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MASTER'S THESIS

**CROWDINVESTING – REGULATORY FRAMEWORK AND  
IMPLICATIONS FOR INVESTORS**

Ljubljana, May 2015

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# TABLE OF CONTENTS

- INTRODUCTION..... 1
- 1 CROWDINVESTING – A NEW FINANCING AND INVESTMENT OPTION..... 3
  - 1.1 Existing Sources of Finance for Companies..... 3
  - 1.2 Crowdfunding..... 6
    - 1.2.1 Types of Crowdfunding ..... 7
      - 1.2.1.1 Donation-Based Crowdfunding ..... 7
      - 1.2.1.2 Reward-Based Crowdfunding..... 8
      - 1.2.1.3 Lending Crowdfunding ..... 9
      - 1.2.1.4 Crowdfunding ..... 10
    - 1.2.2 Crowdfunding’s Target Audience..... 14
    - 1.2.3 Comparison of Crowdfunding with Angel Investing..... 18
- 2 CROWDINVESTING REGULATION ..... 20
  - 2.1 Regulatory Framework in the European Union..... 22
    - 2.1.1 United Kingdom..... 23
    - 2.1.2 Germany ..... 25
    - 2.1.3 France ..... 27
    - 2.1.4 Slovenia..... 28
  - 2.2 Regulatory Framework in the United States..... 29
- 3 CROWDINVESTING IN PRACTICE ..... 32
  - 3.1 Crowdfunding Process ..... 33
  - 3.2 Crowdfunding Contracts ..... 34
    - 3.2.1 Types of Investments Offered ..... 35
    - 3.2.2 The Way Investment is Done ..... 37
    - 3.2.3 Minimum Investment Ticket ..... 38
    - 3.2.4 Fee Structure ..... 39
  - 3.3 Assessment of Different Aspects Connected with Crowdfunding ..... 40
    - 3.3.1 Protection of Investors ..... 40
    - 3.3.2 Liquidity of Investments ..... 43
    - 3.3.3 Transfers of the Ownership ..... 46
  - 3.4 Impact on the Economy ..... 48
- 4 GUIDELINES AND RECOMMENDATIONS..... 52
  - 4.1 Legal Framework..... 52

4.2	Crowdfunding Platforms.....	55
4.3	Business Environment.....	57
5	EMPIRICAL ANALYSIS – THE CASE OF SLOVENIA .....	59
5.1	Where is Crowdfunding Currently Developed and why is that so?.....	59
5.2	Analysis of Slovenia.....	66
5.2.1	Suitability of the Slovenian Business Environment for Crowdfunding .....	66
5.2.2	What can be done? .....	71
	CONCLUSION.....	73
	POVZETEK.....	76
	REFERENCE LIST .....	85

## TABLE OF TABLES

Table 1.	Different Types of Investors, grouped by Equity and Debt Claims .....	4
Table 2.	Development of Crowdfunding Market in Europe by Year .....	13
Table 3.	European Crowdfunding Market by Country until End of 2013 .....	13
Table 4.	Investments in 2013 Made by Business Angels who Operate in Business Angel Networks by Country .....	51
Table 5.	Global Entrepreneurship Index 2015 for EU countries .....	61
Table 6.	The Availability of Financial Resources for SMEs (including grants and subsidies) for EU Countries.....	68

## TABLE OF FIGURES

<i>Figure 1.</i>	Growth in the Number of Platforms* by Crowdfunding Type .....	12
<i>Figure 2.</i>	Density of Crowdfunding Platforms in the European Union.....	59
<i>Figure 3.</i>	Online Purchases by Internet Users in EU Countries in 2012 .....	62
<i>Figure 4.</i>	Demand for Online Investment in EU Countries .....	67
<i>Figure 5.</i>	Most Pressing Problems of SMEs in European Union .....	69

## INTRODUCTION

It is hard to imagine starting or expanding a business venture without any kind of external financing. One of the ways to do that is by raising needed funds from a larger audience. Even though this approach has been around for centuries, it has been constantly evolving. In the last 20 years the expansion of the Internet has paved the way for new possibilities of how funds can be collected. People around the world are nowadays more connected, information flow is easier and faster, and transaction costs are lower than ever before. Due to these changes, crowdfunding, as this type of financing is mostly called today, has become increasingly popular.

The main idea of crowdfunding is to raise external finance from a larger audience, where each individual provides a very small amount, instead of soliciting a small group of sophisticated investors (Belleflamme, Lambert, & Schwienbacher, 2013b, p. 586). Until recently the majority of crowdfunding initiatives conducted over the Internet used to be based on donations and prepayments for various products. However, a few years ago a new form of crowdfunding has appeared: crowdfinancing.<sup>1</sup> This type of crowdfunding attracts people that want to actually invest in a company that they find promising and which they hope will bring them a positive return on their investment. Due to this innovative approach to investing, we could speak about crowdfinancing as a new setup in securities issuance that gives small entrepreneur access to the general public.

In my master's thesis I will focus on this new type of investing, which promises to provide completely new options for raising funds for start-ups and smaller companies, as well as new investment opportunities for a broader audience. Because of the fact that crowdfinancing has appeared only recently, not much research has been done about it so far. Being a new investment option at the same time means that the development is rapidly bringing numerous changes, which makes it an interesting and challenging topic to discuss.

In the thesis I will use the following methodology: I will critically address the existing literature, gather and analyze the relevant laws and regulations from various countries, as well as collect and analyze data that is available on crowdfinancing platforms and databases.

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<sup>1</sup> Other used terms for crowdfinancing are also equity crowdfunding, securities crowdfunding and investment-based crowdfunding.

With my master's thesis I aim to present a thorough analysis of theoretical aspects of crowdinvesting, as well as empirical evidence. Throughout the thesis I will try to answer the following questions:

- What is crowdinvesting and how does it work in practice?
- Why would companies and investors choose crowdinvesting over other financing and investment alternatives? What benefits does crowdinvesting bring to them?
- How do countries regulate crowdinvesting and what effects do different regulation approaches have on the level of crowdinvesting activity?
- Which countries are more suitable for crowdinvesting?
- What does the introduction of crowdinvesting mean for the national economies?
- What are the drawbacks of crowdinvesting?
- What can be done in the future to improve the current setup of crowdinvesting?

While focusing on these questions I will get a better understanding about crowdinvesting and its dynamics, which should help me answer the main research questions of this master's thesis: Is crowdinvesting something that should be developed in Slovenia?

In order to accurately address all the questions, I will divide my master's thesis into five parts. In the first part I will provide the review of the literature that is currently available. I will define crowdinvesting and describe how it differs from other types of crowdfunding and how it has been developing so far. The review of the literature will help me explain why companies opt for this kind of financing and how it differs compared to some other common options for obtaining external financing (e.g., angel investors).

In the second part I will review which laws apply to crowdinvesting and how different countries have regulated this special type of crowdfunding and also how they plan to regulate it in the future.

In the third part I will describe how crowdinvesting works in practice and what steps are usually taken during the crowdinvesting campaigns. Since contracts signed between the parties are an important item, I will analyse how they are usually drafted and what characteristics they have. I will also describe some of the drawbacks that different crowdinvesting approaches can have. Additionally, I will analyse the impact that crowdinvesting has on the national economies.

In the fourth part I will use the findings from the analyses in the first three parts to come up with guidelines for parties involved, as well as outline recommendations for future improvements. Special focus will be on legal framework, the arrangements connected with crowdfundering platforms and the changes that can be applied in order to improve the business environment in countries.

In order to answer if crowdfundering is something that should be set up and developed in Slovenia I will in the fifth part first analyse where crowdfundering is currently operating and what factors determine country's suitability for this type of crowdfunding. I will then apply the findings to Slovenia to see if crowdfundering represents an attractive option. Based on this I will then make proposals to Slovenian policymakers.

## **1 CROWDFUNDERING – A NEW FINANCING AND INVESTMENT OPTION**

When a company seeks additional financing for its new project, expansion or simply to support normal operations, it usually has more than one option available. These options can run from funds invested by the entrepreneur himself to investments from a general public through a public offering. The data collected by Cosh, Cumming, & Hughes (2007, p. 1) shows that firms which seek capital are in most cases able to get their requisite financing from at least one of the different sources that are available. In the following chapter some of the most often used sources of finance are presented and briefly described.

### **1.1 Existing Sources of Finance for Companies**

Based on their characteristics, sources of finance can be split into two main categories, equity and debt. In the case when money is invested against equity, it becomes part of the capital of the company. For this part investors receive shares, which then means that they also gain some control over company. The downside is that at the same time they bear the risk in case the operations do not go according to plan. Financing characterized as debt, on the other hand, means that parties that provided it remain external to the company. Debt categorized financing also bears lower risk due to collateral and the seniority of claims over equity (Schwienbacher & Larralde, 2010, p. 8). In practice this means that high-risk high-growth companies that have mostly intangible assets more often obtain external equity, while companies that could be classified as low-risk low-growth and have mostly tangible assets more often receive external debt (Berger & Udell, 1998, p. 3).

Table 1 below as outlined by Schwienbacher and Larralde (2010, p. 9) shows some of the different traditional types of financing that entrepreneurs and start-ups can potentially use.

Table 1. Different Types of Investors, grouped by Equity and Debt Claims

	<b>Investor</b>	<b>Description</b>
<b>Equity</b>	Entrepreneur and team members	The entrepreneur and team members invest their own money in the company.
	Friends and family	Funds collected from friends and family members.
	Business angles	Wealthy individuals that invest in smaller projects.
	Venture capitalists	Usually specialized investors who gather money from non-specialists and place it into bigger projects for a usual period of 5–7 years.
	Other companies and strategic investors	Other companies that decide to invest in projects for which they believe that have strategic importance to them.
	Stock markets	Investment in the company by the public through a public offering.
<b>Debt</b>	Banks	Bank loans.
	Leasing companies	Provide equipment and office space to entrepreneurs against lease payments.
	Government agencies	Subsidies for particular projects.
	Customers/suppliers	Different tools (e.g., trade credit).
	Bootstrapping	Use of trade credit, credit card and another method, including working capital management.

Source: A. Schwienbacher & B. Larralde, *Crowdfunding of Small entrepreneurial Ventures*, 2010, p. 9.

While there are numerous options available, the problem is that companies are not always able to get funding from their preferable source. In the case of entrepreneurs and start-ups this is especially true for the investments that provide debt claims. For example, a bank loan is for a young company extremely difficult to get. This is mainly due to the fact that they possess no (or very little) tangible assets, which banks could use as collateral and that they would get in case the plans of the company do not work out. Additionally, start-ups in the initial phases do not have sufficient cash flows and are often very risky. All these facts



hinder the banks' willingness of granting the loan. Some of the other debt investment options (e.g., government subsidies and bootstrapping) can be viable alternatives in some cases, however, they might be difficult to obtain in the amounts that would be sufficient enough. Therefore they usually need to be combined with some other investment option(s).

On the side of investments with equity characteristics there are in the first place funds that are provided by entrepreneur himself and potentially also by some other members of the start-up team who have resources available and are willing to invest their own money into the project. Additionally to the fact that entrepreneur is risking (all) his money in case the project does not succeed, his own funds are often not large enough to start the operations. Friends and family represent another option, however, funds coming from them are many times also not large enough. But even if they could in this ways collect funds that would be sufficient<sup>2</sup>, entrepreneurs are usually not prepared to bear all the risk in case the project fails. Therefore, getting other equity type of finance, even though this means that they need to give up total ownership of the company, is often a preferable option.

If founders are willing to give up (total) ownership of the company, a possible solution could be an investment from one or more business angels. These are usually wealthy individuals who are willing to invest in small projects. Many authors (e.g., Hornuf & Schwenbacher, 2014c) see crowdfunding as a close substitute as well as an addition to the usual angel investing. Due to many similarities, the comparison between the two investment options is explained more in detail in the separate chapter later in the thesis.

Another way of getting necessary funding is to attract venture capitalists. The advantage of getting their investment is that they also tend to provide their expertise and guidance. It often happens that entrepreneurs have a great idea and know what they want to achieve, however, they lack the needed experience to get there. Venture capitalists usually already have experience in running a company, as well as knowledge about the industries in which they invest. Therefore, they can also provide additional managerial support in sales, distribution, accounting and other fields which are crucial for success of a company (Schwenbacher & Larralde, 2010, p. 9). There is, however, a downside in getting the funds from venture capitalists and it is also the one which prevents many start-ups from getting venture capital. Venture capitalists usually have quite high minimum investment requirements, which means that younger and smaller companies are often not attractive for

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<sup>2</sup> One other option that entrepreneur might have is taking a personal loan.

them. Similarly to this, stock markets are in most cases not an option, as public offerings are extremely expensive and require complicated registration procedures, which a small company cannot afford.

Beside the more traditional and widely used sources of finance there are also other, newer options that companies can use to get the necessary funds. One of them is crowdfinancing, which has been around only for a few years. The following section describes its characteristics more in detail.

## **1.2 Crowdfinancing**

To get a better understanding of the principles involved in the crowdfinancing, it is first important to understand the broader concepts of crowdsourcing and crowdfunding, which represent the umbrella terms of crowdfinancing.

The term crowdsourcing was first used by Jeff Howe in 2006. In his article *The Rise of Crowdsourcing* he described the phenomenon that companies were starting to turn to the wider audience to obtain inputs for their operations. The development of the Internet and, as a consequence, a networked world meant that also for traditional businesses outsourcing was being combined (or sometimes also replaced) with the sourcing from the “crowd” (Howe, 2006).

Definition stated by Kleemann, Voß, & Rieder (2008, p. 6) sees crowdsourcing as an activity that takes place when company outsources specific tasks that are essential for the development, production or sale of its product to the general public in the form of an open call over the Internet. The intention of this is to animate individuals to make a contribution to the firm’s production process for free or at least for significantly less than that contribution is worth to the firm. Bayus (2013) explains that several organizations have already opted for the implementation of online crowdsourcing systems that help them gather ideas for products and services from a large, dispersed crowd of non-experts. Their contribution is mostly in the form of new products ideas or the commentary on the ideas of others.

There are different types of crowdsourcing, with the difference mostly being the type and level of involvement by the customers. This can range from a simple customer feedback to a much greater involvement in the way of a development of a product or a service by the customers. In cases when the crowd is asked to solve a financial problem of the ordering

party by providing their funds, we can speak about crowdfunding (Hagedorn & Pinkwart, 2013, p. 10).

Crowdfunding's objective is therefore to collect money for investment, which generally happens by using online tools. This is a different approach to getting funds than by raising money from a small group of sophisticated investors. Instead, crowdfunding helps firms obtain money from the wider audience (from the "crowd"), where each individual provides a small amount (Belleflame et al., 2013b, p. 2).

### **1.2.1 Types of Crowdfunding**

There are different types of crowdfunding in use today. The classification is based on the fact that people receive different things in return for providing the funds to the crowdfunding initiative. Based on that we can split crowdfunding into four main types:

- Donation-based crowdfunding;
- Reward-based crowdfunding;
- Lending crowdfunding;
- Crowdfunding.

The abovementioned types of crowdfunding are briefly described in the following subchapters.

#### **1.2.1.1 Donation-Based Crowdfunding**

One of the most widely used types of crowdfunding is a donation-based type.<sup>3</sup> With this type of crowdfunding funders donate to causes they want to support and there is no expectation of monetary (Ahlers, Cumming, Günther, & Schweizer, 2013, p. 7) or any other significant material benefit for the donor. While this type is very popular with Non-governmental organizations and charity organizations, the recipient's motive is not necessarily charitable. Donations obtained through the donation-based platforms may also be for-profit organizations (Bradford, 2012a, p. 15).

One of the main advantages of this approach over the traditional fundraising is that donations are collected for a specific project, rather than simply requested for supporting the organization's mission. It is decided later on how the funds will be distributed and

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<sup>3</sup> Based on the data given by Ahlers, Cumming, Günther, & Schweizer (2013, p. 41) donation-based crowdfunding was in years 2009, 2010 and 2011 the largest by total volume raised (e.g., in 2010 707 million USD out of 1,441 million USD raised through crowdfunding was classified as donation-based).

which projects will be executed. This means that with donation-based crowdfunding donors can decide which project they personally find interesting and beneficial and want to donate money to. Research has shown that this approach helps raise higher amounts per donor, as well as encourages them to make recurring donations if the organization keeps them updated about the progress of the project and they are satisfied with the outcome (Gajda & Walton, 2013, p. 8).

### **1.2.1.2 Reward-Based Crowdfunding**

The second type is a reward-based crowdfunding, which offers funders a non-financial benefit in exchange for their contribution (Ahlers et al., 2013, p. 7), usually in the form of a tangible item or a service. These rewards are provided by the investee and are in most of the cases of a symbolic value.

Some authors distinguish between two separate types of reward-based crowdfunding. Bradford (2012a, p. 14), for example, splits it into the reward and the pre-purchase model of crowdfunding. The reward business model is often used by project owners that want to collect donations for their project and in return for the funds they give non-financial rewards (usually of symbolic value). If rewards are wisely chosen, they can motivate the crowd to contribute higher donations than in the case of a donation-based model. It is important to note that generally speaking the parties involved do not consider it a legally binding obligation to provide the goods and do not classify it as a sale (De Buysere, Gajda, Kleverlaan, & Marom, 2012, p. 10). The pre-purchase model, on the other hand, is the one with which contributors receive the product or service that the entrepreneur is planning to make or offer and for which the campaign was created (Bradford, 2012a, p. 16). In most of the cases the idea for a product is presented with the detailed description of its features as well as with the price at which supporters can receive it when it actually gets produced. Usually this price is set at the lower amount than the one at which the product is expected to be sold later on. This is in a way a benefit that entrepreneurs offer to initial contributors, who with their funds ensure that enough money is collected for the actual production.

This pre-purchase model of crowdfunding is also the one that is being used by Kickstarter<sup>4</sup>, one of the most recognizable platforms for crowdfunding campaigns. One of the main reasons for the participation of funders in these campaigns is the fact that they want the

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<sup>4</sup> Platform is available on website <https://www.kickstarter.com/>.

particular product or service to be made and they will also get a discount on the sales price (De Buysere et al., 2012, p. 10) in case they provide amount that is large enough.

### **1.2.1.3 Lending Crowdfunding**

The lending type of crowdfunding is gaining in importance. In 2012 it replaced donations-based crowdfunding as the type which raised the largest amount of funds.<sup>5</sup> With lending crowdfunding individuals or companies get funds which have characteristics of a loan. However, instead of getting these funds from a bank, they turn to crowdfunding platforms and raise the funds from the crowd. The credit contract that is agreed upon between the parties can have different characteristics, with the main differences being the repayment time schedule and especially the promised interest rate.

As per the interest offered we could distinguish between two subtypes. Firstly, there are loans, which do not include any kind of interest. Gajda and Walton (2013, p. 9) name this type a social lending crowdfunding. While with this type the lenders expect to receive the principal back, their motivation is very much similar to the one found in the donation-based type. Social lending crowdfunding is mostly used in connection with financing of micro businesses in the developing countries. Some crowdfunding sites that operate within this type are not linked directly to entrepreneurs that request these loans, but instead they partner with microfinance lenders, who are responsible for screening local entrepreneurs and then arranging actual loans (Bradford, 2012a, p. 21).

Secondly, there are lending crowdfunding sites which offer interest. They are in essence operating with one of the main principles of banking – helping to redistribute funds from savers to the borrowers. On one side we have parties in need of funds. Also in the case of crowdfunding these can be both (small) businesses as well as individuals.<sup>6</sup> Instead of going to the bank they turn to the lending platforms, because they want to get a loan for which they can pay lower interest rate, or because they are unable to get one due to their insufficient collateral. On the other side we have lenders, who want to earn higher interest on their excessive funds than they would, for example, by buying a certificate of deposit.

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<sup>5</sup> In 2012 more than one billions USD was raised through lending crowdfunding. Amount of money raised worldwide through the donations-based type was in that year just slightly below the 1 billion USD mark (Gajda & Walton, 2013, p. 2).

<sup>6</sup> This is called Peer-to-Peer (P2P) lending, while lending to businesses is sometimes called Peer-to-Business lending (De Buysere et al., 2012, p. 11).

Interest rates vary and are generally based on the risk factor that is calculated based on financial data and personal securities (Gajda & Walton, 2013, p. 10). Different sites use different methods that determine the interest rate. Some sites individually evaluate each borrower and then use the calculated loan grade as a basis for setting the interest rate on a loan. Other sites use different methods, with one of them being the auctioning process. Based on the data presented, lenders can then enter their bids for the minimum percentage rate that they are willing to accept for providing their funds. Once the bidding is over the interest rate on that loan is the minimum percentage acceptable to enough lenders to fund the entire loan (Bradford, 2012a, p. 23).

Lending platforms usually only serve as match-makers for connecting borrowers and lenders. Even when afterwards the repayment transactions flow through the platform, lenders will only receive promised funds if the borrower has transferred funds to the platform. Therefore, lending platforms do not carry any credit risk. European data shows that the default rates are on average lower than 1% for consumer lending and around 2% for lending crowdfunding to businesses (Gajda & Walton, 2013, p. 10).

#### **1.2.1.4 Crowdfunding**

In the last couple of years a new form of crowdfunding has appeared: crowdfunding. This type is quite different from other crowdfunding types both from funders' motivation perspective, as well as from the arrangement that backers get when they provide their money. As the name suggests, this type of crowdfunding attracts people that want to actually invest in companies that they find promising and which they hope will bring them positive financial return in the future.

