above means of Crowdfunding can be practiced only for the period 12 months from registration with the exception of the portable moneyboxes which can be practiced only for 14 days. Upon request the 12-month period can be prolonged by the District Authority for additional 12 months in case of specific reasons.

Within 90 days from termination of the public collection, the Crowdfunding platform is obliged to submit to the District Authority a preliminary report and within 12 months from its termination also the final report which should be later published on the website of the Crowdfunding platform. These documents evidence use of the funds collected by e.g. bank account extracts or invoices.

Before RES Project is financed via public collection in accordance with the Public Collection Acts, we would recommend discussing it with the public authorities due to the reason that the 'publicly beneficial purpose' of RES Projects has not yet been tested. In our view, any RES Project has certain publically beneficial purpose – i.e. protection and creation of environment. However, it is not sufficiently clear how the business side of the RES Project would be viewed by the public authorities and whether or not this would not prevail over the public benefit side.

4.6 Possible additional regulations

Other common regulations to which the operator of a RES Crowdfunding Platform may be subject to include:

- Act No. 455/1991 Coll., on trade licensing, as amended;
- Act No. 297/2008 Coll., on protection against legalization of crime proceeds and against financing of terrorism, as amended (AML regulation);
- Act No. 129/2010 Coll., on provision of consumer credit, as amended;
- Act No. 483/2001 Coll., on banks, as amended.

5 Regulation of RES Projects in Slovakia

5.1 Overview

The Act No. 309/2009 Coll., on support of renewable energy sources, as amended (the "**RES Act**") provides which types of RES Projects are eligible for support and under which conditions. The following RES Projects are eligible, under certain conditions, for support:

a) Water energy;

b) Solar energy;

c) Wind energy;

d) Geothermal energy;

e) Biomass;

f) Biogas, landfill gas, gas from sewage treatment facilities;

g) Biomethane;

h) Aerothermal energy;

i) Hydrothermal energy.

5.2 Support scheme

The support scheme of RES Projects under the RES Act has following forms:

a) Priority access to the regional DSO and grid and priority transport, distribution and supply of the electricity generated by RES Projects;

b) Compulsory off-take of the electricity made from RES Projects by the regional DSOs for the regulated price of electricity for losses (app. EUR 45/MWh);

c) Surcharge payment;

d) Compulsory acceptance of liability for imbalances by the regional DSOs.

However, as mentioned above in part 2, the surcharge payment is now practically unobtainable and even if obtainable it has been significantly reduced. The most common RES Projects in Slovakia – solar plants – are not supported by the surcharge payment at all, with the limited exception of the house roof systems up to 30 kW. Water RES Projects are limited similarly in respect of the surcharge payment – only facilities up to 5MW are eligible. Support under let. (a) above is available for any RES Project without installed output limitation and support under let. (b) above is generally available for any RES Projects with installed output up to 125 MW. Support under let. (d) is available for any RES Project with installed output up to 1 MW with the exception of solar RES Projects which are eligible for this form of support only in case of installed output up to 30kW. However, there are currently cases where DSOs refuse to provide the support on the basis the even the regulated price of electricity for losses is higher than current market price of electricity (app. EUR 33/MWh) which means direct loss for DSOs.

Subject to certain limited exemptions, support under let. (a), (b) and (c) is guaranteed for 15 years from operation or reconstruction.

5.3 Licensing requirements of RES Projects

From the construction perspective RES Projects are subject to general approval process, i.e. zoning permit, building permit and operational permit issued by the District Authority with certain specific additional requirements. Most of the RES Projects would be subject to the EIA screening procedure and any zoning and building permit can only be issued after the final EIA decision. The same applies to the certificate on conformity of the development with the long-term governmental energy policy issued by the Ministry of Economy. The certificate is required for any solar RES Project (with the exception of roof systems) and for other RES Projects only where installed output of the facility exceeds 1MW including. As mentioned above, there is no appetite for issuing of the certificate in respect to the solar RES Projects anymore. In 2015, the Ministry of Economy issued only 17 certificates (most for reconstruction of energy facilities or grid) and basically certified construction of only three green field RES Projects – two water and one biomass RES Projects with installed capacity of 1.6 MW, 560 MW and 40 MW.

In addition, the owner of the RES Project facility will need to obtain license for power generation and supply issued by RONI. There is general requirement of appointment of sufficiently skilled representative in order to obtain power generation license which consist of academic requirements, practical experience and successful completion of professional exam organized by the Ministry of Economy.

5.4 Special levy in energy sector

Holders of licenses issued by RONI (i.e. energy sector) are subject to special levy which is triggered in case annual profit reaches EUR 3 million. The special levy is currently calculated as 0,00363 multiplied by the portion of the annual profit above EUR 3 million.

5.5 Upcoming changes in RES regulation

Similarly as in Czech Republic, it is expected that support model of RES Project will change. However, there is no clear indication of how this will be done in practice. There are two models discussed; feed-in premiums and centrally governed off-take of the energy from RES. None of those have reached legislative stage and rather stem from public discussions and conferences.

6 Conclusion

RES Projects and RES Crowdfunding Platforms especially have to face number of different regulatory regimes in Slovakia. Arguably, small RES Projects such as those developed for the benefit of local municipalities could be theoretically crowdfunded under the Public Collections Act as the publically beneficial purpose overrides the business / profit-oriented side of such RES Projects. However, this platform is certainly not usable for RES Projects with overriding entrepreneurship element.

Therefore, RES Crowdfunding Platforms face possible regulatory implications mainly under the Collective Investment Act and the Securities and Investment Services Act while the national regulator under both regimes, the NBS, does not have any practice or policy established in respect of Crowdfunding platforms.

In addition, in 2015 the whole RES market was fully hit by the Slovak Government's latest attempt to cut financial support of the RES Projects as almost 1200 energy producers from RES lost their entitlement for the surcharge payment.

Unified regulatory and legal basis for RES Projects to seek investment via RES Crowdfunding Platforms is certainly not available at the moment in Slovakia. Possibly, due to all the above we are not aware of any RES Crowdfunding Platform currently operating in Slovakia.

7 Summary – Crowdfunding and RES Projects Regulation

Country / Summary	Slovakia
Recent developments in Crowdfunding regulation	• N/A
Current Crowdfunding Regulation	
General regulation	• The Public Collections Act – for publically beneficial purposes only – 'easy' regulatory regime, non-profit basis only; • The Collective Investment Act – licence and prospectus requirements – possible exception of financing regular business activity with half of the funds being collected from own resources; • The Securities and Investment Services Act – license and prospectus requirements.
Prospectus requirement	• Prospectus requirement for offering of securities or investment products; • General threshold: EUR 100,000 per issuer within 12 months; • No explicit exemption from prospectus for Crowdfunding.

AIFMD-regulation	• Depending on the particulars, both project companies and operating companies may constitute an AIF; • RES Crowdfunding Platform most likely does not constitute the AIF, but it may constitute an AIFM – NBS license requirement; • General exemption from AIFM for financing of the general business activities provided half of the funds collected from own resources; • General exemption for intra-group financing and financing of general business activities of municipalities.
Payment services regulation	• License required for money remittance and payment transactions, however, number of exemptions might be applicable; • Cooperation with payment institution or bank removes the risk of applicability of the Payment Services Act.
Further possible requirements	• Act No. 455/1991 Coll., on trade licensing, as amended; • Act No. 297/2008 Coll., on protection against legalization of crime proceeds and against financing of terrorism, as amended (AML regulation); • Act No. 129/2010 Coll., on provision of consumer credit, as amended; • Act No. 483/2001 Coll., on banks, as amended.
RES Projects Regulation	
Electricity regulation applicable to RES projects	• RES Projects can benefit from support scheme generally for a period of 15 years from operation or reconstruction; • Support scheme includes preferential access and distribution, compulsory off-take of the electricity by the regional DSOs for regulated price of losses, compulsory acceptance of liabilities for imbalances by the regional DSOs and the surcharge payment; • Generally, construction of new RES Projects above 1MW is subject to prior certificate issued by the Ministry of

	Economy – only 3 green field projects received the certificate in 2015; • Generally, EIA screening process and final decision are also conditions for construction of RES Projects; • General power generation and distribution licenses issued by RONI required; • RES Projects with annual profit above EUR 3 million are subject to a special levy.
Market Integration of RES Projects	• N/A
Transition to tender based allocation of new RES Projects	• N/A
Further regulatory sources	• Act No. 250/2012 Coll., on regulation in network industries, as mended; • Act No. 251/2012 Coll., on energy, as amended; • Act No. 309/2009 Coll., on support of RES, as amended; • Decree No. 24/2013 Coll., on electricity and gas market rules, as amended.

Lessons learned – Crowdfunding / RES Projects Regulation

Lessons learned for a possible harmonized European Crowdfunding Regulation	
Role model ("dos")	• The new Public Collections Act – easy regulatory framework for publically beneficial purposes Crowdfunding;
Aspects that should be avoided ("don'ts")	• No clear regulatory and legal position on Crowdfunding in Slovakia; • No explicit exemption of Crowdfunding from comprehensive regulation under the Securities and Investment Services Act, the Collective Investment Act and the Payment Services Act – only extensive interpretation of

	the relevant exemptions may lead to their application which still remains uncertain due to no practice standards.
Lessons learned for a possible harmonized European RES Projects Regulation	
Role model ("dos")	• Preferential grid access and distribution; off-take and balancing by the DSOs
Aspects that should be avoided ("don'ts")	• Increased administrative constrains of RES Projects willing to benefit from the support scheme; • Constant change of the eligibility conditions for support scheme; • Uncertainty about the future of RES support scheme.

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XXV. Slovenia

1 Slovenian Market for RES Crowdfunding platforms

Crowdfunding is still a relatively new concept in Slovenia. There is currently no specific legal framework for Crowdfunding and by the end of 2015 there are no Crowdfunding platforms operating in Slovenia. Slovenian Crowdfunding projects therefore mostly use foreign platforms for funding projects, such as Kickstarter and Indiegogo. CONDA Slovenia, a landing based Crowdfunding platform, is preparing to enter into the Slovenian market. There are several public Crowdfunding initiatives, which are focused both on assisting the projects seeking funding and on the development of an operational and legal framework for this type of financing. The prevailing Crowdfunding model in Slovenia is the donations or rewards based model. Social projects with charitable and humanitarian purposes are commonplace and raise funds under the Humanitarian Agencies Act (*Zakon o humanitarnih organizacijah*) through media campaigns and non-profit associations.

Despite the fact that no specific Crowdfunding legal framework is in place in Slovenia yet, equity, lending as well as donations or rewards-based models are possible under the applicable law. Crowdfunding in the RES sector appears to be fully undeveloped and Slovenian Energy Agency as well as the Crowdfunding initiatives operating in Slovenia are unaware of any special Crowdfunding initiatives in this sector. This fact may be attributed to higher short-term costs of RES compared to the traditional energy sources, which helps explaining why most RES projects are co-funded by public funds.

2 Recent regulatory developments regarding Crowdfunding regulation in Slovenia

The Alternative Investment Fund Managers Directive (AIFMD) has been recently implemented in Slovenia through the new Act on Alternative Investment Fund Managers (*Zakon o upraviteljih alternativnih investicijskih skladov*), valid and effective as of 23 May 2015 and an amendment to the Investment Trusts and Management Companies Act (*Zakon o investicijskih skladih in družbah za upravljanje*), valid and effective as of 19 May 2015. Both the new Act on Alternative Investment Fund Managers and the amendment to the Investment Trusts and Management Companies Act follow the text of AIFMD.

Apart from the legislation implementing the AIFMD there have been no other developments regarding Crowdfunding regulation in the last year.

3 Further recent developments considering RES Projects market in Slovenia

The RES market has recorded a growth in the last couple of years – it has grown for 5.5 per cent in the period from 2006 to 2013, which has exceeded the growth forecast. This has been mostly due to significant growth of the use of RES for heating and

cooling. The growth in the electric energy sector has been significantly slower and has not reached the forecasted growth. Slovenian Energy Agency reports that in the RES sector, further incentives are required in the form of subsidies and public investment in the RES sector or the financing of RES projects. Through the Ministry of Infrastructure and the Energy Agency several initiatives have been put in place in order to support growth in the RES sector. Eco Fund, the Slovenian Environmental Public Fund, is one of such initiatives. Eco Fund offers subsidies in forms of grants and loans on favourable terms (e.g. below market interest rates) to individuals and legal entities.

Most recent legislative development relevant for RES Projects has been the passing of Regulation on self-supply of electricity with renewable energy sources (*Uredba o samooskrbi z električno energijo iz obnovljivih virov energije*). The Regulation will enter into force on 15 January 2016 and it is intended to encourage end-users to generate electricity for their own use from renewable energy sources while ensuring safety and reporting to the Energy Agency. Furthermore, the Decree on the method of determining and calculating the contribution for ensuring support for the production of electricity from high-efficiency cogeneration and renewable energy sources (*Uredba o načinu določanja in obračunavanja prispevkov za zagotavljanje podpor proizvodnji električne energije v soproizvodnji z visokim izkoristkom in iz obnovljivih virov energije*) has entered into force on 27 June 2015 and the Legal Act on support for the production of electricity from renewable energy sources and high-efficiency cogeneration (*Akt o prispevkih za zagotavljanje podpor za proizvodnjo električne energije iz obnovljivih virov energije in v soproizvodnji z visokim izkoristkom*) has entered into force on 1 August 2015. These two document regulate and set the amounts for the mandatory contributions for the support of RES, paid by the end-users. These contributions are the main source for the funding of various support schemes launched by the Republic of Slovenia.

There have been no new RES Projects initiated by the Slovenian Energy Agency in 2015, however the Energy Agency is planning on launching a new RES project (new support scheme) worth EUR 10 million. The launch of the support scheme is pending the approval of the European Commission.

4 Regulation of Crowdfunding in Slovenia

4.1 Banking / Financial Services licence requirement

4.1.1 Equity Model

Under the Financial Instruments Market Act (*Zakon o trgu finančnih instrumentov*), only banks, broker-dealers and investment enterprises that hold a licence issued by the Securities Market Agency may perform financial services and transactions. Financial services and transactions among others include brokerage and agency services involving financial instruments, operation of a multilateral trading facilities, investment consulting and trading of financial instruments on primary and secondary markets. Financial instruments include transferable securities, namely shares in joint-

stock companies, Societas Europaea and limited partnerships with share capital, bonds, other debt securities and derivative financial instruments. However, membership units in limited liability companies and rights in limited and general partnerships formed under the Companies Act (*Zakon o gospodarskih družbah*) are not transferable securities and therefore do not fall under the regulation of the Financial Instruments Market Act. It must be noted that under the Companies Act a limited liability company may not have more than 50 members without a special approval of the Ministry of Economic Development and Technology. Therefore, where a Crowdfunding platform performs financial services with transferable securities falling under the scope of Financial Instruments Market Act a licence by the Securities Market Agency is required.

