




Preface
Current Legal Issues in Crowdfunding

Thomas Neumann*

* PhD, Master of Laws. Associate professor of commercial law and chair of the CLEAR project: 'Crowdfunding, Law, Education, and Research' at Aalborg University, Denmark. The author discloses an economic interest below a total of €10,000 placed through the following crowdfunding service providers: Brickshare/The Many, Flexfunding, Kameo, Lendino and Mintos.  <https://orcid.org/0000-0002-0477-7429>.

PREFACE - CURRENT LEGAL ISSUES IN CROWDFUNDING

BY THOMAS NEUMANN 1 - 6

STATUS ARTIS: RESEARCH IN THE LAW AND PRACTICE OF CROWDFUNDING

BY STEFANO CATTELAN & THOMAS NEUMANN 7 - 53

THE NEW EU CROWDFUNDING REGULATION - EXPLANATIONS & PERSPECTIVES

BY SØREN BRINKMANN & MADRS EBERT RASMUSSEN..... 54 - 72

CIVIL LIABILITY FOR THE KEY INVESTMENT INFORMATION SHEET IN DENMARK

BY STEFAN WESTH WIENCKEN & RASMUS SCHOU PEDERSEN 73 - 89

THE CHALLENGES AWAITING THE EUROPEAN CROWDFUNDING SERVICES PROVIDERS REGULATION: READY FOR LAUNCH?

BY EUGENIA MACCHIAVELLO..... 90 - 115

THE FUNDRAISER'S TRANSFER OF PERSONAL DATA FROM THE EUROPEAN UNION TO THE UNITED STATES IN CONTEXT OF CROWDFUNDING ACTIVITIES

BY NICOLAI KJÆRGAARD SØRENSEN & ULLA STEEN..... 116 - 136

TIED AGENTS UNDER A LIABILITY UMBRELLA WITHIN THE ECSPR REGIME

BY TILL OTTO, PATRICK WAMBOLD & KARSTEN WENZLAFF..... 137 - 143

INTRODUCTION AND CREDIT

Receiving contributions from a large number of people is by no means a new method of financing an activity. Popular examples go back to Pulitzer's campaign to finance the statue of liberty's pedestal in 1885 and Alexander Pope's translation of Homer's Illiad in 1713. With the emergence of the internet and its widespread integration in households it has become possible for fundraisers to reach many more investors. One of the first to harness the power of crowdfunding over the internet was the British rock band Marillion who, in 1996, raised USD 60,000 to finance their tour of the United States using crowdfunding in 1996. Since then, a lot has happened in terms of the number of crowdfunding products, platforms and the amount of money raised. The number of investors engaged in crowdfunding increases, and so too does the number of legislative initiatives and amount of research attention devoted to it.

On 13 April 2021 we established the CLEAR research group at Aalborg University. The group has as its declared mission to undertake the study of legal phenomena in crowdfunding and to communicate relevant, research-based knowledge to actors in the field - investors, entrepreneurs, representatives from crowdfunding platforms, and public authorities.

Collaboration is in the CLEAR group's DNA. Hence, we asked a number of crowdfunding scholars and practitioners from around the world to provide us with their views on current legal issues pertaining to crowdfunding. We have held talks with numerous crowdfunding enthusiasts and practitioners and in the end, twelve authors decided to join us in our efforts to increase focus on legal research in crowdfunding through the publication of this special issue of Nordic Journal of Commercial Law.

Knowing that the legal aspects of crowdfunding are many, and that crowdfunding and law as a research area is in its infancy, we thought it important to give each author free hands in choosing their topic and perspective in their article. Hence, you will find articles addressing a wide range of issues in crowdfunding in this special issue. I thank all authors for their thought-provoking contributions.

I would also like to mention PhD fellow Cecilie Højvang Christensen, research assistant Stefano Cattelan, student assistant Signe Lyngholm Lindbjerg, and student assistant Anna Risgaard Lindbjerg, and to thank them for their contribution in establishing the CLEAR research group at Aalborg University and their assistance in preparing this special issue of the Nordic Journal of Commercial Law.

Thomas Neumann
Chair of the CLEAR research group on crowdfunding
www.theCLEARproject.dk

PRESENTATION OF CONTRIBUTIONS

The first contribution to the issue has been written by Dr Cattelan and Dr Neumann. From the assumption that research on legal issues pertaining to crowdfunding is underdeveloped, the authors set out to collect, systematize and synthesize the current legal scholarship in the field. After collecting and examining almost 300 publications concerning legal issues in crowdfunding, the authors conclude that legal research in this area of life is indeed still in its infancy. The authors argue that the time is ripe for more legal scholars to show an interest in the field as the amount of money being raised through crowdfunding keeps increasing. At the same time, increased scholarship may add to the clarity needed for this market to grow even further.