Different authors use different terms for this type of crowdfunding. For example, Bradford (2012a, p. 24) and Gajda and Walton (2013, p. 11) use the term "equity crowdfunding" to stress that funders can get equity securities of the company in which they invest. Similarly, Stephenson, Knight, & Bahleda (2013, p. 1) use the term "securities crowdfunding". Financial Conduct Authority (2013, p. 10) adopted the name "investment-based crowdfunding" for the cases where "people invest directly or indirectly in new or established businesses by buying shares or debt securities, or units in an unregulated collective investment scheme." To emphasize the fact that not only equity arrangements<sup>7</sup>

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<sup>7</sup> Some authors that use the term equity crowdfunding (Ahlers et al., 2013, p. 8) name other types of these arrangements 'equity-like arrangements'.

are included in this type, I will in the master's thesis use the term "crowdinvesting", which was also adopted by some authors (e.g., Hornuf & Schwienbacher, 2014a; Hagedorn & Pinkwart, 2013).

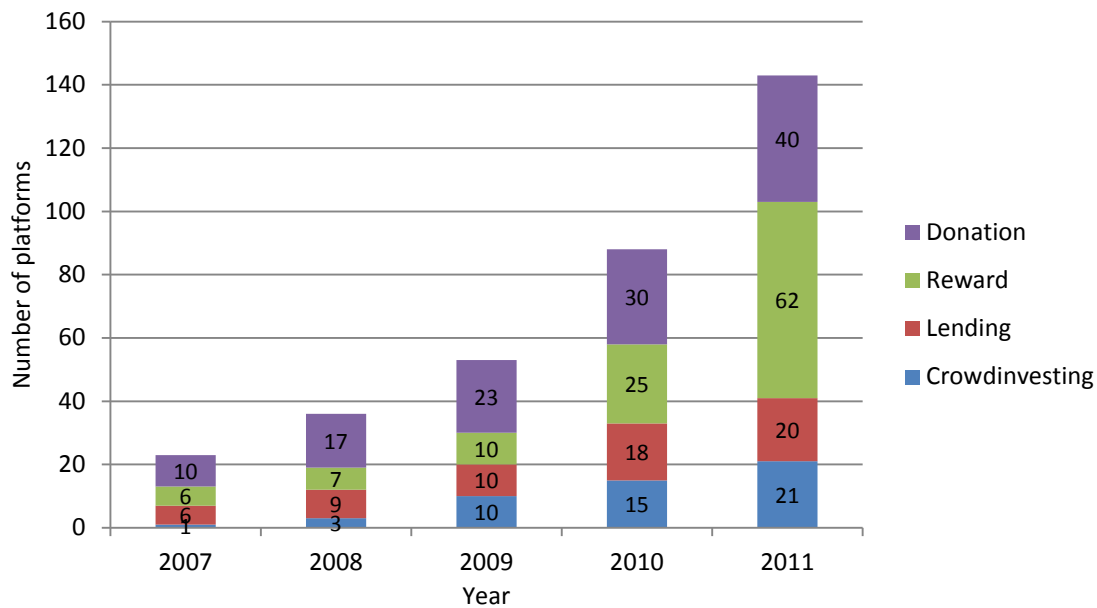
Crowdinvesting has importantly changed the way small companies and entrepreneurs can obtain needed financing. Traditionally, external investments into smaller companies came through business angel or another private investor. But crowdinvesting now offers possibilities to attract investments from a larger group of people (Gajda & Walton, 2013, p. 11). In the past high transaction costs meant that they could not afford to issue securities to the public for the level of amounts that they wanted to raise. With the development of the Internet, this has changed and nowadays, with the help of crowdinvesting platforms, also smaller players can access the general public. Therefore we can see crowdinvesting as a financial innovation in securities issuance, which has at the same time become a viable alternative form of external finance for smaller, entrepreneurial companies (Hornuf & Schwienbacher, 2014a, p. 2).

As already mentioned above, crowdinvesting does not necessarily require an equity offer. In many cases the setup is somehow different and investors do not receive actual shares or any other ownership interest. However, the arrangements can be similar and offer same payoff as equity (shares) with the funder being the creditor who has a contractual right to receive that payoff (Gajda & Walton, 2013, p. 11).

Since the arrangements within crowdinvesting are much more complex than within the other types of crowdfunding and the issuance of shares is usually closely monitored by the countries' financial authorities, the possibilities for the crowdinvesting activities heavily depend on the laws and regulations that are applicable in a given country. What regulations apply and how they encourage or limit the possibilities for getting the funds through the crowdinvesting will be presented in the second part of this thesis.

Because crowdinvesting is still only a couple of years old, it is therefore also the youngest of the four types of crowdfunding. This is confirmed by data presented in Figure 1 below, which shows how many platforms were operational in different types of crowdfunding in a certain year.

Figure 1. Growth in the Number of Platforms\* by Crowdfunding Type



Note. \* This data is based on a sample of 143 crowdfunding platforms. Total number of active crowdfunding platforms worldwide as estimated by Sekhon (2013) was 283 for 2010 and 434 for 2011.

Source: Crowdsourcing.org, *Crowdfunding Industry Report*, 2012, p. 17.

Even though the graph is based on a sample of platforms, Figure 1 confirms that in 2007 crowdfunding was just starting to appear, while other three types had already more platforms that were raising funds by applying other types of crowdfunding. Looking at the time frame of these five years, we can see that crowdfunding had the largest percentage growth and in 2011 the number of crowdfunding platforms was already larger than the number of platforms which used the lending type. It is important to note that the growth of crowdfunding platforms is mostly driven by the increase in the number of European platforms (Crowdsourcing.org, 2012, p. 17).

While the growth in the number of platforms gives us one view of how different types of crowdfunding are developing, it is also important to see what market share they represent. The total global crowdfunding market was estimated to be worth 5.1 billion USD in 2013 (Sekhon, 2013), with crowdfunding portion amounting to approximately 204 million USD, which represents only 4% of the total value (Hollas, 2014).

The data available for European crowdfunding market is more detailed. Table 2 presents the overview for the period from 2007 to 2013.



Table 2. Development of Crowdfunding Market in Europe by Year

<b>Year</b>	<b>Number of new portals</b>	<b>Number of successful campaigns</b>	<b>Total annual volume (rounded)<sup>8</sup></b>
2007–2009	2	1	€ 60,000
2010	1	9	€ 905,000
2011	6	20	€ 3,352,000
2012	11	107	€ 11,602,000
2013	22	234	€ 58,059,000
<b>Total</b>	<b>42</b>	<b>371</b>	<b>€ 73,978,000</b>

Source: L. Hornuf & A. Schwienbacher, *The Emergence of Crowdfunding in Europe*, 2014, p. 28, Table 2.

We can see that there was only one successful campaign prior to 2010, which reached the value of 60,000 EUR. Crowdfunding started gaining more importance in 2010, when in total almost one million EUR was invested in nine different campaigns, giving the average total value per campaign of more than 100,000 EUR. While in years 2012 and 2013 number of new portals almost doubled compared to the previous year, the number of campaigns and the total raised volume exponentially increased. In 2013 already more than 58 million EUR were invested into 234 companies.

Table 3 below shows how developed crowdfunding was in different European countries.

Table 3. European Crowdfunding Market by Country until End of 2013

<b>Country</b>	<b>Number of portals started</b>	<b>Number of successful campaigns</b>	<b>Total volume (rounded)</b>
Austria	2	5	€ 545,000
Belgium	1	2	€ 168,000
France	5	49	€ 9,400,000
Germany	16	132	€ 23,400,000
Italy	1	12	€ 4,650,000
The Netherlands	2	23	€ 1,325,000
Switzerland	1	8	N/A
United Kingdom	14	141	€ 31,500,000

Source: L. Hornuf & A. Schwienbacher, *The Emergence of Crowdfunding in Europe*, 2014, p. 28, Table 2.

We can see that until the end of 2013 crowdfunding platforms were established in eight European countries. While in three of the countries there was only one platform that had

<sup>8</sup> For the campaigns that raised amounts in British pounds an exchange rate of €1 = £0.8 was used.

started operations, in Germany and the United Kingdom crowdinvesting developed the fastest, as there were already 16 and 14 new platforms, respectively. We can also see that more platforms in general mean a larger number of successfully completed campaigns and subsequently a higher total amount of invested funds.

### **1.2.2 Crowdinvesting's Target Audience**

Crowdinvesting brings new opportunities both to companies that are searching for funds, as well as to individuals who are looking for options in which they can invest their money. In this subchapter I will first analyse why companies would choose crowdinvesting and for which types of companies would in theory this be one of the best options for raising finance. Later on I will check investors' perspective, namely, why they would choose crowdinvesting for their investments and what pros and cons this type of investing can have for them.

In order to understand for who is crowdinvesting the most suitable option, it helps to check what kind of companies are successfully raising capital in this way. In most of the cases these are either young, smaller companies or start-ups, which have a project or an innovative idea and are looking for funding to carry out their business plan. In many cases entrepreneurs use this option to raise seed and early-stage capital to financially support their growth and R&D activities (Hornuf & Schwienbacher, 2014c, p. 2).

It is understandable that such types of companies opt for crowdinvesting. Other alternative forms of financing from traditional lenders as reviewed earlier are for them usually either impossible to obtain or are too expensive to present a realistic alternative. Reasons for not being able to get funding through traditional channels are that they are either searching for the size of funding that is too small for large institutions to be interested in financing them, they lack track record that would perhaps manage to convince them to provide their funds, or their projects and plans seem simply too risky (Burkett, 2011, p. 70). Given all these drawbacks, alternative options could most likely be friends and family or business angels and venture capitalist. However, as already pointed out, funds that friends and family are able and willing to provide are, in most cases, not large enough, and business angels and venture capitalist are often targeting investments that are larger in size than the requirement of an average start-up. Consequently, crowdinvesting can fill this gap in the size of financing that appears between these options (Hornuf & Schwienbacher, 2014c, p. 2). This ability of crowdinvesting to fill the financing gap for companies which have the

abovementioned features is also the main reason why crowdfunding should receive more attention and be further developed.

Crowdfunding also proves to be an excellent option for companies that are not yet sure about their business model or a planned project and would like to additionally test its prospects. By preparing a campaign on a crowdfunding platform they can perform this evaluation. If wider audience sees potential in it, they will at the same time be willing to invest in it and campaign will be successfully funded. This provides the company both a signal that their vision can in the future be successful on the market, and it also helps raise the necessary financing. In cases when the campaigns are not successful, entrepreneurs can see this as a sign that it might not be a good idea to continue with the outlined business plan. If they had not performed this test via crowdfunding, it could have happened that they would already invest a lot of money in it before finally realizing that prospective customers are not interested in it. This would also mean that their losses would be much higher than if they had first opted for crowdfunding.

Amounts that companies can raise with crowdfunding differ substantially. First factor that determines the campaign amount is the financial need that a company has. However, in many cases there was and still is a certain threshold amount beyond which the company's campaign cannot go. This means that even if a company needed or perhaps simply wanted to raise higher amounts, it would not be possible. The main reasons for it are laws with which crowdfunding needs to comply and which, among others, also determine what amount of funds can be raised through crowdfunding in a certain time period. These laws do not only differ between countries, but since the national laws often change, they represent a continuously transforming process. I will elaborate more on how different countries have regulated or plan to regulate crowdfunding in the second part of this thesis.

It is, however, important to bear in mind that it is not only changing laws that enable larger amounts to be raised with crowdfunding. Platforms and their innovativeness also play an important factor. One such example is the German crowdfunding market, where initial crowdfunding campaigns were all limited to 100,000 EUR. Innovative approach of using a different financial instrument by one crowdfunding platform meant that platforms started raising amounts that were above this threshold, despite the fact that the applicable laws have not changed.

If companies want to get financing, they need to attract investors who are willing to invest their money into them. Therefore, if crowdfunding wants to present an option for companies, it needs to be at the same time also attractive to investors. The fact that crowdfunding campaigns are available on the Internet and consequently easily accessible by everyone means that crowdfunding can be an efficient option for investors. They can at any time investigate numerous potential investments on various platforms and then quickly determine if a particular company fits their criteria. These criteria can range from their portfolio strategy to risk appetite and other preferences that they may have for selecting suitable investment options (infoDev, 2013, p. 26).

One of the main points that should attract investors is the potential for high returns (SyndicateRoom, n.d.). Upside potential is in crowdfunding, at least in theory, unlimited. It might happen that investors are at some stage bought out and they receive in return an amount that considerably surpasses their initial investment. At the same time the downside potential is limited. The most that investors can lose is the total amount of their investment, which cannot be said for all investment approaches, such as some financial options. This characteristic is the fundamental one and, as it will be presented more in detail later in the following chapters, has to do with a limited liability that crowdfunders have once they make an investment in a given company.

Offering the ability for high returns comes at a price of riskiness. The average company raising funds via crowdfunding is usually classified as a risky investment. This is the fact that crowdfunding platforms and investment specialists often make clear to people that want to choose this kind of investment. Start-ups in many cases have an innovative idea that in the end does not work out as expected and are therefore considered risky investments. Consequently, the majority of experienced investors would not recommend to people to invest all their money into this kind of companies. On the plus side, start-ups' innovative ideas and approaches often mean that their successes are independent from general economic trends. The returns on the investments into start-ups should then also be independent of the general stock market performance. This makes them ideal investments that investors can use to ensure further diversification of their portfolios (SyndicateRoom, n.d.). Even though these individual investments represent high risk, the modern portfolio theory suggests that using them as diversification tools can in the end actually reduce the riskiness of the portfolio that one holds (McClure, n.d.).

Another benefit of crowdfunding is the fact that individual investments can be of very small amounts. While in the past many platforms applied high(er) minimum individual investment limits, the general trend is toward the increasingly lower minimum invested amounts. This means that individuals can further diversify by investing their available funds into more companies. Another benefit of a low minimum ticket size is that it enables individuals with smaller available funds to start investing. Higher minimum investment tickets would for many of them mean that they could not afford to make an actual investment. This is especially true for people who are interested in angel financing approach, but have access to less capital. For them crowdfunding can present a viable alternative (WWF, 2012, p. 14).

There are some characteristics of crowdfunding that might put certain investors off. One item is without a doubt their riskiness. Even though investors cannot lose more than they invest, a high chance of losing their total invested amount is too drastic for many of them (infoDev, 2013, p. 20). Another drawback that might put off investors who appreciate high liquidity is the fact that these are in the majority of cases highly illiquid investments. This is mainly due to the fact that contracts and the whole investors' setups are with most crowdfunding campaigns done in such a way that investors cannot influence when and how they can exit the investment. Some investment contracts even have a minimum holding period, which then makes them more suitable for long-term investments.

Obviously, the main motivation for contributing money via crowdfunding is the potential for a financial return. However, Hagedorn and Pinkwart (2013, pp. 29–30) argue that also other motivations that are often more applicable to other crowdfunding types play in many cases an important role. One such reason are social factors, which can for example be the support for an innovative idea that the funded company is planning to develop. If the investors see that with their money the entrepreneurs help foster an innovative service or product, they get the feeling of a positive contribution, which is not necessarily related to financial expectations. Additionally, it can also happen that inexperienced investors just follow others and invest in projects that are attracting a lot of attention. They can sometimes follow this approach to compensate for the lack of knowledge or research performed.

### **1.2.3 Comparison of Crowdfunding with Angel Investing**

The overview of the investment options for entrepreneurs and start-ups presented earlier indicates that investments by business angels are the preferable alternative. However, because of the regulatory changes which are presented in the second part of this thesis, the way start-ups and other companies in need of the early-stage financing can now get investors has changed in the recent years and a new alternative in a way of crowdfunding has emerged. Many authors draw comparisons between crowdfunding and business angels due to the similarities in the amounts raised in these two ways. Additionally, companies that usually raise funds using these two channels are also in many cases at a very similar state of development (Hagedorn & Pinkwart, 2013, p. 5).

Despite these similarities there are numerous differences in their characteristics. Hornuf and Schwienbacher (2014c, pp. 8–14) divided the differences between crowdfunding and angel investing in six dimensions. Firstly, there are large differences in financial contracting. One of the main characteristics of crowdfunding is that a contract to which investor agrees is standardized and generally cannot be negotiated, meaning that in practice investor can either agree to the given terms or alternatively not invest in the company. In the case of investing by a business angel the typical procedure is different, as it usually includes negotiations on terms that will apply for the relationship between the two parties. This means that angel investor can also make sure that various arrangements (such as anti-dilution provision which protects initial investor's share in case there is subsequent sale of shares) are included in the contract, with which he can more clearly define his rights. This is generally not the case with crowdfunding and as a consequence crowdfunders' rights and influence are (in most of the cases) substantially lower (Hornuf & Schwienbacher, 2014c, p. 8)

Second difference is the investor protection. As pointed out, angel investors are able to tailor-made their contracts, while this is in crowdfunding usually not the case. To ensure investor protection, countries have adopted different legal approaches – from limiting the amount of funds that can be collected through crowdfunding to allowing only accredited investors to invest in such a way (Hornuf & Schwienbacher, 2014c, p. 9). More detailed situation of different legal frameworks connected with crowdfunding will be presented in the next chapters of the thesis.

Third difference is due to the so called double trust dilemma of innovation. Cooter and Edlin (2014, p. 44) define the double trust dilemma of innovation as the situation when somebody has the idea, while someone else has the capital to bring it to life. If they want to succeed, they need to combine the assets and this can only happen if they trust each other with it. If an entrepreneur gets in contact with an angel investor, he can solve the double trust dilemma by making sure that potential investor signs a non-disclosure agreement. With this entrepreneur makes sure that angel investor cannot use the innovative idea to start implementing it on his own. Even in the case of not signing the non-disclosure agreement, the fact that an entrepreneur knows who the other party is, might help him solve the double trust dilemma. In crowdfunding the double trust dilemma cannot be solved in this way due to the fact that all the information needs to be displayed publicly to everybody on the portal. This characteristic limits the types of business ideas that can raise capital on crowdfunding sites. Consequently, crowdfunding is mostly suitable for ideas and projects which are very difficult to replicate, either because they are highly dependent on founder's personality (Hornuf & Schwienbacher, 2014c, p. 11) or because of some other characteristic (e.g., real estate projects on a particular area or a piece of land which entrepreneurs already own).

The way investors behave and the type of relationship that they have in the case of crowdfunding and angel investing also differs. One advantage of crowdfunding over angel investing is that there is a so called wisdom of crowd involved – only project which a lot of people find viable will be supported, eliminating the individual decision-making biases of an angel investor. However, investment decision of masses can on the other hand suffer from groupthink and herd behaviour, which usually means that investors are more likely to invest if their colleagues do so, regardless of the quality or viability of a project (Hornuf & Schwienbacher, 2014c, p. 11). Due to the larger number of investors involved and the fact that they invested through the website without directly meeting the people behind the project, also the relationship between the investors and entrepreneurs is different. While entrepreneurs in the case of crowdfunding usually commit themselves to regularly inform investors about the progress and financial results of the company, the average crowdfunder nevertheless has much less interaction with them than in the case of angel investors. This is also due to the fact that the influence, which investors can have on the business decisions, is, because of the contractual characteristics, extremely limited.

The fifth difference relates to information asymmetry and funding risk. As already mentioned above, by using crowdfundering entrepreneurs can already get an idea about the market potential for their venture, which can reduce the information asymmetry between the entrepreneur and consumers. This consequently reduces uncertainty, so entrepreneur can decide either to pursue with the project or not. On the other hand, there is a drawback to crowdfundering in a sense that project may fail if the entrepreneur does not correctly estimate the capital needs for it. With angel investing there is usually a thorough due diligence performed, while in crowdfundering estimates depend almost solely on the entrepreneur and the project team (Hornuf & Schwienbacher, 2014b, p. 12). Schwienbacher (2014, p. 10) argues that companies which are founded by the crowd and therefore not screened by professional investors tend to have higher operating risk. This is due to the fact that, unlike angel finance, crowdfundering does not enable to raise additional funds ex-post if the amount collected through the campaign turns out to be insufficient.

The last difference relates to the possibility for an exit with which a return on investment can be realized. In most cases companies that are funded via crowdfundering are not big enough for an opportunity to have an initial public offering (IPO) on the stock market, which is what angel investors and venture capitalist usually aim for when investing their funds. While an IPO might not be possible with most ventures initially funded by crowdfundering, it might happen that they reach such size that angel investors or venture capitalist see them as suitable investments, therefore providing the exit opportunity for the initial investors (Hornuf & Schwienbacher, 2014c, p. 13).

## **2 CROWDFUNDERING REGULATION**

The initial idea behind crowdfundering was to reach wider audience to invest funds in smaller start-up companies. The larger pool of investors would bring them needed capital, while people providing the funds would become their partial owners and could therefore benefit from the increase in their value. This method resembles the usual approach of obtaining investments by issuing securities where strict securities regulation is applicable. It is thus not surprising that the first discussions on regulatory framework on crowdfundering concentrated mostly on rules connected with the securities regulation.

The main goal of securities regulation is to ensure the protection of investors. However, compulsory registrations and information disclosures that aim to increase their protection result in higher cost, which are in many cases too burdensome for smaller amounts of



financing to be raised. Since crowdfinancing represents a solution mostly used by younger and financially weaker companies, offering securities might not be the best way of raising funds for them. As a consequence, in some of the EU countries we can see that the development has steered toward other forms of investing, such as silent partnerships and profit-participating loans, in order to elude strong regulation.