4.1.2 Lending Model

Trade and services related to offering of bonds and other debt securities qualify as provision of financial services and transactions under the Financial Instruments Market Act, which triggers the requirement for a licence by the Securities Market Agency.

Taking in of money from unsophisticated persons in the form of deposits or otherwise pursuant to a deposit or other agreement whereby the depositor has the right to request repayment in certain time periods is considered provision of banking services under the Banking Act (*Zakon o bančništvu*). Additionally, granting of credits and loans as a business activity is also provision of banking services under the Banking Act. Only banks holding a licence from the Bank of Slovenia are permitted to preform banking services.

Otherwise, private and personal lending of money in return for the repayment with interest is a non-regulated activity in Slovenia even if the lending occurs through online Crowdfunding platform. Therefore, the creditors would not require a licence, but the general civil and commercial rules regarding lending would still apply.

However, the performance of intermediary and agency services with respect to consumer credit and other loan agreements are considered supplementary financial services under the Banking Act and require a licence by the Bank of Slovenia or the Securities Market Agency.

Depending on the lending model of the Crowdfunding platform licences by the Securities Market Agency and/or the Bank of Slovenia may be required.

4.1.3 Donations or Rewards Model

Games of chance under the Gaming Act (*Zakon o igrah na srečo*) are games in which participants share the same likelihood of winning a price or reward and where the outcome of the game depends exclusively or predominantly on chance or on another uncertain event. For performance of games of chance a licence or concession granted

by the Government of the Republic of Slovenia and of the Ministry of Finance is required.

Individual taxpayers in Slovenia may direct and give up to 0.5% of their personal income tax in a year to a designated recipient as a donation under the Personal Income Tax Act (*Zakon o dohodnini*). To qualify as a recipient of donations that may be paid under direction of a donor out of the donor's personal income tax the recipient must each year apply and qualify as a recipient before the Ministry competent for its business area. Further requirements for recipients are set forth under the Personal Income Tax Act and the Decree of the appropriation of the personal income tax for donations (*Uredba o namenitvi dela dohodnine za donacije*). Other tax implications may apply to donations received through Crowdfunding.

Depending on how a Donations or Rewards model of the Crowdfunding platform is structured, it might trigger licensing requirement for games of chance and/or the Personal Income Tax Act. Otherwise, Donations and Rewards models are not subject to financial services regulation or licence requirements.

4.2 Prospectus Requirement

Equity and Lending Model

a) **General rule**

As a general rule nobody may offer transferrable securities in the Republic of Slovenia without publishing a prospectus that has been approved by the Securities Market Agency under the Financial Instruments Market Act. By offering of securities of third persons the Crowdfunding platform would likely fall under this requirement as the general rule applies to the same extent to any securities intermediaries. Same prospectus requirements would apply if bonds or other debt financial instruments would be used in a Crowdfunding financing model structure.

b) **Exceptions**

The prospectus requirement does not apply to the following offering of securities, in the relevant part: (i) hedge funds units, (ii) securities with the guarantee of the state or local government, (iii) offering of securities to sophisticated investors only, (iv) offering of securities to up to 150 natural or legal persons, who are not sophisticated investors, (v) offering of securities with the purchase price above EUR 100.000 for each individual offer of securities in such offering, (vi) offering of securities with nominal value of at least EUR 100.000 for each offered security, or (vii) offering of securities where the aggregate purchase price in the European Union within 12 months does not exceed EUR 100.000. Each subsequent offer of securities purchased under an exception to the prospectus requirement is subject to the general rule under the Financial Instruments Market Act defined above. In other words, each subsequent offer of securities purchased under an exception must rely on an exception or satisfy the prospectus

requirement. Prior to any trade of securities on a stock exchange a prospectus must be approved by the Securities Market Agency and published in accordance with the Financial Instruments Market Act.

A limited prospectus requirement applies where the offering price of securities does not exceed EUR 5.000.000 in the European Union within 12 months. In such case, the issuer may replace the prospectus with a simplified prospectus under the Financial Instruments Market Act.

4.3 Regulation of Crowdfunding under the AIFMD regime

The Alternative Investment Fund Managers Directive (AIFMD) has been recently implemented in Slovenia through the new Act on Alternative Investment Fund Managers (Zakon o upraviteljih alternativnih investicijskih skladov), valid and effective as of 23 May 2015 and an amendment to the Investment Trusts and Management Companies Act (Zakon o investicijskih skladih in družbah za upravljanje), valid and effective as of 19 May 2015. Both the new Act on Alternative Investment Fund Managers and the amendment to the Investment Trusts and Management Companies Act follow the text of AIFMD.

The Alternative investment fund (AIF) is regulated in Investment Trusts and Management Companies Act. According to it, the alternative investment fund (AIF) is an investment fund that is not an UCITS. Is an undertaking that pools together capital raised from its investors with the view to investing it in accordance with a defined investment policy for the sole benefit of those investors.

On the other hand, the Investment Funds and Management Companies Act regulates conditions and manner of managing the alternative investment funds and applies only when there is an AIF managed by an alternative investment fund manager.

4.3.1 Equity model

Operating company seeking funding

An operating company seeking funding would likely not qualify as neither a USTIC, alternative investment fund or as a venture capital fund under Slovenian law, if it did not issue fund units for money received or operate an investment fund. The same could be concluded in relation to the European Securities and Market Authority (ESMA) Guidelines on key concepts of the AIFMD of 13 August 2013. In the Guidelines ESMA explained that an ordinary company with a general commercial or industrial purpose (i.e. one that pursues a business strategy, which includes running predominantly a commercial activity, involving the purchase, sale, and/or exchange of goods or commodities and/or the supply of non-financial services, or an industrial activity, involving the production of goods or construction of properties, or a combination thereof) would generally not qualify as an alternative investment fund under AIFMD.

Project Company seeking funding

It cannot be excluded that Project Company seeking funding might constitute an AIF under the Investment Trusts and Management Companies Act. It depends on the equity financing structure of a company established to finance a single project such as for example a wind farm, a solar park, a movie or a computer game. The same could be concluded in relation to already mentioned guidelines on key concepts of the AIFMD issued by ESMA, if the Project Company seeking funding is raising capital with the view to investing it in accordance with a defined investment policy.

4.3.2 Lending model

Under the Slovenian regulation it cannot be excluded that the Project Company might constitute an AIF. It depends on the debt financing structure of the Project Company.
Performance of intermediary and agency services with respect to consumer credit and other loan agreements are considered supplementary financial services under the Banking Act and require a licence by the Bank of Slovenia or the Securities Market Agency.

4.3.3 Donations or Rewards model

Under the Slovenian regulation the AIF is an undertaking that pools together capital raised from its investors with the view to investing it in accordance with a defined investment policy for the sole benefit of those investors. In a Donation or Rewards based financing structure the funds are not invested for the benefit of the investors, therefore, it can be argued, that the Donation or Rewards model does not fall under the regulation of the AIF in Slovenian jurisdiction.
In general donations or reward based financing structures do not trigger licence requirements or other significant regulatory issues. However, tax, consumer protection and payment services laws may principally apply.

4.4 Requirement of a License under the Payment Services regulation

Equity, Lending and Donations or Rewards Model

In addition to any requirements set forth above, a transfer of funds through the Crowdfunding platform will most likely constitute a payment service under the Payment services and systems Act (*Zakon o plačilnih storitvah in sistemih*). Such transfer of funds would occur if the investor, creditor or donor paid and transferred the funds through the Crowdfunding platform to the entrepreneur whereby the Crowdfunding platform performed any of these activities: deposit or withdrawal of cash, payment services for debit or credit of a bank account, issuance or acquisition of payment instruments, remittance of cash payments or transfer of funds by an intermediary between a costumer and a provider of goods and services. In Slovenia only banks, licenced electronic money institutions, payment institutions and cash remittance institutions may perform payment services if they were granted a payment services licence by the Bank of Slovenia.

A Crowdfunding platform might however be able to rely on the exemption for "technical service providers" under the Payment services and systems Act, if it outsourced the payment transactions so that it performed only technical services with respect to these payment transactions. Such technical services may include processing and storage of data, data safety and person identification services, IT and communication services, maintenance of payment services equipment and other similar technical services, as long as the provider of such technical services at any time does not have the power to freely dispose with the moneys that are being transferred.

4.5 Possible Additional Regulations

Other common regulations to which the operator of a Crowdfunding platform may be subject include:

- Consumer Protection Act (*Zakon o varstvu potrošnikov*)
- Consumer Protection against Unfair Commercial Practices Act (*Zakon o varstvu potrošnikov pred nepoštenimi poslovnimi praksami*)
- Consumer Credit Act (*Zakon o potrošniških kreditih*);
- Prevention of Money Laundering and Terrorist Financing Act (*Zakon o preprečevanju pranja denarja in financiranja terorizma*)
- Book Entry Securities Act (*Zakon o nematerializiranih vrednostnih papirjih*)
- Personal Data Protection Act (*Zakon o varstvu osebnih podatkov*)
- Investment Trusts and Management Companies Act (*Zakon o investicijskih skladih in družbah za upravljanje*)
- Venture Capital Companies Act (*Zakon o družbah tveganega kapitala*)
- Supportive Environment for Entrepreneurship Act (*Zakon o podpornem okolju za podjetništvo*)
- Humanitarian Agencies Act (*Zakon o humanitarnih organizacijah*)
- Code of Obligations (*Obligacijski Zakonik*)
- Prevention of Restriction of Competition Act (*Zakon o preprečevanju omejevanja konkurence*)

5 Regulation of RES Projects in Slovenia

5.1 Overview

The new Slovenian Energy Act (*Energetski zakon*), which has been implemented in April 2014 and inter alia transposes the Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC into Slovenian law system, lists promotion of the use of renewable energy sources as one of its main objectives. Use of RES is encouraged through providing information on RES and education, e.g. through the RES online platform "*Trajnostna energija*" (available at http://www.trajnostnaenergija.si/) as well as by public subsidies for investments into RES projects, by giving grants or lending under favourable terms.

Several implementing regulations have been passed which regulate RES projects in more detail, such as the Rules on the promotion of energy efficiency and the use of renewable energy sources (*Pravilnik o spodbujanju učinkovite rabe energije in rabe obnovljivih virov energije*), Legal Act on support for the production of electricity from renewable energy sources and high-efficiency cogeneration (*Akt o prispevkih za zagotavljanje podpor za proizvodnjo električne energije iz obnovljivih virov energije in v soproizvodnji z visokim izkoristkom*) and Decree on support for electricity generated from renewable energy sources (*Uredba o podporah električni energiji, proizvedeni iz obnovljivih virov energije*), to name just a few. Several of the implementing regulations have been repealed with the coming into force of the new Slovenian Energy Act, however they are still in use until the new acts are passed.

Despite the promotion of the RES through grants and financing, the growth of RES has fallen slightly behind the plans and projections in order to comply with the EU requirement to achieve the target 25% share of RES in gross final energy consumption by 2020. Further legislation on support programmes is planned to encourage the growth of RES in Slovenia.

5.2 Funding RES projects through support schemes

In accordance with the Energy Act and the Rules on the promotion of energy efficiency and the use of renewable energy sources, legal and natural persons can benefit from grants intended for initial investments in RES projects, which can constitute up to 30% of the entire initial investment. The additional conditions that have to be fulfilled by applicants are set in each public tender documentation. Under the new Energy Act, granting of funds for the RES projects is to be changed significantly - the Energy Agency has already prepared a revised support scheme for RES electricity projects with approved funding in the amount of EUR 10 million, which will substitute the existing schemes. The Energy Act provides that RES projects intended to produce electricity from renewable energy sources will be able to benefit from either guaranteed purchase (at fixed prices and amounts) or financial aid. This new support scheme has

to first be approved by the European Commission and new implementing legislation, fully in accordance with the Energy Act, has to be passed. It is expected that the first open call to enter the support scheme will be published in early 2016.

5.3 Eco Fund (*Eko Sklad*)

Eco Fund, the Slovenian Environmental Public Fund, is a public fund, which has been established with the purpose of promoting development in the field of environmental protection. This also includes provision of loans on favourable terms to natural and legal persons as well as grants for RES projects. Eco Fund is partly financed through contributions of end users (charged on their electricity or natural gas bills as well as other energy bills), the amount of contribution is set in the Legal Act on support for the production of electricity from renewable energy sources and high-efficiency cogeneration (*Akt o prispevkih za zagotavljanje podpor za proizvodnjo električne energije iz obnovljivih virov energije in v soproizvodnji z visokim izkoristkom*). Additionally, in the past Eco Fund has also been funded by the following financing institutions: International Bank for Reconstruction and Development (IBRD), through EC Phare programme and the European Investment Bank (EIB).

At the moment Eco Fund is offering loans for legal and natural persons. Natural persons may obtain funding for the following investments: biomass boilers, solar panels, small solar, wind and hydro power plants and micro cogeneration of heat and electric energy. In some cases it is possible that several persons apply for a loan together; this may be sensible for investments in e.g. small power plants. Legal persons are eligible for loans for the following investments: RES projects intended for heating or cooling and RES cogeneration of electricity or heat.

Loans under favourable terms may constitute state aid if given to legal persons as well as to natural persons in some cases (e.g. when natural persons intend to distribute the energy generated through small power plants). Due to the size of the loans, most of the cases fall under de minimis exception.

5.4 Upcoming changes in energy regulation

The Regulation on self-supply of electricity with renewable energy sources (*Uredba o samooskrbi z električno energijo iz obnovljivih virov energije*) will enter into force on 15 January 2016. Additionally, the launch of the new support scheme is expected in early 2016, following the approval of the European Commission. The support scheme, which is based on the Energy Act, will be further regulated by additional implementing legislative acts. Moreover, since some of the implementing RES regulation has been repealed by the new Energy Act, but is still in use, new implementing legislation is anticipated in the field of RES regulation in near future as well.

6 Conclusion

At a first glance Crowdfunding is not a heavily regulated business in Slovenia, but Crowdfunding platforms in particular should pay attention to various regulatory and

compliance issues which might arise based on existing regulation of the financial instruments and markets, banking and payment services industries. In addition, the operation and investment through a Crowdfunding platform may have tax, consumer protection, money laundering, game of chance and other legal implications.

Crowdfunding is relatively new concept in Slovenia across all areas, however it appears to be a completely unused method of financing of RES projects. This could be attributed in part to the fact that there are several – current and upcoming – public support schemes for RES projects, which are indirectly funded by end-users through their mandatory contributions. The public support schemes are, however, subject to heavy public tender and state aid regulation. They are furthermore based on the RES needs as perceived by the Energy Agency – public funding, either in the form of loans or grants, might not be available for all possible RES Projects at all times. Therefore, it would be sensible to encourage private investment of end-users into RES Projects as well, e.g. through support of Crowdfunding of RES Projects.

