



Scientific review

DOI: <https://doi.org/10.21202/jdtl.2023.8>

# Legal Regulation of Relations in the Sphere of Crowdfunding in the Republic of Belarus

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## Keywords

Contract,  
crowdfunding,  
crowd-investing,  
crowd-lending,  
crowd-rewarding,  
digital technologies,  
law,  
legislation,  
online-funding,  
regulation

## Abstract

**Objective:** to study the theoretical and legal bases of crowdfunding and to elaborate scientifically grounded proposals for improving the Republic of Belarus legislation in this sphere.

**Methods:** the methodological basis of the research is a system of principles, methods and techniques of studying the general regularities of emergence, formation and development of social-legal phenomena. In the research, general and specific methods of scientific cognition were used: analysis, synthesis, comparative-legal, logical, systemic, formal-legal, dialectic and other methods.

**Results:** the history of emergence and formation of crowdfunding was analyzed. The social-economic and technical-technological factors were revealed, which facilitate the popularization of crowdfunding among the Internet users. The origins of the “crowdfunding” notion were discussed, as well as its filling with a definite meaning. The types of crowdfunding were listed, depending on the goal of investment on the part of investors. The main subject composition of legal relations in crowdfunding was established, which consists of the following persons: funding seeker; funder; operator of online-funding service. The overall algorithm of legal relations between the main subjects of crowdfunding was described. The positive and negative aspects of crowdfunding were characterized. An overall analysis of foreign legislation in the crowdfunding legal regulation was performed. Based on the analysis, the general trends of legislation

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development were presented. The program and normative legal acts on developing crowdfunding in the Republic of Belarus were reviewed. The probable contract models of the parties' legal relations registering were named. The technical and legal requirements to the functional of an online-funding service were determined. The minimal necessary set of measures was proposed, which may prevent risks and threats associated with procurement and extension of funds through online-funding services. Based on the operator functions, specific requirements to the rules of online-funding service were determined.

**Scientific novelty:** the author comprehensively studied the notion, legal nature and features of legal regulation of crowdfunding. The factors were revealed, which influence the formation of the legal norms regulating the procurement and extension of funds through online-funding services. The author elaborated proposals for improving the Republic of Belarus legislation in the sphere of social relations under study.

**Practical significance:** the research results are significant for developing the studies in the sphere of civil, economic, and informational law. The obtained results may be used in teaching a course in civil, economic, and informational law, as well as be applied by law subjects when elaborating and introducing the respective drafts of laws and be an object of further scientific research on the issue.

## For citation

Vasilevskii, A. V. (2023). Legal Regulation of Relations in the Sphere of Crowdfunding in the Republic of Belarus. *Journal of Digital Technologies and Law*, 1(1), 191–234. <https://doi.org/10.21202/jdtl.2023.8>

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## Introduction

The issues of access to funds do not lose relevance for physical persons, startups, small and middle business. Difficulties in procurement of the necessary amount of funds are perceived as especially acute in a high-risk innovative sphere.

Banks have for a long time been dominating in distributing financial flows. As a rule, these credit-financial organizations reluctantly extend loans to emergent entrepreneurs, fearing non repayment of funds. In the current practice, such fears are due to the fact that enthusiasts starting their business engage in rather risky initiatives, often having no experience in business, which often leads to their insolvency and bankruptcy of the commercial legal entities created by them (Armour & Enriques, 2018).

Business angels, venture funds and other non-bank credit-financial organizations or sponsors also render financial aid to entrepreneurs. The amount of such aid may vary and sometimes is comparable with the amount of bank loans. Business angels most often allocate a comparatively small amount of funds for implementation of a project they like. Venture funds, on the contrary, provide large amounts, as they are focused on large projects in specific economic sectors. Such funds are interested in high profits for high risk of investment into private initiatives, hence, like banks, they pose a number of qualification requirements to projects and entrepreneurs.

In general, there are trends of reduction of financial flows and restriction of qualification, economic and organizational requirements to the participants of civil circulation when extending funds to them. The forming trend is determined by the current sanction wars, the economic instability of the global markets caused by the pandemic and strict quarantine measures, decreased growth rate and even crises in certain economic sectors, accompanied by falling quotations of raw materials in stock exchanges, etc.

In view of the aforesaid, alternative sources of funding play a more and more significant role in civil circulation, facilitating access to the necessary volume of funding.

With the development of information-communication technologies, the communication medium between people has changed. Extending means through internet platforms became a popular source of funding. Special sites and applications in the global computer network have appeared, through which physical or legal persons in need of a certain amount of money may appeal not to traditional credit-financial organizations, but to other non-indifferent persons. Such means of financial communication between persons in the Internet is widely known as "crowdfunding".

Simple, accessible and convenient way of procuring and extending funds through online financial services promote the development and growth of the global market of such transactions. Governments adopt normative legal acts aimed at regulating public relations in different types of crowdfunding. According to experts, the need to adopt special legislation in this sphere is justified by the fact that the lack of relevant

legal regulation of crowdfunding “complicates settlement of probable disputes between the participants, creates prerequisites for impairing the rights and legal interests of consumers of such financial services, for illegal business activity, may promote the emergence of financial pyramids and financing of illegal activity, etc.” (Stepuro, 2021; Selyava, 2021).

There are a lot of publications in mass media about crowdfunding as an innovating mechanism of funding (Parukova, 2020). At the same time, this means of procuring and extending funds is not as new as some researchers try to depict it. The concept of raising money from all interested persons, underlying crowdfunding, dates back many centuries (Kamenkov, 2022). The process is being made innovative by the technologies used at this stage of human development, which influence the way of communication between people. Given the above said, this research speaks not of a new funding mechanism, but of a new medium or a new means of communication when implementing collective funding.

## 1. General provisions on crowdfunding

### 1.1. History of development, notion and features of crowdfunding

Despite the relatively recent emergence of the communication means under study, it is hard to specify the exact date of its first use for collective funding. Rather arbitrarily, “modern crowdfunding began in 1997, when fans underwrote an entire U.S. tour for the British rock group Marillion by means of a fan-based Internet donations campaign”<sup>1</sup>.

With time, the idea of procuring and extending money through specialized online-funding services (sites and applications) in the Internet became widely spread. In 2001, ArtistShare became the first service in the USA allowing music fans to financially support creative initiatives of performers<sup>2</sup>. In cinema production, crowdfunding was first used in 2002, after launching a website FilmVenture.com<sup>3</sup>.

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<sup>1</sup> *Crowdfunding for enterprise (an examination of the crowdfunding landscape in Europe.* <https://www.crucialcrowdfunding.com/wp-content/uploads/2017/05/CROWDFUNDING-FOR-ENTERPRISE-an-Examination-of-the-Crowdfunding-Landscape-in-Europe.pdf>

<sup>2</sup> *ArtistShare.* <https://www.artistshare.com/about>

<sup>3</sup> *FilmVenture.* <https://web.archive.org/web/20021105143430/http://www.filmventure.com/fv/> (The website does not function since April 2016.)

By the early 2000s, there were only a few online-funding services. The situation changed by 2010, when, by the Global Bank's estimations, there were already several hundred of such services, with the majority concentrated in the USA. For example, in 2013 there were 344 online-funding services in the USA, 87 in Great Britain, 53 in France, Canada and the Netherlands had 34 each, Spain had 27, Germany – 26, Brazil – 17, Italy – 15, Australia – 12, India – 10, Russia and RSA – 4 each"<sup>4</sup> (Vasilevskii, 2020a).

It should be noted that at the early stages of its development the process of procuring and extending money through online-funding services was not specially titled, and the term "crowdfunding" came into use of an ordinary Internet user much later.

In order to study the legal regulation of public relations in the sphere of crowdfunding, one should turn to the etymology of this term and examine its filling with a certain meaning in the relevant sphere of use – the Internet, from which the term was borrowed by economics and legal science.

The neologism used is a transliteration into Russian of the English word "crowdfunding" which consists of two words: "crowd" and "funding". This can be interpreted as "people's financing". Recently, the term "crowdfunding" began to be more and more often understood as online-funding.

The term was coined by Michael Sullivan. In 2006, he launched Fundavlog service in the Internet, the main purpose of which, according to its creator, was to help funding the projects of video bloggers creating such materials as new web shows, documentaries, etc.<sup>5</sup> Fundavlog project comprised the achievements of vlogdir.com website, earlier launched by M. Sullivan, which specialized on video blogs and contained a number of additional functions, among which those of interest for the present research is the possibility to fund any video the user likes by a click of a button. The sums of contributions were ranged and indicated on the buttons, the main being 1 cent for a click. Fundavlog project was interesting for the community, but did not have a further development.

In an interview to Das Crowdfunding Magazin, M. Sullivan marked that at the initial stages of Fundavlog development he tried to find a new term to more comprehensively reflect the social processes of jointly funding projects, the technical mechanisms of which were proposed both in the service created by him and in a number of other services functioning at that time<sup>6</sup>. In his blog about Fundavlog service, he termed

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<sup>4</sup> *Crowdfunding's Potential for the Developing World*. <https://documents1.worldbank.org/curated/en/409841468327411701/pdf/840000WP0Box380crowdfunding0study00.pdf>

<sup>5</sup> For reference, it should be noted that at that time video hosting projects were actively elaborated by many software developers, for example, the now popular YouTube video hosting was founded in 2005.

<sup>6</sup> *Crowdfunding-Wortschöpfer Michael Sullivan im Interview*. (2015, Oktober 28). <https://www.crowdfunding.de/magazin/crowdfunding-wortschoepfer-michael-sullivan-im-interview/>

“crowdfunding” the way of communication of persons during funding through software-hardware means of the service in the Internet. As the author himself stated, the choice of the term was obvious for him, as the notions of “crowd” and “crowdsourcing” were popular at that time<sup>7</sup>.

The term “crowdsourcing” was first proposed in 2006 in an article “The Rise of Crowdsourcing” of a monthly “Wired” by an American journalist Jeff Howe<sup>8</sup>. According to N. V. Mikhaleva, the author inserted the following meaning into this notion: “... to solve a problem on voluntary bases, using information-communication technologies, an indefinite number of persons is involved, who are able to take part in its solution” (Mikhaleva, 2019).

After the article publication, J. Howe focused heavily on the topic of crowdsourcing, monitoring and describing this phenomenon in his blog at crowdsourcing.com. Later, these observations formed the basis of his monograph “Crowdsourcing: Why the Power of the Crowd Is Driving the Future of Business”, published in 2008. In that work the author described the essence of crowdsourcing using historical method. He sees the sources of this phenomenon in creating the “communities of hobbyists” and links its development with the emergence of a special area of information technologies – open source software, thanks to which amateurs obtained legal access to software source code and could amend it, thus participating in developing open software. In the said monograph, crowdfunding is only mentioned a few times as opposed to crowdsourcing. The critical difference between these social processes of communication consists in crowdfunding being understood as collective funding of a project, not as a work of a group over solving a problem. In other words, this method of a project implementation implies not an active participation of a group but their passive participation through providing the funds. According to J. Howe, the common feature between the said processes is that both crowdsourcing and crowdfunding possess a social integrative impulse which allows reducing the number of hierarchical links between the people solving a problem or implementing a project.