On a high level we can divide the regulation related to crowdfinancing in two different parts: regulation of platforms and regulation of investments used. First, rules pertaining to the platforms regulate their activities on the market and their responsibilities as potential financial intermediaries. Second, rules related to the actual investments define their legal form and set the boundaries for business activities. Obviously, not everything that would represent the best alternative for the parties involved is allowed. For example, in Slovenia a potentially suitable option of using a limited liability as a type of business entity for the crowdfinancing campaigns is in practice extremely limited, as the maximum number of members that a Slovenian limited liability company is allowed to have is only 50. Even though the founding partners might like to form a limited liability company with capital collected from an even larger number of investors, this is not possible due to the restrictive legislation.

Besides its complexity, the regulation related to platforms largely depends on the country specifics and therefore differs greatly between countries. Main question that usually arises is what status a platform that wants to engage in crowdfinancing activities needs to have. This often depends on the types of investments that are offered in campaigns published on them. Especially if a platform wants to offer securities, this generally means very strict conditions and a licence from a national financial supervisor or some other relevant agency needs to be obtained. Such requirements in many cases serve as a barrier for platforms who then either search for other suitable types of investment products that could be used (such an example are investment products that fall under the German Investment Products Act and which do not require that a platform holds a special licence if it wants to use them) or connect with other companies that already possess them. As it will be explained below, some countries have also come up with entities that hold a special status and as which crowdfinancing platforms can now register.

The rules on legal forms, however, can be structured more easily, as there are roughly speaking three groups of instruments used for crowdfinancing (across the EU): securities, limited liability companies, and silent partnership (or similar contractual instruments – e.g.,

profit participating loans). Also here the actual rules differ across the countries and the actual nature of legal forms depends on the specific national rules. In order to provide a clearer overview, these specifics will be for selected countries elaborated in the following subchapters.

## **2.1 Regulatory Framework in the European Union**

Despite the fact that the EU Commission has recently made first steps by acknowledging the importance of crowdfunding, so far no EU legal act (neither a directive nor a regulation)<sup>9</sup> has been adopted that would either include or specifically target aspects of this type of fund raising. However, when first platforms assessed possibilities of using traditional issuance of securities for crowdfunding, they realized that Directive 2010/73/EC of 24 November 2010<sup>10</sup> could be applicable. As explained earlier, issuing securities is connected with high cost. These high cost occur due to the fact that whenever securities are offered to the public, prospectus needs to be prepared and registered with the authorities, making it impossible for smaller offers to financially make sense. However, the above mentioned directive (also known as “Prospectus directive”) offered some exceptions to the prospectus requirement. Namely, Article 3(2) of the Directive states that if at least one of the following criteria is met, the obligation to publish a prospectus shall not apply:

- (a) an offer of securities (is) addressed solely to qualified investors;*
- (b) an offer of securities (is) addressed to fewer than 150 natural or legal persons per Member State, other than qualified investors;*
- (c) an offer of securities (is) addressed to investors who acquire securities for a total consideration of at least EUR 100,000 per investor, for each separate offer;*
- (d) an offer of securities whose denomination per unit amounts to at least EUR 100,000;*
- (e) an offer of securities with a total consideration in the Union of less than EUR 100,000, which limit shall be calculated over a period of 12 months.*

Analyzing these conditions we can see that crowdfunding offers can be considered an exception and out of scope of the general prospectus rule if either the offer is made only to

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<sup>9</sup> A directive in the EU represents a legal act that states the requirements to which laws of Member states need to comply with and by when. However, it usually gives the Member States a free choice of how these results are achieved. A regulation represents a legal act that unifies rules across the EU. It is directly applicable, although it is not transposed in the national law.

<sup>10</sup> Directive 2010/73/EC serves as an amending directive to the Directive 2003/71/EC, which was implemented in EU on 1 July 2005.

a limited and small amount of investors per country, there is a sufficient minimum contribution from investors, minimum denomination is high enough, or total value of securities offered is very low. In practice most platforms opted for the latter, while some platforms rather decided to allow maximum of 150 investors to participate and required from them a larger minimum investment ticket.

However, due to these limitations with which campaigns need to comply in case they want to be exempt from prospectus requirement and the fact that offering securities (even with the absence of prospectus) might not represent a viable option also due to other limitations included in national laws, platforms in different member states in many cases opted for other options to raise funds instead of issuing securities. The country specific regulation in some of the member states and the most common approaches of platforms based in them are presented in the following subchapters.

### **2.1.1 United Kingdom**

Crowdfunding market in the United Kingdom is one of the most developed, as already by early 2014 more than 28 million GBP had been raised in crowdfunding campaigns (Hornuf & Schwienbacher, 2014c, p. 21). Despite that, there is currently no law that would specifically focus on crowdfunding or even crowdfunding in general (Weinstein, 2013, p. 438). Therefore, crowdfunding in the United Kingdom currently takes place under the general securities rules, which are defined in the Financial Services and Markets Act 2000 (FSMA) (Hornuf & Schwienbacher, 2014c, p. 21). In the past Financial Services Authority used to be the financial regulatory body that was overseeing the securities offerings, however, as of 1 April 2013 the regulation of financial firms and markets has been transferred to the Financial Conduct Authority (FCA).

The FSMA implements the EU Directive presented above and therefore includes exemptions in case of offers to qualified investors and for offers up to a certain amount. This threshold is in the United Kingdom very generous, as they took the option that Directive gives to countries and increased the threshold amount to which the exceptions are valid to 5 million EUR in a 12-month period (European Crowdfunding Network, 2014, p. 226). This means that offering ordinary shares does not require prospectus registration even if total amount is higher than EUR 100,000. Two of the biggest platforms based in the United Kingdom offer shares to the investors. Platform Seedrs operates with ordinary shares which they hold as nominees on investors' behalf, while Crowdcube also offers

different classes (with or without voting rights) of common shares, depending on the type of campaign.

However, there are some items which are country specific and importantly impact crowdfunder operations in the country. An important item for the regulation of platforms is that under the FSMA regulatory system, invitations or inducements to engage in investment activities are considered financial promotions (Weinstein, 2013, p. 438). In essence this financial promotions regime dictates that promoting investments to anyone except for large or qualified investors needs to be approved or made through the licensed firm, which would be subject to regulation (Root, 2012). Due to its nature, much of the content on crowdfunder websites includes some elements of financial promotion. This means that either the platform operator would need to have an authorization by the FCA or alternatively the operator can ensure that an FCA-authorized firm approves the financial promotion. Since approval of financial promotions imposes costs and administrative burden, it is often the case that platforms engage an FCA-authorized firm for approval of initial investor communications (European Crowdfunding Network, 2014, pp. 224–225).

It seems that general tendency in the United Kingdom is towards the tighter regulation and also making sure that platforms get registered and authorized by the FCA. This was confirmed in the consultation paper issued by FCA in October 2013 in which the regulator presented his view of the current situation and indicated in which direction they wanted to move with the future regulation. Their aim is to make crowdfunder market more accessible, to help increase competition and to make access to alternative finance options easier. However, they stress that this must not come at a price of lower investor protection. Their proposal is to restrict the offers in a way that only well informed investors who are familiar with the risks involved and can bear these risks are participating (FCA, 2013, p. 6).

In the past crowdfunder platforms in the United Kingdom used to base their structure on a combination of exclusions and exemptions from the regulated activities regime. However, since the FCA acknowledged the permissibility of crowdfunder as a valid business model, this practice has been changing (European Crowdfunding Network, 2014, pp. 223–225). The evidence of that is the fact that two of the largest and most well known

crowdfunding platforms that operate from the United Kingdom, Seedrs and Crowdcube, have both been authorized by the FCA.<sup>11</sup>

### 2.1.2 Germany

Another country where crowdfunding portals have now been operational already for a few years is Germany.<sup>12</sup> Despite the fact that crowdfunding market is one of the most developed in Europe, no crowdfunding specific legislation has been passed so far.

When it comes to the regulation of platforms, the key question is whether they are providing financial services. If platform is engaged in such activities, then according to the German Banking Act (Ger. *Kreditwesengesetz*) it needs to obtain a written licence from the Financial Supervisory Authority (Ger. *Bundesanstalt für Finanzdienstleistungsaufsicht - BaFin*). Financial services are defined as the purchase and sale of financial instruments. According to the German Banking Act financial instruments include securities, investment products and shares in collective investment undertakings. Additionally, investment products include shares in other legal entities (limited liability companies, limited partnerships, civil law partnerships or silent partnerships), participation rights with regard to profits in legal entities, shares in trust assets, and registered bonds. However, if platforms offer products other than securities (such as subordinated profit-participating loans (Ger. *partiarische Nachrangdarlehen*) or interests in silent partnerships<sup>13</sup>), they can benefit from the exception to the licensing requirement. In such cases, platforms then only need a relatively easily obtainable licence under the Trade, Commerce and Industry Regulation Act (Ger. *Gewerbeordnung*) (European Crowdfunding Network, 2014, pp. 105–107).

We can see that the usage of the financial instrument determines the status that a platform has and the necessity to obtain a licence from BaFin. Exclusion of investment products that fall under the Investment Products Act from the licence requirement meant that they were initially very popular choice of platforms. Most widely used option was to offer to investors silent partnerships. However, while this eliminated the need for platforms to get a BaFin licence, using an investment product still meant that for offers larger than EUR

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<sup>11</sup> Platform Seedrs has been authorized by the FCA since May 18, 2012, while Crowdcube Ventures received authorization on February 1, 2013.

<sup>12</sup> Platform Seedmatch, which was launched in 2011, is considered to be the first German crowdfunding platform (Alois, 2014a).

<sup>13</sup> Silent partnerships fall under the German Investment Products Act (Ger. *Wermögensanlagegesetz*). All investment products that fall under this act are included (European Crowdfunding Network, 2014, p. 107).

100,000 the requirement to publish a prospectus was applicable (European Crowdfunding Network, 2014, pp. 105–107).

Since the exemption threshold amount is quite low, platforms were searching for other ways to bypass this prospectus regulation.<sup>14</sup> They came up with the concept of profit-participating loans (Ger. *partiarische Darlehen*) and subordinated profit-participating loans (Ger. *partiarische Nachrangdarlehen*) (Hornuf & Schwienbacher, 2014c, p. 23). These types of investments represent a kind of shareholder loan. With them investors are participating in the success of the project or a company that they help to fund, with their interests being linked to the profit of this project or company. They do not share liability of any losses that may occur. Their benefit is that they are not treated as investment products under the German Investment Products Act and consequently are exempt from prospectus requirements (European Crowdfunding Network, 2014, pp. 103–107).

The innovative approaches which crowdfunding portals adopted raised attention with the authorities, who are currently working on revised measures that are targeted at improving the protection of retail investors. The draft of planned changes that are expected to come into effect by mid-2015 includes some quite significant changes that will importantly impact the way crowdfunding portals operate. One of the most important changes is that (subordinated) profit-participating loans will qualify as investment products under the German Investment Products Act. This would mean that portals could no longer use this type of financial contracting to bypass the law regarding the amounts raised and prospectus requirements. The presented draft also foresees the increase in the regulation for all investment products (European Crowdfunding Network, 2014, pp. 105–108), which includes a hardcopy of an Investment Information Sheet, as well as tight restrictions on the advertising of crowdfunding (Alois, 2014b).

However, the proposed new rules include also changes for prospectus exemptions. If the following conditions are met, only a three-page fact sheet needs to be issued (European Crowdfunding Network, 2014, pp. 108–109):

- Offer is for a maximum of 1 million EUR;
- Offer is type of a profit-participating loan or a subordinated loan;

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<sup>14</sup> Only one platform, Bergfürst, decided to apply for a BaFin licence and introduce a business model of raising larger amounts of equity by publishing a prospectus.

- Maximum investment of a single investor is EUR 10,000;
- Marketing is done via licensed online platforms.

This in essence means that the new threshold limit will be increased to 1 million EUR, but at the same time the exposure that individual investor could have will be limited as well.

### **2.1.3 France**

French crowdfunding market saw some important regulatory changes in 2014 with the new legal framework for crowdfunding activities being applicable as of October 1 (European Crowdfunding Network, 2014, p. 93). This has brought some important changes for the French crowdfunding platforms. Before they were required to get a license from the French Markets Authority (Fr. *Autorité des Marchés Financiers – AMF*). This requirement was in place due to the fact that these portals act as financial intermediaries and need to comply with their rules. One of the drawbacks of this rule was that due to its numerous requirements, it made it costly for the portals to comply with it (Hornuf & Schwienbacher, 2014c, p. 22). To address this constrain, the new regulation introduces a new status. Crowdfunding platforms can now simply register as Crowdfunding Investment Advisers (Fr. *Conseil en investissement participatif – CIP*). CIPs are classified as platforms that provide investment services in equity and certain debt securities on an Internet website and need to comply with regulations as stated in the AMF General Regulations. While they may also provide some ancillary services, they are not allowed to receive funds from investors other than remuneration, and are also not authorized to receive securities from companies that are issuing them (European Crowdfunding Network, 2014, p. 94).

When deciding which financial instruments they will use, these platforms are now only allowed to use ordinary shares (Fr. *actions ordinaires*) and fixed interest bonds (Fr. *obligations à taux fixe*). Usage of instruments such as warrants and convertible bonds is for them not allowed. Another important change is that these platforms are now allowed to make public offerings for shares of a French Simplified joint-stock company (fr. *Société par actions simplifiée – SAS*), which represents a special flexible type of a company in France. The prospectus requirements have changed as well. The amended law states that offers of equity and fixed interest bonds of up to 1 million EUR per issuer over a 12-month period by authorised or licensed platforms on their websites are not considered to be public offerings and are therefore not required to prepare the full prospectus and get it approved

by the AMF. They only need to provide an adequate level of information about the campaign to the potential investors and outline the risks connected with such investment (European Crowdfunding Network, 2014, pp. 95–98).

#### **2.1.4 Slovenia**

In Slovenia the crowdinvesting and also crowdfunding market in general is still to be developed, as there have not been any platforms set up so far. Similarly, any crowdinvesting specific regulation has not yet been adopted.

If a platform was to be set up it would according to the Financial Instruments Market Act (Sln. *Zakon o trgu finančnih instrumentov*) need to obtain a licence from the Slovenian Securities Market Agency (Sln. *Agencija za trg vrednostnih papirjev – ATVP*) for its operations only in case it would be using transferable securities as financial instruments. But since membership units in limited liability companies are not treated as transferable securities, using this approach would mean that for a platform this licence would not be needed. However, using limited liability company approach for crowdinvesting campaign would on the other hand present different burdens. As mentioned earlier, a big drawback of this approach is that under the Companies Act (Sln. *Zakon o gospodarskih družbah*) limited liability company may not have more than 50 members without a special approval from the Ministry (European Crowdfunding Network, 2014, p. 194), which is too small given the fact that crowdinvesting targets wider audience where each individual contributes a small amount. Additionally, when new members enter an already existing limited liability company or if a new company is formed a social contract needs to be drawn up and all the changes need to be registered. This involves also high cost of notary and overall creates a very rigid structure to which any changes are very difficult to implement.

Looking at some other countries with a similar corporate law structure (e.g., Germany, Croatia) we can see that approaches that platforms are using in these countries do not represent a viable alternative in Slovenia. This relates mainly to the popular and widely used concept of a silent partnership, where the main idea for having a silent partner very closely resembles the concept of crowdinvesting. The flexibility of custom-tailoring the contract means another benefit that speaks in favour of using this concept compared to the membership in the limited liability company. However, while this concept existed in



Slovenian legislation for many years, it was surprisingly abolished in 2012, making it currently impossible to use this approach for any potential crowdinvesting campaigns.

## **2.2 Regulatory Framework in the United States**

Crowdfunding market in the United States (US) is one of the oldest and most developed in the world. Already in 2012 there were 191 crowdfunding platforms, more than in any other country (Crowdsourcing.org, 2012, p. 16). Some of the most popular platforms are based in the US. One such example is Kickstarter. These platforms are mostly offering reward- and donation-based crowdfunding. One reason for a high amount of these types of platforms is that fundraising in exchange for a reward, credit or donation is in the US not subject to any special regulation (European Crowdfunding Network, 2014, p. 232).

The situation is much more complex if platforms want to engage in crowdinvesting activities. Whenever equity is involved in the offerings, the regulation is extremely restricting. The US securities law in principle requires that whenever securities are offered to the general public, they must be registered with the SEC. This ruling that has been in place since the 1930s<sup>15</sup> is mainly aimed at protecting investors. The registration requirement was seen as a way to protect people from fraud and get more control over what gets offered to the public by holding the issuer as well as the underwriter of the security liable in case false information are provided or if material facts are not adequately reported (Hornuf & Schwienbacher, 2014c, p. 16).

Section 5 of the Securities Act of 1933 states that the registration statement needs to be accompanied with a prospectus, which needs to include detailed information about the company, as well as audited financial statements. The Securities Exchange Act of 1934 dictates that after company offers securities, it also becomes subject to period reporting requirements (Hazen, 2012, pp. 5–6). All these rules make the registration requirement not only time consuming, but also very costly.<sup>16</sup> Consequently, the fees associated with public offering of shares are simply too large for smaller companies to represent a viable option.

However, similar to regulations in some other countries, also in the US there are some exemptions to the registration rule. The Regulation D of the Securities Act of 1933 gives companies three options under which the registration with the SEC is not required. First

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<sup>15</sup> The US Securities Act dates back to 1933, while the Securities Exchange Act dates back to 1934.

<sup>16</sup> According to Weinstein (2013, p. 431) the fees associated with an underwritten public offering can amount to between 300,000 and 500,000 USD.

one is Rule 504, which is limited to offers and sales of securities of up to 1 million USD in a 12-month period. But in such cases an offering must be undertaken in a state, which means that registration requirement with the state still applies and this is generally as prohibitive as federal registration. The cap on offers or sales of equity under the exemption Rule 505 is raised to 5 million USD in a 12-month period, however the limit on the number of non-accredited investors that can participate is set at 35. Rule 506 is similarly restrictive. While it enables offers of unlimited amounts, it restricts them to only 35 sophisticated individual investors, who have enough business knowledge and financial experience in order to properly evaluate the investment opportunity (Weinstein, 2013, pp. 431–433).

There is, however, one important rule that is applicable throughout the Regulation D. This is the restriction on general solicitation, which means that these offers are not allowed to be publicly advertised. This represents an important obstacle which prevents crowdfund investing to fit into these exemptions. Regulation A, which offers another possibility for registration exemption, has more relaxed limitations for general solicitation, but it also comes with a series of disclosure cost that are, while not as high as standard registration cost, still too substantial to be attractive to crowdfund investing projects (Weinstein, 2013, p. 433). Overall we can see that these exemptions are still not suitable for applying the offers of securities to the general crowd and therefore do not represent an opportunity for crowdfund investing to take place (Hazen, 2012, p. 10).

Data confirms that high disclosure cost have a negative impact on the willingness of companies to seek funds through the initial public offering. This has affected especially companies with valuations under 50 million USD, as the number of IPOs has fallen by more than 75% since the high point in 1996 (Weinstein, 2013, p. 434). Additionally, the recent financial crisis made it much more difficult to obtain funds through the usual channels, which importantly impacted especially smaller and younger companies. Realizing their importance for the economy, it was clear that the regulation had to be changed to make it easier for them to get the needed capital through the alternative, modern channels, with crowdfund investing being one of them.

The important step forward for crowdfund investing has been the Jumpstart Our Business Startups Act (JOBS Act), which formally recognized funding from the crowd and was

signed into law on 5 April 2012. Especially relevant is the Title III of the JOBS Act<sup>17</sup>, which outlines the main requirements for the crowdfunding in the US. One of the main changes included in Title III is the rule that issuers are allowed to raise in total up to 1 million USD within a 12-month period without the need to file a registration statement with the SEC or at the state level. There are, however, three conditions which need to be satisfied if the exemption is to be used: transaction needs to be conducted via a funding portal or a broker, amounts that can be sold to individual investors need to be within the limit, and issuers need to satisfy the obligatory disclosure requirements (Hornuf & Schwienbacher, 2014c, p. 17).

First condition stresses that any offering must be conducted by an SEC registered and Financial Industry Regulatory Authority (FINRA) licensed intermediary. This can be either a broker or a funding portal. While brokers have been around for a long time, the same does not hold true for funding portals. Since the SEC still needs to adopt the rules governing the funding portals, it is not yet clear what the exact requirements will be. Nevertheless, JOBS Act states some restrictions which set them apart from the brokers. Funding portals are in comparison with brokers not permitted to receive, hold or manage investor funds or securities, as well as are not allowed to provide investment advice or make recommendations to investors. They are also not permitted to solicit purchases, sales or offers to buy offered securities and must not compensate employees, agents or others for solicitation or based on the sales of the offered securities on their website or portal. Due to all these restrictions, the expectation is that the rules that will be valid for the funding portals will be less strict compared to the ones that apply for brokers and would therefore make it easier to get the necessary registration (European Crowdfunding Network, 2014, p. 233).

It has already been stressed that one of the main goals of securities laws is to protect investors. One way of doing that is to limit the amount of funds that an individual can invest, so that his exposure is limited. Title III of the JOBS Act therefore imposes annual investment limits for crowdfunders. Investors with an annual income or net worth of less than 100,000 USD are only allowed to invest the maximum of greater of 2,000 USD or 5% of their annual income or net worth in any 12-month period. If investor's net worth or annual income is equal to 100,000 USD or higher, then the aggregate amount sold to

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<sup>17</sup> Title III of the JOBS Act is also referred as CROWDFUND Act – Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act (Hornuf & Schwienbacher, 2014c, p. 17).

investor must not exceed 10% of either his annual income or net worth, with the respectively greater value applying. In case the investor's net worth or annual income would be higher than 1 million USD, he could not invest more than 100,000 USD, as this amount represents the absolute limit for crowdfundings in a 12-month period (Hornuf & Schwienbacher, 2014c, p. 17).