7 Summary – Crowdfunding and RES Projects Regulation

Country / Summary	Slovenia
Recent developments in Crowdfunding regulation	• AIFMD was implemented through the new Act on Alternative Investment Fund Managers (*Zakon o upraviteljih alternativnih investicijskih skladov*), which entered into force on 23 May 2015, and an amendment to the Investment Trusts and Management Companies Act (*Zakon o investicijskih skladih in družbah za upravljanje*), which entered into force on 19 May 2015.
Recent developments in RES regulation	• New implementing regulation supporting RES Projects entered into force in 2015 • Support scheme in the amount of 10 million for RES Projects approved by Slovenian Government; expected to launch in early 2016
Current Crowdfunding Regulation	
General Regulation	• Financial services and transactions related to offerings of transferrable securities provided by a Crowdfunding platform trigger requirement for a licence by Securities Market Agency • Intermediary services with respect to consumer credit and other loan agreements require a licence by Bank of Slovenia or Securities Market Agency

	• Donations and Reward Crowdfunding Models would among others likely have tax, game of chance and consumer protection legal implications
Prospectus requirement	• Prospectus requirement for offer of securities • Threshold: EUR 100.000 in EU within 12 months • Other most relevant exceptions: (i) offering of securities to sophisticated investors only, or (ii) offering of securities to up to 150 natural or legal persons, who are not sophisticated investors • Simplified prospectus possible for offerings of securities below or equal to EUR 5.000.000 in EU within 12 months
AIFMD regulation	• AIFMD has been recently implemented in Slovenia through the Alternative Investment Fund Managers Act and an amendment to the Investment Trusts and Management Companies Act. • An operating company seeking funding would likely not qualify as an AIF in Slovenian jurisdiction, mostly because ordinary company with a general commercial or industrial purpose would generally not fall under a scope of Alternative Investment Fund Managers Act. On the other hand, Project Company seeking funding might qualify as AIF if it is raising capital with the view to investing it in accordance with a defined investment policy. • Lending and Donations or rewards model would likely not constitute an AIF, but we cannot definitely exclude the possibility that they fall outside the scope of Alternative Investment Fund Managers Act in all cases.
Payment service regulation	• Remittance of cash payments or transfer of funds by intermediary between costumer and provider of goods and services constitutes provision of payment services, which requires a licence by Bank of Slovenia. • Crowdfunding platform might rely on “technical service provider” exemption
Further possible	• Consumer Protection Act (*Zakon o varstvu potrošnikov*)

requirements	• Consumer Protection against Unfair Commercial Practices Act (*Zakon o varstvu potrošnikov pred nepoštenimi poslovnimi praksami*) • Prevention of Money Laundering and Terrorist Financing Act (*Zakon o preprečevanju pranja denarja in financiranja terorizma*) • Book Entry Securities Act (*Zakon o nematerializiranih vrednostnih papirjih*) • Personal Data Protection Act (*Zakon o varstvu osebnih podatkov*) • Investment Trusts and Management Companies Act (*Zakon o investicijskih skladih in družbah za upravljanje*) • Venture Capital Companies Act (*Zakon o družbah tveganega kapitala*) • Supportive Environment for Entrepreneurship Act (*Zakon o podpornem okolju za podjetništvo*) • Humanitarian Agencies Act (*Zakon o humanitarnih organizacijah*) • Code of Obligations (*Obligacijski Zakonik*) • Prevention of Restriction of Competition Act (*Zakon o preprečevanju omejevanja konkurence*)
RES Projects Regulation	
Overview	• RES projects are mostly supported by various support schemes, which are funded through mandatory contributions for RES development, imposed on end-users. • Eco Fund (Eko Sklad) provides grants and loans to legal entities and end-users for various RES projects • A new scheme for the support of RES electricity projects is expected to be launched in early 2016, following the approval of the European Commission and the entering

	into force of the implementing regulation
Regulatory sources	• Slovenian Energy Act (*Energetski zakon*) • Regulation on self-supply of electricity with renewable energy sources (*Uredba o samooskrbi z električno energijo iz obnovljivih virov energije*) • Legal Act on support for the production of electricity from renewable energy sources and high-efficiency cogeneration (*Akt o prispevkih za zagotavljanje podpor za proizvodnjo električne energije iz obnovljivih virov energije in v soproizvodnji z visokim izkoristkom*) • Decree on support for electricity generated from renewable energy sources (*Uredba o podporah električni energiji, proizvedeni iz obnovljivih virov energije*) • Rules on the promotion of energy efficiency and the use of renewable energy sources (*Pravilnik o spodbujanju učinkovite rabe energije in rabe obnovljivih virov energije*) – repealed, but still in use • Decree on support for electricity generated from renewable energy sources (*Uredba o podporah električni energiji, proizvedeni iz obnovljivih virov energije*) – repealed, but still in use

Lessons learned – Crowdfunding / RES Projects Regulation

Lessons learned for a possible harmonized European Crowdfunding Regulation	
Role model ("dos")	• Portion of personal income tax may be donated by taxpayer to qualified recipients • Prospectus requirement exceptions based on threshold amount raised work for start-up companies
Aspects that should be avoided ("don'ts")	• Lack of Crowdfunding-specific exceptions/ regulation
Lessons learned for a possible harmonized European RES Projects Regulation	
Role model ("dos")	• Easily accessible information on the benefits of RES as well

	as ongoing RES support schemes/ public tenders (use of online platforms)
Aspects that should be avoided ("don'ts")	• Relying solely on public funds and public tenders to support RES Projects • Delays in implementing legislative changes

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XXVI. Spain

1 Spanish market for RES Crowdfunding platforms

In Spain, Crowdfunding was already known of and primarily used in sectors related to music and film, although it has now started to take off in other spheres. The novelty of this method of obtaining funding is that it is also being used to develop projects dealing with renewable energy sources through the so-called Renewable Energy Crowdfunding ("**RES Projects**") which has, in the past year, reached magnitudes that just a few years ago were hard to believe possible, both in terms of the volume of completed projects and the amount raised through collective contributions.

Thanks to RES Crowdfunding, anyone can contribute financially to the implementation of green energy projects through various financing models employed by the Crowdfunding platforms for the development of these kinds of projects ("**RES Crowdfunding Platforms**").

1.1 Different investment models

The Promotion of Corporate Finance Act 5/2015 of 27 April (*Ley 5/2015, de 27 de abril, de fomento de la financiación empresarial*) ("**LFFE**") regulates different forms of Crowdfunding:

- The first one is known as the **equity based model**, in which the contribution of funds is conducted by the issue or subscription of shares or other financial instruments representing the capital, either as part of a process of incorporation of a company or through a capital increase. In this equity based model, the investor receives the economic and political rights inherent in the status of partner of a company that receives the funds in return for the funding provided. Under this equity based model, the investor can also subscribe bonds issued, either by public limited companies or now also by limited liability companies, as the LFFE has opened up the possibility of issuing simple bonds (not convertible bonds) to these limited liability companies as a result of the change that has led to the Article 401 of the Consolidated Text of the Spanish Companies Act (Ley de Sociedades de Capital), which restricted this possibility before the entry into force of the LFFE.

- The **lending based model** is the other form of Crowdfunding regulated under LFFE. Based on financing through loans with interest, due to the current economic and legislative situation in Spain companies barely resort to Crowdfunding to obtain these loans as in the banking market they may encounter many more beneficial conditions.

Although during the past year the donations model based on fundraising for social projects has recorded excellent growth in the Spanish Crowdfunding market, this

model is excluded from the scope of application of the LFFE, encompassing all cases in which projects are funded with small donations or through collective loans without interest (donation Crowdfunding and social lending Crowdfunding). We can also include in this cases in which the reward received by the donor or financial backer is merely symbolic and with little economic value, even when it may have a high subjective value, such as letters or statements of gratitude. As we stated previously, the LFFE excludes this type of financing from its scope, establishing that companies whose activity consists of contacting investors and promoters in a professional manner through websites or other electronic means will not be considered to be Crowdfunding platforms when the financing obtained by the latter is exclusively through:

- Donations
- Sale of goods and services
- Interest-free loans

1.2 RES Projects in Spain

Last year, 42.8% of energy produced in Spain was generated with renewable resources:

- Hydraulic power plants: 15.4%
- Wind power plants: 20.4%
- Photovoltaic ("**PV**") power plants: 3.1%
- Concentrating solar thermal ("**CSP**") power plants: 2.0%
- Thermal energy from renewable sources: 1.9%

Most operations on RES market carried out in Spain involve acquisition of PV power plants and wind farms. Despite the data shown earlier, since 2012 the government in Spain has passed a plan of action to modify the regime of renewable energies, also including plans to cut the feed-in-tariffs for all kinds of RES projects.

In this context, Spain must rethink the place that renewable energy and citizens occupy in the energy system. Despite having been a leader in investment and innovation, it may now be wasteland compared to its neighbors. However, due to the actions of the Spanish Government, the growth of renewable energy has almost stopped and Spain would not fulfill its binding national target of reaching 20% renewable energy in final gross energy demand in 2020, as stipulated in the Directive 2009/28/EC (Renewable Energy Directive).

Even with the growth of renewables in Spain in the past decade, little was done regarding citizen or community involvement. However, citizen participation has increased and currently, at least for PV installations, there are approximately 60,000 citizens investors. Without a supportive framework, this nascent industry could not reach their full potential.

Most of the funds are invested in RES Projects through different products and finance services such as Project Finance, private equity fund investments, venture capital, photovoltaic leasing, sale and leaseback, and bridge equity.

Crowdfunding for RES in Spain has not yet reached top levels of importance in financing RES Projects, though its importance is expected to continue to increase. Some of the RES Projects that use Crowdfunding platforms in Spain are:

- Project "Biomasa Forestal" aims to obtain EUR 100,000 to collect 30,000 tons of biomass from a forest in Cataluña in order to clean it and use the biomass as a combustion source. This is one of the first projects turning to Crowdfunding in Spain. It is an initiative born in Barcelona that sought to obtain EUR 100,000 to collect 30,000 tons of biomass left in forests with the objective of preventing surface fires in the summer and at the same time transform all of the biomass collected in order to put it on the market and make a profit through its sale to large biomass consumers.

- Projects to create a wind farm of 2.7 MW in Alta Noia (Barcelona) and a PV power plant of 2.16 MW in Seville. It should be noted that Sevilla is one of the areas with highest insolation in the mainland. The production is equivalent to the use of about 1,300 homes, which represents an important contribution to our own production. The area has 8.6 hectares and is completely flat. The land is classified as industrial use since 2007. The proposed design is expected to have minimal impact on the ground. Barcelona conditions are likewise good in terms of wind, and also access and connection to the medium voltage network.

- Project to create a biomass production plant based on seaweed growing. This Project has raised EUR 5 million and has been carried out by a company which has developed a unique technology for the cultivation of microalgae, capturing the main nutrient of these microorganisms, CO2, directly from smokestacks emitting combustion gases in energy production plants, representing a world first. This has generated valuable benefits to the environment and has led to significant reductions in production costs.

2 Recent regulatory developments regarding Crowdfunding regulation in Spain

Raising capital in the primary Spanish market for small and medium-sized enterprises (SMEs) up until now was virtually impossible due to the high transaction costs generated. Furthermore, the problem was increasing as companies requiring this fundraising were in their early or embryonic stages, and due to their lack of experience

they could not make accurate assessments of risk based on their own experience, something which made it very difficult to obtain bank loans as well as the entry of venture capital entities in the capital of these SMEs.

This issue has been resolved in Spain, with the LFFE, whose Title V regulates Crowdfunding platforms. These platforms can obtain the necessary financing for a business project thanks to the convergence of supply and demand provided by them. Crowdfunding platforms are authorised companies whose activity consists of putting into contact, in a professional manner and through websites or other electronic means, a multiplicity of individuals or legal entities who provide funding in exchange for a monetary return, so-called investors and promoters who apply for funding on their own behalf to be earmarked exclusively for a specific project which, as pointed out by LFFE, can only be a project related to business, education or consumer.

These Crowdfunding projects could be implemented through:

- The issue or subscription of bonds, ordinary and preferential shares or other securities representing the capital in a corporation ("*Sociedad Anónima*"), when it does not require prospectus in accordance with the consolidation version of Securities Market Act, approved by the Royal Legislative Decree 4/2015, 23 October (*texto refundido de la Ley de Mercado de Valores*) ("**LMV**").

- The issue or subscription of shares in limited liability companies ("*Sociedad Limitada*").

- The application for loans, including subordinated profit-participating loans.

The financing obtained for the development of a specific project of a promoter through a Crowdfunding platform shall in no case be assigned to:

- Professional financing of third parties and in particular the granting of credit or loans.

- The subscription or acquisition of shares, bonds and other financial instruments admitted to trading on a regulated market, multilateral trading system or equivalent third country markets.

- The subscription or acquisition of stocks and shares of collective investment schemes or their management companies, venture capital entities, other collective investment entities of a closed-ended type and management companies of other collective investment entities of a closed-ended type.

3 Further recent developments considering RES Projects market in Spain

Recently the Spanish Government has approved Royal Decree 900/2015, of 9 of October on Self-consumption and Royal Decree 947/2015 of 16 October and Order

IET/2212/2015 of 23 October, regulating the specific remuneration system allocation procedure's auction for new biomass installations in the mainland electricity system, and for wind power plants. With regard to the Royal Decree 900/2015, it should be noted that the regulation covers the administrative, technical and economic conditions of certain self-consumption modalities determining their obligation to contribute to access tolls and other charges. Regarding the implementation of electricity generation facilities intended for consumption, technological and commercial development of renewable energy are allowing investment costs to be reduced, today and for the future. In this context, electrical energy from renewable sources represents an interesting option for users the more their consumption and generation profiles resemble one another. Accordingly, the installation of storage systems enables a more efficient energy management, with the limitations only of industrial safety and quality.

On the other hand, with reference to Royal Decree 947/2015 of 16 October and Order IET / 2212/2015 of 23 October, an auction is convened for a specific remuneration system allocation procedure limited to 200 MW in biomass installations and 500 MW in wind power.

4 Regulation of Crowdfunding in Spain

4.1 Licence under the Promotion of Corporate Finance Act (Ley 5/2015, de 27 de abril, de fomento de la financiación empresarial)

4.1.1 Equity Model / Lending Model

The Spanish Stock Market Commission ("**CNMV**") is the body in Spain competent to authorise and register Crowdfunding platforms, following a mandatory and binding report by the Bank of Spain in the case of platforms that publish projects related to applications for loans, including subordinated profit-participating loans.

The LFFE sets a number of requirements for an entity to obtain and maintain authorisation as a Crowdfunding platform and so that it can operate in the Spanish market, which are as follows:

- Have the exclusive corporate purpose of carrying out activities that are individual to the Crowdfunding platforms, and where appropriate the activities of a hybrid payment institution.

- Have its registered office and effective administration and management in the Spanish territory or in another Member State of the European Union.

- Take the form of a capital company for an indefinite time.

- Have the minimum share required capital fully paid up in cash and comply with the financial requirements provided on the LFFE.

- That the platform directors and managers are persons of recognized business or professional repute and possess appropriate knowledge and experience in the areas necessary for the exercise of their functions.

- Have good administrative and accounting structure or adequate internal control procedures.

- Have adequate means to ensure the security, confidentiality and reliability to provide the service through electronic means.