In Google search engine, the first queries for the word “crowdfunding” were not made before 2007, while up to the end of 2011 the popularity of queries, according to Google Trends, did not exceed 10 scores out of possible 100<sup>9</sup>. In the Russian-language segment of Google, the first query for “crowdfunding” dates back to December 2010.

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<sup>7</sup> Fundavlog. <https://web.archive.org/web/20070224191008/http://fundavlog.com/community/index.php?op=ViewArticle&articleId=9&blogId=1>

<sup>8</sup> The Rise of Crowdsourcing. (2006). <https://www.wired.com/2006/06/crowds/>

<sup>9</sup> Google Trends. <https://trends.google.ru/trends/explore?date=all&q=rowdfunding>

At that, the dynamics of queries for the Russian term is comparable to the general trends of searching for the term “crowdfunding”<sup>10</sup>.

Spreading of the term “crowdfunding” among the Internet users is associated with the functioning of Kickstarter<sup>11</sup> online-funding service. According to GoogleTrends, the dynamics of queries for Kickstarter online-funding service is similar to that for the word “crowdfunding”<sup>12</sup>. From the moment of launching (April 28, 2009) till the present research (October 2022), the said service was one of the world’s most popular online-funding services. Via Kickstarter, 21 million people took part in funding, \$6.3 bln were raised, and 228,078 projects successfully funded<sup>13</sup>. Via Kickstarter, varied projects in 15 categories are funded: games, movies and videos, design, technologies, music, publishing, culinary, art, fashion, comics, theatre, photo, dancing, crafts, journalism.

By the statistical data available as of October 2022, the largest number of successfully funded projects at Kickstarter belong to the categories “music” – 33,713 projects, “games” – 32,781 projects, and “movies and videos” – 30,964 projects. By the amount of money invested, the projects from “games” category are leading – \$2.53 bln.

Popularization of crowdfunding in general was promoted by a set of factors, among which the key ones are the following.

First of all, it is the economic crisis of 2007–2008. In that period, traditional financial institutions like banks and non-bank credit-financial organizations took steps to minimize risks of nonpayment. Funding of startups, small and middle businesses significantly decreased<sup>14</sup>. Qualification requirements to participants of civil circulation when extending loans toughened<sup>15</sup>. Besides, interest rates in credits and loans increased.

Economic instability led the growing numbers of middle-aged and elderly people engaged in business. The main goal of such self-employment was to maintain the income level which existed before crisis. According to experts, success of entrepreneurial activity of this

<sup>10</sup> Google Trends. <https://trends.google.ru/trends/explore?q=%D0%BA%D1%80%D0%B0%D1%83%D0%B4%D1%84%D0%B0%D0%BD%D0%B4%D0%B8%D0%BD%D0%B3>. An interesting fact is that among the countries representing the Russian-language segment of the Internet, the maximally frequent query for “crowdfunding” is observed for Belarus.

<sup>11</sup> A social history of crowdfunding. (2011). <https://socialmediaweek.org/blog/2011/12/a-social-history-of-crowdfunding/>

<sup>12</sup> Google Trends. <https://trends.google.ru/trends/explore?date=all&q=kickstarter>

<sup>13</sup> Kickstarter. <https://www.kickstarter.com/about?ref=global-footer>

<sup>14</sup> Banking on each other (Peer-to-peer lending to business: Evidence from Funding Circle). [https://media.nesta.org.uk/documents/banking\\_on\\_each\\_other.pdf](https://media.nesta.org.uk/documents/banking_on_each_other.pdf)

<sup>15</sup> The Rise of Future Finance: The UK Alternative Finance Benchmarking Report. <https://www.jbs.cam.ac.uk/faculty-research/centres/alternative-finance/publications/the-rise-of-future-finance/>



social-demographic group is due to broader community links of such people. It facilitates seeking funding from a large number of friends and acquaintances<sup>16</sup> (Cai et al., 2021).

Development of crowdfunding was also promoted by the globally existing social barriers. Access to financial resources in some countries is restricted by gender, race and other non-commercial factors.

According to foreign research, investors (sponsors) prefer investing funds into projects, the initiators (fund seekers) of which correspond to them by gender, race and social-economic status (Duan et al., 2020). The fund seekers who do not belong to this social-demographic group in most cases remain outside the market of venture and angel funding.

The set of the above mentioned economic, organizational-procedural and social encumbrances and barriers, associated with obtaining funds from traditional institutions, stimulated fund seekers to searching alternative sources of procurement. Analysis of possible options yields the simplest and most effective one – collecting funds from all persons, in one way or another interested in the project implementation. This method of procurement of funds is not new; it was repeatedly used and proved its economic efficiency.

With the progressive development and broad spreading of information-communication technologies, “the scale, speed and accessibility of social contacts have reached a qualitatively new level; interaction with a large number of interested persons became possible online, regardless of their geographical location. At the same time, basic users of bank services acquired the opportunity to perform financial transactions remotely and quickly. The availability of such technical potential promoted optimization of costs for dissemination of the project information and for organization of fund raising via online-funding services” (Vasilevskii, 2020a).

A significant contribution into the informational coverage of the project is made by the Internet media (such as YouTube, TikTok, VKontakte, Odnoklassniki, Twitter\*, Viber, Telegram and other video hostings, social media, messengers, etc.). Each potential investor (sponsor) can access such sources of information via a smart phone, a computer, or a notebook. These gadgets and the Internet access became an indispensable part of a person's social life. A user's attention to a project is an object of competition in the Internet (high-quality and popular (“hype”) material (“content”) is launched, subscribers are attracted, likes are put, etc.) (Wang et al., 2020; Wolfe et al., 2021; Bi et al., 2017). Internet media facilitate a sort of transformation of a social capital into a financial one and allow avoiding the “bureaucratic”, “picky in project funding” chain of traditional mediators.

The proposed term for “crowdfunding” (people's funding) comprehensively reflects the essence of the processes at the initial stages of forming the analyzed means

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<sup>16</sup> Gabison, Garry A. (2015). *Understanding Crowdfunding and its Regulations*. <https://publications.jrc.europa.eu/repository/bitstream/JRC92482/lbna26992enn.pdf>



of communication, that is, procurement and extending of money via specialized online-funding services in the Internet. At that period, funding was mostly procured for creative or charity initiatives (for example, recording of an album; organization of a concert; helping people who fell on hard times, etc.). In economy, this funding model is known as the model of crediting between physical persons, or peer-to-peer lending, abbreviated as P2P.

At the same time, it should be noted that the given term for denoting the social processes of procurement and extension of funds via online-funding services is not the only one possible. For example, the Cambridge Centre for Alternative Finance and a number of other institutions and economists use a more general term – (online) alternative finance. The use of this term is logically determined by the fact that this way of funding is opposed to traditional means (such as getting credits, loans, grants, etc.). Alongside with that, foreign legislation applies other legal categories for legal regulation, for example, “investments procured via investment platforms”, etc.

As the range of financial tools used at online-funding services becomes broader and more comprehensive, the context of the term “crowdfunding” is also transforming. In particular, one should recognize as accomplished the fact of significant participation of qualified investors in crowdfunding, as well as the gaining momentum inter-corporate pattern of funding (“business to business”, abbreviated as B2B), the use of which raises a number of theoretical-legal questions in many national law orders, which require normative resolution.

Today, the term “crowdfunding” bears an umbrella (general) meaning for various business models of collective funding in the Internet. Despite diversity of such business models, they have certain common features referring them to crowdfunding.

Having analyzed the approaches of the Russian and foreign economists, A. Golikova distinguished the following main features of crowdfunding:

- “1) procurement of money is performed via an online-funding service in the internet and a special mediator – an organization, the activity of which is associated with rendering online-funding services (an operator of an online-funding service);
- 2) an operator of an online-funding service is not a bank or other traditional financial institution;
- 3) an operator of an online-funding service does not invest their own money into any project placed on its online-funding service;
- 4) the system of contributions is ranked and available to any user;
- 5) a project is funded with contributions from many participants” (Golikova, 2019).

Based on the above, one may conclude that crowdfunding should be interpreted as a means of procurement and extension of funds in the Internet for project funding. Such funding is most often performed with small sums from many interested participants of civil circulation. At that, the operator of an online-funding service, as a rule, is not a traditional financial institution like a bank or non-bank credit financial organizations.

## 1.2. Types of crowdfunding

Most of popular-scientific publications interpret the term “crowdfunding” as a collective category of the main business models of collective funding: charity crowdfunding, crowdrewards (also termed “reward crowdfunding”), crowdlending and crowdfunding. However, this approach is not universal. In particular, in many publications crowdlending is not considered as a component of crowdfunding (Tkachev & Batalko, 2018; Lihn, 2019).

Literature on law and economics provides numerous grounds for classification of crowdfunding. For the purposes of legal regulation, classification based on the goal of investment. On this basis, commercial and non-commercial types of crowdfunding are distinguished (Vasilevskii, 2020b; Shneur et al., 2023).

Commercial crowdfunding is based on persons’ investing money in order to obtain profit (income) or achieve another significant result associated with business activity. In literature, commercial crowdfunding is viewed as a means of investing (Usenya, 2019).

Types of commercial crowdfunding include:

- crowdfunding (equity-based crowdfunding, investment-based crowdfunding) – a form of online-funding of small and middle economic entities through investors’ purchasing emission securities of these entities. The investors participating in this type of commercial crowdfunding obtain dividends on the purchased emission securities and share the risks of business activity with the funding seeker as regards the potential loss of the money invested. It is worth noting that there is a popular practice, aimed at accelerating business, of paying no or very little dividends to investors. Hence, most of the investors count on long-term capitalization of the economic entity and further resale of the emission securities in the stock exchange for a higher price. Crowdfunding is more risky for investors, as the profit is poorly predictable and depends on multiple factors uncontrollable to them (Lukkarinen, 2020);
- crowdlending (lending-based crowdfunding, credit-based crowdfunding, loan-based crowdfunding) – a form of online-funding of physical and/or legal persons through investors’

procuring short-term commercial loans (Usenya, 2020). Unlike in crowdfunding, investors' profit is predictable and is formed from the applicants' paying investments by interest loan agreements, with the amount of interest agreed by the parties or established by the online-funding service.