Title III also clearly defines what information needs to be provided by the issuers to the investors, so that they can assess a potential investment. Offering materials must among other include basic information about the issuing company, its ownership and capital structure, the anticipated business plan, valuation of securities that are offered, and risks associated with the investment. Additionally, the issuer also needs to disclose its financial statements. Their extent depends on the aggregate amount that is being offered within the 12-month period. If the aggregate offering amount within this period is 100,000 USD or lower, then most recent filed income tax returns and financial statements certified only by the issuer's principal executive officer need to be disclosed. For offerings between 100,000 USD and 500,000 USD the provided financial statements need to be reviewed by an independent public accountant. In case the aggregate offering amount is larger than 500,000 USD, then issuer must make sure that audited financial statements are provided (European Crowdfunding Network, 2014, pp. 233–234).

Compared to the legislation that was in place in the past, this new law with the crowdfunding threshold set at 1 million USD definitely represents an important step forward for the possibilities for crowdfunding development in the US. However, although the US was the first country that passed specific regulation on crowdfunding, not a single issue has taken place so far (Hornuf & Schwienbacher, 2014c, p. 18). Reason for this is that SEC has still not written the rules to implement the crowdfunding provisions of the JOBS Act, which is a necessary requirement if crowdfunding campaigns are to be published. Therefore, until the SEC's rulemaking is complete, any offer or sale of securities, which would rely on the crowdfunding exemption, would currently still be unlawful under the federal securities laws (U.S. SEC, 2012).

### **3 CROWDFUNDING IN PRACTICE**

In the third part I will focus on how crowdfunding works in practice. I will analyze the crowdfunding contracts more in detail in order to see what approaches different platforms are taking. Additionally, I will present how crowdfunding is currently ensuring adequate

protection of investors, how liquid these investments are and how difficult it is to transfer the ownership of the acquired instruments. In the end I will also assess how positive the impact of crowdfunding is for the national economies.

### **3.1 Crowdfunding Process**

Crowdfunding campaigns are run through specialized internet sites, which are called platforms. Different platforms offer different types of crowdfunding – some are offering only crowdfunding projects, while others combine it with some other type of crowdfunding. An example of a crowdfunding platform is Germany-based Companisto<sup>18</sup>, which specializes in investments in start-up companies and in real estate.

A crowdfunding platform can be seen as a place where companies that look for funds and potential investors can meet. In the case of Companisto people with innovative start-ups or real estate projects can contact the platform representatives and present them their idea. This means that the first step is for the entrepreneurs to convince the platform that their campaign is worth publishing. Within their presentation start-ups need to explain details about their business concept and other relevant information, such as who are the people involved in the project, what is the current status of the company and what are its unique selling points. With this information they try to convince the platform that the project is viable, has a good chance of success and can therefore offer good investment possibilities. The fact that Companisto will receive fees for their services only if the campaign is successful should mean that projects which are not convincing to them for whatever reason will not be published on the platform.

Two important details about the project are the amount that company wants to (or needs to) raise and the timeframe in which it plans to do so. These are important items, as in case the project does not reach the minimum needed investment amount within the set time period, it will not be funded.

Apart from the platform representatives and entrepreneurs, investors are the group which is crucial for the success of the campaign. People who are searching for projects in which they would like to invest their money can visit the crowdfunding platform where all currently opened campaigns are listed. In many cases visitors can browse through the general presentation about the project, but need to register themselves on the platform to

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<sup>18</sup> Companisto platform is accessible at <https://www.companisto.de>.

see all the available details about the project. This more detailed information can then help them better determine if it is worth investing in the project or not.

If an individual or a company<sup>19</sup> wants to invest funds in a project, he or she can simply make a few clicks and an investment is made. In case of Companisto all the information is transferred electronically and payment can be done using different payment options, such as credit cards or direct transfers. Investor can freely determine the invested amount, which can be as low as five euros. In case the investment is made at the time when the minimum threshold for a project is not yet reached, it is not guaranteed that the investment will actually happen. As already stated above, the campaign is successful only if the set minimum amount is invested within the given time period. In case the aggregate amount of the submitted investments is not sufficient, the project will not be funded and all the committed investments by investors are given back.

### **3.2 Crowdfunding Contracts**

Comparison of crowdfunding with angel investing shows that the way the financial contracting is done in both cases is in many aspects different. While angel investors can make sure that various covenants are included in the contracts, so that they can protect themselves in different situations that may arise in the future, the way crowdfunding contracting is done is completely different. Generally speaking, if people want to invest in a certain company through the crowdfunding platform, they need to agree with the terms written in the contract that is drafted by the platform. Given the fact that the number of investors can be very high, it is understandable that the contracts are not tailored individually to each investor. This would not only increase the cost and make the process extremely time consuming, but it would also create confusion. Having to deal with a couple of hundred investors, all with a slightly different terms and conditions, it would make the things simply too chaotic and constraining if changes were to be implemented later on.

Platforms therefore usually have a general contract form<sup>20</sup> which only gets adjusted for items such as the amounts involved and ownership share of the company that is going to be transferred to the investors. This enables them to decrease the transaction cost of drafting

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<sup>19</sup> Companisto platform offers also a possibility for an investment in the project by the company (corporate investors).

<sup>20</sup> There are some exceptions. One such example is a Swiss portal c-crowd, which leaves the drafting and negotiations of contracts to the parties. They do, however, offer help preparing these documents (Hornuf & Schwienbacher, 2014b, p. 8)

the contracts for each person separately. It also decreases the legal uncertainty that might otherwise occur.

Nevertheless, the actual ways of how investments are made, differ greatly among the platforms. This is partly due to the fact that crowdfunding has not been around for long and that market is still fairly new, as well as that they are operating in different countries and therefore need to comply with the laws that are applicable in them. However, also within the same country there are large differences in how the actual investments take place. The same way that companies are competing to convince investors to invest in them, also platforms try to distinguish themselves in order to attract both companies and investors. They do this along several dimensions, including what financial instrument is offered to the crowd, whether the investment is done directly in the company or pooled through a special purpose vehicle (SPV), as well as with the minimum amount that can be invested by one investor and the fee structure charged to the company (Hornuf & Schwienbacher, 2014c, pp. 2–8). These dimensions are further discussed in the following subchapters.

### **3.2.1 Types of Investments Offered**

Some authors do not use the term crowdfunding, but rather name it equity crowdfunding. Truth is that real equity in a form of common shares is not offered very often. One example of a portal that does offer common shares to investors is German platform Bergfürst (Hornuf & Schwienbacher, 2014c, p. 9). This portal is also exception amongst the German platforms since it has an official operating licence from the BaFin, which represents the German regulatory body for the financial sector (Meyer, 2014). Bergfürst distinguishes itself due to the fact that only full voting capital in the form of shares is placed (Crowdfunding Berlin, n.d.) and that issuing takes place under the traditional prospectus regime, which makes the investments of larger amounts legal without the need to search for regulatory loopholes (Hornuf & Schwienbacher, 2014a, p. 27). Portal gears itself towards young companies that promise growth, but have at the same time already a proven track record and are therefore looking for capital requirements starting from 2 million EUR (Crowdfunding Berlin, n.d.). The set threshold is understandable, as only larger funding volumes can prove to be sufficient to cover the compliance costs of drafting and registering a prospectus. This high requirement also explains why so far on Bergfürst only one funding has taken place, which had the total amount of 3 million EUR (Hornuf & Schwienbacher, 2014a, p. 27).

Official approval of the prospectus by the regulator and the fact that Bergfürst holds the BaFin licence brings another advantage that the platform has seized. Unlike other crowdinvesting platforms in Germany, it offers a secondary market for the issued shares (Meyer, 2014). This means that investors are permitted to freely trade with the acquired shares. They can be sold at any time on the electronic trade platform that Bergfürst has set up and they are also handling all the transactions (Luzar, 2013).

Campaigns where investors receive real equity are usually only offered by platforms that have some kind of registration with the authorities or are officially licensed. Other examples of such platforms are Anaxago in France and Seedrs and CrowdCube in the United Kingdom. Since most of the platforms do not have any kind of official registration, in the majority of cases what gets offered to investors is not real equity, but are more equity-like arrangements. By using them platforms avoid the necessity to register the prospectus or avoid limiting the total amounts to the applicable threshold. Additionally to that, an important reason for the issuers to adopt debt or some mezzanine form of finance is the fact that with these arrangements there are also no cost of a notary involved (Hornuf & Schwienbacher, 2014a, p. 25), which is not the case when there is incorporation and transfer of shares of a private limited company (Hornuf, Eidenmueller, Engert, & Braun, 2011, p. 13).

The other types of securities that are often used include participating notes, cooperative certificates and convertible bonds. In Germany initial campaigns in most of the cases had a typical or atypical silent partnership arrangement, however, since fall 2012 the most popular option have been profit-participating loans (*partiarisches Darlehen*), which had been spotted as a cost-efficient solution for reducing transaction costs and avoiding regulatory limits (Hornuf & Schwienbacher, 2014c, p. 9). These funding instruments are issued with a revenue and loss share, as well as controlling rights, but without the participation rights. This proves to be an advantage for the entrepreneur, because he can be certain that investors are not able to enforce a new management against his will or take over the whole company. However, this non-voting characteristic makes the shares less attractive for the investors and can potentially lead to the lower amounts being raised during the campaigns (Hagedorn & Pinkwart, 2013, p. 23).



### **3.2.2 The Way Investment is Done**

Among platforms there are not only differences in what kind of instruments are offered to investors, but also how the investments take place. Hornuf and Schwienbacher (2014c, pp. 8–9) divide the investments into direct and indirect ones. Direct investments are offered by platforms where investors are buying and then directly holding the instruments that are issued by the companies. Most of the platforms offer this type of investments, which means that their role is simply to serve as intermediaries who are linking companies and investors together, but are afterwards not directly involved in the relationship between the two parties. Hagedorn and Pinkwart (2013, p. 26) divide the direct investments into two models, which can both be found in Germany. First one is a stock model, which has been described earlier and is offered by platform Bergfürst. The second one is a peer-to-peer model, where investors can subscribe amounts of shares they want directly from the company.

There are a few platforms that have adopted a different model and offer an indirect investment. Hagedorn and Pinkwart (2013, p. 26) call this a trust model, since investors are not directly investing in a company, but are instead contracting with a platform. For platforms that choose this model, a common practice is to set up a special purpose vehicle (Hornuf & Schwienbacher, 2014c, p. 9), which is usually registered as a limited liability company. This entity is formed to group crowdinvesting shareholders and also to represent their interests (Best & Neiss, 2012). Investors actually invest in this company, which then invests the raised capital in the start-up. Since the investors do not directly hold the securities of the company that is raising funds, it means that these are indirect investments (Hornuf & Schwienbacher, 2014c, p. 9).

Examples of platforms that have set up special vehicles to pool investments from the crowd are French WiSeed, Dutch Symbid and German Companisto. The latter has set up a SPV called Companisto Venture Capital GmbH and people that invest actually provide the funds to this company, which in turn invests the money raised in the entrepreneurial firm. This setup definitely brings some benefits. One of them is the fact that the ownership structure of the firm is not affected by the size of the crowd, as company that is looking for funds only get an investment from one company (the SPV). This means that the funded company has after the successful campaign only one additional member or shareholder. At the same time this setup proves to be beneficial because it facilitates the participation of a larger crowd, in which the individual invested amount can also be of a smaller value. In

case the investments are done directly and not through the SPV, funded firm would prefer to have as small as possible amount of new members or shareholders, since more investors also mean a more difficult and time consuming decision-making process after the campaign (Hornuf & Schwienbacher, 2014c, p. 9). This is especially important in case of an exit or if there is subsequent financing, as potential buyer or investor need to negotiate the terms only with a single contact instead of a much dispersed crowd (Hornuf & Schwienbacher, 2014a, p. 15). This setup is therefore seen as VC and exit friendly (Meyer, 2014).

### **3.2.3 Minimum Investment Ticket**

Portals differentiate themselves also with regard to the minimum investment ticket amount, which represents the minimum amount that each participant can invest. While some platforms enable investors to contribute as little as a few euros, other set the limit considerably higher. The minimum amount that applies inevitably affects the number of participants. Therefore some portals impose very high minimum tickets and with that they voluntarily restrict investor participation to the wealthier crowd (Hornuf & Schwienbacher, 2014c, p. 8).

Analysis performed by Hornuf and Schwienbacher (2014c, p. 14) shows that since the first campaigns the average minimum ticket size has decreased. One of the reasons has been the change in the way platforms are arranging the investments and which now enable larger total amounts to be raised. An example of this is the introduction of profit-participating loans in Germany, which by using the regulatory loophole enabled platforms to raise larger total amounts and consequently platforms did not have to limit the number of investors to the same extend as earlier.

Another reason that stimulates platforms and companies to allow lower minimum investment ticket is the introduction of SPVs. As noted above, since all the investors are pooled into the SPV, the company deals with only one contact, regardless of the amount of investors that provided the funds. This means that actual number of investors is not really relevant from the contractual point of view. Lower minimum ticket can consequently mean that larger crowd will be addressed and therefore more investors will be willing to invest their money into a campaign.

### 3.2.4 Fee Structure

Fee structure is another item which different portals have set up differently. This is essentially their source of income and therefore represents an important item. Structure is equally important for the companies that want to raise the funds, as they are in most of the cases paying the largest part of the applicable fees.

Most common approach of platforms is to charge issuers a fee, which is usually a percentage of the total funds raised. In the majority of cases this percentage is within the range of 5% to 10%. While some platforms charge a flat rate, a lot of them have a system of success fees, which means that company pays for the service only if the funding is successful and the target amount is achieved. This approach can be seen as a positive signal which should attract issuers when choosing the platform, as it means that also platform will be motivated that the campaign successfully reaches the target amount. Another reason for this approach is that start-ups looking for financing in many cases cannot afford to pay for campaign without new funds and in the case of flat rates regardless of the campaign outcome they also risk losing money if the target amount is not successfully reached. Some platforms' success fees are furthermore dependent on the size of the funds raised, meaning that for campaigns of higher amounts a different success rate percentage is applied.

While almost all platforms apply some kind of fee that is linked to the funded amount, some charge issuers additional fees, such as registration fees, solicitor and admin fees, as well as in some cases payment processing fees. While a lot of platforms do not have this practice, some decide to apply various fees to investors. Most common are transaction fees and fees as a percentage of the funding amount. The latter are similar to the fees charged to issuers, but they are essentially transferred to investors in a way that for the paid amount they get slightly lower actual investment in the funded company. A UK-based platform Seedrs<sup>21</sup> has taken a slightly different approach to investor fees. Platform charges investors a fee of 7.5% of the profits that they make with their investments. This essentially means that if their payback is lower than the invested amount, no fees are charged to them. With this rule platform aims to convince the investors that they are motivated to work toward the successful exit of investors, with their investments gaining in value.

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<sup>21</sup> More information about the platform is available at <https://www.seedrs.com/>.

Research performed by Hornuf and Schwienbacher (2014c, p. 16) shows that in practice the highest fees are applied by portals that facilitate the participation of a larger crowd using a more complex setup (such as profit-participating loans in Germany) and smaller minimum investment tickets. These findings confirm the assumption that managing a larger crowd is more complex and time consuming for the portals and that for legally more advanced approaches, which are in many cases applied to enable the funding of larger amounts, cost are higher as well.

Based on the review of different aspects of crowdfunding contracts and campaigns we can say that smaller ticket size, pooling of investments together and special setups that enable larger amounts to be raised facilitate crowd participation. This has been confirmed by analysis conducted by Hornuf and Schwienbacher (2014c, pp. 4–5) on a sample of 181 crowdfunding campaigns in Germany in the period from 2009 until mid-2014. They found that when reducing the minimum investment amount by 100 EUR, this on average attracted between 38 and 41 additional investors. Usage of profit-participating loans, which enables larger total amount to be collected, increased the number of investors by at least 372. At the same time lower ticket size and usage of profit-participating loans also increased the probability that the company will be able to reach the target amount.

### **3.3 Assessment of Different Aspects Connected with Crowdfunding**

In the following subchapters different approaches are assessed based on their importance for investor protection, as well as for the liquidity of investment and consequently for an option to transfer the ownership of the acquired instrument.

#### **3.3.1 Protection of Investors**

Even though many crowdfunding campaigns are for now not raising extremely high amounts (especially when compared to the average amounts raised through normal IPOs), that does not mean that investor protection is not something that regulators should address. On the contrary, in certain cases it can be of utmost importance, as start-ups are on average riskier investments than larger companies with a proven business model and a track record of at least a few years. Additionally, lower minimum investment tickets mean that even individuals with lower income and fortune can afford to make investments that can potentially provide them a financial return.

As already mentioned in the section about comparison of crowdfinancing with angel investing, if crowdfinancers want to make an investment, they are de facto forced to agree with the pre-written contract and cannot impose their individual conditions. Since many of potential investors are not familiar with the implications of different conditions, regulation and controls need to be such that they eliminate the chances of investors being ripped off. Another important reason for regulation is the fact that the majority of instruments that investors receive in exchange for their funds have low seniority in case the company goes bankrupt. This characteristic of common shares has had an important influence on the security laws that countries have adopted in order to establish a fair market without fraudulent acts.

Platforms have a vital role in ensuring investor protection, as they are essentially the ones that select the companies and make all the contractual arrangements. The findings of Hornuf and Schwienbacher (2014c, p. 5) show some promising trends for investors. The analysis of the German crowdfinancing market has shown that campaigns, which are launched on established portals that have done already a larger amount of deals, are more likely to succeed. They are more likely to reach their target amounts, on average attract more investors and overall reach larger amounts. One of the reasons for this can be the fact that more known platforms that have been around for longer and have a proven track record are in the eyes of investors seen as more reliable. This can then help them build a larger investor base. Due to the fact that larger investor base attracts also more companies who prefer to raise their campaign on such a platform, building a good reputation and accumulating experience should prove to be beneficial for the platform.

While the findings above confirm that it should be in the long-term interest of the platform to do whatever is in their power to build a positive reputation, this does not necessarily prevent them from engaging in fraudulent activities. There is always a chance that new platforms will appear which are not aiming to provide promising investment opportunities, but only want to collect as much funds as possible and then simply disappear. This is definitely a threat and it should be one of the main focus items that legislators and regulators should address.

Another theory on which higher investor protection could be built upon is the collective wisdom of the crowd (Brown, 2014, p. 2). The fact that more people are doing the investment should bring the benefit of an assessment done by a wider audience. Checks performed by a larger number of individuals should reduce the possibility that one

individual misses some important items that greatly change the attractiveness of the investment. However, the way in which most platforms are currently set up, investors cannot directly express their doubts or share any knowledge they might have about the project or company, which might help improve the investment decision of potential investors. Of course, they can express their doubts on other internet sites and online forums, but even if they do that the chance that investors come across this information is greatly reduced.

The option of using wisdom of the crowd to increase investor protection was already recognized by some regulators. In the proposed rules for crowdfunding which were published by the U.S. SEC (2013, pp. 498–499) one of the possible ways of enhancing the collective wisdom from the crowd is to make it compulsory for the platform to create the communication channels that would serve as an exchange for the information that are related to the offering and therefore relevant for the investment decision. Potential investors could in this way communicate with one another, as well with representatives of the issuer about the offerings posted on the platform. In cases when intermediary is a funding portal, it is not allowed to participate in the communications, but is nevertheless required to establish guidelines and monitor the communications to detect and remove any abusive or potentially fraudulent posts. Another important part of the proposal is to have the communications publicly available so that everybody can see them. However, the contributions could only be done by issuer representatives and the individuals who have registered themselves with the intermediary. This would at the same time mean that each person's relation to the offering would be clearly visible to everyone. Additionally, to prevent the creation of “multiple crowds”, issuer would be allowed to conduct an offering only through one intermediary (U.S. SEC, 2013, p. 30).

While this central communication measure should provide more information to the investors, Brown (2014, pp. 2–3) argues that even if implemented, this collective wisdom of the crowd will not provide the adequate level of investor protection. One reasons for this is that spotting inaccurate or incomplete statements will simply not be possible. Even if registration with the intermediary is required before posting any statements, the correctness of information provided when registering can also be questionable. This gets even more difficult if the number of investors increases, which makes it harder, as well as more time consuming for the intermediary to perform adequate checks.

### **3.3.2 Liquidity of Investments**

As the name already indicates, crowdfinancing is about actual investing. The main thing that investors are usually interested in is how much the return on their investment will be. Since most of the companies raising funds via crowdfinancing are in their initial development stages, it is no secret that an average investment on crowdfinancing platforms is very risky. Regardless of how good the start-up's business plan is, there is still at least some probability that it will not work out as forecasted. But younger companies often also have potential to develop into very successful ventures and this is what drives people to invest in them.

However, investors are not only interested in the return on their investment. When they assess the value of their investment and compare different investment opportunities, they are also interested in their liquidity. This represents one of their most important characteristics. Investments that can be quickly transformed into cash are much more desirable than other investments which are more difficult to sell unless they are sold underpriced. These findings indicate that crowdfinancing will be more desirable (and therefore investors will be prepared to pay a higher price) the more liquid they are.

If we take a look at the way the deals are offered and the track record of the campaigns that have already taken place, we realize that liquidity of investments can potentially be a big drawback for crowdfinancing. Due to the fact that crowdfinancing is relatively new, it is understandable that (also due to longer investment periods of these investments) not many exits have occurred so far. Still, it is important for the development and popularity of crowdfinancing that investors can see in practice, how they can actually exit their investment and make a nice return on it, as this represents one of the biggest unanswered questions about crowdfinancing (Johnson, 2014).

