

Arguments for the exclusion of public benefit crowdfunding platforms and service providers from the category of obliged entities under the EU AML/CFT Regulation

Introduction:

We are of the opinion that those crowdfunding platforms/crowdfunding service and crowdfunding service providers, which are exclusively set up and used for public benefit purposes should be excluded from the definition of ‘obliged entities’ according to the EU AML/CFT Regulation Proposal considering that the risk of abuse, based on all available official reports and evidence, is low for public benefit purposes crowdfunding platforms and crowdfunding service providers established by non profit legal entities. It could also be left to the discretion of Member States to decide to exempt providers of crowdfunding platforms used exclusively for public benefit purposes because of the proven low risk posed by the nature and, where appropriate, the scale of operations of such entities.

We consider that the exclusion of these entities from the list of obliged entities - and, therefore from the additional burdensome requirements required for obliged entities - would reflect the different role of public benefit purpose crowdfunding established by NPOs as legal entities, also achieving the positive effect of helping NPOs establish or increase donations.

More in detail, we argue that the following arguments would support such exclusion:

1. Evidence of (low) risk of misuse for Terrorism-financing for charity / public benefit-based crowdfunding

The recent report [Following the Crowd - Clarifying Terrorism Financing Risk in European Crowdfunding](#), commissioned by the EU, examines in detail the Terrorism-financing risk in European Crowdfunding.

It concludes that, *“Although some well-established platforms have been abused by violent extremists, and radical groups on their fringes, formal crowdfunding’s overall current significance as a TF stream remains relatively small within the European context. It is also apparent that risks are higher outside formal crowdfunding platforms, with the internet offering possibilities for less-regulated ‘pop-up’ methods using social media and, increasingly, cryptocurrencies. Such challenges must therefore be addressed, but this will need to be done in a focused and proportionate way to ensure that broader financial innovation is not stifled unnecessarily”*.

We believe that the **lack of definitions of crowdfunding services and crowdfunding service provider(s) in the current Commission Proposal and Council and Parliament positions do not**

constitute a focused and proportionate way to address these challenges (see point below for further argumentation).

Moreover, in its report [EU Terrorism Situation & Trend Report \(TE-SAT\) | Europol](#) (cfr. p. 32) Europol has noted *several cases over the last year where donations from Sweden, the Netherlands, Spain and Switzerland – ostensibly collected to support refugees and their dependents in Syria – have been redirected to support the families of foreign terrorist fighters. The reported details of these cases suggest a preference for using informal crowdfunding mechanisms via social media and IM (Instant Messaging), combined with other traditional AVTS.* In addition, the Europol report details *Telegram channels, Facebook as known cases of TF attempts to crowdfund. So far, there is also no publicly available evidence to suggest that crowdfunding has been used to fund a terrorist attack in Europe.* In France – the only European country to regulate donation-based sites – *the most significant TF risks have been found to come from ‘money-pooling’ sites, where there is no fundraising goal or deadline, and the stated purpose for the funds can be brief and undescriptive.*

As several expert interviewees noted, **much of the evidence around the use of crowdfunding remains anecdotal rather than systematic**, and Europol has suggested that crowdfunding is only one of many streams of funding being used by extremists groups. **Moreover, the agency has also stated that the number of TF cases involving any ‘new payment method’ remains relatively low in comparison to other methods. The 2023 TESAT report by Europol states that crowdfunding appears via social media channels and cloud-based mobile applications.** However, these mechanisms mentioned in TF cases do not appear to be included in the regulation, as crowdfunding services nor providers are defined (please refer to section 4 on definitions in the proposed EU AML/CFT Regulation). The findings of these reports commissioned by the EU point to the **need for a clear exemption for public benefit-based, organized and formal crowdfunding that is conducted by established, already well-regulated legal entities** (such as foundations, associations, and other non-profit entities) as **these are not evidenced to be risky nor there are cases for TF**, and are already under the scrutiny and oversight for risk and financial transactions (see below).

2. Lack of definition of crowdfunding service and crowdfunding service provider(s) in the Commission proposal

In its proposal, the Commission has added “crowdfunding service providers other than those regulated by Regulation (EU) 2020/1503” as obliged entities. There is **no definition on crowdfunding service nor provider** within the articles containing definitions of the Commission proposal, the Council position or the Parliament report. This will cause **legal uncertainty, unclarity and lack of harmonization across the EU** when implementing the regulation. Moreover, **different interpretations of who or what constitutes such service or provider will appear in diverse legal systems and/or operations.**

Examples of possible confusion deriving from unclear definitions:

- A person posts a crowdfunding request on their social media profile – e.g. Facebook. Does this fall under the regulation obligation? If yes, who is the provider in the case at hand? How are they fulfilling this obligation? What happens with the person’s post if they don’t fulfill their obligations?
- A group of volunteers posts via online channels a request for crowdfunding for a local initiative. Does this fall under the regulation obligation? If yes, who is the provider in the case at hand? A volunteer group? Or different online channels? How are they fulfilling this obligation?
- A local church posts via different channels (WhatsApp groups, Telegram groups) a crowdfunding request for a church roof repair. Does this fall under the regulation obligation? If yes, who is the provider in the case at hand? A church? Or different channels, e.g. WhatsApp or Telegram? How are they fulfilling this obligation?
- A local Scouts or other informal youth group posts a request for funding for a summer camp via online channels. Does this fall under the regulation obligation? If yes, who is the provider in the case at hand?

There is a **need to clarify and define who falls within the category of crowdfunding providers and services, to avoid diverse (mis) interpretations, legal uncertainty as well as potentially chaotic or impossible implementation** if the widest possible (undefined) scope of the obligations captures all social media companies, all physical and legal persons, including religious groups, volunteer groups and similar.

3. Need to consider already existing regulation and take fundamental rights into account

Crowdfunding platforms usually act as non-profit facilitators that help facilitate the transfer of funds without the need to obtain a license or special permission. Some countries, including France, Finland, and Spain, have recently introduced legal frameworks to regulate it. The provider of an online crowdfunding portal administering a donor database already must strictly abide by national data protection legislation — in particular, by requesting each donor’s approval to process his or her personal data. States have both positive and negative obligations to safeguard the right to freedom of association, including access to resources. **Non-profit organizations that operate crowdfunding services often work with a third-party account/payment service provider that acts as the financial gatekeeper** (donation platforms have a contract with the PSP). Therefore, **there are already checks in place for the purpose of financial transactions.**

In principle, **the EU and MS must assess whether the requirements are necessary and the least intrusive means possible. Authorities must ensure that these requirements comply with Article 12 of the EU Charter on Fundamental Rights and must be “necessary in a democratic society.”** Even if a law or policy is not burdensome on its own, authorities should consider whether the combination of various laws and policies, including at the regional level, create a burdensome process.

4. Impact of considering public benefit crowdfunding service providers as obliged entities

According to the recent [2018 Global Trends in Giving Report](#) 47% of people living in Europe donate to crowdfunding campaigns that benefit individuals or NPOs. The top five causes for donations are

start-up costs for a social enterprise, medical expenses, volunteer expenses, education costs, and disaster relief.

If public benefit crowdfunding platforms/service providers were to be included in the EU AML regime without exemption, **it would result in extreme compliance costs for these providers and very reduced flow of philanthropic capital also across borders. Ultimately there could be a chilling effect on fundraising, giving and philanthropy**, as well as potential market concentrations due to increased costs for providers and higher entry barriers for new providers. Given the importance of how they underpin giving and philanthropy currently and in the future, we ask to exempt public benefit 'crowdfunding' from the definition of obliged entities.