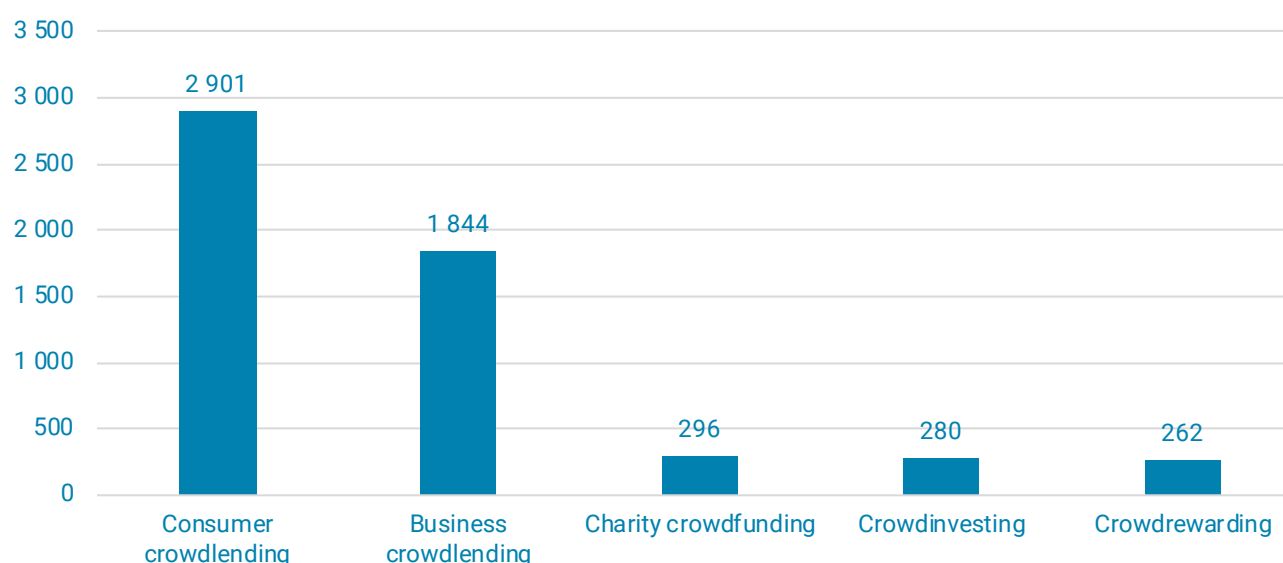
Non-commercial crowdfunding is based on investing money for social, personal, household, family and other purposes not directly associated with gaining profit (income).

The following types of non-commercial crowdfunding are distinguished:

- crowdrewarding) – a form of online-funding of manufactures of goods or providers of services by consumers' extending money for a reward in the form of advertising a product or a service (Zhao, Ryu, 2020);

- charity crowdfunding (donation crowdfunding, fundraising) – a form of online-funding when sponsors grant money for implementing a socially important project.

For the information of the volume of each type of crowdfunding, Fig. 1 shows the respective statistical data on the alternative finance market in Europe (excluding the Great Britain) in 2020.

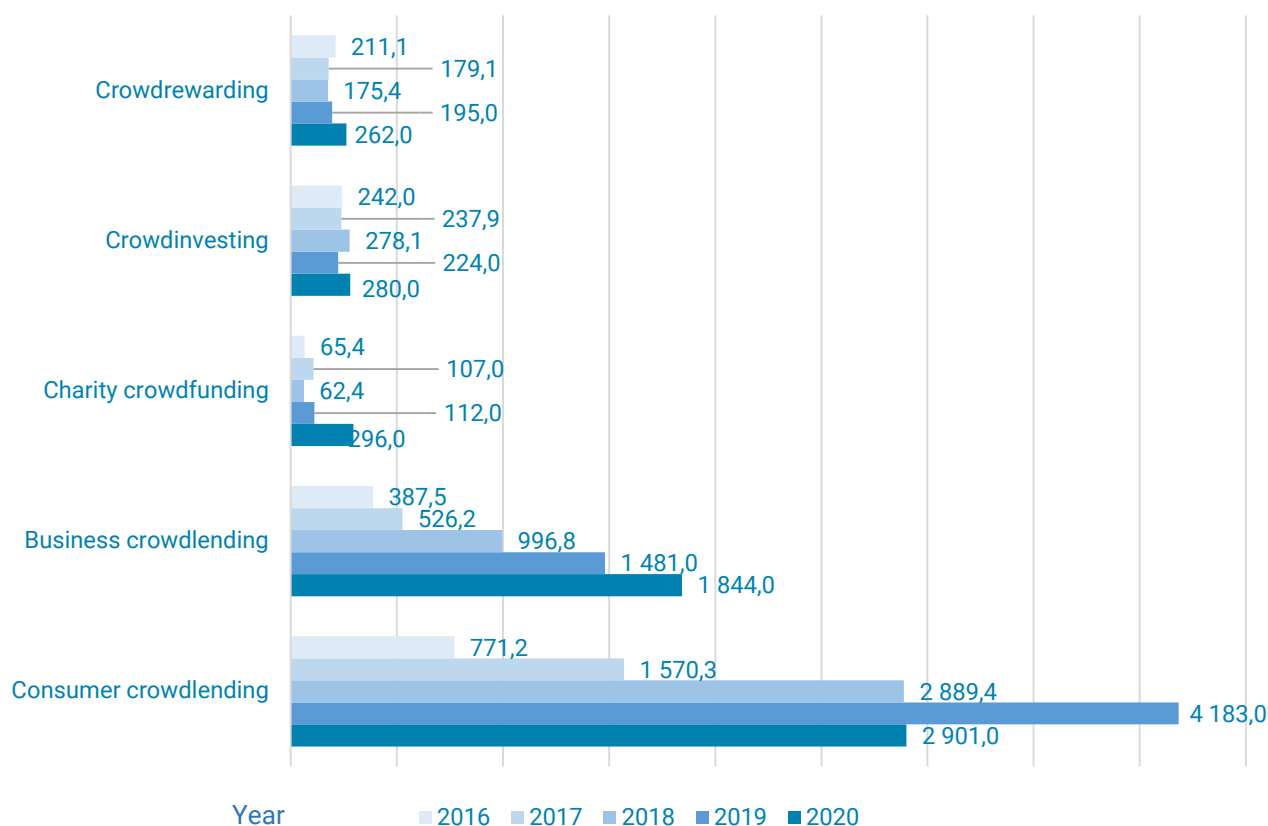


**Figure 1. Total value of the alternative finance market in Europe (excluding the UK) in 2020 by types of crowdfunding (US\$ mln)**

Source: Total value of the alternative finance market in Europe (excluding the UK) in 2020. (2022).

<https://www.statista.com/statistics/412394/europe-alternative-finance-transaction-value-market-segment/>

The trends of the recent 5 years in the alternative finance market in Europe (excluding the UK) by types of crowdfunding are shown in Fig. 2.



**Figure 2. Total value of the alternative finance market in Europe (excluding the UK) in 2016–2020 by types of crowdfunding (US\$ mln)**

Source: Peer-to-peer consumer and business lending transaction value in Europe (excluding the UK) from 2014 to 2020. (2022). <https://www.statista.com/statistics/412400/europe-alternative-finance-transaction-value-p2p-lending/>; Equity-based crowdfunding transaction value in Europe (excluding the UK) from 2013 to 2020. (2022). <https://www.statista.com/statistics/412460/europe-alternative-finance-transaction-value-equity-crowdfunding/>; Donation-based crowdfunding transaction value in Europe (excluding the UK) from 2015 to 2020. (2022). <https://www.statista.com/statistics/412463/europe-alternative-finance-transaction-value-donation-crowdfunding/>

The given statistical data clearly show that crowdlending dominates by a wide margin in the alternative finance market in Europe by the volume of funds procured, followed by other types of crowdfunding. In general, similar trends are characteristic for the global alternative finance market.

## 2. Legal relations in crowdfunding

### 2.1. Parties

Social relations aimed at procurement and extension of funds using online-funding services, regardless of their type, emerge, change and cease between three main and indispensable participants.

1. a seeker of funding, fundraiser or project initiator (creator) – a physical or legal person (usually a person needing help; an emergent entrepreneur (“startupper”)); a subject

of small or middle business) interested in procurement of funds for implementation of a certain goal.

2. a person extending funds (funder) – a physical or legal person procuring funds on a payment or gratuitous basis to a seeker for implementation of a project. Depending on the type of crowdfunding, they are called:

- donator, sponsor, benefactor or donor – for charity crowdfunding;
- potential buyer (prebuyer), sponsor or backer – for crowdrewardsing;
- lender – for crowdlending;
- investor – for crowdfinancing.

It should be noted that in charity crowdfunding the funders are not investors, as they do not extend the assets hoping that its market value will grow.

3. An operator of online-funding service – a legal person rendering services of procurement or extension of funds to seekers or funders, respectively.

The range of persons participating in social relations of crowdfunding is not limited to the above listed. For example, on the part of a seeker there may be also agents or organizers of a contest of funds procurement; in non-commercial crowdfunding, alongside with the online-funding service operator there are, as a rule, persons facilitating the funds procurement on a non-payment basis (volunteers) and others.

## 2.2. Dynamics of the social relations of parties

The general algorithm of actions and legal relations between the crowdfunding parties is as follows:

a) a fundraiser browses the internet searching for the rules of online-funding services, the reputation of services among users, the users' reviews about the services' functioning and operators' activities, etc. Based on the data obtained, the fundraiser chooses the online-funding service suitable for the pursued goals or the implemented project, registers in it and fills in an application for procurement of funds; based on the application, the service generates an offer of procurement of funds. Depending on the type of crowdfunding and a particular online-funding service, the application may contain different fields to be filled in. Given the common goal of fundraisers in all spheres of crowdfunding, which is to procure funds, such applications in most cases contain the following fields:

- the maximal volume (the total sum) of the funds to raise;
- the minimal sum of funds being the mandatory term for signing the contract on procurement of funds;
- the period of procurement of funds;
- the goal of procurement of funds or the information about the project for which the funds are procured, etc.

Besides, the rules of an online-funding service may stipulate that a seeker must attach to their application the scan copies of confirming document;

b) an operator of online-funding service, based on the information received from a registration form and an application for procurement, carries out a preliminary estimation of the fund seeker and the proposed project (if any). The estimation is carried out by the of online-funding service operator in compliance with the independently established criteria and methods which should be applied equally to all seekers, taking into account the features of their pursued goals or implemented projects. As a result of the estimation, the operator makes a decision on approving the application and placing on the online-funding service a proposal on money procurement, or rejecting the application with well-reasoned grounds. The operator must notify the seeker about the decision made via the online-funding service. The term of notification is established in the rules of the online-funding service and starts from the moment of the seeker sending the application for money procurement;

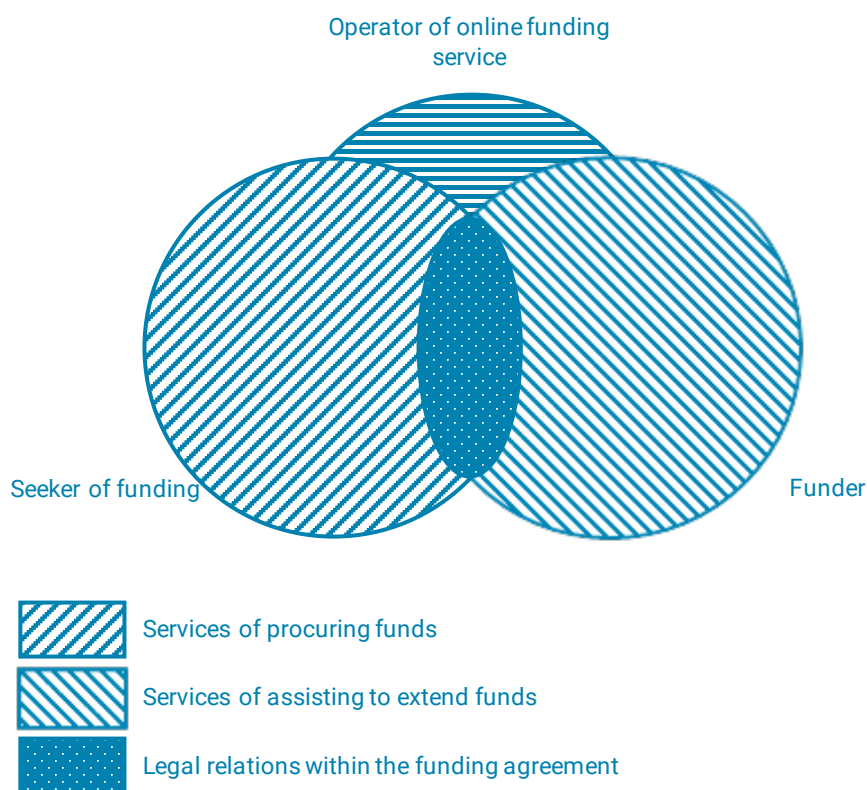
c) the Internet users, among them the persons interested in extending funds, having examined in the online-funding service the available proposals for money procurement, make decisions on funding the project which interests them (Boudreau et al., 2021). To obtain additional information about the seeker and their proposal, as well as to sign a contract on extending money (further – funding agreement), the users register in the online-funding service;

d) via the online-funding service, a person wishing to fund the project of interest signs a funding agreement with the respective seeker on a payment or non-payment basis, depending on the type of crowdfunding. To fulfill the signed agreement, the person interested in extending money transfers the sum stipulated in the proposal or agreed by the parties to the account of the fund seeker;

e) the parties must register in the online-funding service all information about the facts referring to the execution or termination of the funding agreement signed via the said service.