In theory investors could see their returns being realized in various ways. As possible methods to achieve that Johnson (2014) states dividends, buybacks, subsequent financing rounds, acquisitions, and secondary markets. Problem with dividends is that start-ups and other younger companies are not very likely to pay them out. Most of the companies that are raising funds via crowdfinancing are already tight on cash and paying out dividends would put additional pressure on their resources, which could in worst case scenario force them into bankruptcy. Even if they were able to pay them out, the amounts paid out to

investors would probably not represent the return that they were looking for (Johnson, 2014) and would rather be used to support company's current or planned future activities.

Buybacks, subsequent financing rounds and acquisitions could be classified as liquidity events that can enable investors to get a return for their contribution. Buybacks in theory represent one of the simplest exit methods from administrative and legal perspective, however, due to the similar reasons that are valid for dividends, the probability that they occur is very low. Even if a start-up was able to achieve this, the premium paid would probably not be very high (Johnson, 2014).

Subsequent financing rounds and acquisitions are one of the best bets that investors could have for realizing a nice return on their investment. Majority of companies that use crowdfunding for raising funds are in very initial development phases and small. This means that they are not particularly attractive to angel investors and venture capitalists, who like to aim for an exit via an IPO. However, if successful, they can grow to a larger size and if having a promising future, angel investors, venture capitalist or other companies might decide to buy them or make further investments in them.

The fact that angel investors and venture capitalists can provide an exit opportunity for crowdfunders has been confirmed in practice with the German start-up Smarchive<sup>22</sup>, which represents a prime example of how crowdfunders can realize a return on their investment. Smarchive initially raised funds on German crowdfunding platform Seedmatch, but later on received a follow-up funding from the venture capital fund T-Venture (Hornuf & Schwenbacher, 2014b, p. 13), which provided an opportunity for the crowdfunders to be bought out and see their invested amount not only to be repaid, but also earn a positive return on it.

Platforms and consequently companies, as they are initially the ones choosing the platform on which they will publish their campaign, can influence the probability for an exit by using appropriate arrangements. If the legal setup and the contracts that investors are offered are not exit friendly, subsequent financing and exit by investors can be extremely difficult. The greatest burden is in most of the cases the sheer number of shareholders that a company can have after the crowdfunding campaign. This could potentially mean that each investor first needs to be contacted and later he or she needs to agree with the terms. If this is not achieved and one investor is not in agreement, the whole procedure can fall

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<sup>22</sup> The company has later been renamed to Gini.



through or at least take much longer, as separate agreements need to be negotiated. This makes the whole financing round or acquisition much more time-consuming and expensive (Johnson, 2014).

One of the best ways of making the crowdfinancing campaign exit friendly is to pool the investors, so that potential new investor or buyer is dealing only with one contact and not hundreds of individuals. Additionally, clauses such as drag along<sup>23</sup> or tag along<sup>24</sup> can also importantly contribute to the smooth transition in case an exit opportunity appears (Whiteboard, 2013).

Most people associate selling or buying shares with stock exchanges. Especially shares that are traded on larger stock exchanges are extremely liquid and provide an opportunity to shareholders to sell them quickly and for the price that is known at any point of time. However, for companies that raise funds through crowdfinancing, this is not the case. An alternative solution could be seen in secondary markets. Some well known companies<sup>25</sup> were for example traded on secondary exchanges before they entered the public securities markets. But there are two issues that companies encounter. Firstly, there is the demand for securities. If the demand for company's securities is not sufficient, the secondary exchange will not function. Secondly, there are regulatory burdens regarding securities compliance. Most of the countries have various rules in place that limit the possibilities for trading of these instruments (Johnson, 2014).

Despite these difficulties there are platforms which have recognized the necessity to establish a secondary market for the investments done via their site. One such example is previously mentioned German platform Bergfürst, which has used the fact that it managed to get official registration with the German financial authority to set up its own secondary market for the common shares that investors buy on their site. Another example of a platform that has set up a secondary market for the sales of acquired shares is Australian ASSOB. The advantage that ASSOB has is that it operates in a country where legal environment permits crowdfinancing, which makes it easier to establish it. The downside of the ASSOB's secondary market is that it is still a very small platform and as a result secondary sales occur relatively infrequently. Consequently, there are no live quotes of

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<sup>23</sup> "A right that enables a majority shareholder to force a minority shareholder to join in the sale of a company" (Drag-along rights, n.d.).

<sup>24</sup> A tag along right "assures that if the majority shareholder sells his stake, minority holders have the right to join the deal and sell their stake at the same terms and conditions as would apply to the majority shareholder" (Tag-along right, n.d.).

<sup>25</sup> Such examples are companies Facebook and Twitter.

share prices. Only the asking prices of shares offered by companies or shareholders are displayed.

### **3.3.3 Transfers of the Ownership**

How the offering and the actual investment is legally set up plays a crucial prerequisite for a successful future of the company and consequently also for the investment. There are multiple aspects that need to be taken into consideration when trying to find an approach that has overall the greatest value of benefits over the given drawbacks. Since crowdfundering has been around only for a short period of time and most of the campaigns have not reached all their lifecycle stages yet, it is difficult to evaluate what the best approaches for all the combined stages are.

When working on implementing the most suitable setups, platforms have been putting a lot of focus on making sure that they comply with laws. But at the same time they have also been trying to see what loopholes they could find that would enable them to raise larger amounts without the need for costly registrations. Additionally, in order to persuade potential investors to invest in campaigns they have also paid attention to making sure that various clauses are in place that would protect the investors from being outwitted. It is now becoming clear that focusing too much only on these aspects is too narrow-minded and can bring both to companies, as well as to investors more evil than good.

This has been confirmed in practice in the case of German start-up Smarchive. While the story had at the end a successful outcome, because of the way the deal was structured, things could have ended a lot differently. Initially, Smarchive decided to raise capital on Germany crowdfundering platform Seedmatch. The campaign was successful and Smarchive managed to raise target amount from 140 individual investors, who consequently became partial owners of the company. Contracts that investors received had many items which had a goal of ensuring their protection – from anti-dilution clauses to the exclusion of tag along and drag along clauses. This setup meant that a single investor had the power to block a sale of the company. When a venture capital fund expressed interest in the company, the arrangement that was in place nearly proved to be a deal breaker. Since the company was running low on cash, the lined up investment was seen as crucial for the future of the company. To save his company's existence, CEO spent weeks trying to contact all 140 individual investors and get them to agree to either being paid out and receive a bonus or to be pooled. In the end he managed to get agreement from them, which

enabled the investment to take place (Whiteboard, 2013). This example proves how important initial arrangement is both for companies, as well as for the investors. The fact that investors had contracts that offered them a lot of protection, in the end almost meant that they lost all their money.

The type of business entity that a company chooses has important implications. In the case of crowdfunding this is even more so. First important aspect is the liability that investors have once they invest money into the company and become partial owners. Limited liability is in this case crucial. This means that the most that they can lose is the amount that they invested and not more. This characteristic is a fundamental attribute of limited liability companies and also one of the reasons why limited liability company is a popular choice when setting up a company. Making the investors fully liable for the actions of the company would put them in a dangerous situation. Therefore, even though the contracts differ between platforms, they are in the end all set up so that investors' liability is limited.

Another important aspect that business entity type determines is the ability and easiness to transfer ownership stake. The fact that there can be hundreds of investors putting their funds in the company and with that acquiring ownership stake makes the arrangement a crucial one. Some types of limited liability companies (for example, LLC<sup>26</sup> in the US, GmbH<sup>27</sup> in Germany and d.o.o.<sup>28</sup> in Slovenia) are very restrictive in this regard. The transfer of the ownership in these types of companies needs to be agreed on by the majority or even by all of the owners and arranged with the notary so that the information gets registered. The involvement of notary additionally makes the transfers of shares both time-consuming and costly.

In the end these drawbacks can be eluded by using special instruments and making sure that agreements are structured in such a way that all important aspects that may arise in the future are adequately covered. In order to avoid incurring high notary costs, most of German platforms decided to adopt debt and mezzanine forms of finance in their deals as dealing with them does not require the involvement of notary (Hornuf & Schwienbacher, 2014a, p. 25). The case of Smarchive clearly signalled that those contractual agreements were lacking exit options. Consequently, platform Seedmatch changed the contracts so that they included exit clause (Whiteboard, 2013). Some platforms saw the opportunity in

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<sup>26</sup> Limited Liability Company.

<sup>27</sup> *Gesellschaft mit beschränkter Haftung.*

<sup>28</sup> *Družba z omejeno odgovornostjo.*

pooling the investments, so that company is then dealing with only one contact that makes decisions on behalf of all the crowdinvestors.

### **3.4 Impact on the Economy**

As analyzed earlier, crowdinvesting is especially useful option for getting necessary funding for younger and smaller companies that are, usually due to the lack of assets and track record, not able to get funds from the traditional sources. Angel capital represents one alternative, but there is often a lack of angel investors and the recent financial crisis has created additional pressure on the amount of funds that angel investors have available. Other types of crowdfunding in some cases represent an alternative, however, there are certain types of companies or projects which are not suitable for them. Therefore crowdinvesting represents an important additional option for obtaining finance. In case that this option was not available, this would mean that fewer companies would be able to start operations, as they would not have sufficient financial resources to begin with or further develop their business plan.

While in the past the attention used to be mainly on big companies and corporations, things have been changing in the recent years. The fact that SMEs worldwide account for over 95% of the business population and that they constitute around 60–70% of total employment, has shifted the focus towards smaller companies. Governments around the world are increasingly recognizing the importance of SMEs and entrepreneurship as the drivers of growth and job creation. New companies that are being formed are often counting on their innovative technologies, products and approaches, which can help them accelerate and optimise the operations. With new technologies there are also new services appearing and typical companies that are present in them are changing as well. One example of an activity where smaller companies are representing most of the business is computer services. Data for OECD countries shows that micro enterprises, which are defined as companies that have fewer than 10 employees, now represent more than 90% of all computer services business (OECD, 2006).

Probably the main prerequisite for the development of new companies that can become important drivers of the economy is the appropriate business environment. It needs to be such that entrepreneurial activities are stimulated and that it allows easy access to items such as human capital, networks, technology, and financing (OECD, 2006). Governments can play an important role in making sure that policies which are adopted enable this kind

of environment. However, policies are often limited and focus only on certain narrow aspects. The review of regulations that impact the possibilities for getting financing through crowdfunding in the previous section of the thesis shows that some countries are very slow in taking the measures, which would make the environment for entrepreneurs and start-ups in need of funds friendlier.

It is very difficult to assess with certainty how beneficial crowdfunding is for a country's economy. Namely, its absence does not necessarily mean that companies that would otherwise choose crowdfunding as their preferable option are not able to get needed funds by using other channels. But, as already stated earlier, other financing sources might not present a realistic option for a young start-up, are often more expensive, and in some cases cannot provide the sufficient amount of money needed. What is certain is that with crowdfunding in place, companies have an additional way to obtain external financing and this without a doubt makes the business environment more entrepreneurial friendly.

It can easily be argued that crowdfunding in general has a positive effect on a country's economy. Since people from all over the world have easy access to the crowdfunding platforms, entrepreneurs can quickly reach wider audience and expand their target market from their own country or region to the whole world. Prime examples are reward-based types of crowdfunding campaigns published on platforms such as Kickstarter. Since there are no regulatory burdens for such kind of initiatives, people from all over the world can easily fund the project by purchasing the product upfront. Wider audience can be especially beneficial for start-ups from smaller countries, where the domestic market is not that big. When launching the campaign on a well known global platform, they can more easily target other markets as well and get a global reach. Due to the structure of campaigns entrepreneurs can afford to pre-test the market potential of their products on the platforms without making a large financial exposure. This stimulates them to try to implement more projects than in the case if this option would not be available, which increases the chances for success and with this also chances for larger sales and higher revenue.

Due to the regulatory constraints and consequently the limited size of the total crowdfunding market, the benefits from crowdfunding are not yet so high. While the estimated total global crowdfunding market in 2013 was 5.1 billion USD (Sekhon, 2013), the crowdfunding portion was estimated to just 204 million USD, which represents only a 4% share (Hollas, 2014). Seeing that the total historic amount raised through

crowdfunding until the end of 2013 was 393 million USD, we can see this type is gaining in importance as more than half of all funds were raised in the last observable year (OurCrowd, 2014). Once more countries adopt crowdfunding-friendly laws, the amounts raised in this way are expected to be even higher.

Since crowdfunding is not the only way of investing in companies' early stages, it is worth comparing it against the traditional options. Data collected in 2014 by European Business Angels Network (EBAN, 2014, p. 2) shows that total European early stage investment market is estimated to be worth 7.5 billion EUR. Largest part of this, approximately 5.5 billion EUR, represent the investments done by business angels. Part of venture capital industry that focuses on early stage investments represents approximately 2 billion EUR. Crowdfunding share was estimated to be merely 80 million EUR.

One of the positive impacts on the economy that formations of new companies or their expansions create, are new jobs. There is currently no data available on the impact that crowdfunding has on the increase in the number of people employed in the companies prior and post the campaigns. However, data for crowdfunding in general shows that the average firm using this type of fundraising has 2.0 employees prior to the campaign. On average, companies after the successful campaign hire additional 2.2 employees, which indicates that crowdfunding fuels microenterprise growth (Alois, 2014a).

In order to get an estimate on what impact crowdfunding might have on the level of jobs created, we could compare data available for investments done by angel investors. Table 4 below shows the data collected by EBAN for the investments done by business angels<sup>29</sup> in 26 European countries in 2013. We see that in the visible market more than 2,600 companies received angel financing and the total observed investments reached more than 430 million EUR combined. Calculations then show that on average 5.1 new jobs were created in the financed companies and that approximately every 34,000 EUR that were invested created one extra job.

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<sup>29</sup> Data presented takes into consideration only angel investments that were part of the visible market. Visible market in this case represents activity undertaken by investors gathered in business angels networks and which either have a direct relation with EBAN or those reporting through a federation. The estimate is that visible market represents around 10% of total angel investments (EBAN, 2014, p. 3).

Table 4. Investments in 2013 Made by Business Angels who Operate in Business Angel Networks by Country

Country	Number of companies financed	Business angels investments in 2013 (in M EUR)	Jobs created	Jobs created per company	Investment per job created (in EUR)
UK	535	84.4	2,354	4.4	35,854
Spain	245	57.6	1,485	6.1	38,788
Russia	165	41.8	808	4.9	51,733
France	376	41.1	1,807	4.8	22,745
Germany	185	35.1	916	5.0	38,319
Finland	208	26.4	916	4.4	28,821
Sweden	110	19.4	506	4.6	38,340
Turkey	61	14.7	400	6.6	36,750
Portugal	73	13.8	497	6.8	27,767
Switzerland	44	13.3	130	3.0	102,308
Ireland	59	13.2	286	4.8	46,154
Denmark	102	11.8	539	5.3	21,892
Belgium	67	10.0	332	5.0	30,120
Italy	43	9.9	282	6.6	35,106
Netherlands	58	9.8	281	4.8	34,875
Poland	38	6.6	233	6.1	28,326
Estonia	83	4.7	457	5.5	10,284
Norway	19	4.2	88	4.6	47,727
Austria	24	2.9	132	5.5	21,970
Bulgaria	37	2.9	163	4.4	17,791
Greece	18	2.1	99	5.5	21,212
Lithuania	18	2.0	77	4.3	25,974
Luxembourg	17	1.6	59	3.5	27,119
Croatia	10	0.8	42	4.2	19,048
Serbia	6	0.7	28	4.7	25,000
Cyprus	2	0.6	14	7.0	42,857
<b>Total</b>	<b>2,603</b>	<b>431.4</b>	<b>12,931</b>	<b>5.1*</b>	<b>33,726*</b>

Note. \* Values represent the average values.

Source: European Business Angles Network, *Statistics Compendium*, 2014, p. 5; own calculations.

We could use the same calculated averages to estimate what effect crowdfunding had in 2013 on the job creation. Assuming the previously stated information that globally 204

million USD were invested through crowdfunding in 2013, then using angel investing averages for Europe we can estimate that this could have created around 4,500 jobs<sup>30</sup> worldwide.

## **4 GUIDELINES AND RECOMMENDATIONS**

The analysis of crowdfunding presented in this thesis provides a basis on which guidelines and recommendations for the future improvements can be based. The review of laws in different countries and the comparison of their effects on the level of crowdfunding activity in those countries can help determine which solutions work better in practice and could therefore be seen as best practices. Since platforms play a vital role in the crowdfunding process, focus should also be on them in order to try and further improve their services and consequently increase the level of crowdfunding activity. Due to the fact that crowdfunding is also in large part affected by the general economic climate, I find it important to focus on this aspect as well in order to help foster its development.

The following three subchapters present suggestions that should in my opinion help further develop crowdfunding and make it an important financing option for companies and an attractive investing option for wider audience.

### **4.1 Legal Framework**

Even though there are numerous other factors that have influence on the development of the crowdfunding market, legal framework is definitely one of the most important ones. This can be clearly seen in the case of the US. Since the laws that are currently still applicable there have not foreseen crowdfunding as such, it means that using crowdfunding to help companies raise financing from a wider audience is not really an option. The current requirements for registration are simply too complex and costly to be financially viable for types of companies that are usually in other countries choosing this alternative.

The example of the US shows that using obsolete laws from times, when crowdfunding as we know it today has not yet appeared, is not benefiting its development. This emphasizes the need for lawmakers to constantly work on trying to adapt the laws to current trends. This is even more important with laws that are related to financial markets,

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<sup>30</sup> Value was calculated using the EUR/USD exchange rate of 1.35.



where approaches and instruments used are often changing. Especially given the fact that crowdfunding can have positive effects on the country's economy, my opinion is that countries should try to make sure that laws that are passed make it possible for crowdfunding to take place.

While I think that laws should enable crowdfunding, I also find it necessary that it is properly defined and regulated. Situations where crowdfunding is indirectly allowed, but not properly defined and regulated, can create confusion and uncertainty. This can then avert both companies that are raising capital, as well as investors, since they may get a feeling that approaches are not lawful. Consequently, this uncertainty can make them steer away from engaging in such an activity. The case of Germany shows that not defining crowdfunding can make platforms seek for various loopholes within the existing laws in order to find a way to run the campaigns. Even though there have not been any reports of illegal activities, it could happen that setups would turn out to be unlawful, causing potential problems to companies and investors, as well as diminishing crowdfunding's reputation. Because of these threats, I find it more beneficial that countries properly define and regulate crowdfunding, which would make the activities more controlled and potentially also more appealing.

One item that should receive more attention is investor protection. Often it is seen that allowing crowdfunding will automatically bring lower investor protection. I disagree with this view, which could have incorrectly appeared because of the fact that investments in start-ups are on average very risky. However, these are two separate things that should be clearly distinguished. In order to increase investor protection, more focus should be put on making sure that correct and relevant information is presented to investors. While this is exactly the aim of prospectus registration requirements, they are simply too extensive and costly for smaller companies. This dictates that they need to be adjusted to crowdfunding's financial capabilities, while still maintaining a sufficiently high level of investors' protection.

One way of making sure that higher investors' protection could be reached is to hold people liable for the information provided. In the first place, focus should be put on the owners and management of the company that is seeking financing and who are presenting various information about their company and plans. Here I find the requirements as proposed in the draft of Title III of the JOBS Act to be one of the possible solutions. Issuers are obliged to state at least some clearly defined information related to their

company, including financial statements, of which the level of detail depends on the amount that is to be raised. Secondly, accountability should also be put on the platforms that are publishing the campaigns. This directly means that more focus should also be on platforms' regulation. Suggestions related to platforms will be presented in the next chapter.

A popular approach for ensuring investor protection is to limit the offer to only accredited investors. In most of the cases they are defined as high net worth individuals or individuals with experience in investing that should be able to spot and assess the risks connected with this kind of investments. This requirement, however, means that crowdfunding can only reach a very small number of people and therefore cannot easily develop into an option for the wider crowd. High requirements and especially the complexity of the procedures to get accredited mean that if crowdfunding wants to become more popular, the current rules need to be changed.

My proposal would be to allow everyone to make investments via platforms, but limit them with certain conditions. One condition would be to establish the maximum amount that investor can invest. For non-accredited investors this could be for example set at 10,000 EUR. For people who would like to make larger investments, an accreditation could still apply. It is crucial that this kind of registration could be performed completely via the Internet. As authorities in developed countries already possess a large amount of personal data (e.g., yearly income and level of funds available on their bank accounts), performing a quick check on person's financial situation should be performed quite easily and accreditation granted in only a day or two. According to their financial situation, they would then be able to invest higher amounts, similarly to allowances that are currently in place in some of the countries (e.g., in the US).

Additional item that laws should define are the requirements for regular reporting to investors of what the company's current business and financial situation is and if there are any information that would importantly change the investors' position and the value of their share. Some platforms are already making sure that companies periodically update their investors with this kind of information. Regulating this and ensuring that required information are reported and that company representatives are at the same time accountable for the correctness of the report would additionally increase the investor protection. By using standardized forms and reports that are not too extensive and difficult to complete, this kind of periodic reporting should be easy and not too costly to perform.

## 4.2 Crowdfunding Platforms

Throughout the thesis it has been established that platforms play an important role in the crowdfunding process. They determine which companies' campaigns get published on their websites, as well as outline the legal setup and choose the instruments. This means that a lot of focus needs to be put on them if crowdfunding is to be additionally developed and the operations successfully run.

