



Dyusana Yasmine De Sousa Vaz Martins

The Balance Between Consumer Protection and Innovation in the Fintech sector in Peer-2-Peer Lending

Dissertation to obtain a Master's Degree in Law,
in the specialty of Law and Financial Markets

Supervisor:

Professor Martinho de Almeida Garret Lucas Pires, Professor of the NOVA School of Law

15 September 2025

Anti-Plagiarism Statement

I declare that I am the sole author of the present dissertation, which is a result of my own personal work and research. To the best of my knowledge and belief, this paper contains no material previously published or written, except where due reference is made in the text. I hereby declare that I have acknowledged all materials and sources consulted and all citations are dully identified.

Signed

Dyusana Martins

Date

Lisbon, 15 September 2025

Acknowledgment

The completion of this dissertation would not have been possible without the guidance and support of several individuals that believed in my potential and in one way or another, contributed to my personal growth.

I would like to express my gratitude to my supervisor, Professor Martinho Pires, for his invaluable guidance, attention and support throughout the course of my research. His insightful feedback greatly contributed to enhancing the quality of this dissertation.

Beyond my academic guidance, I am profoundly grateful to my family whose love, encouragement, and sacrifices have been the foundation of my journey. Their unwavering support has been a constant source of strength and motivation.

Quoting and Other Conventions

The present dissertation adopts the Oxford University Standard for the Citation of Legal Authorities (OSCOLA, 4th edition), published by the Faculty of Law of the University of Oxford. All references to legislation and secondary sources are formatted in accordance with the OSCOLA guidelines.

Number of Characters

I hereby declare that the body of the dissertation, including the spaces and notes, occupies a total of 130.384 characters.

List of Acronyms and Abbreviations

AI	Artificial Intelligence
BIS	Bank for International Settlements
CCD	Consumer Credit Directive
CSP	Crowdfunding Service Provider
EBA	European Banking Authority
EC	European Commission
ECB	European Central Bank
ECSFR	European Crowdfunding Service Providers Regulation
ETF	Electronically Traded Funds
ESMA	European Securities and Markets Authority
EU	European Union
FinTech	Financial Technology
FSB	Financial Stability Board
ICR	Investment Climate Reform
IMF	International Monetary Fund
KID	Key Information Document
KIIS	Key Investment Information Sheet
MiFID II	Markets in Financial Instruments Directive
MS	Member State
P2P Lending	Peer-to-Peer Lending
PR	Prospectus Regulation
RegTech	Regulatory Technology
SME	Small Medium Enterprises
SPE	Special Purpose Entity

Abstract

In recent years, Financial Technology (FinTech) has become a crucial element of digital services promotion and simplification. Within the FinTech sector, Peer-to-Peer lending (P2P lending) has become an alternative to traditional financial institutions as funding is more accessible to borrowers who may not have access to bank loans, and investors can benefit from higher returns and more opportunities for diversification. However, P2P lending raises questions regarding the extent to which consumers are protected in light of the limited regulatory environment surrounding the model and the incentives for innovative developments. Hence, this paper aims to explore the extent to which the European Union's (EU) regulatory landscape strikes a balance between innovation in the P2P lending sector and consumer protection.

Through a comparative analysis of three main frameworks namely: the European Crowdfunding Service Providers Regulation (ECSPR), the Markets in Financial Instruments Directive II (MiFID II) and the Consumer Credit Directive (CCD) and the subsequent practical assessment of their application to two distinct case studies, the research points out their strengths and limitations in addressing consumer risks, transparency, creditworthiness assessments and platform accountability. The research finds out that while MiFID II and the CCD provide for relevant consumer protections, their application to P2P lending remains limited. Conversely, the ECSPR provides for more tailored measures but might not cover provisions towards secondary markets and product diversity. Moreover, this regulatory fragmentation can result in inconsistent safeguards for investors and cause legal uncertainty.

Based on these findings, the dissertation advocates for the creation of a unified EU regulatory framework designed specifically for P2P lending. The objective of the framework would be to harmonize disclosure standards and compliance obligations and improve supervision. To enhance consumer protection and innovation, additional measures such as regulatory sandboxes, RegTech adoption and investing in investor education are proposed to allow regulation to evolve and adjust to innovations.

