3 Crowdfunding regulation in Spain

Legal certainty for this new alternative source of financing

Spain has recently introduced a specific legal framework for financial crowdfunding. Providing legal certainty is a positive step to foster this new source of financing, which is a complement to traditional ones. However, harmonisation at the EU level is desirable to avoid market fragmentation.

The early stage of financial-return crowdfunding in Spain

Financial crowdfunding platforms are online marketplaces where investors and fund seekers meet. The former provide financing to the latter in exchange for some kind of financial return. Depending on the instruments employed, financial crowdfunding can be classified into different models: debt-based, equity crowdfunding or invoice discounting.[1] Financial crowdfunding platforms emerged and took their first steps in Spain in the absence of specific regulation. According to a report by the University of Cambridge and Ernst & Young, the funds provided through these platforms grew from EUR1.8mn in 2012 to EUR25.6mn in 2014. Despite this growth, Spain lags well behind other European countries where financial crowdfunding has developed further, particularly the UK (EUR2.215bn in 2014), but also Germany (EUR117mn) and France (EUR113mn).[2] In this regard, providing legal certainty is essential to foster the development of this new source of financing, which is a complement to traditional sources, above all for companies in their early development phases and for higher-risk projects.

A specific legal framework for financial crowdfunding platforms

The Law on Promoting Business Finance, which came into force on 29 April, created a specific legal framework for crowdfunding platforms involved in the intermediation of financing through loans, bonds or equity participations. These platforms are now under the authorisation, supervision, inspection and sanction of the CNMV, the Spanish securities market regulator, with the participation of the Bank of Spain in the case of lending-based crowdfunding. They have to fulfil certain administrative and financial requirements to be allowed to operate as crowdfunding platforms. Moreover, the Law restricts the range of services that these platforms may provide. In particular, they are not allowed to offer investment advice or process payments (unless they apply for a license as hybrid payment institutions).

Protecting non-professional investors

Investing through crowdfunding brings potentially high risks of solvency and liquidity, as greater informality exacerbates the information asymmetry between investors and fund seekers. Platforms are obliged to publish certain information on the applicants and their projects, but no checks on that information are required. Given the risks involved, the Spanish regulation classifies investors into two categories: accredited and non-accredited. The former face no investment limits whilst the latter (the non-professional investors) are allowed to invest a maximum of EUR3,000 per project and a total of EUR10,000 per year. The Law also imposes a limit on the amount of funding that can be raised through crowdfunding: EUR2mn for projects opened to any investor and EUR5mn when projects are targeted only to accredited investors.

Harmonisation at EU level is needed to avoid market fragmentation

Given the lack of European harmonisation, financial-return crowdfunding is being regulated at the national level with different approaches. Indeed, Spain has introduced a unique legal framework for the different types of financial-return crowdfunding, in contrast to other European countries such as the United Kingdom, France or Italy, where lending-based and equity crowdfunding are under different regulations. Requirements for platforms, investment limits and the categorisation of investors, among other issues, also vary significantly across countries. Therefore, harmonisation at the European level is needed to avoid the development of a fragmented market. A harmonised regulatory framework would facilitate getting the most from the cross-border potential of crowdfunding and ensuring that all European firms, irrespective of their location, have the same opportunities to access finance through alternative sources.

1: For further details, see our Digital Economy Watch “Crowdfunding in 360º: alternative financing for the digital era”. Available at: https://www.bbvaresearch.com/wp-content/uploads/2015/02/Crowdfunding_Watch.pdf
2: University of Cambridge & EY (2015). “Moving Mainstream: The European Alternative Finance Benchmarking Report”. Available at: http://www.ey.com/Publication/vwLUAssets/EY-and-university-of-cambridge/$FILE/EY-cambridge-alternative-finance-report.pdf

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