The legal relations of the parties of crowdfunding are shown in Fig. 3.

As one can see from the above algorithm and diagram, the online-funding service operator is of key significance in organization of crowdfunding. First, the operator administers the online-funding service, without which crowdfunding as a phenomenon cannot exist; second, they render mediation services of procurement and assistance in extension of funds, i. e. participates in linking the demand and the supply; third, they ensure the functioning of the online-funding service for signing, executing and termination of contract legal relations between a funding seeker and a funder.



**Figure 3. Legal relations between the funder, the funding seeker, and the online-funding service operator in crowdfunding<sup>17</sup>**

Source: compiled by the author.

The online-funding service is a technical-software solution, “a specialized Internet resource, on which crowd-projects are placed” (Gorovaya, 2016) or “a website dedicated to raising funds by crowdfunding” (Gedda et al., 2016)<sup>18</sup>. The service acts as a mediator platform (tool) for interaction between persons interested in procuring money for a certain goal and persons ready to fund achievement of that goal (Vishnyakova, 2018). The online-funding service is a constant element of the crowdfunding ecosystem, which provides the

<sup>17</sup> In Fig. 3, circles denote the crowdfunding subjects. To individualize the crowdfunding subjects, the circles are signed and depicted with different designs: the circle of “the online-funding service operator” is hatched with horizontal lines; the circle of “the funding seeker” is hatched with diagonal lines sloping to the right; the circle of “the funder” is hatched with diagonal lines sloping to the left. The intersection of circles demonstrates legal relations of the parties in crowdfunding: intersection of circle “online-funding service operator” with the circle “funding seeker” or the circle “funder”, respectively, denotes the legal relations in rendering services of procurement of assistance in extension of funds; intersection of all three circles – the legal relations in signing, executing and termination of funding agreement via the online-funding service.

<sup>18</sup> In the Republic of Belarus, various online-funding services are functioning both for commercial and non-commercial crowdfunding. For example, Maesens.by was functioning from 2011 till 2018; <https://www.talaka.org> was launched in 2013; <https://dev.investo.by> was launched in 2015; <https://unihelp.by> was launched in 2016, etc.



sense of safety of the implemented legal relations to their participants. The information content about the project in the online-funding service promotes active procurement of funds. A platform often shows information on the sum collected and the number of people who took part in funding. Potential investors (sponsors) tend to invest into a project supported by many people. This is the social-psychological effect of “people’s wisdom”, when people take into account the results of collective thinking in making their own decision (Mollick & Nanda, 2016). An important role is played the model of collecting money used by the online-funding service. Most services use the “all or nothing” model, when the money collected for a project implementation are extended to the funding seeker only if the threshold value is achieved, which is stipulated at the project registration. In this model, the online-funding service operator first accumulates the collected money on their own accounts. If the threshold value is not achieved in the established time, the service operator returns the money to the people who donated them.

The functioning of online-funding services operators differs depending on the country, taking into account the legislation applied. Some operators perform a preliminary estimation of the projects, others just gather proposals and interested parties, while still others, on the contrary, act as a single stockholder of the project funded (Shchetinina, 2016).

Operators of online-funding services are interested in their service having a flawless reputation and not being associated with fraud or low-quality (unsuccessful) projects. This is due to a competition between operators for the attention of potential seekers and investors (sponsors) to the service they offer.

In many cases, if a seeker manages to procure money, the operator will charge their activity, with the charge varying depending on the territorial (geographical) location of the operator, level of competition and the business model used for crowdfunding.

### 3. Positive and negative aspects of crowdfunding

Procurement and extension of funds via online-funding services are characterized by a broad variety of positive aspects, among which the following should be highlighted.

A deficit of a project funding is filled in without complicated qualification requirements to a fund seeker. Fund seekers may customize the business model of crowdfunding, stemming from the features of the project implemented, organizational and financial situation. In other words, seekers using crowdfunding have more “levers” of control and tuning of financing compared to obtaining funds from traditional financial institutions.

Financial flows become transboundary. A project is funded by people and organizations from all over the world, and their number is not limited. If fund raising is successful, transboundariness allows the seekers to enter new markets.

Economic circulation “includes resources of citizens, which separately are not sufficient for performing any useful activity, but together form significant sums which can be allocated for market development in various spheres, which is especially relevant under economic instability” (Klinov, 2018).

Funding seekers retain control over the project, which allows them to develop and improve the project during money collection, taking into account the public critique.

Funding seekers may analyze the market conjuncture for the demand for the product they offer. Besides, if fund raising is successful, the funding seekers get guaranteed consumers of their product among the persons who funded the project.

As money is collected, a sort of social insurance takes place. This aspect is especially relevant for high-risk innovative projects. Crowdfunding allows procuring small sums of money from a large number of persons, each of them sharing the business risk as regards the probable loss of the money contributed but not risking a large wealth.

Crowdfunding often supplements traditional sources of funding. At the same time, it sometimes significantly facilitates access to them. For banks, non-bank credit-financial organizations and communities, it is easier to estimate the potential of an idea, probable risks and a seeker interest in the success of a project if the project is already at the stage of implementation. In most cases, traditional financial institutions decide for extending funds for the development of such project. Commitment of potential investors to funding promising innovative projects at the stage of implementation grows geometrically. One of the brightest examples of such practice is an innovative project on creating a virtual reality helmet (glasses) Oculus Rift. Collection of funds for this project was launched on August 1, 2012 at Kickstarter platform; the funding seekers announced the need to raise US\$ 250 thousand. In only a month, US\$ 2.4 mln from 9,522 persons were collected<sup>19</sup>. After a few years, on March 25, 2014, the Oculus VR company (which was the developer of the said project) was purchased by Facebook\*\* for US\$ 2 bln<sup>20</sup>. In less than two years, capitalization of the project developing company grew more than 20 fold, and crowdfunding facilitates the start of this process.

Thus, commitment of seekers in crowdfunding is obvious. In turn, potential investors (sponsors) and consumers are interested in crowdfunding, as they get access to new products before they become widely commercialized.

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<sup>19</sup> *Oculus Rift: Step Into the Game*. (2016). <https://www.kickstarter.com/projects/1523379957/oculus-rift-step-into-the-game>

<sup>20</sup> *Facebook Buying Oculus Virtual-Reality Company for \$2 Billion*. <https://time.com/37842/facebook-oculus-rift/>

At the same time, crowdfunding is not free from shortcomings.

Fraud is the largest threat. Traditional reputational and law enforcement methods and means are not always effective. Fund seekers are not constant participants of the crowdfunding ecosystem. That is why in some cases they do not value the flawlessness of their business reputation (Karpoff, 2021). The persons extending funds, in turn, are not sufficiently interested in filing a suit of fraud or violation of a funding agreement by an unscrupulous seeker. This is due to the fact that the main idea of crowdfunding is to collect small sums of money from many people instead of large investments of a limited number of subjects. The insignificant sums of the lost contributions do not stimulate an individual to engage in a costly and time-consuming judicial procedure. That is why the persons extending money in crowdfunding are mostly subject to fraud risks.

Operators of online-funding services play an active role in opposing fraud while comprehensively checking the project and applying a number of preventive measures to estimate its quality (Ferreira, 2022). For example, they often use a model of financing “all or nothing”, etc. A significant contribution to counteracting fraud is made also by the persons extending money, premised on their knowledge and analytical abilities – the effect of the “people’s wisdom” mentioned above. Besides, the persons extending money may reduce the above risks by restricting and diversifying financial flows, in other words, by investing small sums into various projects.

Alongside with purposeful fraud, there are risks of unintended failure of a project. A project may fail due to various reasons, like incompetence and overconfidence of the funding seekers, economic inefficiency of the project, technical drawbacks, unfavorable changes in external factors (economic, raw material, production crisis), force majeure, etc.

A lack of a well-developed stock exchange does not promote the business models of crowdfunding, which are based on property for the authorized capital stock of the funded economic entity. Investors in such business models often count on getting profit by further selling a part of the authorized capital stock acquired through crowdfunding. If a stock exchange is not sufficiently developed, investors lack this opportunity of profit acquisition and, respectively, are not interested in investing in such a way.

As for taxation, a popular practice in many countries is to grant tax incentives to taxation subjects who fund non-profit organizations. These tax incentives are also attractive for the sponsors funding non-profit projects through crowdfunding. However, as the operators of online-funding services accumulating funds are often commercial organizations, sponsors in the formal-legal sense are not entitled to such incentives. Besides, in some countries tax incentives differ depending on from which means (profit, capital assets or loans) an enterprise funds its research and development. Such differences in taxation regimes influence the demand for funding, the preferences of investors (sponsors) and seekers

of funding in the ways of procurement and extension of funds and, respectively, the way crowdfunding develops.

Some countries pay insufficient attention to legal regulation of crowdfunding, which creates additional risks in terms of guarantees and safety of social relations. Alongside with the regulatory function, legal norms also perform the educational (informational) function for the participants of civil circulation.

Crowdfunding does not “fit all”, as for the successful procurement of funds the seekers usually need an innovative approach, marketing skills, information literacy, creativity, etc. If the fund seekers do not sufficiently possess these competencies, they may employ consulting services of specialists in promoting products in the Internet. Such services can be rendered, inter alia, by operators of online-funding services.

Finally, there are risks in the sphere of intellectual property. To successfully procure money, fund seekers need to disclose a significant volume of information on the project. If the intellectual property lacks the relevant protective documents, the disclosed information may be misused by unscrupulous participants of civil circulation (Ersh, 2021).

#### 4. Legal regulation of crowdfunding

Given the above listed positive and negative aspects of crowdfunding, the regulative bodies of different states face a number of issues requiring normative resolution (Sanderson, 2022). Among such issues, the following main ones may be emphasized. Who is entitled to perform the activity of the operator of online-funding service? What qualification requirements should be applied to the operators of online-funding services? Which models of crowdfunding can be applied? Who is entitled to extend funds via online-funding services? What amount of funds can be extended by one person? Who is entitled to receive funds? What amount of funds are the fund seekers entitled to procure for implementation of a project? How often are they entitled to do it?