Resumo

Nos últimos anos, a Tecnologia Financeira (FinTech) tornou-se um elemento crucial na promoção e simplificação dos serviços digitais. No setor FinTech, P2P Lending (Peer-to-Peer Lending) tornou-se uma alternativa às instituições financeiras tradicionais, dado que o financiamento é mais acessível a mutuários que podem não ter acesso a empréstimos bancários, e os investidores podem beneficiar de retornos mais elevados e mais oportunidades de diversificação. No entanto, P2P Lending levanta questões sobre até que ponto os consumidores estão protegidos, considerando o ambiente regulamentar que rodeia o modelo limitado e os incentivos para desenvolvimentos inovadores. Assim sendo, o presente trabalho procura explorar até que ponto o cenário regulamentar da União Europeia (UE) proporciona um equilíbrio entre a inovação no setor de P2P Lending e a proteção dos consumidores.

Através de uma análise comparativa de três estruturas principais, nomeadamente: o Regulamento Europeu dos Prestadores de Serviços de Financiamento Coletivo (ECSPR), a Diretiva dos Mercados de Instrumentos Financeiros II (MiFID II) e a Diretiva de Crédito ao Consumidor (CCD), e a subsequente avaliação prática da sua aplicação a dois estudos de caso distintos, a investigação aponta os seus pontos fortes e limitações na abordagem dos riscos para o consumidor, transparência, avaliações de solvabilidade e responsabilização das plataformas. A investigação constata que, embora a MiFID II e a CCD prevejam proteções relevantes para o consumidor, a sua aplicação a P2P Lending continua a ser limitada. Por outro lado, o ECSPR prevê medidas mais personalizadas, mas pode não abranger disposições relativas aos mercados secundários e à diversidade de produtos. Além disso, esta fragmentação regulamentar pode resultar em salvaguardas inconsistentes para os investidores e causar insegurança jurídica.

Com base nestas conclusões, a dissertação defende a criação de um quadro regulamentar unificado da UE, concebido especificamente para P2P Lending. O objetivo da estrutura seria harmonizar os padrões de divulgação e as obrigações de conformidade e melhorar a supervisão. Para aumentar a proteção do consumidor e a inovação, são propostas medidas adicionais, como sandboxes regulamentares, adoção de RegTech e investimento na educação dos investidores, para permitir que a regulamentação evolua e se ajuste às inovações.

Table of Contents

Anti-Plagiarism Statement	II
Acknowledgment	III
Quoting and Other Conventions	IV
Number of Characters	V
Abstract	VII
Chapter I: Introduction.....	11
1.1. Contextualization: FinTech Concept and the novel P2P lending model	11
1.2. Problem Statement: The Challenge of Balancing Consumer Protection and Innovation	13
1.3. Research questions.....	14
1.4. Methodology	14
1.5. Structure of the Thesis	15
Chapter II: Literature Review	16
2.1 Consumer Protection and Innovation in the Financial Sector	16
2.2 Striking an Equilibrium Between Consumer Protection and Innovative Advancements	17
2.4 Consumer Risks and Challenges in P2P Lending.....	21
2.5 Regulatory Landscape for P2P Lending in the EU	22
Chapter III: Regulatory Landscape for P2P Lending in the EU	26
3.1 The European Crowdfunding Service Providers Regulation.....	26
3.1.1 Purpose and Rationale.....	26
3.1.2 Scope and Applicability	27
3.2 The Markets in Financial Instruments Directive II.....	32
3.2.1 Purpose and Rationale.....	32
3.2.2 Scope and Applicability	32
3.3 The Consumer Credit Directive	35
3.3.1 Purpose and Rationale.....	35
Chapter IV: Deconstructing the EU regulatory landscape.....	39
4.1 Case Study I: Afranga as a Model for P2P Lending in Bulgaria.....	39
4.1.1 Afranga’s Investor Onboarding Process	40
4.1.2 Afranga’s Consumer Protection Mechanisms	41
4.1.3 Evaluating Consumer Protection under ECSPR: The Case of Afranga	44
4.2 Case Study 2: Mintos - A Model of P2P Lending	46

The Balance Between Consumer Protection and Innovation in the Fintech sector in Peer-2-Peer Lending

4.2.1 Mintos Investor Onboarding Process.....	47
4.2.2 Mintos Consumer Protection Mechanisms	48
4.2.3 Evaluating Consumer Protection under MiFID II: The Case of Mintos.....	51
Chapter V: Regulatory Approaches to Crowdfunding and P2P Lending in the EU: A Comparative and Forward-Looking Analysis.....	54
5.1 Comparative Analysis of EU Regulatory Frameworks in P2P Lending.....	54
5.2 Implications for the EU Regulatory Balance	59
5.3 Towards a Unified or Tiered Regulatory Framework?.....	61
Conclusion	64
Bibliography	65