- Have an internal code of conduct that addresses potential conflicts of interest and the terms of the participation of directors, officers, employees and representatives in funding applications that are implemented through the Crowdfunding platform.

- Provide mechanisms so that in the case of cessation of its activity, it may continue providing all or part of the services to which it committed to provide to the Crowdfunding projects for which they obtained funding.

At the same time the LFFE points out the financial requirements to be met by these Crowdfunding platforms:

a) Those which must be provided at all times:

- A share capital fully paid up in cash of at least EUR 60,000, or

- Professional liability insurance or a guarantee or other equivalent as surance that deals with responsibility for negligence in the exercise of their professional activity, with a minimum coverage of EUR 300,000 for each claim, and a total of EUR 400,000 per year for all claims, or

- A combination of initial capital and professional indemnity insurance, guarantee or other equivalent assurance which results in a coverage level equivalent to that indicated in the preceding two paragraphs.

b) When the amount of the financing obtained in the last 12 months for the projects published on the platform exceeds EUR 2 million, the Crowdfunding platforms must have equity of at least EUR 120,000.

c) Its total equity shall be increased depending on the total amount of financing obtained in the last 12 months for projects published on the platform.

4.1.2 Donations or Rewards Model

As already stated, the Spanish framework only regulates the cases in which the investors receive an economic remuneration in return for the funding provided, with the donations and rewards models being excluded from the LFFE, therefore no licence is required.

4.2 Prospectus requirements

4.2.1 Equity Model / Lending Model

In general, public stock, share and bond offers on the platforms are not subject to the national provisions of the LMV regarding releases in the primary market since the legislator has intended to limit the operational scope of the platforms to those releases in which the existing legislation on the primary market is not applied.

Thus, the same LFFE highlights that Crowdfunding projects can be implemented by means of the issue of bonds, ordinary and preferred shares and other equity securities, when this does not require and lacks an approved prospectus. This concept is completed with a fixed limit of EUR 5 million as a maximum amount of funds that a Crowdfunding project can raise on a yearly basis, provided that it is directed exclusively at accredited investors (in the case that it is directed at non-accredited investors such a fixed limit is set at EUR 2 million). This limit of EUR 5 million also corresponds to the maximum limit that, in accordance with the LMV, allows a securities offer to be exempted from the obligation of publishing the prospectus.

A defect affecting this regulation is that there is not adequate coordination between the LMV and the LFFE, given that the LMV establishes the limits on the raising of capital without the need of a prospectus in relation to a single issuer, whereas the LFFE fixes the limits on raising capital in relation to a specific Crowdfunding project. Certainly, the LFFE prohibits a promoter from simultaneously publishing more than one project on one platform, but nothing prevents one company from soliciting funding for various projects on different platforms, with the possibility of acquiring very substantial amounts of money in a short time.

a) **Basic information for investors on the website**

Although for the kind of transaction mentioned above the publication of a prospectus is not mandatory, it is evident in the established legislation that the concern of the legislator is to ensure that investors know and understand the workings of this new investment channel and that they are fully aware of the risks they face through their participation in Crowdfunding projects. Therefore, extensive duties of transparency regarding the nature and operation of Crowdfunding platforms, as well as the risks they create, are imposed, forcing these platforms to advertise certain information which is considered to be essential for the protection of investors.

Crowdfunding platforms shall include on their homepage under the heading "Background information for the client", amongst other things, the following basic information and warnings:

- Warning of the risks involved for investors of participating in loans or subsription of shares, stocks or other representative capital values and obligations through the Crowdfunding platform and, in any case, the risk of total or partial loss of invested capital, the risk of not achieving the expected money return and the risk of liquidity shortfalls in the investment.

- In the case of financing by issuing shares in a corporation ("Sociedad Anónima"), the risk of dilution of the stake in the company, the risk of not receiving dividends and the risk of not being able to influence the management of the company.

- In the case of financing by issuing shares or other equity securities in a limited liability company ("Sociedad Limitada"), the risk of dilution, the risk of not receiving dividends, the risk of not being able to influence the management of the company and the restrictions of free transmissions inherent to this type of companies.

- The warning that the Crowdfunding platform does not hold the status of investment services company nor credit institution and that it is not supported by investment guarantee or deposit guarantee fund.

- The warning that Crowdfunding projects are not subject to authorisation or supervision by the CNMV nor by the Bank of Spain and that the information provided by the promoter has not been reviewed by such authorities or, in the case of issue of shares, does not constitute a prospectus approved by the CNMV.

- The fees applicable to investors and promoters, the contracting process and the method of billing.

However, the mere publication of this information on the internet does not guarantee that it is read by the investors. Therefore, the legislator has taken the step towards effectively achieving awareness of the non-accredited investors that they are operating in a different field with different rules. So, LFFE requires that when potential investors are non-accredited, a specific communication is sent to them in which they are warned in a clear and understandable manner with practically the same information that is required as basic information, as already established above. The Crowdfunding platform must insure that the investor receives and accepts this specific communication prior to participation in each project. Therefore, this information should be send to the same non-accredited investor as many times as the number of projects in which they intend to participate.

b) **Complementary information on the website**

In addition to this basic information, the platform must also publish on its website other complementary information which should be included in an accessible, permanent, updated, free and easily visible manner. Among this information we suggest referring to the basic operation of the platform, including the selection of the Crowdfunding projects, how the information supplied by the promoters is received and dealt with and the guidelines for publication, which should be uniform and non-discriminatory. In the event that the Crowdfunding platform supplies information on the number of percentage of defaults, the default rate, profitability or other similar variable, which can provide guidance for making investment decisions, must also set out how each variable is defined and how the calculations have been made. In any case, the platforms must formulate this information in accordance with objective guidelines and avoid any deception, given that the manipulation of the rate of return of the level of risk constitutes a very serious offence.

In turn this requires that the ways and means through which projects are invested in are reported, either by subscribing to shares, stocks or other capital representative or by subscribing to bonds, this information is completed with the required information on the procedures and systems in place by which the promoter will receive the funds from investors and by which the investors will receive remuneration from invested capital, and in the event that a mediation between payments exists, the name of the entity authorised to provide such a service, together with its registration number.

Information regarding the mechanisms in place to reduce the risks faced by the investor and to avoid conflicts of interest should also be provided. In this regard, information on the measures and organisational means adopted to minimise the risk of fraud and operational risk. This information must be supplemented by the publication of the platform policy in terms of management of conflicts of interest.

As has already been mentioned, the LFFE reinforces the duties of transparency, so that if the platform, their managers or significant shareholders intend to participate in a project published on the platform they must inform investors in a clear and accessible manner the value of their involvement, aside from their internal policy guidelines, to establish their level of participation in the projects already published on the website.

Other information that must also appear in relation to the reduction of risks is that related to the procedures and means through which the Crowdfunding platform provides a service of debt collection and also the mechanisms for which, in the case of the termination of the activity of the Crowdfunding platform, it will continue to provide all or part of the services to which they committed against Crowdfunding projects which had obtained financing and what the consequences of a failure to activate these mechanisms would be for the investors and promoters.

As a final note on the aforementioned information relevant for the protection of investors, we must add that the platforms should make the procedures and methods

for the filing of complaints and claims from customers and the procedures by which to resolve them public.

4.2.2 Donations or Rewards Model

As mentioned above, in this model the publication of a prospectus is not mandatory regardless of whether it is excluded from the LFFE.

4.3 Regulation of Crowdfunding under the AIFMD regime

Prior to the approval and entry into force of the LFFE and Act 22/2014 of 12 November, which regulates the venture capital entities, other collective investment entities of a closed-ended type and management companies of such entities ("**Act 22/2014**") in Spain, which transposes AIFMD, the possibility that the Crowdfunding platforms were considered to be managers of alternative investment funds was an unclear issue. Unlike other jurisdictions, neither the Spanish regulator (CNMV) nor Act 22/2014 have included a specific definition of the Alternative Investment Fund and, what is more, Act 22/2014 defines collective investment entities in the same way as the AIFMD defines Alternative Investment Fund.

Faced with the normal functioning of public offers for subscription under the LMV, the primary market generated by Crowdfunding presents a relevant singularity consisting of the necessary intermediation of a Crowdfunding platform. With the regulation of the platforms, LFFE set a new category of intermediary in the financing market, reserving the activity of contacting, in a professional manner, investors and promoters through websites or other electronic means.

Its function as intermediary is set as mandatory services for the platform; receiving, selection and publication of participative financing and development projects, and establishment and operation of communication channels to facilitate the search for funding between investors and promoters. At the same time, the LFFE prohibits the exercise of activities reserved for investment services firms and credit institutions in connection with the issue of shares, bonds or other transferable securities, they may not provide services of reception, transmission and execution, nor may they guarantee fundraising.

The role played by investment service providers that enter into a placement contract differs from that of placement and underwriting. The platform is not a broker or agent of the issuer or promoter, but simply a mediator between promoters and investors seeking to facilitate transactions. The role of the operator of the platform is the management and operation of a primary market for SMEs from a position of neutrality. The platform selects and presents the projects, and can advise promoters regarding their advertising and marketing, but they are prohibited from making personalised recommendations to investors on specific projects, as well as managing financing projects discreetly and individually. The platform is not intended to promote

the distribution of specific values, but to create a market, enabling a meeting point between supply and demand of capital.

Based on the aforementioned, and expressed by the new Crowdfunding regulation, setting these activities as the sole activities that Crowdfunding platforms can conduct while outlining activities that are expressly prohibited; the uncertainty about the possibility for the platforms to be considered as managers of AIFs has been clarified.

4.4 Licence under the Spanish Payment Services Act (Ley 16/2009, de 13 de noviembre, de servicios de pago)

The LFFE prohibits Crowdfunding platforms from carrying out activities reserved to payment institutions and, especially, from receiving funds in order to pay on behalf of investors or promoters, without the platform being authorised as a hybrid payment institution in accordance with the Payment Services Act 16/2009 of 13 November.

In addition to the CNMV authorisation mentioned in section 4.1, the Spanish Payment Services Act states that to perform the services of a hybrid payment institution the platform must submit an application to be authorised as such to the Minister for the Economy and Competitiveness following a consultation with the Bank of Spain and the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences.

4.5 Possible additional regulations

Other common regulations to which the operator of a Crowdfunding platform may be subject include:

- Consumer contracting loans or mortgage and brokerage services for the conclusion of contracts of loan or credit Act 2/2009 of 31 March (*Ley 2/2009, de 31 de marzo, por la que se regula la contratación con los consumidores de préstamos o créditos hipotecarios y de servicios de intermediación para la celebración de contratos de préstamo o crédito*);

- Consumer Credit Contracts Act 16/2011 of 24 June (Ley 16/2011, de 24 de junio, de contratos de crédito al consumo);

- General Terms of Contracting Act 7/1998 of 13 April (Ley 7/1998, de 13 de abril, sobre condiciones generales de la contratación);

- Protection of Consumers and Users Act 1/2007 of 16 November (Real Decreto Legislativo 1/2007, de 16 de noviembre, por el que se aprueba el texto refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias);

- Money Laundering and Terrorist Financing Prevention Act 10/2010 of 28 April (Ley 10/2010, de 28 de abril, de prevención del blanqueo de capitales y de la financiación del terrorismo);

- Personal Data Protection Act 15/1999 of 13 December (Ley Orgánica 15/1999, de 13 de diciembre, de Protección de Datos de Carácter Personal).

5 Regulation of RES Projects in Spain

5.1 Overview

In the last decade, the legal and economic framework for the generation of electricity from renewable energy sources has changed significantly, resulting from a strong need to reduce the tariff deficit and ensure the financial sustainability of the electricity system.

So much so that the new Electricity Act, Law 24/2013 of 26 December ("**LSE**"), has removed the differentiating concepts of ordinary (conventional non-renewable resources) and special regime (renewable energies), also abandoning the incentive model based on electric production established from Law 54/1997 (former Electricity Act). Thus, all installations have come to assume the same obligations market, except in respect of renewable energy and only in cases where appropriate, of the possibility of receiving a new economic system, the so-called specific remuneration system, which consists of an additional remuneration to market share, based on a strict application of the principle of reasonable profit.

In response to the new principles of the LSE, Royal Decree 413/2014 of 6 June was published, regulating the activity of electricity production from renewable energy sources, cogeneration and waste ("**RD 413/2013**"), at the same time amending the specific remuneration system of these production facilities and reorganising the administrative procedures related to it.

Additionally, this Royal Decree establishes rights and obligations, the peculiarities of market functioning and procedures relating to the registration in the administrative registration of production facilities of electricity, which will be registered regardless of the technology used and the installed power. Also, the aforementioned RD 413/2013 regulates the procedures and mechanisms for the registration of a specific remuneration regime for those facilities with the right to receive it.

5.2 Access to the grid

The LSE guarantees third party access to transmission and distribution networks in the technical and economic conditions that will develop by regulation. It must be noted that the energy generated by the production facilities under the ordinary regime did not enjoy the right of priority dispatch and access to transmission and distribution in the terms that they did under the special regime facilities.

The installations using renewable energy sources and, behind them, the facilities of high efficiency cogeneration, will have dispatch priority equal in the same conditions in the market, subject to the requirements for maintenance of the reliability and safety system under the terms established by Government regulation.
Also installations using renewable energy sources have priority access and connection to the grid, in terms established by regulation, on the basis of objective, transparent and non-discriminatory criteria.

5.3 Remuneration system

Royal Decree 413/2014, regulating the activity of electricity production from renewable energy sources, cogeneration and waste, develops the economic scheme applicable to facilities for electricity production from renewable energy sources, cogeneration and waste. It also modifies their rights and obligations as well as the administrative procedures related to them. Indeed, it removes the existing economic scheme and replaces it with the so-called "specific remuneration system". This new scheme supplements the sale price obtained by these facilities in the market and applies independently to their power.

The characteristics of the new specific remuneration system for renewable energy sources, cogeneration and waste in Spain are the following:

- The special system disappears therefore all the facilities shall be bound by the same rules, assuming the market obligations.

- The specific remuneration system of facilities eligible for premium, prior to this Law, will be referenced on ten years´ State bonds, plus a spread of 300 basis points during the first regulatory period (DA10).

- Exceptionally, the Government may establish a specific remuneration system to encourage the production of new facilities.

- The granting of this special system will be established through a competitive procedure and shall consist of:

  — One term per power unit installed to cover the unrecovered by the market.

  — Where appropriate, an ending to the operation when the operating costs cannot be recovered by the market.

- To calculate this specific remuneration system for facilities, along their regulatory life and referring to an efficient and well-managed company, standard operating costs and standard value of the initial investment should be considered.

- It is possible to set, for each regulatory period (6 years), all the remuneration parameters (including reasonable profit), with it not being possible to change life and standard value of the investment. The energy market sales estimations are reviewed every three years. At least once a year the remuneration values are updated on the operating costs that depend on fuel prices.