Many suggestions for improvements can be drawn from the presented analysis performed by Hornuf and Schwienbacher (2014b). Their results indicate that platforms should try to increase the number of participants, as this in practice also increases the success rate of the campaign (Hornuf & Schwienbacher, 2014c, pp. 4–5). We can see this as a positive signal and the confirmation from actual data that crowdfunding is about reaching a wider audience. One of the simplest ways of increasing the participation from a larger base of investors and to make crowdfunding appealing to a wider audience is to decrease the minimum ticket size. In order to afford to offer smaller investment tickets and subsequently accept investments from more investors, platforms need to work on finding ways of automating the process and making sure that larger number of investors does not make the setup too complex for any changes that might occur in the future. One of the suggestions would therefore be to adopt the practice of pooling the investors by creating special purpose vehicles. This approach benefits both companies in case they want to apply any changes or get subsequent financing, as well as investors since the setup proves to be exit friendly and with it they can more easily get their investment back.

Another suggestion confirmed with data is for the platforms to work on their reputation. It all starts with making sure that right campaigns are selected. While they need to be prosperous and well presented so that they attract enough investors, platforms also need to perform thorough checks about companies' background, financial data and stated facts. In practice it should not be expected that individual investors will perform due diligence, simply due to the fact that they have limited information available and are not in direct contact with the management and owners of the company. This dictates that platform's personnel should be knowledgeable and have some experience with start-ups. Beside that they should also get in close contact with company's representatives to check and confirm that what is provided to potential investors is trustworthy.

A concern that was pointed out in the thesis is that building a good reputation might not be in every platform's goal and that there is a risk of platforms being set up with the intention of collecting people's funds without actually investing them in real companies. Because of this I see a need for the financial regulator or another competent authority that might be set up to oversee crowdinvesting to start regulating the platforms engaging in crowdinvesting. One of the ways of regulating this market would be to make it mandatory for the platforms to obtain a licence and get registered as platforms that are allowed to engage in these kinds of activities. France is an example of a country that has already applied this rule, while some other countries (e.g., US) are planning to introduce it in the future. United Kingdom is on the other hand an example of a country where registration of a platform is possible, however, it is not compulsory. Based on the findings that good reputation helps platforms attract more investors, it should mean that platforms would actually voluntarily tend to seek registration. But the fact that it is not compulsory means that there are still chances that fraudulent ones can appear. Therefore I believe that compulsory registration and accreditation of platforms can be an important step forward which will increase investors' confidence and consequently also build larger investor base. This increased trustworthiness should then at the same time mean that they will be willing to invest larger amounts and more often. The only thing that authorities need to make sure is that registration procedure is not too time-consuming and costly for the platforms, which might discourage them to get involved in the first place.

What platforms should also try to improve in the future is the liquidity of investments. Knowing that even in case the company in which you invested money is doing well, you might not be able to get your money back for a number of years and would receive it at a point of time which you do not have any impact on, is currently a large drawback connected with crowdinvestments. Solution for this would be to set up separate secondary markets, which would be run by the platforms. Some platforms have already done that, but due to low amount of both supply and demand, the market is still very illiquid. One possible solution would be for the platforms to connect and create joint secondary markets with more supply. This could importantly increase the attractiveness of such an exchange. The possibility to create such platforms of course depends on the instruments used in the offering, so it is crucial that they enable an easy transfer of the ownership.

### **4.3 Business Environment**

Findings presented earlier confirm that crowdfunding can have positive impact on the economy as it can offer a way for smaller companies and entrepreneurs to raise financing that can help them develop and expand their operations and create new jobs. The legal framework, which enables and stimulates crowdfunding, is only one aspect that needs to be in place. In my opinion countries should also focus on trying to make sure that business environment is stimulating companies' activities. There are numerous steps that can be taken to try to make sure that the needs of the companies and entrepreneurs are spotted and adequately addressed.

One of the steps towards building a more prosperous business environment would be to set up a special body, for example in the form of an agency, that would focus on improving the environment for entrepreneurial activities. Its aim should be to gather information about the needs that entrepreneurs and smaller companies have and based on that propose and initiate changes that would make the system friendlier for them. With this input the government could outline policies and laws that would help improve the business environment. One of the items that they should address is the easiness with which the company can be set up. In many countries the requirements are still very demanding and the whole registration procedure is too bureaucratic and time-consuming. Nowadays with the development of new communication channels the whole process should be as simplified as possible, with the communication done exclusively via the Internet and consequently being quicker and involving lower cost.

Such an agency could also put more attention on crowdfunding. It often happens that some new and innovative ways of raising finance are not adequately understood, simply because they do not yet exist within one country. Having an agency monitoring and assessing the developments in other countries could help better understand what steps need to be taken in order to successfully implement best practices from other parts of the world in the domestic market. Expanding the responsibilities of such an agency could also help with some of the regulatory suggestions mentioned earlier. An option would be to create a central register of crowdfunders. Putting limits on the amounts that individuals can invest requires a registration and setting up a database of investors. Even a simple registration would enable authorities to check how much a person has invested in the last period and if a limit has been reached. This is necessarily connected with the requirement of registration and authorization of platforms that would allow only people with an account with the

central agency to invest large amounts. With all the connections in place it would be easy to monitor how much a person has invested on different platforms.

While this registration and monitoring instrument might at first sight seem restricting for the development of crowdfundering, this could not necessarily be the case. A solution that would help tackle this, as well in general stimulate investments in prospective companies, would be to create a stimulative tax system. The system should be such that it would encourage people to make investments in young, promising companies by offering tax incentives to investors that invest their funds into them. An example of a country that is applying similar changes is Turkey, where investors are encouraged to make angel investments. The incentives there range from 75% of the investment amount if they hold the investment for at least two years, to up to full amount of the investment if the business in which they invest received a grant from a qualified Turkish ministry, council or development organization (infoDev, 2013, p. 59).

Grants and other types of stimulations are another option that government can use to foster the development of young businesses. An example from practice that involves crowdfunding comes from the United Kingdom, where government decided to help growing businesses. In 2012 government connected with the lending-based crowdfunding platform Funding Circle and announced that part of the foreseen funds would be used as a loan to promising businesses raising funds on this platform (Armitage, 2012). Results confirmed that such an initiative can provide important stimulation to businesses. Even though in the same period total lending to small businesses considerably declined, the loans that were raised through the Funding Circle importantly increased (Armitage, 2013).

There are other ways in which crowdfundering can be stimulated. Similarly to the connections of than angel investors in various networks, also for crowdfundering special networks or alliances could be founded. Platforms could play an important role in them. It could turn out to be not just a way of increasing the power by appearing together and lobbying for crowdfundering-friendlier laws to be implemented, but also for promoting the crowdfundering in general. Many people are still not aware that this investment option exists and raising people's awareness and explaining how it works in practice could definitely help improve its recognition.

## 5 EMPIRICAL ANALYSIS – THE CASE OF SLOVENIA

To better understand the dynamics of crowdfvesting it is important to check where crowdfvesting is currently developed and what the main drivers for differences between countries are. Data shows that the number of crowdfvesting platforms in certain EU countries is already quite high, while there are some in which not a single platform has been set up so far. Similarly, review of regulatory frameworks for selected countries indicates large differences among them. In order to better assess the suitability of crowdfvesting for Slovenia, comparing various factors to other EU member states should therefore offer a good comparison tool.

### 5.1 Where is Crowdfvesting Currently Developed and why is that so?

The development of the crowdfvesting market in Europe is already briefly presented in the first section of the thesis. Data in Table 3 on page 13 shows that the most crowdfvesting platforms in Europe had been by the end of 2013 started in Germany, United Kingdom and France. These findings are confirmed in the Figure 2 below, which presents the current situation of the crowdfvesting platforms by country in the European Union.

*Figure 2. Density of Crowdfvesting Platforms in the European Union*



Source: *Crowdfunding innovative ventures in Europe*, 2014, p. 11.

Map shows that Western and Northern Europe are the regions with the largest number of operational crowdinvesting platforms. The United Kingdom is at the moment the leading country in the European crowdinvesting market, both in terms of number of platforms, as well as in total volume of funds raised. Germany and France are lagging slightly behind the United Kingdom. While Figure 2 shows that there is some crowdinvesting activity in the Southern and Northern Europe, it is the Eastern Europe that is really undeveloped in this regard, with many countries not yet having a single operational crowdinvesting platform (European Commission, 2014, p. 11).

In order to determine factors that importantly influence where crowdinvesting is more likely to develop, European Union area can serve as a good area for the analysis. There are many similarities between the member states, but at the same time they are very heterogeneous, so that different determinants could be observed. One of the factors that determine the amount of crowdinvesting platforms can be quickly recognized from the Figure 2 – the size of the country and its economy. The three countries with the largest number of crowdinvesting platforms (United Kingdom, Germany and France) are at the same time also the largest economies of the European Union. In larger economies, with all other things being equal, more companies are being started and also they have a larger base of potential investors, which consequently means that they are more attractive for the platforms to be set up.

However, since it was established earlier in the thesis that mostly younger companies and start-ups are attracted to this kind of capital raising, the development of the country in the entrepreneurial sense also plays an important role. A good measure for the level of the entrepreneurship within countries is the Global Entrepreneurship Index (GEI), which is calculated and published by the Global Entrepreneurship and Development Institute and focuses on entrepreneurial attitudes, aspirations and the level of activity.



Table 5: Global Entrepreneurship Index 2015 for EU countries

Rank within EU	Country	Global Entrepreneurship Index	Rank within EU	Country	Global Entrepreneurship Index
1	United Kingdom	72.7	15	Slovenia	53.1
2	Sweden	71.8	16	Portugal	50.8
3	Denmark	71.4	17	Spain	49.6
4	Germany	67.4	18	Czech Republic	48.9
5	France	67.3	19	Poland	47.4
6	Netherlands	66.5	20	Slovakia	45.4
7	Finland	65.7	21	Romania	45.3
8	Belgium	65.5	22	Bulgaria	42.7
9	Ireland	65.3	23	Hungary	42.7
10	Austria	64.9	24	Cyprus	42.5
11	Estonia	60.2	25	Greece	42
12	Luxembourg	57.2	26	Italy	41.3
13	Lithuania	54.6	27	Croatia	40.6
14	Latvia	54.5		Malta	N/A

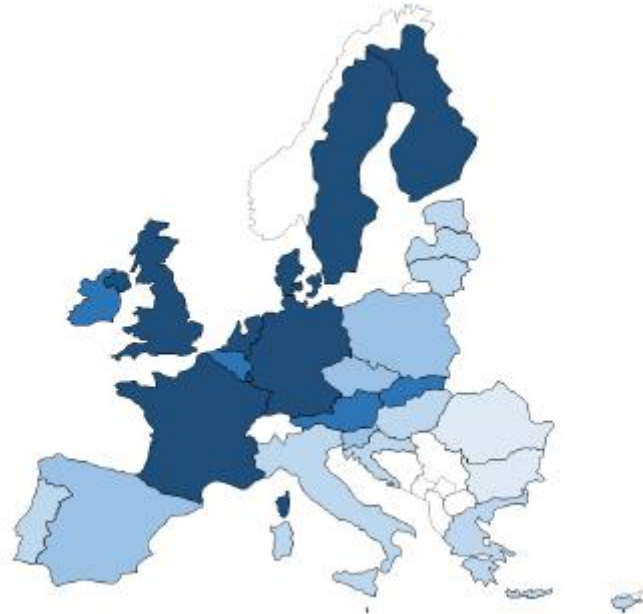
Source: Global Entrepreneurship and Development Institute, *Global Entrepreneurship Index 2015*, 2014, pp. 42–43, Table 3.5.

Table 5 shows that the most developed EU country in terms of crowdfunding, the United Kingdom, is also the best ranked EU country with regard to the GEI. Additionally, we can observe that except for Denmark all top ten EU countries in Table 5 also already have an operational crowdfunding market. Lower ranked countries, with the exception of some large economies such as Italy and Spain, have on the other hand still not seen the crowdfunding platform being set up yet. Based on this comparison we can confirm that countries which are more entrepreneurial are at the same time more attractive (and more suitable) for crowdfunding.

According to European Commission (2014, p. 9) the market development of the crowdfunding model in the EU member states depends mainly on cultural, financial, as well as regulatory factors. A cultural factor that importantly influences how crowdfunding in general (and with that also crowdfunding) will be accepted within the country is how well the general public is associated with e-commerce. Since crowdfunding opportunities are spotted on the internet and also all the monetary transactions are done online, not being familiar and comfortable with ordering products and services online can importantly hinder the willingness of people to engage in crowdfunding activities. In countries where e-commerce is widely used, more people perceive these transactions as something normal

and they are less sceptical and more prone to engage in them. Additionally, average person in countries where online purchasing is common is also more likely to possess the tools (such as credit cards) that are usually required to perform the actual monetary transaction.

*Figure 3. Online Purchases by Internet Users in EU Countries in 2012*



Source: *Eurostat News Release 147/2013*, 2013; *Crowdfunding innovative ventures in Europe*, 2014, p. 9.

Figure 3 above shows the share of internet users in individual EU countries that used internet also for purchasing goods and services, with darker shade of blue indicating higher share. We can see that Figure 3 is very similar to Figure 2, which indicates that countries with higher degree of familiarity with e-commerce are also more advanced in the crowdfunding sense, therefore confirming the connection.

The influence of financial factors is harder to define. While low availability of the entrepreneurial finance within one country should positively impact the speed of the crowdfunding development due to the lack of other available resources, data collected by Singer, Amoros, & Moska (2015, p. 59) indicates that this is not necessarily the case, as some of the countries with the highest availability of financial sources for entrepreneurs were at the same time also the first ones to see the crowdfunding platforms being set up. The demand for financial capital, on the other hand, is an important driver. The previously mentioned entrepreneurship index and the size of the economy are seen as factors that positively influence the demand side.

Another reason why availability of other financial sources is not necessarily impacting the speed of the development of crowdfinancing is the nature of crowdfinancing, since it offers the companies also other benefits. As it was established earlier in the thesis, many young companies opt for crowdfinancing not only for the pure financial reasons, but in many cases also to test the prospects of their plan with the public and in this way obtain valuable information from the market, as well as gain more exposure and in this way advertise their company. Additionally, funds received through crowdfinancing are often cheaper than some of the other sources of entrepreneurial finance, which means that even if many different sources of finance are available, crowdfinancing can still represent the preferable option.

Regulatory factors play an important role. The review of the regulatory frameworks that impact crowdfinancing in some of the countries presented in the second part of the thesis shows great diversity of the member states. However, data shows that despite different rules that are valid in countries, in many of them crowdfinancing managed to start operating without any special regulatory changes that would be adopted specifically for crowdfinancing. The development of crowdfinancing in some of the countries indicates that as long as the regulatory framework is not too strict (such as in the case of the US, where crowdfinancing for a wider, non-accredited audience is still not permitted), crowdfinancing platforms usually can find a way to start operating. Although they had to take some compromises when setting up campaigns, the crowdfinancing managed to start developing without any special regulatory changes that would specifically target crowdfinancing. One of the best examples is Australia, where at the time when the first crowdfinancing platform was set up, no specific crowdfinancing regulation existed (European Commission, 2014, p. 49). Similar situations were observed in numerous EU countries, where at the time of the launch of the first crowdfinancing platforms, no specific crowdfinancing regulation was in place. This shows that in the majority of cases, for the crowdfinancing to be launched special laws are not a precondition.

However, as it was already stressed earlier in the thesis, special laws with greater focus on crowdfinancing can vastly foster its development. The benefits come mainly from two reasons. Firstly, there are direct implications that special law can have on the way platforms are able to structure their campaigns, such as the easiness of setting up a platform, the amount of funds that can be collected and the transaction and compliance cost that are associated with them. Secondly, defining crowdfinancing and creating special

rules for this type of financing can also bring benefits to its development due to the decreased legal uncertainty associated with this new type of raising funds. Reduced uncertainty can at the same time decrease cost for lawyers and legal consultants and make crowdinvesting an even more attractive option.

One of the biggest drawbacks of different applicable laws is that they hinder cross-border operations of crowdinvesting platforms. This can also be seen in case of platforms focusing on other types of crowdfunding, which are from legal perspective less complex and should make it easier to accept projects from all over the world. For crowdinvesting, the situation is even more complex. How valid the regulatory complexity is for the development of crowdinvesting has been confirmed during the public consultation on crowdfunding which was initiated by the European Commission in 2013. The findings showed that 81% of platforms that engage in types of crowdfunding that do not provide any financial return were operating also cross-border, confirming that internal market works relatively well for them. On the other hand, only 38% of lending and crowdinvesting platforms engaged in cross-border operations. When being asked about the obstacles that prevent them from operating in another EU country, the most often stated reason (valid for 44% of financial return platforms) was the lack of information about legal requirements. 27% of them responded that they do not operate cross-border due to high cost of authorisation in another country (European Commission, 2014, p. 4).

How discouraged platforms can be to operate in different countries due to different laws and rules can also be seen in other types of crowdfunding. Even reward-based platforms, which engage in a type of crowdfunding that is considerably less complicated from the legal point of view than crowdinvesting, prefer to run campaigns for companies that are based in their home country. A good example for this is one of the most well known platforms, Kickstarter, which required (before gradually opening its subsidiaries in some other countries) that all the companies that published projects on their platform were US based in order to make sure that from compliance point of view there were no unknowns.

This tendency of platforms to offer services to companies which are based in their country creates an interesting sequence of events. As it was established earlier, countries that have a higher entrepreneurship index and are therefore more likely to see higher number of start-ups, are also more likely to see crowdinvesting platforms being set up, as there is a larger base of potential clients. Having successful platforms in a country means that they can attract additional companies from abroad to move their operations to that country.

Combining the whole circle of events we can see that policies that stimulate entrepreneurship and attract start-ups can also through crowdfunding bring additional benefits for the national economies.

It has already been stressed that by helping raising funds for younger, innovative companies crowdfunding can positively impact economy growth, job creation and support for innovation. To support this countries are also adopting various policies that make the business environment more attractive for establishment of new companies. Some of the solutions that countries have taken were already mentioned earlier in the thesis, however important questions that come up with the movements of companies to other countries are also what company will get when basing itself in a certain country and what consequences this will bring. When deciding where to move their operations, besides appraising access to business infrastructure, talent and distribution (Martell, n.d.), companies are also considering the reporting requirements and tax obligations that they will encounter in a particular country or state. Especially in the case of reward-based crowdfunding, the place where the start-up is based usually also means that they will pay taxes there if their campaign is considered a sale of products (Feldman, 2012).

Applicable taxes can definitely represent an important item that can either attract start-ups or encourage them to set their business somewhere else. Realizing the benefits that presence of younger and innovative companies can have for the community and economy, many countries offer generous tax benefits for these types of companies. An example is the state of New York, which in order to attract start-ups and leverage the available research capacity decided to introduce a 100% tax elimination credit for state and local tax liabilities to a certain type of young companies (Greyf, Perechocky, & Enista, 2014). The importance of tax treatments in connection with crowdfunding and the influence that this can have on the choice where people and companies put and invest their money was also recognized by the European Commission. Prime examples are donations and financial investments in start-ups and in R&D activities, which are in some EU countries tax deductible, but in others are not. These differences can reduce the attractiveness of certain countries and also create a confusion which further hinders the development of the crowdfunding (European Commission, 2014b, p. 9).

## **5.2 Analysis of Slovenia**

As it can be seen on the Figure 2 on page 59 Slovenia is not yet on the map of countries that offer crowdfunding possibilities. The same situation applies to other types of crowdfunding, since not a single Slovenian crowdfunding platform has been set up so far. This, on the other hand, does not mean that Slovenian start-ups have not yet benefited from this type of fundraising. On the contrary, numerous Slovenian companies have had successful campaigns in which they raised the targeted amount of money and in many cases also considerably exceeded it.<sup>31</sup> They have, however, all published their campaigns on foreign crowdfunding platforms.

Below I will first briefly analyse the current situation in Slovenia in order to answer the question if crowdfunding is something that can and should be developed and stimulated. Based on these findings I will then come up with suggestions for future approaches.

### **5.2.1 Suitability of the Slovenian Business Environment for Crowdfunding**

Using the determining factors presented in the previous subchapter we can see that size of the Slovenian market is definitely something that is hindering the development of crowdfunding in the country. Assuming that the Slovenian based platform would only cover the Slovenian market and investors, the number of potential companies and investors who would be willing to fund the projects would most likely be very low.<sup>32</sup> Small market is therefore negatively impacting the potential for the development of crowdfunding in Slovenia. Also if a platform would specialize in other types of crowdfunding small audience would probably not attract many companies. This is especially true for reward-based campaigns, which have so far been the most popular choice for Slovenian start-ups. Many of them have deliberately chosen Kickstarter in order to have their campaigns published on a platform with a global reach which helped them secure (much) higher sales.