The general vector of development of the legal regulation of social relations formed in crowdfunding is outlined in the international acts on electronic commerce. The provisions of these acts are recommendatory for business circulation participants and states. Such acts are adopted by various international organization, the most authoritative among which are the United Nations Organization (further – UNO)<sup>21</sup>, World Trade Organization

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<sup>21</sup> UNO. Model Law on electronic commerce of the United Nations Commission on International Trade Law. [https://www.un.org/ru/documents/decl\\_conv/conventions/commerce.shtml](https://www.un.org/ru/documents/decl_conv/conventions/commerce.shtml)

(further – WTO)<sup>22</sup>, Organization for Economic Cooperation and Development (further – OECD)<sup>23</sup> and others. “Electronic commerce” is not interpreted universally today. The prevailing approach is that of WTO and OECD, according to which “electronic commerce” is viewed as a set of relations in signing deals with specially designed means. The means are both information-communication networks, the internet among them, and other means, for example, specialized websites, mobile applications. This said, the notion of electronic commerce does not include the deals agreed via a telephone call, telex, fax, and ordinary e-mail (Savelyev, 2016).

#### 4.1. Experience of normative legal regulation of crowdfunding in foreign countries

In most countries, legal regulation of crowdfunding is differentiated depending on the business model applied. Non-commercial crowdfunding is often regulated in the provisions of general civil legislation, while commercial business models of crowdfunding have a specific normative regulation.

Among the first special legal acts regulating the legal relations of persons procuring and extending funds on a commercial basis via online-funding services, one should highlight the US law of 2012 “Jumpstart Our Business Startups Act (JOBS Act)”<sup>24</sup>. The preamble to this law says that its provisions are aimed at increasing the number of jobs in the US and ensure economic growth by improving the access to public capital markets for the emerging and developing enterprises. The section III of JOBS Act is informally known as the Crowdfund Act. The legal provisions of this section were rather advanced at the time of adoption. It stipulates the possibility for economic entities to use business models of crowdfunding, based on securities circulation. Notably, the US financial market had been very conservative and overregulated for many years before that. Despite adoption of the act, its practical implementation by the civil circulation participants became possible much later. In 2015, the United States Securities and Exchange Commission (SEC) adopted a respective normative act developing the provisions of section III of JOBS Act. The act came into force on May 16, 2016<sup>25</sup>, after which the US economic subjects were able to fully legally apply financial business models of crowdfunding (La Viña & Black, 2018).

<sup>22</sup> WTO. *E-Commerce in Developing Countries: Opportunities and Challenges for Small and Medium-Sized Business*. [https://www.wto.org/english/res\\_e/booksp\\_e/ecom\\_brochure\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/ecom_brochure_e.pdf)

<sup>23</sup> OECD. *OECD Glossary of Statistical Terms. Electronic Commerce*. <https://stats.oecd.org/glossary/detail.asp?ID=4721>

<sup>24</sup> *Jumpstart Our Business Startups Act*. <https://www.govinfo.gov/content/pkg/BILLS-112hr3606enr/pdf/BILLS-112hr3606enr.pdf>

<sup>25</sup> *Regulation Crowdfunding*. (2016). <https://www.sec.gov/rules/final/2015/33-9974.pdf>

The said legal regulation drew a response of the global business community. The interest to this issue was first of all due to the US leadership in normative regulation of this sphere of public relations, as well as to the US status as one of the leading economies, determining, among other equal countries, the vector of development of the global markets.

Later, special normative regulation of crowdfunding was adopted in other states, too. For example, in the Republic of Italy in 2012 a new edition of a Decree “On further urgent measures for economic development of Italy” (Ital. “Decreto-legge “Ulteriorimisure urgenti per la crescita del Paese”)<sup>26</sup> was adopted, which gave the normative legal act a status of law<sup>27</sup> containing, among other provisions, those on crowdfunding for innovative enterprises; in the Republic of France in 2014 a Decree “On crowdfunding” (Fr. Ordonnance relative au financement participatif)<sup>28</sup> was adopted; in 2015 the Republic of Austria adopted a Federal Law “On alternative forms of funding” (Germ. Bundesgesetz über alternative Finanzierungsformen (Alternativfinanzierungsgesetz, AltFG))<sup>29</sup>; in 2015 the Federal Republic of Germany adopted a Federal Law “On protection of ‘small’ investors” (Germ. Kleinanlegerschutzgesetz)<sup>30</sup> (Odorović & Wenzlaff, 2020); in 2019 the Russian Federation adopted a Federal Law “On procurement of investment using investment platforms and on making amendments in certain legislative acts of the Russian Federation”<sup>31</sup> and others.<sup>32</sup>

As the OECD countries strive to harmonize civil legislation, the Republic of Belarus is especially interested in the experience of normative regulation of these social relations in the Russian Federation.

In Russia on January 1, 2020, the Federal Law of August 2, 2019 no. 259-FZ came into force “On procurement of investment using investment platforms and on making

<sup>26</sup> Decreto-legge 18 ottobre 2012, N° 179 «Ulteriorimisure urgenti per la crescita del Paese». <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2012-10-18;179!vig=>

<sup>27</sup> Executive Summary of the new Italian legislation on innovative startups. [https://www.mise.gov.it/images/stories/documenti/Executive\\_Summary\\_Italy\\_Startup\\_Act\\_02\\_05\\_2016.pdf](https://www.mise.gov.it/images/stories/documenti/Executive_Summary_Italy_Startup_Act_02_05_2016.pdf)

<sup>28</sup> Ordonnance n° 2014-559 du 30 mai 2014 relative au financement participatif. <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000029008408/>

<sup>29</sup> Bundesgesetz über alternative Finanzierungsformen (Alternativfinanzierungsgesetz – AltFG). <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009241>

<sup>30</sup> Kleinanlegerschutzgesetz. [https://www.bundesfinanzministerium.de/Content/DE/Gesetzestexte/Gesetze\\_Gesetzesvorhaben/Abteilungen/Abteilung\\_VII/18\\_Legislaturperiode/2015-07-10-Kleinanlegerschutzgesetz/0-Gesetz.html](https://www.bundesfinanzministerium.de/Content/DE/Gesetzestexte/Gesetze_Gesetzesvorhaben/Abteilungen/Abteilung_VII/18_Legislaturperiode/2015-07-10-Kleinanlegerschutzgesetz/0-Gesetz.html)

<sup>31</sup> On procurement of investment using investment platforms and on making amendments in certain legislative acts of the Russian Federation: Federal Law of the Russian Federation of August 2, 2019 no. 259-FZ. [https://www.consultant.ru/document/cons\\_doc\\_LAW\\_330652/](https://www.consultant.ru/document/cons_doc_LAW_330652/)

<sup>32</sup> The legal acts are cited to denote the bases of the initial (primary) legal regulation of relations in the sphere of crowdfunding in some countries of the world. By now the volume of legal regulation in the said sphere of social relations in the law orders of the listed countries is significantly broader than the contents of the above mentioned acts.



amendments in certain legislative acts of the Russian Federation” (further – Law no. 259). When considered in the State Duma<sup>33</sup>, the act had a different title – “On alternative ways of investment procurement (crowdfunding)”. Assumingly, “the reason for changing the title was that the law was aimed at regulating not the whole crowdfunding but only the commercial one...”<sup>34</sup> This version is confirmed by the provisions of clause 5 of Part 1 of Article 2 and Article 5 of the Law no. 259, which stipulate the normative regulation of procurement of funds for the purposes associated with, first of all, entrepreneurial activity performed by the fund seekers. In turn, non-commercial crowdfunding is beyond the legal regulation of this normative legal act.

The provisions of the Law no. 259 offer the following main groups of legal acts aimed at regulating the relations of parties in crowdfunding.

1. The rules of an investment platform – an organizational act of the operator of an investment platform, which determines the main terms of its functioning: authorization rules, requirements to investors and recipients, etc. (Article 4 of the Law no. 259).

2. Contracts on service rendering signed between the operator of an investment platform on the one part and investors of fund seekers on the other part. Signing of these contracts ensures access of seekers and investors to participation in crowdfunding (Article 3 of the Law no. 259).

3. A contract signed between the investor and the fund seeker. This part of relations in crowdfunding is the most disputable, as some contract patterns do not fully comply with the classical models of contracts regulated by legislation, first of all, the Civil Code of the Russian Federation.

Article 5 of the Law no. 259 stipulates the investment techniques using investment platform: 1) granting of loans; 2) purchasing emission securities placed using investment platform, except emission securities of crediting organizations and non-credit financial organizations, structured bonds and securities for qualified investors; 3) acquisition of utilitarian digital rights.

In order to form the idea of the possible vectors of development of the Republic of Belarus legislation aimed at regulating the sphere of social relations under study, we will briefly list the main normative requirements applied to the participants of the crowdfunding ecosystem.

Legislations of foreign countries show trends to establishing qualification requirements to the persons claiming to perform the activity of an online-funding service operator:

- registration as a legal person;
- positive business reputation of the founders (participants) and management of the legal person;

<sup>33</sup> *On procurement of investment using investment platforms*: Draft of Federal Law of the Russian Federation, no. 419090-7. <https://sozd.duma.gov.ru/bill/419090-7>

<sup>34</sup> *Crowdfunding: motion, legal regulation and contract constructs*: based on the material by V. E. Polyakova. <http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=CJI&n=117866#uDYA3KTqUGIETuLs>



– special permission for performing the activity of an online-funding service operator. In many jurisdictions, accomplishment of administrative procedures on issuing such permissions falls within the authority of a minister of finance or a state's national bank. It is worth noting that this requirement is mandatory in most countries as regards the operators applying crowdinvesting. This is due to the specificity of the legal regime of securities' defensive capacity. This said, the respective permission (license) is usually acquired through a simplified procedure compared with the general permissive (license) order;

– taking organizational-technical measures for collecting and checking data on the fund seeker and the projects offered for funding (if any);

– taking preventive measures to counteract fraud, including providing comprehensive, allowed by legislation, information to the persons planning to fund the project, about the fund seeker and their project;

– taking measures to counteract legalization of funds obtained with criminal methods and funding of terrorist organizations, etc.

As an example of establishing qualification requirements to the online-funding service operators as the key subjects of the crowdfunding ecosystem, we will describe the experience of policy-making in the Republic of France. This law order is chosen because the legislation of France is one of the few which regulates the functioning of online-funding service operators who use both commercial and non-commercial types of crowdfunding (Sannajust et al., 2014). Accordingly, the French national segment of legal relations in crowdfunding distinguishes between two legal statuses of an online-funding service operator: CIP – “counselor for crowdfunding investments” (Fr. conseil en investissement participatif), entitled to render mediation services in commercial types of crowdfunding, and IFP – “investment mediator in crowdfunding” (Fr. intermédiaire en financement participatif), entitled to render mediation services in non-commercial types of crowdfunding. The choice of legal status by operators depends on the range of financial and consultation services which they can offer to fund seekers and funders.

A CIP-operator of online-funding service must comply with the following requirements:

- be a legal person registered in France;
- be registered in the ORIAS system (a database of mediators of banking operations and payment services);
- provide guarantees of their functioning;
- be a member of an accredited office of Autorités des Marchés Financiers (AMF)<sup>35</sup> (if the online-funding service operator is not an AMF member, they are subject to special control procedures)<sup>36</sup>;

<sup>35</sup> Autorités des Marchés Financiers is a state agency regulating the securities market in France.