The authors find that the existing legal scholarship is often concerned with questions of how to regulate a highly internationalized market, how to encourage development to the benefit of innovation and, at the same time, to protect often inexperienced, or so-called 'unsophisticated' investors'. Most of the scholarly attention is directed toward debt-based and equity crowdfunding, with significantly less focus on donation and reward crowdfunding. Further themes in the literature are the predictability of law, the conduct of the crowdfunding businesses, protection of investors / disclosure, and access to risk capital. While many key concepts of crowdfunding have been introduced in the literature, the legal scholarship seems not to take full comparative advantage of the fact that many concerns are common across jurisdictions, such as encouraging SME development through access to risk capital or ensuring the protection of the unsophisticated investor. To stimulate further development of research into the legal aspects of crowdfunding, a categorised bibliography is attached.

The second contribution to the special issue is authored by two legal practitioners Brinkmann, esq. and Rasmussen, esq. From their standpoint in legal practice they provide the reader with an introduction to the content of the new EU crowdfunding regulation - ECSPR. In doing so, they bring several salient features to the reader's attention, including uncertainties of a practical nature. Throughout the text the authors relate the new rules of the ECSPR to the existing legal regime in Denmark, in which it becomes obvious that the Danish legislature has taken a reluctant approach to regulating crowdfunding activities.

The third piece is also written by two legal practitioners – Wiencken, esq. and Pedersen, esq. They address the liability regime applicable to the information contained in the mandatory key investment information sheet (KIIS). While the KIIS is mandatory according to ECSPR, the liability regime for wrongful information contained in the KIIS is left to domestic legal regulation. The two practitioners study the domestic setting of Denmark.

While no Danish legislation has been enacted regulating civil liability for the KIIS, Wiencken and Pedersen find that the project owner is the

party primarily responsible for the accuracy of the KIIS and as such will be the party held primarily responsible in any civil claims resulting from errors or omissions in the information sheet. The crowdfunding service providers' civil liability is most likely limited to such errors, misleading information and omissions in the information sheet that result from inadequate procedures adopted by the crowdfunding service provider or their failure to comply with such procedures.

In the fourth paper Dr Macchiavello evaluates whether the newly adopted ECSPR is able to withstand current international challenges that the author predicts will be significant adversaries to the regulation's success. Taking into account the scope, architecture, and specific rules of the ECSPR, Dr Macchiavello considers a number of aspects; the residual fragmentation/uncertainty that Brexit, climate change together with recent sustainable finance framework and other EU actions, and the pandemic crisis. She concludes that while the ECSPR appears to be an advancement in facilitating crowdfunding services, there are several challenges to its implementation?. One such challenge is that small crowdfunding service providers will experience being more tightly regulated under the ECSPR. In terms of the four challenges considered by the author, she finds the ECSPR to present a potential high level of resilience. However, she also points out aspects tainted by uncertainty and insufficient harmonisation. Dr Macchiavello points out that further adjustments may be desirable.

In the fifth contribution to the present special issue, Sørensen, esq. and Dr Steen demonstrate how transfer of personal data to the US may take place in situations of reward crowdfunding. The authors highlight the fundraiser's obligations as data controller in such transfers and underline that no simple solution exists in achieving an adequate level of personal data protection. Current contractual solutions are difficult to comply with. Considering that the fundraiser is also obliged to make a transfer impact assessment, the fundraiser faces significant risks using US reward platforms. The authors reason that the legal barriers to data transfer to the US is due to US security legislation authorizing disproportionate access for US intelligence services to citizens' personal data, compared to EU law. Sørensen, esq. and Dr Steen stress that a possible solution may be on the horizon, in the form of the new TADP (Trans-Atlantic Data Privacy Framework) currently being negotiated between EU and US.

The sixth and final contribution is by Otto, esq. Wambold, esq. and Wenzlaff. The authors discuss how existing MiFID regime licenses can be used in parallel to a license under the ECSPR in Germany, where the implementation law of MiFID may indicate otherwise. The authors conclude that MiFID, ECSPR and the intention of the German legislator is to allow concurrent authorizations under the separate regimes.