Thus, the specific remuneration system for renewable energy sources, cogeneration and waste is necessary based on the market participation of these facilities, supplementing the market incomes with a specific regulated market remuneration that enables these technologies to compete on equal terms with other technologies. This additional specific remuneration system (outstanding) will be sufficient to reach the minimum level necessary to cover the costs (investment and operation) that they cannot get back in the market and allows them to obtain an appropriate profitability.

Article 12 of Royal Decree 413/2014 provides that for the granting of the specific remuneration system a Royal Decree will establish the features and technologies that may participate in the competitive bidding mechanism as well as the assumptions on which this is based according to the article 14.7 of Law 24/2013. In this regard, the Spanish Government approves Royal Decree 947/2015 of 16 October and Order IET/2212/2015 of 23 October regulating the remuneration system specific allocation procedure's auction for new biomass installations in the mainland electricity system, and for wind power plants.

5.4 Administrative procedure

In accordance with Article 53 of the LSE, the commissioning of electricity production facilities, or the modification of existing ones, will require the following administrative authorisations to be granted without prejudice to the concessions, licenses and other sectorial authorisations required under other provisions apply (building and environmental laws):

a) Prior administrative authorisation.

b) Administrative authorisation or approval of construction project execution.

c) Operating license or certificate of commissioning.

Moreover, it must be underlined that applicants for authorisations shall prove their legal, technical, economic and financial capacity to carry out the project. One of the most important requirements is economic and financial capacity, which will be considered valid once the applicant company provides a contribution accreditation ensuring the viability of the project. As a result, some companies may be exempted from this accreditation by the competent authority provided that they have been exercising earlier this activity.

Finally, all the renewable energy facilities must register on the First Section of Administrative Registry of Electricity Production.

6 Conclusion

- The Promotion of Corporate Finance Act 5/2015 of 27 April regulates the different forms of Crowdfunding for the first time, pointing out that the Crowdfunding projects can be implemented by means of the issue or subscription of bonds, ordinary and preferred shares, loans, profit-participating loans, and other equity securities.

- Crowdfunding for RES in Spain has not reached top levels of importance in financing renewable energy projects yet, though its importance is expected to continue to increase. Without a supportive framework, this nascent industry may not reach its full potential. Recently the Spanish Government has approved Royal Decree 900/2015, of 9 of October on Self-consumption and Royal Decree 947/2015 of 16 October and Order IET/2212/2015 of 23 October regulating the specific remuneration system allocation procedure's auction for new biomass installations in the mainland electricity system.

- The Electricity Act has removed the differentiating concepts of ordinary (conventional resources non renewables) and special regime (renewables energies), also abandoning the incentive model based on production electric.

- RD 413/2014 regulates the activity of electricity production from renewable energy sources, cogeneration and waste, which at the same time amends the specific remuneration system of these production facilities, reorganising the administrative procedures related to it.

- The Electricity Act guarantees third party access to transmission and distribution networks in the technical and economic conditions that will develop by regulation. The installations using renewable energy sources will have dispatch priority equal in the same conditions in the market, and have priority access and connection to the grid.

- The Spanish Government removes the existing economic scheme and replaces it with the so-called "specific compensation scheme". To calculate this specific remuneration system for each facility, along its regulatory life and referring to an efficient and well-managed company, standard operating costs and standard value of the initial investment should be considered.

- This new framework has established a strict cap for the Crowdfunding projects; the amount promoters can raise through Crowdfunding platforms is limited to EUR 5 million when it exclusively involves professional investors; when non-accredited investors are involved, the limit will be set at EUR 2 million. This cap

prevents the possibility of larger projects which limit the RES projects due to the large funding needed to implement them.

- The new regulation has been relevant for the growth of these platforms; however the LFFE regulates Crowdfunding in a generic manner forgetting the importance of those applicants for authorisations that shall prove their capacity to carry out the project with legal, technical and economic requirements.

- At the same time, a further barrier to the encouragement of Crowdfunding could be that the LFFE has established that accredited investors are allowed to invest as much as they wish but those who are non-accredited will be limited to EUR 3,000 per project and a total of EUR 10,000 per year.

7 Summary – Crowdfunding and RES Projects Regulation

Country / Summary	Spain
Spain market for RES Crowdfunding platforms	• There are different investing models in Spain: Equity, Lending and Donation or Rewards models. • Spain must rethink the place that renewable energy and citizens occupy in the energy system. Without a supportive framework, this nascent industry could not reach their full potential. • There is a great opportunity of investing in eolic and photovoltaic energy production in Spain through Crowdfunding platforms.
Recent developments in Crowdfunding regulation	• Crowdfunding platforms operating the Equity model and the Lending model are regulated for the first time by the Promotion of Corporate Finance Act 5/2015 of 27 April
Developments considering RES Projects market	• First self-consumption regulations entered into force on 17 October 2015. • It approves the first specific remuneration system allocation procedure's auction for new biomass installations and for wind power plants.
Current Crowdfunding Regulation	
Licence under the Promotion of Corporate Finance Act	• CNMV authorisation required for Equity and Lending Models. • Donations and Rewards Models are not subject to the LFFE and therefore, no licence is required.

	• The LFFE points out the financial and general requirements for an entity to obtain authorisation as a Crowdfunding platform.
Prospectus requirement	• The publication of a prospectus is not mandatory. • Crowdfunding platforms shall include on their homepage background information for the client.
AIFMD- regulation	• Crowdfunding platforms are not considered as managers of AIFs.
Payment service regulation	• If platforms wish to receive funds in order to pay on behalf of investors or promoters, Minister for the Economy and Competitiveness authorisation is required.
Further possible requirements	• Consumer contracting loans or mortgage and brokerage services for the Conclusion of Contracts of Loan or Credit Act. • Consumer Credit Contracts Act. • General Contracting Terms Act. • Protection of Consumers and Users Act. • Money Laundering and Terrorist Financing Prevention Act.
RES Projects Regulation	
Electricity regulation applicable to RES Projects	• The new Electricity Act has removed the differentiating concepts of ordinary and special regime, also abandoning the incentive model based on electricity production. • Royal Decree 413/2014 of 6 June regulates the activity of electricity production from renewable energy sources, cogeneration and waste. • The Electricity Act guarantees third party access to transmission and distribution networks in the technical and economic conditions that will develop by regulation. • The Spanish Government removes the existing economic scheme and replaces it with the so-called "specific compensation scheme". • To calculate this specific remuneration system for each facility, along its regulatory life and referred to an efficient and well-managed company, standard operating costs and standard value of the initial investment should be considered.

Lessons learned – Crowdfunding / RES Projects Regulation

Lessons learned for a possible harmonized European Crowdfunding Regulation	
Role model ("dos")	• Unlimited investment amounts for "professional" investors. • Exception of Crowdfunding from the prospectus requirement. • Solid alternative to bank financing for entrepreneurs.
Aspects that should be avoided ("don'ts")	• Limitation of EUR 5 million maximum obtained by each project. • Limitation in the amount of investment for the non-accredited investors. • Strict financial requirements applied to Crowdfunding platforms.
Lessons learned for a possible harmonized European RES Projects Regulation	
Role model ("dos")	• Plans to encourage greater citizen participation. • Specific regulation in relation to RES projects.
Aspects that should be avoid-ed ("don'ts")	• The amounts should not be restricted.

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XXVII. Sweden

1 Swedish Market for RES Crowdfunding Platforms

The Swedish Crowdfunding market is rapidly growing. Stockholm being named the start-up capital of Europe is per capita the second most abundant tech hub globally after Silicon Valley. The Swedish population is fast to adapt to new technology and trends, which breed innovation and entrepreneurship. The government and venture capitals are huge investors in start-ups, but many start-ups are recently using the Crowdfunding platforms as an alternative way of receiving investments.

There are currently between 10-15 active Crowdfunding platforms in Sweden. Projects that focus on renewable energy sources ("RES Projects") are increasing in numbers; however there are no Crowdfunding platforms that only offer a funding platform for RES Projects ("RES Crowdfunding Platforms"). We will therefore analyse the Swedish Crowdfunding market for RES Projects on the current Crowdfunding platforms in which the RES Projects are active on.

1.1 Different investment models

The equity based platforms are the most popular type of Crowdfunding platform, including for RES Projects, mainly due to the minimal regulatory requirements and legislation compared to the lending based platforms. The investors are allowed to fund the projects by subscribing shares in the companies. Depending on how the equity based Crowdfunding platforms is set up, equity based platforms that intermediates share transfers are mainly not required to apply for any license or registration with the S-FSA and the RES Projects are not required to provide any prospect which facilitates the funding procedure.

The RES Projects also apply the lending based Crowdfunding platforms to receive funding. It is mainly natural persons that fund the RES Projects by lending money to the project owners with an interest. This type of Crowdfunding model is marketed to the investors as a form of saving with good interest. The lending based platforms are subject to license or registration with the S-FSA if they receive, manage and transfer the incoming funds from the investors to the RES Projects. There are currently no licensed crowdlending platform under the supervision of the S-FSA, but the S-FSA are currently investigating how the platforms and if they are subject to any license requirements.

A few RES Projects use the reward Crowdfunding model. It is mainly RES Projects that manufactures a specific item that is attracted to this model. Donation models are frequently used for RES Projects in undeveloped countries. The reward and donation based Crowdfunding models are not legislated under Swedish law due to the low risk attached.

1.2 RES Projects

Although the RES Projects seek funding on the Crowdfunding platforms, the biggest and most successful RES Projects are funded by venture capitals, investor angels and governmental contributions. To name a few of the recent innovative start-up RES Projects;

- Midsummer: developing a new method for producing thin-film solar cells,
- myFC: has developed a portable charger which generates electricity with water,
- SEEC: decreases the energy used by buildings for heating and cooling by up to 80% without an impact on the environment based on a patented borehole technology, and
- Solelia Greentech: rents out and sells solar-powered charging stations so that companies can offer charging of electric cars and hybrids with completely clean and fossil-free solar electricity.

ETC Sol internally offers a crowdlending service to private lenders (individuals) with a 2 per cent interest on the invested money. ECT Sol uses the invested money to expand the ECT solar parks and is currently building 20 new solar parks. The investment is financed by long term loans and purchase of solar cells.

2 Recent regulatory developments regarding Crowdfunding regulation in Sweden

In Sweden, no new legislation has recently been passed or amended with regard to Crowdfunding. However, the Swedish government has shown a great interest in the Crowdfunding phenomenon and commissioned the Swedish Financial Supervisory Authority ("S-FSA") to investigate and analyse the current Crowdfunding market and to outline the applicable regulations. The report was published on December 15, 2015 and contained an outline and analysis of the legal landscape of equity and lending based Crowdfunding platforms. The report also highlighted the areas that needs to be legislated and amended to fill the current regulatory gap. The gap allows many platforms to be active and offer their services on the market without a license or registration, which can result in increased fraud and low consumer protection as the Crowdfunding market expands.

The government has not yet planned any amendments that affect the Crowdfunding regulation in Sweden, but the government might consider amending the financial statutes in the coming years based on S-FSA's report.

3 Further recent regulatory developments considering RES Projects market in Sweden

3.1 The grid reinforcement loans

In April 2015, the Swedish government decided to pass the Regulation on Loans for Grid Companies to Facilitate the Connection of Renewable Electricity (2015:213), which was entered into force on May 1, 2015. The Regulation aims to facilitate the grid connection for RES productions by enabling the Swedish National Grid (Svenska Kraftverk) to provide loans for electricity companies. The loans will be used to fund measures to increase the capacity of the electricity grids in order to facilitate the connection of plants for production of renewable energy, provided that such connection cannot otherwise be made.

The purpose of the grid reinforcement loans is to promote socio-economic efficiency. When assessing if loans shall be provided, aspects to be considered are whether the reinforcement is done in an area which is appropriate for production of renewable due to e.g. wind conditions, whether the reinforcement contributes to a more efficient use of power supply and the amount of electricity that is expected to come from the reinforced electricity plant.

Furthermore, the Swedish National Grid conducts research and development of the electrical grid, dam safety and possible risks in the power system, as well as supports amongst other research projects, doctoral students projects and theses in the technical universities in Sweden. The budget for research and development for 2015 amounted to SEK 40 million.

3.2 Renewable fuels

The government bill (prop. 2013/14:181) regarding reliefs of the obligation to provide renewable fuels was passed in 2014 and led to two amendment in the Act on Obligation to Provide Renewable Fuels (2005:1248), which was taken into effect on August 1, 2014. The first amendment entails that the gas stations and other fuel retailers that annually provides the public with 1500 cubic meters or more conventional fuels (petrol and diesel fuel) should have an obligation to also provide renewable fuels. What determines whether a fuel retailer during a calendar year reaches the required amount to provide renewable fuels, is the amount of sales volume of patrol or diesel fuel during the two prior years. The second amendment concerns the possibility for exemption from the obligation to provide renewable fuels.

3.3 Grant for local climate investments

On June 25, 2015 the government passed a regulation regarding grant for local climate investments (förordningen om stöd till lokala klimatinvesteringar, 2015:517). The regulation allows grant, to other than natural persons, to permanently reduce greenhouse gas emissions. The rule primarily applies to the measures that are expected to provide the greatest sustainable reduction in greenhouse gas emissions

per invested crown (SEK). The possibility of receiving grant for measures or projects related to charging stations for electric vehicles is especially emphasised in the regulation.

3.4 Pesticides

The Swedish Regulation on Pesticides (2014:425) was amended with new rules regarding environmental penalties relating to pesticides (plant protection products and biocidal products). The penalties are between SEK 5000 to 10 000 and regards violation against provisions of e.g. labeling and information duty to the authority and license requirements for the use of plant protection products. The amendments were taken into effect on July 16, 2015. The same Regulation was also amended with a ban of the use of chemical pesticides on soil disinfection, treatment of fruit and potatoes against fungal attack after harvest and combat of vegetation in water. The bans aim to reduce the impact that the use of chemical pesticides has on human health and on the environment.

4 Regulation of Crowdfunding in Sweden

4.1 Requirement of a Financial Service license requirements

4.1.1 Equity Model and Lending Model

The Securities Market Act (2007:528)

The Securities Market Act (*lag om värdepappersmarknaden*) is part of the Swedish implementation of the MiFID-Directive. The Swedish Securities Market Act contains provisions regarding the securities market. Authorisation from the S-FSA is required to conduct securities operations. Authorisation is granted for:

- receipt and transmission of orders in respect of one or more financial instruments;
- execution of orders in respect of financial instruments on behalf of clients;
- dealing in financial instruments on own account;
- discretionary portfolio management in respect of financial instruments;
- investment advice to clients in respect of financial instruments;
- underwriting in respect of financial instruments and placement of financial instruments on a firm commitment basis;
- placement of financial instruments without a firm commitment basis; and

- operation of trading facilities.