<sup>36</sup> General regulation of the Autorité Des Marchés Financiers. <https://reglement-general.amf-france.org/eli/fr/aai/amf/rg/20161218/en.pdf>

- insure their performance (the minimal guaranteed sum of the insurance policy must be 400 thousand euro for each event insured and 800 thousand euro annually);
- follow the normative guidelines of the Monetary and Financial Code of France (Fr. Code monétaire et financier, CMF)<sup>37</sup> and the Provisions on AMF;
- protect the users' interests; provide comprehensive information to estimate the risks of funding;
- additional institutional requirements emerge at the stage of registering in the ORIAS system.

To acquire an IFP status, an online-funding service operator must:

- be a legal person. Compared to the requirements for CIP, the legal person does not have to be registered in France (foreign representative offices may be engaged);
- be registered in the ORIAS system;
- insure their performance (the minimal guaranteed sum of the insurance policy must be 250 thousand euro for each event insured and 500 thousand euro annually, while for the operators of online-funding services aimed exclusively at charity – 100 thousand euro and 200 thousand euro respectively);
- follow the normative guidelines of the Monetary and Financial Code of France (Fr. CMF).

If IFP operators of online-funding services render services transferring funds between a seeker and a funder, thus acting as a payment office, they also must have an ACPR permission and a license of a payment office (Fr. Prestataire de Services de Paiement), obtained in a simplified way. To obtain this license, the amount of authorized capital of the online-funding service operator must be not less than 40 thousand euro.

Thus, we may state that France stipulates a wide range of qualification and institutional requirements to the operators of online-funding services. The presence of such normative censures promotes the quality of services rendered by the operators and serves as a guarantee of a proper protection of interests of the parties in crowdfunding.

As regards funding seekers, the most common normative restrictions are those determining:

- the limits of procured funds during a 12 months period or a calendar year;
- the institutional requirements (organization-legal form, type of the activity performed; amount of authorized capital, etc.).

For example, in the USA the total sum of funding procured via crowdfunding for implementing a project must not exceed US\$ 1.07 mln, in France – 1 mln euro, in Russia – 1 bln rubles, etc. In Italy, only innovative organizations are entitled to initiate fundraising. In Russia, legal regulation stems from the opposite in this aspect, i.e.,

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<sup>37</sup> Code monétaire et financier. [https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000006072026/2019-05-24/](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006072026/2019-05-24/)

legislation stipulates the criteria of subjects which are not allowed to procure funds via online-funding services. Legislations of different countries may have other normative requirements to fund seekers.

In some law orders, special qualification requirements are also applied to persons extending funds. For example, in Italy, to collect money for an innovative project via online-funding services, not less than 5% of funds must come from professional investors. This requirement is based on the professional investors being able to comprehensively estimate the risk of a particular project, thus, unqualified participants of civil circulation may be preventively protected against probably property loss<sup>38</sup>. In the USA, the volume of invested funds is normatively limited for all regulated business models of crowdfunding during a 12 months period. For example, if a person has a yearly income and available net assets of less than US\$ 107 thousand, then the limit of funding is US\$ 2,200, or 5% from the least sum of yearly income and available net assets. If the yearly income and available net assets of a person are equal or exceed US\$ 107 thousand, then the limit is 10%. At that, during a 12 months period the total value of the securities purchased by the person via online-funding services must not exceed US\$ 107 thousand, regardless on the yearly income and available net assets<sup>39</sup>. In Russia, physical persons may invest via investment platforms not more than 600 thousand rubles during one calendar year.

## 4.2. Experience and prospects of normative legal regulation of crowdfunding in the Republic of Belarus

In the Republic of Belarus, the institution of crowdfunding is paid close attention to. Program legal acts in various spheres and directions of social-economic development of the Republic specify the status and vectors of further development of crowdfunding in a short-term and long-term perspective:

- the Concept of informational security of the Republic of Belarus, when characterizing the humanitarian aspect of the current status of informational sphere, ascertains the wide use of crowdfunding<sup>40</sup>;
- the State program of innovative development of the Republic of Belarus for 2016–2020 stipulates the development of internet platforms (crowdfunding) as a tool

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<sup>38</sup> *Review of Crowdfunding Regulation*. [https://eurocrowd.org/wp-content/uploads/2022/02/ECN\\_Review\\_of\\_Crowdfunding\\_Regulation\\_2017.pdf](https://eurocrowd.org/wp-content/uploads/2022/02/ECN_Review_of_Crowdfunding_Regulation_2017.pdf)

<sup>39</sup> *Spotlight on Jumpstart Our Business Startups (JOBS) Act*. <https://www.sec.gov/spotlight/jobs-act.shtml>

<sup>40</sup> *On the Concept of informational security of the Republic of Belarus*: Decree of the Security Council of the Republic of Belarus of March 18, 2019. No. 1. <https://pravo.by/document/?guid=3871&p0=P219s0001>

for interaction between consumers and manufacturers of products and services, investors and fund seekers<sup>41</sup>;

- the Republic program of the Year of Small Motherland in the Republic of Belarus in 2018–2020 stipulates development of a draft of Presidential Decree “On the functioning of financial Internet platforms” with a view of broadening access of physical and legal persons to financial resources via Internet platforms for business funding<sup>42</sup>;

- the Strategy of developing digital banking in the Republic of Belarus for 2016–2020 stipulates, as a special direction of digital transformation of financial services market, the creation of organizations providing alternative financial services, including elaboration of innovative software-hardware solutions<sup>43</sup>;

- the Strategy of development of financial market of the Republic of Belarus up to 2020<sup>44</sup> and the Strategy of development of small and middle business “Belarus – a country of successful entrepreneurship” up to 2030 stipulate formation of institutional conditions for the development of non-banking funding system<sup>45</sup>;

- the Main directions of monetary-credit policy of the Republic of Belarus for 2021 implies broadening the physical and legal persons’ access to loans via online borrowing services<sup>46</sup>;

- the Program of social-economic development of the Republic of Belarus for 2021–2025 stipulates: in the communal sector – to introduce crowdfunding and crowdinvesting services in the digital platforms of smart regions, providing the residents with the opportunity to select a variant of renovating their residential areas; in the financial sector – to broaden the physical and legal persons’ access to loans via online borrowing services<sup>47</sup>;

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<sup>41</sup> On the State program of innovative development of the Republic of Belarus for 2016–2020: Order of the President of the Republic of Belarus of January 31, 2017 no. 31 (in the edition of the Order of the President of the Republic of Belarus of July 7, 2020). <https://pravo.by/document/?guid=12551&p0=P31700031>

<sup>42</sup> On adopting the Republic program of the Year of Small Motherland in the Republic of Belarus in 2018–2020: Enactment of the Council of Ministers of the Republic of Belarus of July 18, 2018 no. 547. <https://pravo.by/document/?guid=12551&p0=C21800547&p1=1>

<sup>43</sup> On approving the Strategy of developing digital banking in the Republic of Belarus for 2016–2020: Enactment of the Board of Directors of the National Bank of the Republic of Belarus of March 2, 2016 no. 108. <https://www.nbrb.by/legislation/documents/pp108.pdf>

<sup>44</sup> On the Strategy of development of financial market of the Republic of Belarus up to 2020: Enactment of the Council of Ministers of the Republic of Belarus, the National Bank of the Republic of Belarus of March 28, 2017 no. 229/6 (in the edition of Enactment of the Council of Ministers, the National Bank of 01.08.2019). <https://pravo.by/document/?guid=3871&p0=C21700229>

<sup>45</sup> On adopting the Strategy of development of small and middle business “Belarus – a country of successful entrepreneurship” up to 2030: Enactment of the Council of Ministers of the Republic of Belarus of October 17, 2018 no. 743. <https://pravo.by/document/?guid=3871&p0=C21800743>

<sup>46</sup> On adopting the Main directions of monetary-credit policy of the Republic of Belarus for 2021: Order of the President of the Republic of Belarus of December 22, 2020 no. 481. <https://pravo.by/document/?guid=12551&p0=P32000481&p1=1>

<sup>47</sup> On adopting the Program of social-economic development of the Republic of Belarus for 2021–2025: Order of the President of the Republic of Belarus of July 29, 2021 no. 292. <https://pravo.by/document/?guid=3871&p0=P32100292>

– the Program of the Government of the Republic of Belarus functioning up to 2025 includes legal provision of the crowdfunding institution with a view of easing access of small and middle business entities to funding<sup>48</sup>;

– the State Program “Small and middle business” in 2021–2025 implies eliminating gaps in the legal regulation of online borrowing services by adopting the Presidential Decree of the Republic of Belarus “On online borrowing services”<sup>49</sup>.

The measures and steps planned in the cited program legal acts are being gradually implemented. For example, on May 25, 2021, an Order of the President of the Republic of Belarus no. 196 “On online borrowing services and leasing activity”<sup>50</sup> was adopted. This legislative act stipulates normative regulation of crowdlending (Voytova et al., 2022). The relations are regulated, which are associated with the activity of an online borrowing service operator, as well as with signing and executing a loan agreement and an agreement as security for the obligations via such a service.

Other types of crowdfunding do not yet have a special regulation in the Republic of Belarus, and that largely hinders their development. The persons planning to render online-funding services in such types of crowdfunding have to follow the general provisions of administrative and civil legislation, which are to be applied directly or by analogy. However, crowdfunding has its specificities, namely, a large volume of money circulation due to the risk factor and the involvement of a wide circle of (often unprofessional) persons due to the Internet used in the process of funding; this requires establishing a special legal regime of online-funding services rendering (Parukova, 2020).

In the light of general European trends showed in Fig. 1 and 2, as well as the internal dynamics of the Belorussian society in the sphere of collective gratuitous mutual financial assistance, we see the prospects of further crowdfunding development in the Republic of Belarus in creating conditions for the functioning of online charity services operators (Kuchko & Levitskaya, 2018).

Based on the norms of current civil legislation of the Republic of Belarus, the most appropriate contract model for the online-funding service operator and a seeker or funder may regulate their legal relations is a contract on rendering services (Article 733 of the Civil Code of the Republic of Belarus, further – of the Belarus Civil Code)<sup>51</sup>. The content of such

<sup>48</sup> On adopting the Program of the Government of the Republic of Belarus functioning up to 2025: Enactment of the Council of Ministers of the Republic of Belarus of December 24, 2020 no. 758. <https://pravo.by/document/?guid=12551&p0=C22000758&p1=1>

<sup>49</sup> On the State Program “Small and middle business” in 2021–2025: Enactment of the Council of Ministers of the Republic of Belarus of January 29, 2021 no. 56. <https://pravo.by/document/?guid=3871&p0=C22100056>

<sup>50</sup> *On online borrowing services and leasing activity*: Order of the President of the Republic of Belarus of May 25, 2021 no. 196. <https://pravo.by/document/?guid=12551&p0=P32100196&p1=1>

<sup>51</sup> *Civil Code of the Republic of Belarus*: in the edition of the Law of the Republic of Belarus of July 18, 2022 no. 195-Z. <https://pravo.by/document/?guid=3871&p0=hk9800218>

an agreement may stipulate the rights and responsibilities of the parties when the seeker's information about the project is placed in the online-funding service of the operator, as well as the order of mediation services of the operator in procurement and extension of money.