Comparisons with other countries show that from the entrepreneurial perspective Slovenia is currently not on the same level as some of the most entrepreneurial EU countries. Based on the Global Entrepreneurship Index presented in Table 5, which takes into consideration entrepreneurial attitudes, aspirations and the level of activity, Slovenia is ranked number 15 within the EU. Index indicates that entrepreneurial mindset and environment in Slovenia is considerably less developed than in countries such as the United Kingdom and

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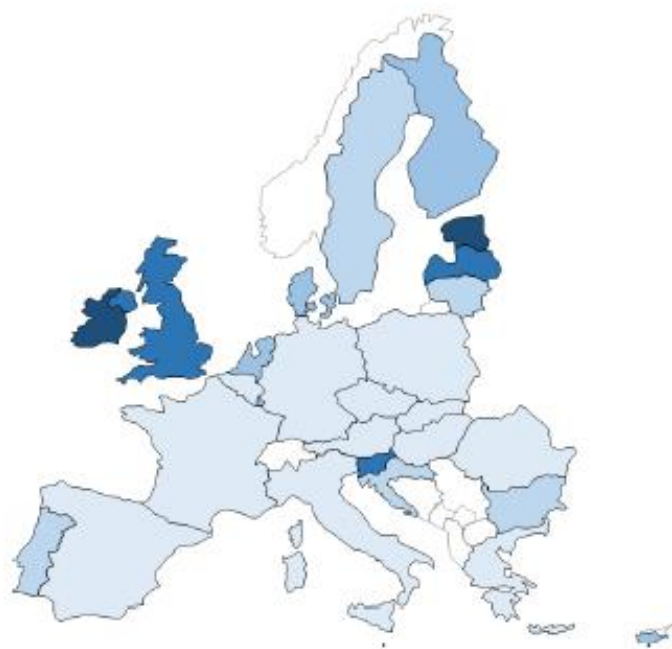
<sup>31</sup> An example is a campaign FlyKly Smart Wheel, which on Kickstarter targeted contributions of \$100,000, but in the end managed to raise \$701,239.

<sup>32</sup> Slovenia has a population of around 2 million and is one of the smallest EU countries.

Sweden. Additionally, the level of online purchases by Slovenian internet users is much lower compared to some the Western and Northern European countries, indicating lower familiarity with e-commerce. These comparisons indicate that if crowdfunding campaigns were to be focused just on the Slovenian market, companies would most likely face difficulties raising higher targeted amounts.

Financial factors that impact the development of crowdfunding are for Slovenia more promising. It was established that demand for financial capital is an important item and that it has a positive impact on the development of crowdfunding. Figure 4 below shows how large the demand for online investing is when compared with the number of start-ups per capita (European Commission, 2014a, p. 10)

*Figure 4. Demand for Online Investment in EU Countries*



Source: *Eurostat News Release 147/2013*, 2013; *Crowdfunding innovative ventures in Europe*, 2014, p. 10.

We can see that Slovenia is one of the countries with the highest demand for online investment, indicating that there is a need for higher supply of financial resources for these types of companies. While demand is high, the general availability of financial resources for entrepreneurial companies is on the other hand very limited. As it can be seen in Table 6, Slovenia has one of the lowest scores for the availability of entrepreneurial finance

among the EU countries, indicating that it is much harder for entrepreneurs in Slovenia to obtain the needed external financial resources.

Table 6. The Availability of Financial Resources for SMEs (including grants and subsidies) for EU Countries

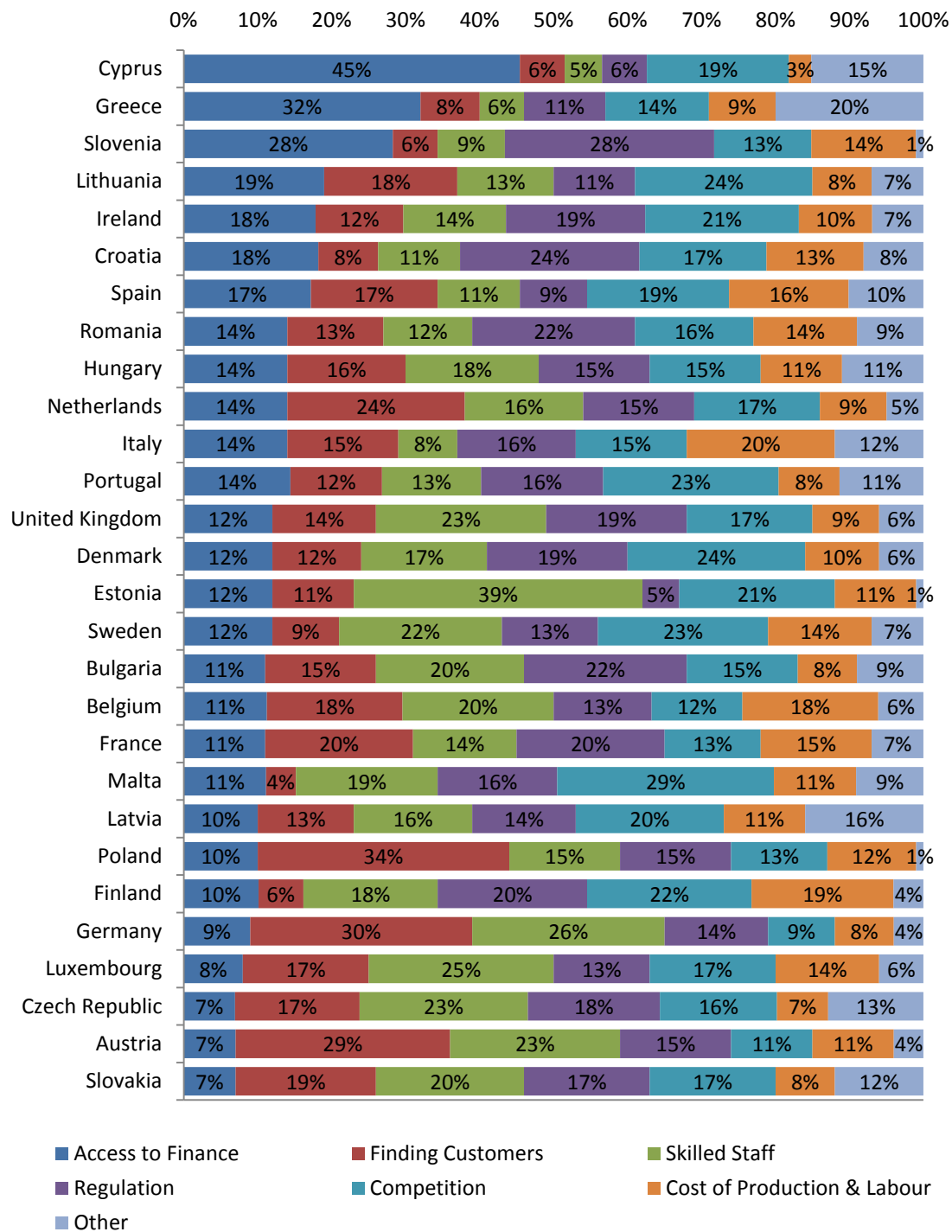
<b>Rank within EU</b>	<b>Country</b>	<b>Entrepreneurial Finance Indicator</b>	<b>Rank within EU</b>	<b>Country</b>	<b>Entrepreneurial Finance Indicator</b>
1	Belgium	3.38	15	Hungary	2.63
2	Lithuania	3.19	16	Sweden	2.63
3	Ireland	2.87	17	Italy	2.55
4	Estonia	2.86	18	Latvia	2.55
5	Germany	2.84	19	Austria	2.51
6	Finland	2.82	20	Romania	2.43
7	Netherlands	2.81	21	Slovenia	2.33
8	France	2.77	22	Croatia	2.32
9	Poland	2.77	23	Spain	2.14
10	United Kingdom	2.77	24	Greece	2.11
11	Denmark	2.73		Bulgaria	N/A
12	Portugal	2.73		Cyprus	N/A
13	Slovakia	2.73		Czech Republic	N/A
14	Luxembourg	2.70		Malta	N/A

Source: Singer, Amoros, & Moska, *GEM 2014 Global Report*, 2015, p.59, Table 3.2.

That the access to finance is a big problem for smaller Slovenian companies has also been confirmed in the EU survey conducted in 2014. When asking Slovenian SMEs what their most pressing problem was, 28% of them answered that it was the access to finance. As we can see below in Figure 5 Slovenia was in the survey ranked as one of the top countries in which SMEs struggle to get access to finance and is considerably above the EU average. Only SMEs in Cyprus and Greece experienced this problem more severely. One of the main reasons why companies are struggling to get necessary funds in Slovenia could be found in the fact that Slovenian companies traditionally tend to rely on bank loans. In the same survey 37% of Slovenian SMEs indicated that they applied for a bank loan (second highest percentage within EU, surpassed only by Belgium – 38%), while additional 22% of them wanted to apply but did not so because of the high possibility for rejection, which represented the highest percentage within the EU. During the recent financial crisis the availability of bank loans has greatly decreased and the collateral requirements have become much higher. Results from the survey indicate that Slovenian companies have been due to their reliance on financing through bank loans indeed one of the most affected within the EU (Doove, Gibcus, Kwaak, Smit, & Span, 2014, pp. 4–144).



Figure 5. Most Pressing Problems of SMEs in European Union



Source: S. Doove, P. Gibcus, T. Kwaak, L. Smit, & T. Span, *Survey on the access to finance of enterprises (SAFE)*, 2014, p. 144.

Before the crisis bank loans were a popular source of entrepreneurial finance also in other European countries. At that time requirements for granting a loan used to be lower and also companies with lower amount of assets (used by banks as collateral) were able to get a loan approved. But financial crisis has increased the requirements and this has importantly

deteriorated their availability to entrepreneurs. However, to what degree the crisis has affected the financing supply to entrepreneurs within the EU depends mostly on the region. Some countries were able to counteract the limited access to bank loans by the availability of the venture capital. An example of such a country is the United Kingdom, which as a consequence increased its competitiveness for start-ups. Slovenia, on the other hand, belongs to the group of countries, where both venture capital and bank loans are harder to get (Mendrek-Laske, 2014). This all indicates that a new, alternative way of raising finance should at least from the Slovenian entrepreneurs' point of view represent a welcomed addition.

Slovenian legal framework in connection with crowdfunding has already been discussed earlier in the thesis. As the presented analysis shows, the laws in Slovenia are extremely unfavourable for any crowdfunding campaigns due to the limits on the number of members of a limited liability company and the absence of a silent partnership option. Additionally, regardless of the fact that from the regulatory point of view the donation and reward-based types of crowdfunding are generally not so complex, the fact that Slovenian tax obligations that relate to them are unfavourable compared to some other countries, makes them less attractive. A prime example of this is that even in the case of donations from the crowd the amounts received in Slovenia are taxed at the 22% rate (Kavčič, 2014).

Based on all these findings we can see that there are some factors which favour the development of crowdfunding in Slovenia. The demand for online investment when compared to the number of start-ups is high and the availability of other entrepreneurial sources of finance is limited. However, in my opinion factors that indicate that at this moment crowdfunding should not be a priority item in Slovenia prevail. I see the biggest obstacle in the size of the Slovenian market. If a platform was to be set up in Slovenia, it would, due to regulatory differences, most likely focus only on Slovenian market. Operating cross border is at this moment quite complex and Slovenian platform would most likely need very large resources to start such operations. Assuming that the platform would therefore focus only on the Slovenian market, low familiarity of Slovenian people with e-commerce (and also with the concept of crowdfunding) would in practice make it difficult for the platform to attract and convince people to actually invest. Then there is also a question of how many companies would there be with projects and business plans that would be appropriate for crowdfunding campaigns. Entrepreneurial index suggests that this might be a problem as well. Indications of suitability of the Slovenian market for

the development of other crowdfunding types are also not promising. Despite the large supply of business ideas and projects, the size of the market and the reach that a Slovenian platform would most likely get, would probably not convince Slovenian start-ups to place their products on Slovenian platforms instead of on some well known global ones. This combined with unfavourable tax treatment of received funds also explains why none of the platforms have been started in Slovenia so far.

### **5.2.2 What can be done?**

Despite the negative findings which indicate that developing a Slovenian crowdfundering platform might at this point not be very beneficial, I still believe that crowdfundering is something that Slovenian companies and economy can in the future benefit from. Majority of items that speak against the development of crowdfundering platform in Slovenia are a consequence of the country's small market size. We can see that there are EU countries which have lower entrepreneurial indices than Slovenia in the entrepreneurial sense (e.g., Spain and Italy), but managed to successfully start the crowdfundering market. The solution that I see is therefore in the cooperation with foreign platforms and better alignment of policies and legal and tax framework within the EU. Regarding the regulation, Slovenia should consider reintroducing the concept of a silent partnership, which proves to be a successful and popular choice in some of the countries.

Basically all the crowdfundering platforms have first started their operations only in the country where they are based. Different legal frameworks, unfamiliarity with start-up environments in other countries and often also difference in languages have discouraged them to operate outside of their home country. However, due to limited domestic markets and in many cases also increased competition, numerous platforms are now planning or already taking concrete steps to cross-border operations. This approach can bring good results because with it platforms expand their target market and can reach even wider audience. At the same time this can also be beneficial for companies that are raising funds, since larger investor base can also mean higher invested amounts. This approach can also prove to be very beneficial for Slovenian crowdfundering. Solution that I see is that instead of trying to set up an independent Slovenian platform, a better approach would be to join operations with an already established platform or to form a Slovenian subsidiary. In the crowdfunding world good knowledge of local entrepreneurial and start-up environment can importantly contribute to its success, with local experts spotting potential campaigns and at the same time promoting and educating people about crowdfundering.

European Commission has already acknowledged the advantages and the potential that crowdfunding and other types of crowdfunding have for the member states. So far most of the activities have been focused on conducting studies and gathering information and feedback from various stakeholders in order to better understand the needs of parties involved, as well as the challenges that they face. The goal that Commission has set is to assess best practices and develop standards both at national and European level that would help foster industry's development and at the same time support initiatives such as Entrepreneurship Action Plan (European Commission, 2014b, pp. 11–12). Slovenia can use these initiatives as an opportunity to contribute its view and feedback on the matters in order to make sure that local peculiarities are taken into consideration when creating joint policies.

We can see that European Commission is linking the crowdfunding initiatives closely with other programs, the aim of which is to improve the overall state of the business environment within the EU. As it was stressed earlier in the thesis, working on improving the general business environment within the country could also importantly help with the development of crowdfunding. Comparison with other EU countries shows that Slovenia is lagging behind the most developed EU countries in the entrepreneurial sense. In order to set up a successful supporting environment for Slovenian start-ups Rebernik and Jaklič (2014, pp. 10–16) suggest that the focus of policies should be to improve the following five elements:

1. Development of the entrepreneurial culture – one dimensions in which Slovenia is scoring well above the EU average are human resources (European Commission, 2014c, p. 93). However, educated and skilled people are not enough if the country is to develop in the entrepreneurial sense. It is therefore important to include elements in the educational system through which talented people could realize that becoming an entrepreneur is also an attractive alternative. Events such as workshops, start-up weekends and conferences can also importantly raise the awareness and promote the entrepreneurial culture.
2. Better access to capital – according to the EU survey, access to financial resources is one of the biggest hurdles that Slovenian SMEs face. Situation for younger companies which are in the initial phases of company development can be even more difficult due to the lack of assets that they possess. It is therefore important to offer further support for the investments done by domestic and foreign venture capitalist and business

angels. Additionally, the administrative burdens for getting the funds should be as minimal as possible and subsidies for promising projects should be more widely available.

3. Support for domestic start-ups on global markets – Slovenian market is small and this means that for most of the start-ups (especially for ones that focus on specific niche markets) real opportunities for growth and development could be realized when companies enter foreign markets. One way of helping start-ups establish connections abroad is to support and (co-)finance their positioning at foreign accelerators and incubators.
4. Commercialization of knowledge and technologies – it is important to add entrepreneurial spirit to various research and other institutions that are inventing and developing new products, methods and processes. Commercializing their work can bring large benefits, both to these institutions as well as to the wider audience. In order to make sure that knowledge is protected, a new modern system for the protection of the intellectual property should be set up.
5. Effective supporting environment – In order for the start-up ecosystem to work effectively and efficiently, all stakeholders need to take an active role and act in a supportive manner. Usage and distribution of funds need to be transparent with periodical checks of their effectiveness. The development of the ecosystem needs to be monitored and, if necessary, corrective actions need to take place.

## **CONCLUSION**

The development of the Internet has triggered numerous innovations, which have brought some significant changes to the existing business models. One of the latest innovations in the financial world is crowdfunding, which represents an attractive alternative to the traditional options of raising funds for companies' operations. As people expect to receive a positive return for the provided money, crowdfunding can also be seen as a new investment option for a wider crowd. Despite the fact that crowdfunding first appeared only a few years ago, there have already been numerous successful campaigns. Both the number of crowdfunding platforms, as well as the total amount of funds raised through crowdfunding has recently importantly increased.

The analysis shows that crowdfunding should be most suited for smaller and younger companies that can use this option to successfully raise seed and early-stage capital to

support their activities. Since they are usually not able to get adequate funds from other sources due to their riskiness and the lack of assets, crowdfunding can prove to be a viable and attractive alternative for them. Crowdfunding is also an excellent option for the companies that are not yet sure about their planned projects and can use crowdfunding campaigns to test their prospects. Investors are attracted to crowdfunding due to its potential for high returns and the nature of these investments, as they are in many cases not following the general economic trends and can serve as a great diversification tool for their portfolios. The additional benefit of crowdfunding is the fact that in most of the cases investments can be done for very small amounts, which means that this investment option can be accessible also to people with less funds available.

On a high level we can divide the regulation related to crowdfunding in two different parts: regulation of platforms and regulation of investments used. Different countries use different approaches for regulating them. In the United Kingdom a generous threshold for the exclusion from the prospectus requirement means that biggest platforms use shares in their campaigns. In Germany licensing requirements and low threshold amounts for prospectus registration made the majority of platforms seek other options for their campaigns, with the profit participating loans being a popular choice. In France platforms can now register as Crowdfunding Investment Advisors, while in Slovenia national legislation includes numerous rules which make crowdfunding in practice very difficult. In the United States the JOBS Act, which has already been signed into law, officially recognizes crowdfunding and offers the possibilities for it to take place. However, before the law can be enforced and crowdfunding offerings can start taking place, the SEC still needs to write the rules to implement the crowdfunding provisions.

Crowdfunding platforms play an important role in the process as they connect companies with investors. They determine the types of contracts that the parties are offered, what kind of instruments are used, how the investment is done, as well what fees and minimum investment tickets apply. They also play an important role in trying to solve some of the spotted drawbacks currently connected with crowdfunding, such as the protection of investors, the liquidity of crowdfundings, and the ability and easiness to transfer ownership stake in the companies.

Since crowdfunding promises to be especially useful option for younger and smaller companies which can become important drivers of the economy, its development should therefore also be beneficial for national economies. While there is limited direct data

available about the impact of crowdfunding, assuming that crowdfunding campaigns have similar characteristics as investments done by business angels and other crowdfunding campaigns, we can conclude that such investments should have positive impact on the level of operations and therefore also on the level of new jobs created. Additionally, due to the fact that such campaigns in most of the cases target also people abroad, it should at the same time enable companies to reach wider audience and considerably expand their target market.

In order to further develop crowdfunding, countries should try to set up a legal framework that would enable it, while at the same time have it properly defined and regulated. Higher investor protection could be reached by holding people liable for the information provided and by defining requirements for regular reporting of important information. More focus should also be on platforms, as they play one of the most vital roles in the process and are the ones that can also help achieve higher liquidity of crowdfundings. An important step forward in increasing the trustworthiness can be the requirement for the platforms to get registered and to obtain the licence to perform crowdfunding activities. Making sure that business environment in general is fostering entrepreneurship can also help develop crowdfunding. Specialized agencies, grants and stimulative tax system can offer additional benefits.

In European Union mostly countries in Western and Northern Europe have better developed crowdfunding markets. Analysis shows that countries which are larger, more entrepreneurial, have a higher percentage of internet users who engage in online purchases and have higher demand for financial capital are also more appropriate for crowdfunding. As long as it is not forbidding the crowdfunding, regulatory framework is not a crucial factor for its development, but it can help foster it.

Applying these determining factors to Slovenia we can conclude that the majority of them suggest that crowdfunding at this point of time does not represent a financing option that should be developed within Slovenia. Best solutions for Slovenia are in the cooperation with foreign platforms and better alignment of policies and legal and tax framework within the EU. Policies that are focused on increasing the entrepreneurial environment in Slovenia should also yield good results.

## POVZETEK

Težko si predstavljamo zagon ali širitev podjetja brez kakršnega koli zunanega financiranja. Eden izmed načinov je pridobitev potrebnih sredstev s strani širše množice. Čeprav tak pristop obstaja že stoletja, se je skozi čas spreminjal. V zadnjih dvajsetih letih je razvoj svetovnega spleta omogočil nove možnosti za zbiranje sredstev. Ljudje z vsega sveta so danes bolj povezani, pretok informacij je enostavnejši in hitrejši in transakcijski stroški nižji. Številne spremembe so pomenile, da je crowdfunding, kot danes tak način zbiranja sredstev največkrat imenujemo, postal vedno bolj priljubljen.

Glavna ideja crowdfundinga je zbiranje finančnih sredstev s strani širše množice, kjer posameznik prispeva majhen znesek (Belleflamme, Lambert, & Schwienbacher, 2013b). Do nedavnega je večina spletnih crowdfunding kampanj vključevala donacije in predplačila za različne izdelke. Pred nekaj leti pa se je pojavila nova različica crowdfundinga: crowdfinancing. Ta različica privablja ljudi, ki želijo investirati v podjetje, katero po njihovem mnenju veliko obeta in za katerega upajo, da jim bo prineslo pozitiven donos.

Magistrsko delo se osredotoča na ta nov način financiranja, ki obljublja popolnoma nove načine zbiranja sredstev za majhna in inovativna podjetja ter obenem prinaša nove možnosti investiranja širši množici. Crowdfinancing kot tak je v uporabi zgolj nekaj let, zato do sedaj ni bilo opravljenih veliko raziskav na to temo. Ker predstavlja novo možnost investiranja, to obenem pomeni, da prihaja v razvoju do številnih sprememb in tudi zato je crowdfinancing zanimiva in obenem zahtevna tema za analizo.