Financial instruments means transferable securities, money market instruments, UCITS, and financial derivative instruments, whereas transferable securities means such securities, with the exception of instruments of payment, which are traded on the capital market, such as:

- shares in companies and comparable ownership rights in other types of undertakings, and depositary receipts in respect of shares;

- bonds and other forms of debt instruments, including depositary receipts in respect of such securities; and

- other securities granting the right to transfer or acquire such transferable securities as referred to in a and b, or giving rise to a cash settlement calculated based on prices of transferable securities, currencies, interest rates or yields, commodities or other indices or measures;

A Crowdfunding platform does not constitute a platform that trades transferrable securities of public companies. It only serves as an intermediary of the share transfer of private companies. Therefore, the equity platform models shall normally not fall within the scope of the act and does not need a license to offer their equity services.

4.1.2 The Donation and Reward Models

The donation and reward models are yet not regulated under Swedish law. According to the Swedish legislator, these models need the least regulation due to the low risks attached to the investments and because no financial investment or return is offered.

4.2 The Prospectus Requirements

4.2.1 The Equity and Lending Model

The Financial Instruments Trading Act (1991:980)

The duty to prepare a prospectus for transferrable securities is stated in the Swedish Financial Instruments Trading Act (1991:980), chapter 2 sections 2-7. According to the act, all offerings of transferrable securities in companies are subject to prospectus requirements.

A prospectus must contain all information regarding the issuer and the transferable securities which is necessary to enable an investor to make a well-founded assessment of the assets and liabilities, financial position, results, and future prospects of the issuer and of any guarantor as well as of the transferable securities. The information shall be written such that it is easy to understand and analyse.

Exemptions from the prospectus duty

In order to facilitate the funding process for smaller companies, the act includes exemptions of the prospectus duty. When transferable securities are offered to the public, a prospectus need not be prepared where:

- the offer is directed solely to qualified investors;
- in a country within the EEA, the offer is directed to fewer than 150 natural persons or legal entities who are not qualified investors;
- the offer relates to a purchase of transferable securities for a sum equivalent to not less than 100,000 euros for each investor;
- each of the transferable securities has a nominal value equivalent to not less than 100,000 euros; or
- the aggregate sum which the investors shall pay during a 12-month period within the EEA does not exceed the equivalent of 2.5 million euros.

Transferable securities are further defined as securities that can be traded on a capital market. Securities in private companies are therefore found not to be under the definition of transferrable securities and are thus exempted from the prospectus duty. The vast majority of all projects (including RES Projects) on the platforms are private limited liability companies and are therefore not required to provide a prospectus under the Financial Instruments Trading Act.

However, in order for the Crowdfunding platforms to be reliable and safe, the platforms often require the company behind the project to submit financial documentation of the company and detailed description of the fund seeking project, in order to be an approved fund seeking project on the platform. This requirement is however not stipulated under any act.

4.2.2 The Donation and Reward Models

The donation and reward models are not regulated at the moment, and due to the low risk of the investments, the legislator has not indicated any legislation in this area.

4.3 Regulation of Crowdfunding under the AIFMD regime

4.3.1 The Equity and Lending Model

The Alternative Investment Fund Act (2013:561) regulates the requirements for license and registration of AIF-managers (AIFM), and their business activities.

Alternative Investment Fund ("AIF") (*alternativ investeringsfond*) means a collective investment firm that raises capital from a number of investors in accordance with a defined investment policy for the benefit of the same investors. An AIFM (*AIF-förvaltare*) means a legal person whose regular business is managing one or more AIFs. An AIFM needs a license issued by the S-FSA to conduct business in Sweden. The license can also be passportble to other EEA states. Companies that are under the scope of the act shall comply with rules and requirements regarding the companies' capital, organisation, management and marketing.

A Swedish AIFM can apply for registration instead of a license if;

- Its total assets do not exceed EUR 100 000 000;
- The AIFM who only manage unleveraged AIFs that do not grant investors redemption rights during a period of 5 years and
- The cumulative AIFs that are under management fall below a threshold of EUR 500 million.

A registered AIFM may not, as a main rule, manage funds directed towards retail investors and it can only be marketed and managed nationally within the home state.

According to the S-FSA, there are currently no Crowdfunding platforms that are covered by the AIF Act. However, due to the broad definition of AIFs, it is possible that future platforms may have a business structure that resembles fund management, which can come to fall within the AIF-regulation.

4.3.2 The Donation and Reward Models

The donation and reward models are not covered by this legislation.

4.4 License under the Swedish Payment Service Act (2010:751)

The Payment Services Act is based on the Payment Services Directive. The act contains license requirements for companies that provide payment services. The licence is provided by the S-FSA, which also supervises that the licensed company complies with applicable legislation.

Payment services are defined under the act as the execution of payment transactions, which refers to e.g. transfer of money and transfer of funds that are covered by a credit line (automatic payments, credit card, account-based payments or other payment instruments), Chapter 1 Section 2, p. 2-5.

4.4.1 Licence requirement

Any transfer of funds through the Crowdfunding platform, i.e. the platform receives funds that are held separate from its own funds for example by depositing the funds

on a client trust account and then transferring it to a third party, would constitute a service regulated by the Payment Services Act, which would require a license. A licensed payment service provider is referred to as a payment institution.

4.4.2 Exemptions

A platform may to the FSA apply to be exempted from the license requirement if;

- The average of the total amount of payment transactions during the past 12 months did not exceed an amount equivalent to EUR 3 million per month,
- If the person to be appointed as a board member in the platform company, a CEO or another responsible person of the payment services, has not been convicted of crimes relating to money laundering, terrorist financing or other financial crimes,
- There is reason to believe that the planned activities shall be operated under applicable sections of the act and other statutes governing the payment service,
- It for legal entities is reason to believe that anyone who has a qualifying holding in the company is suitable to exercise a significant influence over the management of the company, and
- If the person to be appointed as a board member in the platform company, a CEO or another responsible person of the payment services, or be a replacement for any of them, have sufficient insight and experience to participate in the management of the company or be responsible for the payment services activities, and otherwise suitable for a such a task.

4.4.3 Registration

If a platform falls within the limited exemptions of the Payment Services Act, the platform is only required to apply for a registration with the S-FSA. Further, the platform activities are not governed by the act in case a platform only mediates contact between investors/lenders and RES Projects without receiving or/and transferring any funds.

A payment institute must, among other things, adhere to requirements regarding the company's capital, organization, shareholders and management. If a payment institute and registered payment service provider engaged in activities involving consumers, the platforms must also observe the provisions of the Consumer Credit Act (2010: 1846).

There are yet no platforms that are licensed under the Payment Service Act, due to the set-up of their fund management or since the transferred funds are below the threshold and thus fall under the exemptions. The S-FSA is however pursuing a review

of all active platforms to investigate whether any platforms fall within the license requirement.

4.4.4 The Donation and Reward Models

Similar to above, if the platforms that receive funds, which are kept in a client trust account before being transferred to the RES Project, is likely to fall within the scope of the act. This is however assessed, and can differ, in each individual case.

4.5 The Companies Act (2005:551)

4.5.1 The Equity Model

The prohibition of spreading shares

According to Companies Act (chapter 1 section 7), a private liability company and a shareholder in such company are prohibited to offer securities or subscription rights to the public. The prohibition means that such offering is not allowed through marketing or in other ways offer or attempt to offer securities to more than 200 investors, as it constitutes a "public" offering.

There are exemptions to the rule that are applicable for instance when the offer is directed solely to a group of persons who have previously given notice of interest in such offers and where no more than 200 trading units are offered. Violation against the spreading prohibition is sanctioned both under civil and criminal law.

This prohibition causes a high insecurity within crowdequity in Sweden. In order to comply with the law, some Crowdfunding platforms offer a pre-sale period where 200 investors can pre-register their interest or require an investor to sign in before investing. The S-FSA has assessed that offering shares in limited liability companies on a platform entails spreading of shares to the public, which the currently applied measures by the platforms do not tackle. This issue has however not been raised by the court or the legislator yet.

4.5.2 The Donation and Reward Model

The donation and reward models are not regulated at the moment, and due to the low risk of the investments, the legislator has not indicated any legislation in this area.

4.6 Possible additional regulations

- The Consumer Credit Certain Activities Act (2014:275)
- Consumer Credit Act (2010:1846)
- The Money Laundry and Terrorist Financing Acts (2009:62)

- Financial Instruments Trading Act (1991:980)
- Data Privacy Act (1998:204)
- Act concerning qualified electronic signatures (2000:832)
- The Distance and Off-Premises Contracts Act (lag (2005:59)
- Electronic Commerce and Other Information Society Services Act (2002:562)
- Marketing Practices Act (2008:486)
- The Class Action Act (2002:599)

5 Regulation of RES Projects in Sweden

5.1 Overview

Sweden highly promotes and invests a great amount of money into the research, development and use of renewable energy. The main ways for the Swedish government to promote this is through a quota system, tax regulation mechanism and a subsidy scheme as well as giving grant to different kinds of RES research.

The Swedish government has 16 environmental quality objectives that describe the state of the Swedish environment which environmental action is to result in, i.e. by 2020.

The environmental objectives include elements such as; reducing impact on the climate, creating clean air, use of only natural acidification, create a protective ozone layer, good-quality groundwater, a safe radiation environment and sustainable forests. In order to achieve the 16 environmental objectives, the governmental agencies (e.g. the Parliament, the Swedish Environmental Protection Agency (*Naturvårdsverket*)), non-governmental agencies, enterprises and municipalities are engaged in the work.

Furthermore, the Swedish government launched the Fossil-free Sweden initiative in November 2015, which is a contribution to the Lima–Paris Action Agenda (LPAA). The initiative highlights actors, such as enterprises, municipalities and associations, who help solve the climate issue, reduce greenhouse gas emissions and achieve the goal of a fossil-free society. The initiative was presented on a seminar at the COP21 climate change meeting in Paris, by Minister for Climate and the Environment Åsa Romson and Minister for Financial Markets Per Bolund. IKEA, Volvo Group and Ericsson are some of the actors that have already decided to support the initiative. The measures of the participating actors are reviewed and registered in a database called NAZCA, which illustrates how the measures contribute to reduced emissions.

5.2 Electricity

Sweden promotes the use of renewable energy sources by a quota system in terms of quota obligations and a certificate trading system. According to the Electricity Certificates Act (2011:1200) energy suppliers must disclose that a certain quota of the electricity they supply is generated from renewable energy sources. This is done by presenting tradable certificates received by the RES producers.

All technologies used for the production of RES electricity are entitled to applicable incentives. Tax privileges are for instance provided for electricity generated from wind energy. The privileges consist of a reduction of the real estate tax and a reduction of the energy tax.

According to the statutory provisions of the Energy Certificates Act, a grid operator shall hold a licence, which obliges him to connect electricity generation systems to the grid, transmit electricity and expand the grid. Renewable energy is however not given priority.

5.3 Transportation

The transportation RES are mainly promoted by taxation mechanisms. The taxation regulation mechanisms are under the supervision of the Tax Authority (*Skatteverket*). Biofuels and other RES-fuels are exempted from taxes, while companies that supply, import and produce fossil fuels must pay energy and carbon dioxide taxes according to the Energy Tax Act (1994:1776) and the Act on sustainability criteria for biofuels and bio liquids (2010:598). The costs of tax relief of biofuels are borne by the state.

In 2004, the Congestion Tax Act (2004:629) was passed. The congestion tax charge aims to reduce traffic congestion, improve the environment and contribute to financing infrastructure investments. Some biofuel cars were exempted from congestion taxes in Stockholm until July 31, 2012. This exception does not apply anymore and since 1 August 2012 all biofuel cars are covered by the congestion tax.

6 Conclusion

Crowdfunding is yet a limited but growing phenomenon in Sweden. There are yet no Crowdfunding platforms exclusively for RES Projects, even though RES Projects are frequently present on other Crowdfunding platforms such as FundedByMe and CrowdCube.

The legal framework of the Crowdfunding platforms is uncertain at the moment and the legislation is applied and interpreted in each case depending on the set-up of the platforms. The Swedish government has however expressed interest in Crowdfunding as an investment tool and it is not improbable that targeted regulations intended to facilitate business for Crowdfunding platforms may be introduced in the coming years.

7 Summary – Crowdfunding and RES Projects Regulation

Country / Summary	Sweden
Recent developments in Crowdfunding regulation	• No Crowdfunding regime • No legislation tailored for Crowdfunding yet
Current Crowdfunding Regulation	
General regulation **MiFID requirements**	• Swedish implementation of MiFID is found under the Securities Market Act, which contains provisions on the securities market. — License is granted by the S-FSA to conduct securities operations — The S-FSA is the supervisory authority — The license is passportable to other EEA states • A Crowdfunding platform does normally not constitute a platform that trades transferrable securities of public companies. Transferrable securities that are traded on a securities market are securities of public companies. The platforms only serves as an intermediary of the share transfer of private companies. Therefore, the platforms shall normally not fall within the scope of the act and do not need a license to offer its services.
Prospectus requirements	• Financial Instruments Trading Act (1991:980), chapter 2 • Main rule: all offerings of transferrable securities in companies are subject to prospectus requirements • Exemptions: — the offer is directed solely to qualified investors;

	— in a country within the EEA, the offer is directed to fewer than 150 natural persons or legal entities who are not qualified investors; — the offer relates to a purchase of transferable securities for a sum equivalent to not less than EUR 100,000 for each investor; — each of the transferable securities has a nominal value equivalent to not less than EUR 100,000; or — the aggregate sum which the investors shall pay during a 12-month period within the EEA does not exceed the equivalent of EUR 2.5 million. • Transferable securities are defined as securities that can be traded on a capital market. Securities in private companies are therefore found not to be under the definition of transferrable securities and are thus exempted from the prospectus duty.
AIFMD-regulation	• The Alternative investment Fund Act (2013:561) — AIF = a collective investment undertaking which raise capital from a number of investors in accordance with a defined investment policy for the benefit of the same investors. — An AIFM needs a license issued by the S-FSA to conduct business in Sweden. — The license can also be passportble to other EEA states. A Swedish AIFM can apply for registration with the S-FSA instead of a license if; • Its total assets do not exceed EUR 100 000 000; • The AIFM who only manage unleveraged AIFs that do not grant investors redemption rights during a period of 5 years and • The cumulative AIFs that are under management fall below a threshold of EUR 500 Million. • According to the S-FSA, there are currently no Crowdfunding platforms that are covered by the AIF Act. However, due to the broad definition of AIFs, it is possible that future platforms may have a

	business structure that resembles fund management, which can come to fall within the AIF-regulation.
Payment services regulation	• License is required to offer payment services • Payment service: Any transfer of funds through the Crowdfunding platform operator, i.e. the platform receives funds that are held separate from its own funds, for example by depositing the funds on a client trust account and then transferring it to a third party • Licence is applying with the S-FSA • The S-FSA is the supervisory authority • Exemptions: e.g. if the total activities are below EUR 3 million/month, the platform is only required to apply for a registration with the S-FSA. • In cases platforms only mediate between the parties without transferring any funds, the act is not applicable. • No licenced Crowdfunding platforms yet, only registered.
Further possible requirements	• The Consumer Credit Certain Activities Act (2014:275) • Consumer Credit Act (2010:1846) • The Money Laundry and Terrorist Financing Acts (2009:62) • Financial Instruments Trading Act (1991:980) • Data Privacy Act (1998:204) • Act concerning qualified electronic signatures (2000:832) • The Distance and Off-Premises Contracts Act (lag (2005:59) • Electronic Commerce and Other Information Society Services Act (2002:562) • Marketing Practices Act (2008:486) • The Class Action Act (2002:599)
RES Projects Regulation	