The relations between a funding seeker and a funder are registered via various agreements. The choice of the agreement depends on the particular business model of crowdfunding.

In charity crowdfunding, the most frequently signed agreements are those of gift (Article 543 of the Belarus Civil Code), donation (Article 553 of the Belarus Civil Code), rendering gratuitous (sponsor) assistance (clause 5 of the Order of the President of the Republic of Belarus of July 1, 2005 no. 300 "On rendering and using gratuitous (sponsor) assistance")<sup>52</sup>, etc.

In crowdfunding, sale and purchase agreements with preliminary payment are applied (Article 457 of the Belarus Civil Code), etc. At that, as noted by O. I. Bandyk, "if crowdfunding implies the condition of transferring the goods to the donor (investor) regardless of the amount of payment and the final cost of the goods, then Article 457 of the Civil Code cannot be applied" (Bandyk, 2019). Besides, for the purposes of crowdfunding it is possible to sign an agreement of converted loan and option (respectively, subclauses 5.1 and 5.2 of clause 5 of the Decree of the President of the Republic of Belarus of December 21, 2017 no. 8 "On development of digital economy")<sup>53</sup>. Due to the legal experiment conducted, the sphere of normative regulation of these agreements is restricted by its subject composition to residents of High-tech Park and the third parties entering the respective contract relations with them. The draft of Law of the Republic of Belarus "On changing Codes"<sup>54</sup> plans to include the said experimental contract models into the Belarus Civil Code, complementing it with Articles 770-1 "Converted loan" and 399-2 "Option agreement". The action of these articles will be extended to an unlimited circle of civil circulation participants<sup>55</sup>.

The legal relations between fund seekers and investors in crowdfunding, based on the current civil legislation of the Republic of Belarus, can be registered with a sale and purchase agreement of a share (shares) of the authorized capital of an economic entity. Having analyzed this agreement for practical implementation, E. V. Usenya stated that such pattern of interaction between the parties "is theoretically possible but practically inconvenient, because of the need to observe a number of legislation requirements" (Usenya, 2019).

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<sup>52</sup> *On rendering and using gratuitous (sponsor) assistance*: Order of the President of the Republic of Belarus of July 1, 2005 no. 300 (in edition of the Order of the President of the Republic of Belarus of May 10, 2019 no. 169). <https://pravo.by/document/?guid=3961&p0=P30500300>

<sup>53</sup> *On development of digital economy*: Decree of the President of the Republic of Belarus of December 21, 2017 no. 8. <https://pravo.by/document/?guid=12551&p0=Pd1700008&p1=1>

<sup>54</sup> *On changing Codes*: Draft of Law of the Republic of Belarus. <https://house.gov.by/ru/zakony-ru/view/ob-izmenenii-kodeksov-1114/>

<sup>55</sup> *Professionally about the actual*: Draft of Law of the Republic of Belarus "On changing Codes": key changes in subsection 2 of section III of the Civil Code. <https://www.pravo.by/novosti/novosti-pravo-by/2019/mart/32692/>



In practice, difficulties will occur during documenting this contract model due to the following reasons:

- the number of participants of an economic association (except Open joint stock companies) is normatively limited to 50 (Part 5 of Article 66, Part 1 of Article 91, Part 1 of Article 112, Article 113 of the Law of the Republic of Belarus of December 9, 1992 no. 2020-XII “On economic associations”)<sup>56</sup>;
- when registering each deal of selling and purchasing a share (shares) of the authorized capital of the funder, all corporate procedures must be followed (provide preemptive right to the participants, hold a general meeting, etc.);
- when a new investor joins a limited liability company or a double liability company, changes in the charter must be registered, etc.

Similar formalized corporate procedures can be found in legislations of many states. The regulators justify these procedures, first of all, by the general desire to protect civil circulation against fraudulent schemes of unscrupulous participants.

Formation of crowdfunding in national law orders is also complicated by the fact that procurement of funds via an online-funding service (which is not a stock exchange) in exchange of a share (shares) of the authorized capital of an economic entity is, actually, a public offer of the share (shares) of the authorized capital (initial public offering, IPO) (Furnari, 2021). Legislative acts of most countries (including the Republic of Belarus), regulating the order of securities circulation and the functioning of stock exchanges, stipulate that an offer of a part of authorized capital must be made in a stock exchange and the economic entity must comply with a number of criteria (in terms of financial reporting, information disclosure, emission volume, etc.). Meanwhile, at this stage of economic development the fund seekers in crowdfunding are, as a rule, startups, small and middle businesses. For most of these economic subjects it is rather complicated or even impossible to fulfill the imperative requirements of special legislation. Moreover, online-funding services are not stock exchanges. In this regard, in many countries crowdfunding is not prohibited from the formal-legal viewpoint, but not practically feasible (Yasar, 2021). This situation can be resolved in formal-legal terms by establishing a special simplified legal regime of securities circulation in crowdfunding. The practice of establishing such legal regulation is common in foreign law orders.

In the Republic of Belarus, it is expedient to adopt separate legislative acts for each type of crowdfunding (Usenya, 2018). The object of legal regulation will be public relations associated with the functioning of online-funding services operators while organizing the respective type of crowdfunding. Given that crowdlending is already regulated by the Presidential Decree, taking into account the requirement of clause 4 of Article 33 of the Law

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<sup>56</sup> *On economic associations*: Law of the Republic of Belarus of December 9, 1992 no. 2020-XII (in the edition of Law of the Republic of Belarus of July 18, 2022 no. 197-Z). <https://pravo.by/document/?guid=3871&p0=v19202020>



of the Republic of Belarus of July 17, 2018 no. 130-Z “On normative-legal acts”<sup>57</sup>, public relations in other types of crowdfunding also should be regulated by Decrees of the President of the Republic of Belarus.

The content of the Presidential Decrees should stipulate:

- the operator of an online-funding service having a legal status of a juridical person registered in the Republic of Belarus;
- requirements to business reputation of founders (participants), property owner, beneficiary and other owners of the online-funding service operator;
- requirements to business reputation and qualification of the Head, Vice Head, responsible for executing the rules of internal control in the sphere of criminal money laundering, funding terrorist activity and funding dissemination of mass weapons, and an authorized official in the said sphere of activity of the online-funding service operator.

The legal person acquires the right to perform activity of an online-funding service operator in a certain type of crowdfunding since the day of their inclusion into the relevant register by a state agency. In the Republic of Belarus, the competence of forming and maintaining the register by types of crowdfunding may be granted by the National Bank, Ministry of Economy, Ministry of Finance, Committee for State Control.

In order to form and maintain the register of online-funding service operators by types of crowdfunding, the relevant state body must be endowed with authorities to establish:

- the order of inclusion of legal persons into the register and making changes in the register (including the form and content of the application for inclusion into the register, a list of documents attached, the form of the certificate of inclusion into the register, the grounds for rejecting the application for inclusion into the register (making changes in the register) and refusal of inclusion into the register);
- the order of exclusion of an online-funding service operator from the register (including the grounds for exclusion from the register, rejection of the application for exclusion from the register and refusal of exclusion from the register).

An operator of an online-funding service must render services on organization of crowdfunding in good faith, which means rendering services in compliance with economic interests and intentions of the fund seeker and funder. In order to ensure the execution of this obligation, legislative acts stipulate restrictions of rights of an online-funding service operator. For example, in crowdlending, an online-borrowing service operator cannot be a party of a loan agreement, an agreement as security for the obligations signed via that online-borrowing service, and cannot procure to their banking accounts and accumulate clients’ funds to further redirect them to borrowers, or otherwise participate in the movement of funds when performing payments on loan agreements.

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<sup>57</sup> *On normative-legal acts*: Law of the Republic of Belarus of July 17, 2018 no. 130-Z. <https://pravo.by/document/?guid=3871&p0=H11800130>

An online-funding service operator renders services of organization of crowdfunding based on agreements, separately signed with the participants of the service they administrate. With a fund seeker, they sign a contract on rendering services of procurement of funds; with the person interested in extending funds, they sign a contract on rendering services of assistance in extending funds. According to the terms of the said agreements, the crowdfunding participants get access to the online-funding service. The person interested in extending funds also gets access to complete and reliable information: on the terms of funding agreements signed via the online-funding service; on the results of the estimation, carried out by the online-funding service operator, of the fund seekers and projects proposed for funding (if any).

Signing the respective agreement on rendering services, an online-funding service operator is obliged to establish the specific physical or legal person, with whom they enter contractual legal relations. The operator must also get a confirmation from the person that they were familiarized and agree with the rules of the online-funding service.

Contracts on rendering services of procurement and assistance in extending funds are contracts of affiliation. The contract terms are stipulated by the operator in the rules of the online-funding service. One of the mandatory terms of a contract on rendering services of assistance in extending funds is the notification that the person interested in extending funds realizes and accepts the high risks associated with extending funds via an online-funding service.

If there is a need to change the terms of a contract on rendering services, an online-funding service operator must dispatch the respective offer to the participants, ensuring their personal notification, for example, by notifying in the personal area of the participant in the online-funding service. Keeping silence should not be considered an expressed will of the party, except the cases stipulated by legislative acts.

Unilateral actions of an operator changing the contract terms, as well as refusal to execute the contract are admissible only in the cases directly stipulated by rules of online-funding services or by legislative acts.

With the help of technologies and technical means of online-funding services, fund seekers and persons interested in extending funds can sign contracts on funding in compliance with the type of crowdfunding (for example, an agreement of sale and purchase of emission securities, an agreement of commercial loan, an agreement of sale and purchase or rendering services with preliminary payment, an agreement of donation or gratuitous (sponsor) assistance, etc.) (Parukova, 2020).

An online-funding service should use software registering actions of participants in terms of signing, executing and rescission of agreements of funding and rendering services.

With the help of online-funding service, a register of contracts signed with such service is formed and maintained. The register of contracts includes information which allows identifying the parties of contracts, the essential terms of contracts and date of signing

them. Information on each contract signed by the online-funding service operator should be kept up to the date of its termination, as well as after its termination during the period stipulated by law.

During the whole period of storing of the information on contracts, the online-funding service must ensure: protection and reliability of such information, possibility for the parties to receive the text of the contract.

The online-funding service operator, on the request of a participant, during the period stipulated by a legislative act is obliged to issue a document on signing the contract via an online-funding service, complying with the requirements stipulated by law, and other documents necessary for the participant, which are related to signing (executing) such contract.

As is known, procurement and extension of funds via online-funding services is accompanied with multiple risks and threats, including fraud, collection of funds for illegal or destructive goals, etc. (Papaskua, 2021). The said risks and threats must be controlled both by state bodies (first of all, the National Bank, Committee of State Control, etc.), acting as guarantors of safety and public concordance in this sphere, and by the online-funding service operator. In this regard, regulators must elaborate an effective system of measures for identifying and preventing such risks and threats. At the same time, the due measures should not “hinder” or infringe the activity of crowdfunding participants, which is in most cases based on the factor of natural (goodwill) economic risk.

Based on the analysis of foreign experience, we may highlight the most popular measures for identifying and preventing the risks and threats associated with procurement and extension of funds via online-funding services:

- identification and authentication of online-funding service participants, establishing the order of access to information resources of online-funding service;
- establishing requirements to the content of a proposal on procurement of funds;
- establishing requirements to the online-funding service participants (for example, age of physical persons, economic status, requirements to the Head (executive body) of the legal person, frequency and amount of the funds procured, etc.);
- establishing a list of contracts which a seeker and a funder may sign using the information technologies and technical means of an online-funding service, as well as the order of signing, executing and rescission of such contracts;
- determining the composition of information disclosed by the online-funding service operator, as well as the order and terms of such disclosure, etc.