Cilj magistrskega dela je predstavitev tako temeljite analize teoretičnih vidikov crowdfinancinga kot tudi empiričnih podatkov. Delo se osredotoča na naslednja vprašanja:

- Kaj je crowdfinancing in kako deluje v praksi?
- Zakaj bi podjetja in investitorji izbrali raje crowdfinancing kot pa katero izmed ostalih možnosti financiranja in investiranja? Kakšne koristi jim prinaša crowdfinancing?
- Kako urejajo države področje crowdfinancinga in kakšne posledice imajo različni pristopi na spodbujanje te dejavnosti?
- Katere države so bolj primerne za izvajanje crowdfinancinga?
- Kaj uvedba crowdfinancinga prinaša gospodarstvom držav?



- Kakšne so slabosti crowdinvestinga?
- Kateri ukrepi bi lahko v bodoče izboljšali ureditev crowdinvestinga?

Iskanje odgovorov na ta vprašanja bo podalo natančnejšo sliko o crowdinvestingu in mi s tem pripomoglo odgovoriti na glavno raziskovalno vprašanje tega magistrskega dela: Ali je crowdinvesting nekaj, kar bi bilo potrebno razviti v Sloveniji?

Magistrsko delo je razdeljeno na pet delov. Prvi del predstavlja pregled literature in poda primerjavo crowdinvestinga z ostalimi tipi crowdfundinga. V drugem delu je predstavljen pregled zakonov, ki vplivajo na crowdinvesting. Tretji del opisuje, kako crowdinvesting poteka v praksi in kakšen je njegov vpliv na gospodarstva držav. V četrtem delu so predstavljeni predlogi za izboljšanje trenutnega stanja crowdinvestinga. Peti del s pomočjo analize odgovarja na vprašanje, ali je crowdinvesting način zbiranja sredstev, ki bi moral biti vzpostavljen tudi v Sloveniji.

## **CROWDINVESTING – NOVA MOŽNOST FINANCIRANJA IN INVESTIRANJA**

Glede na njihove značilnosti lahko vire sredstev razdelimo na dve kategoriji: na lastniški kapital in na dolg. Med investitorje, ki prispevajo lastniški kapital, prištevamo podjetnike same, njihove družinske člane, poslovne angele, sklade tveganega kapitala, druga podjetja in delniške trge. Banke, lizinska podjetja, vladne agencije, kupci in dobavitelji pa so najpogostejši investitorji, ki prispevajo vire sredstev, ki imajo lastnosti dolga, ter tako neposredno ne vplivajo na upravljanje podjetja (Schwienbacher & Larralde, 2010).

Crowdinvesting predstavlja alternativo tradicionalnim oblikam financiranja in je eden izmed tipov crowdfundinga. Z izrazom crowdfunding poimenujemo različne oblike zbiranja finančnih sredstev s strani širše množice preko medmrežja (Belleflame et al., 2013b). Poznamo štiri glavne vrste crowdfundinga. Donacijski crowdfunding temelji na donacijah za različne pobude in projekte. Nagradni crowdfunding prinaša podpornikom nefinančno korist za njihov prispevek (Ahlers et al., 2013). Prva možnost njegove uporabe je za nagrade, kar pomeni, da lastnik projekta podpornikom obljubi nagrado za njihov prispevek, ki je običajno simbolične vrednosti. Drugo možnost predstavlja vnaprejšnji nakup izdelka. V tem primeru podporniki s svojim prispevkom vnaprej kupijo izdelek, za izdelavo katerega je bila kampanja osnovana (Bradford, 2012a). Tretji tip predstavlja posojilni crowdfunding, pri katerem podporniki posodijo denar in ga nato tudi (z obrestmi ali brez) dobijo povrnjenega. Četrto vrsto crowdfundinga pa predstavlja crowdinvesting, pri katerem

podporniki vložijo svoja sredstva v podjetje. V tem primeru govorimo o finančni naložbi v podjetje.

Uvedba crowdinvestinga je pomembno spremenila način, kako si lahko majhna podjetja in podjetniki zagotovijo potrebna finančna sredstva za izpeljavo zastavljenih projektov. Ta način sedaj omogoča, da kot investitorje privabijo širšo množico (Gajda & Walton, 2013). Ker gre v tem primeru za dejansko investiranje, je crowdinvesting v primerjavi z drugimi vrstami crowdfundinga s pravnega vidika veliko bolj kompleksen. Navkljub dejstvu, da je ta oblika crowdfundinga na voljo šele nekaj let, pa doživlja trenutno hitro rast, tako po številu spletnih platform kot tudi po vrednosti vloženih sredstev. Med državami, kjer je crowdinvesting najbolj razvit, prednjačita Velika Britanija in Nemčija.

Crowdinvesting prinaša nove priložnosti tako za podjetja, ki iščejo sredstva, kot tudi za investitorje. Za to obliko financiranja se največkrat odločajo manjša in mlajša podjetja, ki imajo pripravljen projekt ali inovativno idejo in iščejo potrebna sredstva za njihovo izvedbo. Velikokrat gre torej za semenski ali začetni kapital (Hornuf & Schwienbacher, 2014c). Ker imajo mlada in neuveljavljena podjetja nemalokrat težave s pridobivanjem sredstev s strani ostalih virov, predstavlja crowdinvesting dobrodošlo alternativo. Crowdinvesting je primeren tudi za podjetja, ki še niso povsem prepričana o svojem poslovnem modelu ali načrtovanem projektu. Zbiranje sredstev s pomočjo širše množice lahko v tem primeru predstavlja dodaten test njihovega potenciala.

Če hoče crowdinvesting uspeti, mora obenem predstavljati privlačno alternativo za investitorje. Dejstvo, da so kampanje objavljene na svetovnem spletu in tako enostavno dosegljive širši množici, pomeni, da je to zelo lahko dostopna možnost za investitorje. Obenem lahko hitro in enostavno preučijo več možnosti za investicijo, ki so na voljo. Velikokrat predstavljajo crowdinvesting investicije priložnost za diverzifikacijo portfeljev. Prednosti te vrste investicij so tudi potencial za visok donos ob omejenih izgubah ter možnost investiranja majhnih zneskov. Po drugi strani pa te vrste investicij navadno tudi zelo tvegane in precej nelikvidne.

Zaradi tipa investicij in zbranih zneskov se crowdinvesting velikokrat primerja z vložki poslovnih angelov. Kljub podobnostim obstajajo številne razlike, predvsem glede samih pogodb, varstva pravic investitorjev in idej podjetij, odnosa med vlagateljem in podjetjem in asimetriji informacij ter možnosti izstopa vlagatelja (Hornuf & Schwienbacher, 2014c).

## **REGULACIJA CROWDINVESTINGA**

Regulacijo, ki vpliva na crowdinvesting, lahko v osnovi razdelimo na dva dela: na regulacijo spletnih platform in na regulacijo uporabljenih vrst investicij. Regulacija spletnih platform določa predvsem, katere aktivnosti lahko platforme izvajajo in kakšne so njihove obveznosti kot potencialni finančni posredniki. Na drugi strani pravila v povezavi z dejanskimi investicijami določajo njihov pravni status in omejujejo možnost njihove uporabe. Glede zakonov, ki so pomembni za crowdinvesting, obstajajo med državami številne razlike. Pravne oblike, ki so v uporabi, lahko v grobem razdelimo na tri vrste: vrednostni papirji, družbe z omejeno odgovornostjo in tihe družbe oziroma druge pogodbene oblike.

Na ravni Evropske unije kljub priznavanju prednosti take oblike zbiranja sredstev do sedaj še ni bil sprejet noben pravni akt, ki bi neposredno urejal crowdinvesting. Vseeno pa so se številne platforme ob začetnih projektih oprle na Direktivo 2010/73/EU, ki ponuja nekatere izjeme, v katerih ni potrebna objava prospekta. Platforme so določila iz te direktive uporabila za oblikovanje ponudb, ki so bile zaradi odsotnosti izdaje prospekta posledično stroškovno izvedljive.

Kljub razvitosti crowdinvestinga v državi Velika Britanija še ni sprejela posebnega zakona, ki bi urejal to dejavnost. Posebnost britanske ureditve, ki se nanaša na platforme, je, da je vsakršno povabilo oziroma nagovarjanje k sodelovanju pri investicijskih dejavnostih obravnavano kot oglaševanje financiranja (Weinstein, 2013). To pa pomeni, da mora imeti podjetje, ki se s tem ukvarja, ustrezno licenco agencije FCA ali pa mora pri ponudbi sodelovati drugo pooblaščenno podjetje, kar v praksi predstavlja tudi največkrat uporabljen način (European Crowdfunding Network, 2014). Na splošno se pristop Velike Britanije nagiba v smer strožje regulacije in registracije platform pri agenciji FCA, kar dokazuje tudi primer dveh največjih britanskih platform.

Tudi v Nemčiji trenutno še nimajo posebne zakonodaje, ki bi urejala crowdinvesting. Glavno vprašanje v povezavi s platformami je, ali le-te opravljajo finančne dejavnosti, saj to določa, ali morajo pridobiti pisno licenco. V primeru, da platforme ponujajo proizvode, ki ne spadajo v definicijo finančnih instrumentov, posebne licenca ni potrebna. V praksi je to pomenilo, da so platforme pričele uporabljati koncept parciarnih posojil, ki izrablja pomanjkljivost v trenutni zakonodaji, saj licenca v tem primeru ni potrebna (European Crowdfunding Network, 2014)

V Franciji so bile sprejete nekatere pomembne spremembe, ki vplivajo na crowdinvesting. Nova ureditev omogoča platformam pridobitev posebnega statusa, ki poenostavlja postopke. Obenem zakonodaja za te platforme omejuje finančne instrumente, ki ji te platforme lahko uporabljajo. Dodatno spremembo pomeni dejstvo, da za ponudbe lastniškega kapitala in obveznic s fiksnimi obrestmi do enega milijona evrov v 12-mesečnem obdobju, izdaja prospekta ni potrebna (European Crowdfunding Network, 2014).

Trenutno v Sloveniji ni zakona, ki bi posebej urejal področje crowdinvestinga. Po trenutno veljavni zakonodaji bi morala platforma v Sloveniji pridobiti posebno licenco Agencije za trg vrednostnih papirjev zgolj v primeru, da bi v ponudbah uporabljala prenosljive vrednostne papirje. Ker deleži v družbah z omejeno odgovornostjo ne spadajo v to kategorijo, posebna licenca v tem primeru ne bi bila potrebna. Vseeno pa bi uporaba teh deležev predstavljala zgolj pogojno uporabno rešitev, saj je po Zakonu o gospodarskih družbah število družbenikov v družbah z omejeno odgovornostjo omejeno na največ 50 (European Crowdfunding Network, 2014). Rešitev z uporabo tihe družbe, ki je v nekaterih drugih državah uporabljena, pa zaradi ukinitve te oblike leta 2012 trenutno ni več mogoča.

Čeprav je crowdfunding v Združenih državah Amerike zelo razvit, pa crowdinvesting kampanje za širše množice trenutno zaradi omejujoče zakonodaje glede izdaje vrednostnih papirjev še niso mogoče. Pomemben napredek prinaša JOBS zakon, ki formalno ureja financiranje s strani množic. Pomembno določilo, ki ga zakon vključuje, je, da za ponudbe do enega milijona dolarjev znotraj obdobja enega leta ni potrebna registracijska izjava pri ameriški agenciji SEC. To določilo je povezano s tremi pogoji. Transakcija mora biti izvedena s strani portala, ki ima pridobljen ustrezen status, vložki posameznih investorjev morajo biti znotraj omejitev in razkriti morajo biti ustrezni podatki (Hornuf & Schwienbacher, 2014c). Kljub sprejetju zakona pa zaradi zamude pri sprejetju pravil s strani pristojne agencije SEC crowdinvesting trenutno še ni mogoč.

## **CROWDINVESTING V PRAKSI**

Crowdinvesting kampanje potekajo preko spletnih platform. Platforme predstavljajo strani, kjer se podjetja in investitorji lahko srečajo. Podjetja na njih predstavijo svoje projekte in razkrijejo potrebne podatke, investitorji pa lahko med različnimi kampanjami izberejo, kam bodo svoja sredstva vložili. Običajno morajo podjetja vnaprej določiti znesek, ki ga želijo zbrati v določenem časovnem okviru. Investitorji lahko običajno sami določijo

znesek, ki ga želijo vložiti. V večini primerov je kampanja uspešna le, če je zastavljeni znesek podjetja tudi dejansko zbran.

Za razliko od pogodb v primeru poslovnih angelov imajo investitorji pri crowdfinancing projektih precej manjšo pogajalsko moč. Zaradi velikega števila investitorjev imajo platforme običajno zaradi nižjih transakcijskih stroškov že vnaprej pripravljeno pogodbo, ki določa pravice in obveznosti udeležencev. Vseeno pa obstajajo velike razlike med pogodbami, ki jih ponujajo različne platforme. Večina platform v kampanjah ne uporablja pravega lastniškega kapitala, saj je tak pristop običajno povezan s številnimi omejitvami glede prospekta in licenc, ki povečujejo stroške, in je zato primeren zgolj za večje zbrane zneske. Tudi zaradi izogiba stroškov notarskega overjanja so bolj priljubljene uporabe dolga in mezzanine oblik sredstev. Posebej v Nemčiji je pogosta uporaba tihe družbe in parciarnega posojila (Hornuf & Schwienbacher, 2014a).

Hornuf and Schwienbacher (2014c) investicije v podjetja v crowdfinancing kampanjah delita na direktne in indirektne. Primer direktne investicije je ponudba delnic podjetja investitorjem. Indirektne investicije pa za razliko od direktnih vključujejo posebna specializirana podjetja oziroma namenske družbe, kar pomeni, da investitorji ne vložijo svojih sredstev neposredno v ciljno podjetje. Tak pristop prinaša nekatere prednosti, saj je ob uporabi takega načina struktura podjetja popolnoma neodvisna od števila vlagateljev. To obenem omogoča manjše minimalne zneske, ki jih vlagatelji lahko prispevajo, in poenostavlja postopek v primeru, da v družbo vstopi dodaten vlagatelj.

Eden izmed najpomembnejših dejavnikov različnih ureditev, ki jih ponujajo platforme, je zaščita vlagateljev. Ker so v praksi vlagatelji, ki želijo investirati, prisiljeni sprejeti določila v vnaprej pripravljenih pogodbah, igrajo platforme pomembno vlogo pri njihovi zaščiti, saj opravljajo izbor primernih projektov in sestavljajo pogodbe. Pomembna je tudi likvidnost investicij. Johnson (2012) med najpogostejše načine, kako lahko investitorji dobijo povrnjene svoje vložke, prišteva dividende, odkup deležev, dodatna financiranja s strani novih vlagateljev, prevzeme in sekundarne trge. Pomembno vlogo pri tem, kakšne možnosti imajo investitorji za izstop, odigrajo predvsem ureditev in instrumenti, ki jih investitorji za svoj vložek prejmejo. Vrsta podjetja, ki je v kampanji udeležena, obenem pomembno vpliva na možnost, da vlagatelji prenesejo lastništvo instrumentov na drugo osebo.

Čeprav je natančen vpliv crowdinvestinga na gospodarstvo neke države težko natančno izmeriti, pa lahko trdimo, da je njegov vpliv pozitiven. Crowdinvestinga se običajno poslužujejo predvsem manjša in inovativna podjetja v začetnih fazah razvoja, ki zaradi svoje narave težko pridobijo zagonska sredstva preko tradicionalnih kanalov. Dodatna možnost pridobivanja sredstev tako izboljšuje možnosti, da podjetje potrebna sredstva tudi zbere. Obenem lahko zaradi globalnega dosega crowdinvestinga podjetja na tak način nagovorijo širšo množico in razširijo ciljni trg. Zagon in rast manjših in inovativnih podjetji prinaša poleg ostalih prednosti tudi številna nova delovna mesta.

## **SMERNICE IN PREDLOGI ZA IZBOLJŠAVE**

Na razvoj crowdinvestinga pomembno vpliva njegova zakonska ureditev. Nazoren primer so Združene države Amerike, kjer zaradi trenutno veljavne zakonodaje, ki ne predvideva crowdinvestinga, uporaba tega načina zbiranja sredstev za širše množice ni mogoča. Zaradi pozitivnih vplivov, ki jih crowdinvesting prinaša gospodarstvu, menim, da bi ga morala zakonodaja v državah omogočati. Obenem mora biti sam okvir crowdinvestinga natančno definiran in reguliran. Posebna skrb mora biti posvečena zaščiti investitorjev. Eden izmed načinov za doseg tega je ustrezna zakonska odgovornost oseb, ki posredujejo informacije, ter skrb za redno poročanje relevantnih informacij vlagateljem.

Spletne platforme imajo pri crowdinvestingu izredno pomembno vlogo, zato bi morale biti veliko pozornosti posvečene njihovem delovanju. Znižanje vrednosti minimalnega možnega vložka prinaša pozitivne vplive, saj na tak način podjetja lahko nagovorijo širšo publiko. Podatki kažejo, da je za platforme koristno, če gradijo na svojem ugledu. Ker platforme z nadzorom podjetij lahko pomembno pripomorejo k zmanjšanju zlorab, je potrebna tudi ustrezna zakonodaja, ki bi urejala njihovo delovanje. Ena izmed možnih rešitev je obvezna registracija platform in dovoljenje pristojne agencije za opravljanje dejavnosti. Področje, na katerem morajo platforme v bodoče graditi, je tudi izboljšanje likvidnosti investicij.

Izboljšava splošnega poslovnega okolja v državi je izredno pomemben vidik, ki pomembno vpliva tudi na crowdinvesting. Eden izmed možnih korakov za spodbujanje razvoja te dejavnosti bi bila ustanovitev posebne agencije, ki bi se osredotočala na to področje. Prijaznejša zakonodaja, spodbujanje in poenostavitev ustanavljanja podjetij, davčne ugodnosti, subvencije in vzpostavitev poslovnih mrež lahko pomembno prispevajo k boljšemu poslovnemu okolju in s tem posredno tudi na hitrejši razvoj crowdinvestinga.

## **EMPIRIČNA ANALIZA – PRIMER SLOVENIJE**

Zemljevid trenutne razvitosti crowdinvestinga v državah Evropske unije razkriva, da obstajajo med državami številne razlike. Analiza držav, ki so najbolj aktivne na tem področju, razkriva, da so to v glavnem večje države Unije, ki imajo obenem tudi zelo razvito podjetniško okolje. Po podatkih Evropske komisije (2014) na razvoj crowdinvestinga pomembno vplivajo predvsem kulturni in finančni dejavniki ter regulacija. Pomemben kulturni dejavnik je seznanjenost z elektronskim oziroma spletnim poslovanjem. Višji delež ljudi, ki redno opravljajo nakupe in transakcije preko spleta namreč pomeni boljše možnosti za hitrejši razvoj crowdinvestinga. Vpliv finančnih faktorjev na njegov razvoj je manj enoznačen. Pregled regulacije razkriva, da posebni zakoni, ki bi se osredotočali neposredno na crowdinvesting niso nujno pogoj za njegov razvoj, vseeno pa lahko ugodna zakonodaja pomembno prispeva k hitrejšemu napredku. Velik problem predstavljajo predvsem razlike med zakonodajami držav članic, kar v praksi otežuje vstop platformam na tuje trge. V državah, kjer je podjetniško in poslovno okolje bolj razvito, obenem obstaja tudi večja verjetnost za zgodnejši in hitrejši razvoj crowdinvestinga.

Slovenija je primer države, kjer crowdinvesting trenutno še ni prisoten, saj ni bila ustanovljena še nobena spletna platforma. To prav tako velja za druge oblike crowdfundinga. Pomemben dejavnik, ki zavira razvoj te panoge, je zagotovo majhnost slovenskega trga. Posledično se podjetja raje odločajo za objavo svojih projektov na tujih, uveljavljenih platformah, kjer lahko dosežejo precej širšo publiko. Tudi v podatkih o razvitosti okolja v podjetniškem smislu in v deležu uporabnikov, ki redno opravljajo spletne nakupe, Slovenija zaostaja za državami, kjer se je crowdinvesting najprej in najhitreje razvil.

Finančni dejavniki za Slovenijo so crowdinvestingu nekoliko bolj naklonjeni. Povpraševanje po spletnih investicijah je precejšnje, prav tako imajo številna manjša podjetja težave s pridobivanjem finančnih sredstev preko tradicionalnih kanalov, kar bi lahko ugodno vplivalo na priljubljenost crowdinvestinga. Vendar je zakonodaja v Sloveniji izjemno neugodna, saj tiha družba ne obstaja več, število deležnikov v družbah z omejeno odgovornostjo pa je preveč omejeno. Zaradi številnih negativnih kazalnikov, majhnosti trga in neugodne zakonodaje lahko zaključimo, da trenutno vzpostavitev crowdinvestinga v Sloveniji ni smotrna.

Kljub temu lahko v bodoče crowdinvesting spodbudno vpliva na slovenska podjetja in gospodarstvo. Ena izmed najboljših rešitev za Slovenijo ja večja vključenost v mednarodne dejavnosti na tem področju in povezava s tujimi uveljavljenimi platformami, predvsem na področju Evropske unije. Država lahko pomembno prispeva tudi k razvoju poslovnega okolja, ki bo bolj naklonjeno slovenskim inovativnim podjetjem. Rebernik in Jaklič (2014) predlagata, da se ukrepi osredotočijo na pet točk: razvoj podjetniškega okolja, boljši dostop do finančnih virov, podpora slovenskim podjetjem na svetovnih trgih, komercializacija znanja in tehnologij ter bolj učinkovito podporno okolje.



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