Electricity regulation applicable to RES Projects	• The main incentive for the use of renewable energy sources is a quota system in terms of quota obligations and a certificate trading system. — Electricity Certificates Act (2011:1200) Energy suppliers shall provide tradable certificates from the producers of electricity from renewable sources to show that a certain quota of the electricity was generated from renewable energy sources — Act on the Federal Real Estate Tax (1984:1052) Electricity generated from wind energy is eligible for tax privileges consisting in a reduction of the real estate tax Energy Tax Act (1994:1776) — Regulation on State Subsidies for Solar Panels - Regulation No. 2009:689
Market Integration of RES Projects	• The grid operator shall hold a licence, to connect electricity generation systems to the grid, transmit electricity and expand the grid. Renewable energy is however not given priority.
Transportation RES Projects	• Mainly taxation mechanisms • Under the supervision of the Tax Authority (Skatteverket) • Biofuels and other RES-fuels are exempted from taxes • Companies that supply, import and produce fossil fuels must pay energy and carbon dioxide taxes • The costs of tax relief of biofuels are borne by the state • The Congestion Tax Act (2004:629) aims to reduce traffic congestion, improve the environment and contribute to financing infrastructure investments

Lessons learned – Crowdfunding / RES Projects Regulation

Lessons learned for a possible harmonized European Crowdfunding Regulation	
Role model ("dos")	• Fact sheet requirements for consumer protection • Credibility check on project owners

	• Amend the share spreading prohibition in the Companies Act to allow Crowdfunding
Aspects that should be avoided ("don'ts")	• Legislate any MiFID or prospectus requirements • Raise the limit of prospectus requirement from EUR 2.5 million to 5 million • Harmonise the Swedish Payment Service Act
Lessons learned for a possible harmonized European RES Projects Regulation	
Role model ("dos")	• Grid priority for renewable energy
Aspects that should be avoided ("don'ts")	• Increased regulatory requirements

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XXVIII. United Kingdom

1 UK market for RES Crowdfunding Platforms

1.1 Background

The UK has historically had a strong Crowdfunding market for renewables energy transactions. Alongside property, it has been one of the industries in which Crowdfunding has proved most popular in the UK. As well as more general Crowdfunding platforms which do raise finance for renewables businesses, there are also a number of platforms which are aimed specifically at the renewables industry.

1.2 Equity Model

The UK has a strong equity Crowdfunding market that operates across a diverse range of industry sectors. We are aware of a number of equity investments into renewable energy projects having been made through Crowdfunding platforms, however, there is not a notable trend for specialist renewables Crowdfunding platforms to offer equity products. Debt has been more popular for renewables projects (even at development phase) – see below.

1.3 Lending Model

As referred to above, Crowdfunding activity in the renewables industry has been significantly more active in debt. This is because renewables projects such as solar PV and on-shore wind are typically long assets with stable, predictable cash flows from power purchase agreements and Government subsidies. Typical transactions have therefore comprised relatively long term debt (5 – 20 years) to match the life of the relevant project, with either a fixed or floating interest rate.

The investment acquired by an investor is a debt security, being a transferable security for the purposes of MiFID, rather than a P2P loan. So in RES Crowdfunding, securities business is probably more prevalent than P2P funding (unlike the non-energy market, where P2P lending is much bigger). In part this may reflect the preferences of the individual platforms operating in that space, as well as the typical duration of investment.

1.4 Donations or Rewards Model

This is not widely seen in the UK for renewables projects.

1.5 Amounts Funded and use of Proceeds

The typical amounts we have seen funded range from GBP 500,000 to GBP 1,000,000, which is relatively small for energy projects. However, we have also seen larger projects of up to GBP 20,000,000 (or sometimes more) for very large solar or wind projects.

The funds raised through Crowdfunding are typically committed at the point that the project is built and commissioned (i.e. after the construction phase) and the funding is used to repay any development finance and (potentially) to return any excess amount to equity investors in the project (i.e. they can realise an uplift in value of the project on commissioning). However, we are aware of Crowdfunding of renewables at earlier phase (i.e. construction phase).
On smaller fundraisings, Crowdfunding is typically the only source of funding used and it is not combined with bank debt or other institutional finance. On larger fundraisings, it can be combined with either equity from an institutional provider or bank debt (typically mezzanine debt), however, this practice is still not particularly commonplace.

1.6 Types of Projects

As discussed above, in our experience, typical projects seen in the UK market include:

- Wind turbines – either single site / farmscale wind turbines or sometimes portfolios or wind farms (particularly where Crowdfunding is only part of the funding mix);
- Solar PV – typically smaller sites (including roof-mounted solar for residential, public (schools) and commercial sites), although again we have seen Crowdfunding as being part of the mix of funding for larger sites;
- Combined Heat and Power (CHP) Projects and/or energy efficiency projects – again, typically for smaller sites (either individual or a portfolio) e.g. hotels; and
- Anaerobic digestion facilities projects.

We have not seen hydro power projects funded through Crowdfunding, most likely because these projects are likely to be significantly larger scale than could normally be funded through Crowdfunding.

1.7 Security

Given the nature of the projects, if the projects were larger and were debt financed using traditional project finance models, the lender would require security over the assets being financed.

It is difficult to put in place completely satisfactory security packages for smaller projects of a type which are typically Crowdfunded in the UK. This is because the costs of doing so can be prohibitive given the size of the fundraising. For example, it would normally be necessary to negotiate a "direct agreement" with the principal contractual counterparties (the landlord for any leased property, and the parties buying power,

providing grid connection, operation and maintenance agreements etc) as well as the security documents themselves, which take time and result in legal costs which are disproportionate to the amount of money being raised.

Crowdfunders therefore typically do not benefit from security where other institutional lenders (on equivalent but larger projects) would demand a higher level of security.

2 Recent regulatory developments regarding Crowdfunding regulation in the UK

P2P lending became a regulated activity in April 2014 and, at the time of writing, most P2P lending platform operators are in the process of having the Financial Conduct Authority (the "FCA") determine their applications to convert from interim-authorisation to full authorisation. Interim permissions were granted to permit firms operating P2P platforms as of February 2014 the ability to continue to conduct regulated activities in the period it took for the FCA to flesh out the regulatory regime for those firms and process their applications for full permissions. Interim-authorised firms are subject to FCA regulation, but their operations have not been vetted by the FCA on a systemic basis.

The FCA has been monitoring Crowdfunding firms' activity since about 2013 and scrutinising their implementation of the new regulatory regime (particularly for lending). The increased use of "auto-bid" functions (enabling the automatic allocation and diversification of investment portfolios by platforms) has led to comparisons being drawn between Crowdfunding platforms and alternative investment funds. New legislative proposals are being considered by HM Treasury in this regard at the time of writing, which may prohibit platform operators from being lenders or borrowers themselves.

The FCA has also kept a close eye on the financial promotions made by Crowdfunding firms, particularly in the context of social media, on which it published specific guidance in March 2015. This guidance recognised the importance of this channel of promotion for firms, although highlighted the importance of "stand alone compliance" in any communication (particularly relevant for financial promotions made through Facebook or Twitter) and the need to highlight potential risks to investors or lenders.

Overall, Crowdfunding investments are increasingly being afforded the same status as other, more conventional types of investments. The initial popularity of Crowdfunding as an alternative to more traditional bank financing has increased consumer awareness and understanding, and with it, the perception that Crowdfunding can be just as viable an investment option to add to existing portfolios. In July 2015 the Government announced the launch of an Innovative Finance Individual Savings Account ("IFISA"), which will allow P2P loans to be held in the tax-free wrapper from April 2016. The FCA published a discussion paper in November 2015 setting out its proposals for the legislative changes to be made as a result of this. Although the policy

statement setting out the final rules is not expected until March 2016, at this stage it appears that the FCA will require firms to make additional disclosures around investments to be included in an IFISA. Providing advice to potential investors entering into P2P loans is also likely to be brought within the scope of the regulated activity of "advising on investments", with the effect that only firms holding advising permissions would be able to carry this out. Further, firms will be required to assess suitability of the investments for clients, put in place a charging model which is not based on commission, and ensure that all employees who are carrying out an advisory role hold the necessary qualifications.
The Government has also committed to include crowdfunded debt-securities within the scope of the IFISA, although it is anticipated that it will take another year or so to develop the legislative regime around this.

Although not a UK-specific development, the proposed EU Commission changes to the Prospectus Directive (2015/0268) is likely to have a particularly strong effect on cross-border fund raises in the RES sector. The proposal permits Member States to impose an exemption from the requirement to produce a prospectus for domestic offers of up to EUR 10m (which is a welcome development from the current EUR 5m threshold). However, for non-domestic offers, there is a maximum raise of EUR 500k. If this proposal were to be adopted, it would almost certainly result in Crowdfunding for RES developments being restricted to the UK domestic market, as EUR 500k is below the average GBP 500k-GBP 1m range of raise (and this range is likely to increase in value over time as the market grows). The legal costs alone of preparing a compliant prospectus tend to start at GBP 150,000, which is unsustainable for raises below EUR 10m.

3 Further recent regulatory developments considering RES Projects market in the UK

Historically most renewable power generation projects in the UK have been eligible to benefit from subsidy from the UK Government. There have been a number of different subsidy regimes including Feed-in-Tarriffs and Renewable Obligations Certificates. The subsidy regime is one of major factors which has attracted finance (particularly debt) to renewables projects as it resulted in a low-risk, long-term, predictable cash flow. Crowdfunding is no different in this respect, and many (if not most) Crowdfunded renewables projects have historically benefited from subsidies.

Whilst it was always anticipated that subsidies would be phased out over time, that process has accelerated, with reductions in excess of what many in the industry have predicted. Whilst the UK Government has expressed its continued commitment to the promotion of renewable energy, the continued availability of subsidies and their form is unclear at the time of writing.

Whilst it is too early to draw any definitive conclusion, anecdotal evidence and our experience is that reductions/removals of subsidies has reduced the level of

investment in renewables projects in the UK, which has had a corresponding impact on Crowdfunded projects. One of the leading Crowdfunding platforms in the UK that had specialised in offering investment into renewables projects has halted its activities in this area in part as a result of the reduction in subsidy levels."

4 Regulation of Crowdfunding in the UK

4.1 Securities model (investors receive an equity or debt security)

In the UK, the financial services regulatory regimes for corporate finance business and investment funds both tend to shape the structure of investment-based Crowdfunding platforms. The FCA's approach was to acknowledge the permissibility of investment-based Crowdfunding as a valid business model operating under the existing investment-based regime, with minor amendments, as opposed to the creation of a new regulatory regime designed specifically for investment-based Crowdfunding. As a result of this approach, the regulation of platforms offering debt-based securities (such as bonds or debentures) is closer to the regime for equities platforms than it is to non-securities-based lending (known as P2P lending). For example, the FCA clarified its expectations of firms wishing to promote "non-readily realisable securities", covering most unlisted shares and debentures: such investments can be sold on a non-advised basis provided firms ensure the investors have the requisite level of understanding. The FCA has also signalled its disapproval of platform operators making use of exemptions in order to avoid becoming subject to regulation, although the legal loopholes that Crowdfunding firms had been using to operate outside the scope of regulation still exist.

4.2 Lending model (investors lend money to a company or project in return for repayment of the loan and interest on their investment)

Crowdlending is commonly referred to as peer-to-peer lending or P2P, although when individuals lend to businesses, many refer to it as P2B, The making of non-consumer loans was generally not treated as a regulated activity and so the Crowdfunding Lending Model developed quickly as an alternative to bank lending. However, from 1 April 2014, the new regulated activity of "operating an electronic platform in relation to lending" was introduced to the Regulated Activities Order. The activity only applies to loans where either:

- the lender is an individual; or
- the borrower is an individual and either:
  - the loan is GBP 25,000 or less; or
  - the individual is not borrowing for business reasons.

In this context, "individual" includes a partnership with 2 or 3 partners.

As most P2P platforms target individual lenders, the status of the borrower does not affect the requirement for the platform to be authorised. However, the nature of the lending does affect the regulatory regime that will apply to the platform, as more extensive rules apply to P2P platforms that facilitate consumer credit.

Firms operating P2P platforms before April 2014 were required to apply to the FCA for interim permissions to continue carrying on the activity. The FCA allotted a time window (usually 1 August to 1 November 2015) to each platform with interim permissions during which they were required to apply for full permission or lose their authorised status. Going forward, as the interim permission regime has now ended, firms wishing to operate P2P platforms will need to submit either a new authorisation application to the FCA (for firms which are unregulated and often newly established) or a variation of permission application (for firms who are currently authorised but do not hold the requisite P2P lending permissions). It is generally accepted that the regulatory regime for P2P platforms constitutes "light touch" regulation, which is in-keeping with the UK's ambitions to encourage increased responsible SME business lending and make the UK an international hub for Crowdfunding.

As discussed above, investors can also acquire debt-securities through Crowdfunding platforms: this falls into the MiFID regime for the distribution of securities, rather than the recently-created P2P regime. As Abundance NRG operates this model, it is particularly significant for the Crowdfunding of RES projects, although the end of the interim permission regime could well see an increase in the use of P2P for RES.

A number of platforms also use a "receivables purchase" model, whereby the platform makes loans to borrowers directly, and then sells "receivables" (i.e. the right to receive amounts equal to the capital and interest payable by the borrower under the underlying loan) to investors. Provided that the borrowers are corporate entities and not consumers (which is generally the case), the receivables purchase model is currently unregulated. We are not aware of any platforms operating the receivables purchase model specifically targeting RES transactions.

4.3 Donations or Rewards Model (Individuals provide money to a company or project for benevolent reasons or for a non-monetary reward)

The Donations or Rewards Model does not involve any form of financial investment or return and so it falls outside the scope of UK securities regulation (and has little relevance to RES projects).

4.4 Current regulation of Crowdfunding in the United Kingdom

4.4.1 Regulation under the Financial Promotion Regime

The offer of shares, bonds or other securities and the provision of Crowdfunding services relating to securities and P2P loans will generally constitute a financial promotion, namely an invitation or inducement to engage in investment activity.

Much of the Crowdfunding website's contents will comprise an element of financial promotion. Accordingly, assuming the operator is FCA-authorised (or is the tied agent or appointed representative of an authorised firm), the contents of the website's financial promotions need to comply with the requirements of chapter 4 of the FCA's Conduct of Business Sourcebook to ensure that they are clear, fair and not misleading.

A financial promotion relating to non-readily realisable securities (which does not include P2P loans or listed securities) cannot be made to a retail investment audience unless the recipients of the promotion fall within certain categories (high net worth investors, sophisticated investors, advised investors or investors who will not invest more than 10% of their net worth in non-readily realisable securities). For this reason, P2P platforms have a less attritional investor membership process than securities platforms.