The online-funding service operator plays the key role in implementing the said measures. This is due to the fact that, within the legal relations of crowdfunding organization, the operator interacts most closely both with funding seekers and funders. The specific

procedures for identifying and preventing the risks and threats should be stipulated by the operator in the rules of an online-funding service.

Within the said activity, the operator, prior to placing a public offer on procurement of funds in an online-funding service, must obtain and analyze information on the seeker and the proposed project (if any).

To this end, the online-funding service operator requests the following information from the fund seeker:

a) during registration in the online-funding service:

- name, date and place of birth, residential address of a physical person or a sole entrepreneur; title, location and address of a legal person;
- information on the structure and personal composition of executive bodies of a legal person;
- main types of activity; goods or services offered by a seeker;
- yearly accounting (financial) reports of a sole entrepreneur or a legal person for the preceding reporting period;

b) when filling in the application for procurement of funds:

- information which allows getting the general idea of the goals of procurement of funds;
- information on the circumstances which may influence the achievement of the above goals;
- information on the main risks associated with procurement of funds;
- in-force period of the offer for procurement of funds;
- minimal amount of money invested by a person interested in funding;
- minimal amount of money collected after which the offer for procurement of funds becomes invalid;
- information on the facts (events, actions), which may significantly influence the fulfillment of liabilities of the seeker to the persons interested in funding.

Besides, when filling in the registration form, the seeker confirms that they:

a) for seekers – legal persons:

- have no arrears in payments to budget and/or state target budget and/or non-budget funds;
- are not at the stage of liquidation or reorganization of a legal person;

b) for seekers – physical and legal persons:

- are not adjudicated as insolvent (bankrupt), are not at any stage of hearing of a case of economic insolvency (bankruptcy);
- are not involved in implementing, funding or other complicity in terrorist, extremist activity, spreading of mass weapons or criminal money laundering;

c) for seekers – physical persons:

- do not have an uncleared or unexpunged conviction for property crimes and violation of the order of economic activity implementation.

The above information is submitted by the seeker to the online-funding service operator in a standard form stipulated by the rules of the online-funding service.

The online-funding service operator, in compliance with the independently established criteria and methodology, estimates the seeker and the proposed project (if any).

In case of a positive decision, the operator is obliged to place in the online-funding service, during the period stipulated by legislative acts, an offer for procurement of funds, containing information on the seeker and the proposed project (if any) in the amount stipulated by legislative acts. The information is placed in the online-funding service in a standard form, developed by the operator, for the persons interested in extending funds to be able to compare the terms of different offers.

The online-funding service operator is entitled to implement activity of crowdfunding organization provided they disclose the rules of this service. Based on the operator's functions, the rules of online-funding services usually contain:

- terms of an agreement of rendering services of procurement of funds and an agreement of rendering services of assistance in extension of funds;
- order of joining the agreements of rendering services, including the order of identifying persons when signing such agreements;
- requirements to the online-funding service participants;
- types of crowdfunding implemented via the online-funding service;
- requirements to the content of an offer for procurement of funds;
- amount of reimbursement of the online-funding service operator or the order of determining it or the indication of the absence of such reimbursement;
- composition of the information disclosed by the online-funding service operator, order and terms of such disclosure and other information in compliance with the requirements stipulated by legislative acts.

## Conclusions

Summarizing the above, we would like to highlight the key conclusions.

1. Crowdfunding is a means of procurement and extension of funds from a wide range of persons in the Internet for implementation of a certain commercial or non-commercial goal.

Although the term “crowdfunding” has rather recently emerged in the use of the internet users, the underlying concept of collecting money from all persons interested in a project implementation is known for a long time. Crowdfunding differs from the established means of collective funding, first of all, in the use of specialized online-funding services in the global computer network – the Internet.

In crowdfunding, the essence of classical legal relations of procurement and extension of funds does not change. At the same time, the legal relations emerge, change and are terminated in the regime of remote access of the parties in the digital environment specially created to that end (an online-funding service). In connection with the use of a special environment, the said legal relations of parties are mediated by the third party – an organization rendering online funding services.

Crowdfunding is an umbrella category of various business models of collective funding. Generally accepted is the classification of crowdfunding depending on the possibility for the funders to receive profit from the money invested. By this criterion, commercial and non-commercial types of crowdfunding are distinguished.

2. The subject composition of crowdfunding legal relations is represented by the following main participants: a seeker (recipient) of funding; a funder; an online-funding service operator. The online-funding service operator, as a rule, is not a traditional financial institution, such as banks or non-bank credit-financial organizations. At least three groups of legal relations emerge between the said participants of a crowdfunding ecosystem: relations between an online-funding service operator and a seeker (recipient) of funding; relations between an online-funding service operator and a person planning to extend funds; relations between a fund seeker and a funder.

3. In foreign legislations, the following trends of legal regulation of public relations in crowdfunding are outlined:

a) regulation of commercial and non-commercial types of crowdfunding in different normative-legal acts. As a rule, legal regulation of business models of non-commercial crowdfunding is contained in the provisions of general civil legislation. In turn, business models of commercial crowdfunding often have special normative regulation in individual legislative acts. Such practice is due to the specificity of regulated public relations of the business models of commercial crowdfunding, which are based on extracting profit (income) or another result associated with business activity;

b) state control over the activity of online-funding services operators through issuing respective permissions (licenses);

c) qualification and institutional requirements to online-funding services operators, seekers and funders, stipulated in normative legal acts;

d) restriction of the frequency and amount of funds procured by a seeker in a certain period of time, usually in 12 months;

e) restriction of the frequency and amount of funds extended by a funder in a certain period of time.

4. In the Republic of Belarus, crowdfunding is developed on an orderly basis. Program legal acts define short term and middle term topical vectors of further development of this sphere of social relations.

The broad implementation of crowdfunding, charity crowdfunding and crowdre-warding in the Republic of Belarus is hindered by the absence of special normative regulation of these types of crowdfunding. In this regard, it is expedient to elaborate drafts of Presidential Decrees of the Republic of Belarus, regulating the public relations associated with procurement and extension of funds via online-funding services in the respective types of crowdfunding, as well as stipulating the legal bases of functioning of operators of such services.

Adoption of special legislative acts in the studied sphere will facilitate diversification of the sources and tools of financial support of physical persons, subjects of small and middle business, ensure national security, reduce criminogenic risks, harmonize social relations associated with procurement and extension of funds via online-funding services, increase the quality of services provided by the online-funding service operators, and serve as a guarantee of proper protection of the rights and interests of funding seekers and funders.

5. In the nearest future, a promising direction of crowdfunding development in the Republic of Belarus will be the creation of conditions for the functioning of operators of online charity services. In this regard, it is relevant and demanded to develop the draft of a Decree of the President of the Republic of Belarus "On adopting a statute on the functioning of online charity services". The draft must stipulate: the requirements to an operator and participants of an online charity service; the requirements to an online charity service; order of signing and executing agreements of donation and gratuitous (sponsor) assistance via an online charity service; measures for protecting charity-doers (donators, sponsors); order of payments between the parties.

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\* The social network blocked in the territory of the Russian Federation for disseminating unlawful information.

\*\* The organization is recognized as extremist, its activity is prohibited in the territory of the Russian Federation.

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## Conflict of interest

The author declares no conflict of interest.

## Financial disclosure

The research had no sponsorship.

## Article history

Date of receipt – November 2, 2022

Date of approval – January 23, 2023

Date of acceptance – March 6, 2023

Date of online placement – March 10, 2023

# Правовое регулирование отношений в сфере краудфандинга в Республике Беларусь

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## Ключевые слова

Договор,  
законодательство,  
краудинвестинг,  
краудлендинг,  
краудревординг,  
краудфандинг,  
право,  
регулирование,  
онлайн-финансирование,  
цифровые технологии

## Аннотация

**Цель:** изучение теоретико-правовых основ краудфандинга и разработка научно обоснованных предложений по совершенствованию законодательства Республики Беларусь в данной сфере.

**Методы:** методологическую основу исследования составляет система принципов, приемов и способов изучения общих закономерностей возникновения, становления и развития социально-правовых явлений. При выполнении исследования используются общие и частные методы научного познания: анализ, синтез, сравнительно-правовой, логический, системный, формально-юридический, диалектический и другие.

**Результаты:** проанализирована история появления и становления краудфандинга. Выявлены социально-экономические и технико-технологические факторы, способствующие популяризации краудфандинга среди пользователей сети Интернет. Рассмотрены происхождение понятия «краудфандинг» и наполнение его определенным смыслом. Обозначены разновидности краудфандинга в зависимости от цели вложения денежных средств лицами, осуществляющими финансирование. Установлен основной субъектный состав правоотношений при краудфандинге, состоящий из следующих лиц: соискатель финансирования; лицо, осуществляющее финансирование; оператор сервиса онлайн-финансирования. Представлен общий алгоритм правоотношений между основными субъектами краудфандинга. Охарактеризованы положительные и отрицательные аспекты краудфандинга. Обзорно проанализировано законодательство зарубежных государств на предмет правового регулирования краудфандинга. На основе проведенного анализа обозначены общие тренды развития законодательства в данной сфере. Рассмотрены программные и нормативные правовые акты по развитию краудфандинга в Республике Беларусь. Названы возможные договорные модели оформления правоотношений сторон. Определены технические и правовые требования к функционалу сервиса онлайн-финансирования.

Предложен минимально необходимый комплекс мер по предупреждению рисков и угроз, связанных с привлечением и предоставлением денежных средств посредством сервиса онлайн-финансирования. На основании присущих оператору функций определены отдельные требования к содержанию правил сервиса онлайн-финансирования.

**Научная новизна:** комплексно исследованы понятие, правовая природа и особенности правового регулирования краудфандинга. Выявлены факторы, влияющие на формирование правовых норм, регулирующих привлечение и предоставление денежных средств с помощью сервисов онлайн-финансирования. Выработаны авторские предложения по совершенствованию законодательства Республики Беларусь в рассматриваемой сфере общественных отношений.

**Практическая значимость:** результаты научного исследования имеют значение для развития исследований в области гражданского, хозяйственного, информационного права. Полученные результаты могут применяться в процессе преподавания курса гражданского, хозяйственного, информационного права, использоваться субъектами права законодательной инициативы при разработке и внесении соответствующих законопроектов, а также выступать предметом дальнейших научных исследований по данной проблематике.

## Для цитирования

Василевский, А. В. (2023). Правовое регулирование отношений в сфере краудфандинга в Республике Беларусь. *Journal of Digital Technologies and Law*, 1(1), 191–234. <https://doi.org/10.21202/jdtl.2023.8>

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## Конфликт интересов

Автор сообщает об отсутствии конфликта интересов.

## Финансирование

Исследование не имело спонсорской поддержки.

## История статьи

Дата поступления – 2 ноября 2022 г.

Дата одобрения после рецензирования – 23 января 2023 г.

Дата принятия к опубликованию – 6 марта 2023 г.

Дата онлайн-размещения – 10 марта 2023 г.