If the Crowdfunding entails investing in an unregulated collective investment scheme (similar to the European notion of an alternative investment fund), there is a more restrictive financial promotion regime that is often incompatible with "crowd" investing. For this reason, Crowdfunding platforms do not generally offer investments that would constitute units in an unregulated collective investment scheme.

4.4.2 Regulation of Securities Model under the Financial Services and Markets Act 2000

The Financial Services and Markets Act 2000 requires platform operators to become authorised by the FCA in order to conduct regulated activities. Conducting a regulated activity without authorisation is a criminal offence. Regulated activities associated with the Crowdfunding of securities transactions may include:

- bringing about transactions in investments issued by the party seeking funding;
- making arrangements with a view to transactions in investments (which captures referral arrangements even where a specific issuer or investment is not identified); and
- safeguarding and administering investments (custody).

Less commonly, the platform operator could become involved in advising on securities, managing securities or dealing in securities, depending on the business proposition. Where the party seeking funding is not a trading company, platform operators may also need to consider whether they are carrying on the regulated activity of operating a collective investment scheme or managing an alternative investment fund (see below).

Seeking authorisation is a costly and time-consuming process and many platform operators are established as appointed representatives and/or tied agents of authorised firms, benefitting from their regulatory permissions. The authorised firm assumes responsibility for the regulatory compliance of its appointed representative/tied agent, usually in consideration for fees.

4.4.3 Prospectus requirements

The UK Financial Services and Markets Act 2000 (as amended) requires a prospectus to be published where transferable securities are offered to the public. Most Crowdfunding offers fall within an exemption for offers worth less than EUR 5 million in a period of 12 months. As part of the EU Commission's proposals for a new prospectus regime (published in November 2015), Member States may soon be able to legislate to widen this exemption, to require that prospectuses only be published for offers of EUR 10 million or more provided that the offer is only made in that Member State. However any offers with a cross-EEA border element will be restricted to EUR 500k under the proposals.

Section 755 of the Companies Act 2006 also prohibits the offer of shares in a private limited company to the public. The involvement of the platform can be structured so as to reduce the risk of breach.

4.4.4 Regulation concerning Unregulated Collective Investment Schemes ("UCISs")

Where the profit share being offered to investors is not channelled through a standard corporate issuer/shareholder relationship (e.g. the investor receives a contractual entitlement to profits from a project), the investment may be characterised as units in a UCIS. Crowdfunding generally entails the pooling of investor contributions or the pooling of profits and/or income prior to distribution to the investor, with no investor involvement in the day-to-day management of the proposition (or project), the two key components of a "collective investment scheme".

Operating a UCIS and managing an alternative investment fund are regulated activities and must be conducted by an FCA-authorised firm. There is overlap between this regulated activity and the activity of managing an alternative investment fund (see the section on Regulation under the AIFMD regime below). There is potential for either the platform operator or the fund-seeking party to be a person that would conduct the regulated activity, depending on how the arrangements are structured. The promotion of UCISs is subject to greater restriction than the promotion of shares in a trading

company, even when the promotion is communicated or approved by an FCA-authorised firm – for example, the platform operator needs to confirm the eligibility of investors to invest in UCISs before promoting the platform, whereas eligibility for investing in non-readily realisable securities only needs to be determined before a direct offer of those investments is made. The potential categories of exempt funder to whom UCISs can be promoted is also narrower than for other non-readily realisable securities.
These UCIS promotion restrictions also apply to other forms of non-mainstream pooled investment, such as shares in a special purpose vehicle.

4.4.5 Regulation under the AIFMD regime

A range of measures implementing the Alternative Investment Fund Managers Directive ("**AIFMD**") came into force in the UK from 22 July 2013, creating a new pan-European concept of "alternative investment fund" that sits alongside the existing UK regime for UCISs. Broadly, most UCISs will constitute alternative investment funds. The AIFMD has added a new layer of regulation on top of the UCIS regime. The AIFMD applies where the investment proposition involves an "alternative investment fund" ("**AIF**"), namely:

- a collective investment undertaking;
- which raises capital from a number of investors; and
- which invests in accordance with a defined investment policy for the benefit of its investors.

Most UCISs will be AIFs, but the AIFMD is also capable of applying to a body corporate that falls outside the UCIS regime. Managing an alternative investment fund is a regulated activity that also permits the firm to operate a UCIS. The AIFMD imposes a heavy regulatory burden above and beyond the UCIS regime on fund operators falling within scope, for example, the requirement to appoint an independent depositary. However, there is a light touch compliance regime for managers with total assets under management of less than EUR 100 million, which most UK-based platforms would fall into if they were managing an AIF. Under the limited compliance regime, the fund manager (e.g. the platform operator) will generally be required to become authorised as a small authorised AIFM and comply with a limited conduct of business and capital requirements regime.

The light touch regime for small AIFMs does not prohibit the marketing of AIFs to retail investors in the UK, provided the AIF is not also a UCIS.

4.4.6 Regulation under the P2P Regime

From 1 April 2014, platforms carrying out the new regulated activity of "operating an electronic platform in relation to lending" became subject to regulation by the FCA

under an interim permission regime. Firms with interim permissions which failed to apply for full authorisation between August and November 2015 will have had their permissions revoked. Since April 2014, firms wishing to operate a P2P platform that have not benefitted from the interim permission regime have been required to apply for full authorisation.

Variations of the Lending Model can also lead to participants being offered units in a UCIS and/or an AIF, although platform operators generally try to avoid this because of the associated marketing restrictions.

The main tenets of the P2P regime (where the loan does not fall within the consumer credit regime described below) are:

- Publication of historic performance data on loans;
- Arrangements for investor protection in the event of platform failure;
- Capital adequacy requirements, based on the higher of a fixed requirement (GBP 20,000 rising to GBP 50,000) and a variable requirement relating to loan volumes;
- Client money segregation;
- Clear, fair and not misleading communications with lenders;
- An appointed representative regime (similar to the regime for securities Crowdfunding).

4.4.7 Regulation of Payment Services

The transmission of funds between the investor and the crowd funded business may involve the platform operator providing "credit transfer" or "money remittance" services under the Payment Services Regulations 2012 (as amended) ("**PSRs**") implementing the Payment Services Directive in the UK. A platform operator will require separate FCA authorisation if it is conducting payment services.

In general, client accounts for investors are not viewed as payment accounts for the purposes of the PSRs and the account holding credit institutions are the parties with whom the PSR compliance obligations sit.

4.4.8 Possible additional Regulations

Consumer Credit Act

The Consumer Credit Act 1974 ("CCA") applies to consumer credit or consumer hire agreements where the borrower/hirer is not a body corporate or a partnership of four or more persons. This is not generally applicable to renewable lending transactions.

ISA Status of P2P Loans and Crowdfunded Debt Securities

In the UK, individuals can shelter investment returns from certain types of investment (e.g. listed securities and cash) and within annual limits from personal tax. In July 2015 the Government announced that from April 2016, returns from P2P loans can be held in a new class of ISA known as the Innovative Finance Individual Savings Account (IFISA). The changes will be implemented into UK law through amendments to the RAO and the ISA Regulations.

HM Treasury is also planning to bring crowdfunded debt securities within the scope of the IFISA, although the implementation timetable will follow the introduction of IFISA to P2P loans.

5 Regulation of RES Projects in the UK

Generating stations of any type can be built in the UK without the need for a formal generating licence from the Government provided that they have a capacity of less than 50MW, which is typically the case for Crowdfunded projects. However, permission from the local planning authority is generally required for the plant itself and sometimes for the cables connecting it to the electricity grid.

The income streams for renewable energy projects consist of (1) revenue from the sale of generated electricity and/or heat, (2) government subsidies for renewable electricity and/or heat and (3) potentially other benefits derived, for example, from the 'embedded' nature of the projects (i.e. being connected to the lower voltage electricity distribution network and therefore avoiding the costs associated with being connected to the higher voltage transmission network) and/or from ancillary/balancing services provided to the electricity network.

The electricity produced by renewable generating stations can be sold in a number of ways – for example, by connecting to the public electricity network and selling to a licenced electricity supplier (who then supplies end customers) or by laying a private electricity cable in order to supply a particular customer (typically co-sited with or in relatively close proximity to the generating station). A formal supply licence from the Government is not usually required for such supplies. The supply of heat is largely unregulated in the UK, although certain metering and billing requirements are being introduced.

In order to connect to the public electricity network a generator must enter into a connection agreement with the operator of the network in the region where the generating station is located. There is only one network operator in each region so

they are effectively monopolies. However, the connection process in each region is broadly the same and the network operators are obliged to connect any generator that applies for a connection (although the generator may be required to contribute to the costs of upgrading the network, which can be prohibitive). Renewable generators are not given priority over conventional generators in terms of their right to be connected.

In order to receive a subsidy under most of the renewable energy subsidy regimes, a renewable generating station must be accredited by Ofgem, the energy industry regulator. Various accreditation criteria must be satisfied, but the process is generally well-understood within the industry. If accredited, a generating station will usually start to receive its subsidy from the date that the station was commissioned and commercially operational. All renewable energy technologies are currently supported in some way, though established technologies (such as onshore wind and solar PV) receive less support than emerging technologies (such as offshore wind and marine energy). Community energy projects receive some additional benefits under the subsidy regimes as compared to commercial projects, for example enjoying longer subsidy tariff guarantees.

6 Conclusion

The UK financial services regulatory environment is clearly favourable for Crowdfunding generally and there are no barriers to entry that particularly affect the ability for platforms to raise finance for RES investments, particularly through debt securities or P2P loans. The falling levels of Government subsidy is and will continue to have a negative impact on the commercial attractiveness of the UK investments on offer, but the fact that platforms continue to be active in the market indicates that it is still a viable investment proposition.

7 Summary – Crowdfunding and RES Projects Regulation

Country / Summary	UK
Recent developments in Crowdfunding regulation	• Most P2P lending platform operators are in the process of having the FCA determine their applications to convert from interim-authorisation to full authorisation. • New Innovative Finance Individual Savings Account launched → P2P loans can be held in the tax-free wrapper from April 2016. Proposals to also include crowdfunded debt-securities within the scope of the IFISA (but likely to take a year to implement).

	• Providing advice to potential investors entering into P2P loans is also likely to be brought within the scope of the regulated activity of "advising on investments" → only firms holding advising permissions would be able to carry this out. Implications for firms in assessing suitability, implementing non-commission based charging models and ensuring employees hold the necessary qualifications. • Increased scrutiny of platforms using "auto-bid" functions which are being compared to alternative investment funds. New legislative proposals are being considered by HM Treasury in this regard at the time of writing, which may prohibit platform operators from being lenders or borrowers themselves.
Current Crowdfunding Regulation	
General regulation	• Securities Model generally entails conducting regulated securities business → FCA authorisation required • For the Lending Model, the regulated activity of "operating an electronic platform in relation to lending" was introduced in April 2014 → FCA authorisation required. • Donations/Rewards Model is not subject to financial services regulation. • For the Securities Model, FCA rules restrict the promotion of "non-readily realisable securities" to certain categories of retail investor.
Prospectus requirement	• Prospectus requirement for offering of transferable securities (such as shares) → Threshold: EUR 5 million per issuer within 12 months. Proposed EU Commission changes will permit Member States to impose an exemption from the requirement to produce a prospectus for domestic offers of up to

	EUR 10 million, and for non-domestic offers, a maximum raise of EUR 500,000.
AIFMD regulation	• For the Securities Model, where profit share is not channelled through a standard corporate issuer/shareholder relationship, investment may be characterised as collective investment scheme. • For the Securities Model, to the extent that an investment amounts to a collective investment scheme → categories of investors to which unregulated collective investment schemes are narrower than for other non-readily realisable securities. • Crowdfunding structure could constitute an AIF if it includes profit share arrangements otherwise than in a commercial company. • Light-touch regime for managers with management assets under EUR 100 million → FCA authorisation/registration and reporting requirements, but Directive marketing restrictions not applied.
Further possible requirements	• Money Laundering Regulations 2007 → platform operator has to verify the identity of clients. • Platforms must ensure requirements relating to investor protection and liquidity are complied with in order for P2P loans (and possibly debt securities in future) to qualify under proposed tax exemptions in connection with the Innovative Finance Individual Savings Account (ISA) regime.
RES Projects Regulation	
Regulation applicable to RES Projects	• Feed-in Tariffs Order 2012 (as amended) plus associated secondary legislation • Renewables Obligation Order 2015 plus associated secondary legislation

	• Various Contracts for Difference Regulations 2014 (as amended) • Heat Network (Metering and Billing) Regulations 2014 (as amended) • General electricity market codes of practice • General planning, real estate and environmental laws and regulations
Further regulatory sources	• Electricity Act 1989 (as amended) plus associated secondary legislation • Energy Act 2008 (as amended) plus associated secondary legislation • Energy Bill 2015 (to be brought into force in 2016) • Climate Change Act 2008 plus associated secondary legislation

Lessons learned – Crowdfunding / RES Projects Regulation

Lessons learned for a possible harmonised European Crowdfunding Regulation	
Role model ("dos")	• "Light touch" regulation for Crowdfunding platforms overall and in comparison to some other European jurisdictions. • Securities-based Crowdfunding is able to operate under the existing regulatory regime, as opposed to requiring platforms to comply with additional industry-specific requirements. • New regulated activity introduced for loan-based Crowdfunding and an initial interim permission regime was established (although most platforms are now in the process of converting to full authorisation) with an authorisation process which was less costly and the subject of less intensive scrutiny than the full authorisation route. • Balance achieved between removing barriers to businesses whilst securing an appropriate standard of protection for

	investors (e.g. through mandatory arrangements in the event of platform failure, capital adequacy requirements, client money segregation and requiring communications with customers to be clear, fair and not misleading). • The proposed inclusion of peer-to-peer loans (from April 2016) and debt-based securities (implementation date unknown as yet) within a new class of ISA known as the Innovative Finance Individual Savings Account (IFISA), will encourage individuals to lend in return for significant tax benefits on profits.
Aspects that should be avoided ("don'ts")	• No "light touch" regime available for the financial promotion of Crowdfunding opportunities through the medium of social media, which does not naturally lend itself to extensive risk warnings. • Lack of exemptions for Consumer Credit Lending, e.g. where a business is lending to an individual, resulting in the platform falling within the scope of the more onerous consumer credit regime. • Increasing perception of Crowdfunding platforms as comparative to alternative investment funds. New legislative proposals currently being considered may prohibit platform operators from being lenders or borrowers themselves.
Lessons learned for a possible harmonised European RES Projects Regulation	
Role model ("dos")	• Subsidies for renewable electricity and heat. • Legally binding climate change target – to reduce greenhouse gas emissions by at least 80% by 2050.
Aspects that should be avoided ("don'ts")	• Early reductions in subsidies for renewable electricity. • Renewable energy projects are not prioritised over conventional power when connecting to the electricity network.

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