Chapter I: Introduction

1.1. Contextualization: FinTech Concept and the novel P2P lending model

In the last decade, the rise of innovative technologies and the phenomenon of increasing digitalization have transformed the global financial landscape by redefining traditional business models and the manner under which individuals approach money management decisions and the exchange of funds.¹

Financial Technology (commonly referred to as “FinTech”), describes the application of technologically-enabled financial innovation through the employment of - but not constraint to - Artificial Intelligence (AI), Machine Learning & Big Data, for the creation of new business models with a “material effect on financial markets and institutions and the provision of financial services” (FSB, 2024).² The introduction of FinTech and its rapid development has impacted significantly the way under which institutions deliver financial services allowing for reduced costs, greater efficiency and accessibility.³ Bypassing traditional intermediaries, FinTech, using technology as leverage, offers opportunities that directly connect providers and consumers of financial services, thereby raising consumer expectations due to the convenience and personalization offered.⁴ At its core, the Fintech ecosystem is composed of five key elements: FinTech startups, technology developers, financial customers, traditional financial institutions and the government.⁵

A prime example of Fintech’s transformative potential is P2P lending: a new way of loan origination in the credit market.⁶ P2P lending, commonly denoted as “Social Lending” or “Crowdlending”, consists of a model of direct lending where individuals or businesses borrow sums of money from investors without having to rely on a conventional financial institution to manage transactions.⁷ Internet-based platforms are employed to connect lenders with

¹ Yoganandham Govindharaj, ‘Revolutionizing Financial Services: The Role of Emerging Technologies and E-masters in Financial Technology and Management’, [2024] 8 STD 128.

² Financial Stability Board, ‘Financial Innovation’ (Financial Stability Board, 22 October 2024) <<https://www.fsb.org/work-of-the-fsb/financial-innovation-and-structural-change/financial-innovation/>> accessed 1 December 2024.

³ Feyen E and others, *Fintech and the digital transformation of financial services: Implications for Market Structure and Public Policy* (BIS Papers No 117, July 2021) 10.

⁴ Ibid.

⁵ Paola Castro, José Pedro Rodrigues and Jorge Grenha Teixeira, ‘Understanding FinTech Ecosystem Evolution Through Service Innovation and Socio-Technical System Perspective’ in H Nóvoa, M Drăgoicea and N Kühl (eds), *Exploring Service Science* (Springer 2020).

⁶ European Commission, ‘Peer-to-peer lending’ (European Commission) <https://single-market-economy.ec.europa.eu/access-finance/guide-crowdfunding/different-types-crowdfunding/peer-peer-lending_en> accessed 3 December 2024.

⁷ Ibid.

borrowers.⁸ The creation of this novel technological concept stems from the early 2000s with the launch of the first online P2P lending platform “Zopa” and later with the implementation of “Prosper.com” which allowed for scientific contributions and gained momentum through its public establishment.⁹

The objective of these platforms was to provide an alternative to bank loans by eradicating intermediaries and enabling individuals to lend and borrow money directly from one another.¹⁰ Borrowers, in one hand, create profiles and describe the purpose of their loan request, providing information concerning their current financial position in order to benefit from better conditions¹¹. On the other hand, lenders favor P2P platforms as an investment opportunity, bidding for loans by proposing an interest rate at which they are willing to lend.¹² P2P platforms are in the center of facilitating this process, reviewing through applied software technology borrowers’ profiles and assessing the funding of a loan, based on risk factors and personal preferences on behalf of lenders. The benefit for these platforms lays in raising fees for realized transactions.¹³

In essence, P2P lending has entered successfully the market by offering credit for individuals and those who would not otherwise be able to fulfill the requirements set by traditional financial institutions.¹⁴ It provides for inclusivity as borrowers with lower credit scores are able to access loans by means of competitive interest rates and the absence of additional banking costs.¹⁵ Investors are also faced with prospects to diversify their investment portfolios by spreading investments across various loans, eliminating risks and potentially earning higher returns.¹⁶ This virtual approach simplifies the application and approval process as these platforms are highly dependent on technology to streamline the loan application and reduce processing times - conveniently benefiting borrowers and lenders.¹⁷

⁸ Ibid.

⁹ Jefferson Duarte, Stephan Siegel and Lance Young, ‘The Evolution of P2P Lending’ (2023) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4476944> accessed 3 December 2024.

¹⁰ Ibid.

¹¹ Peter Renton, ‘Understanding Peer-to-Peer Lending’ (*Fintech Nexus*, 2015) <<https://www.fintech-nexus.com/Understanding-Peer-to-Peer-Lending.pdf>> accessed 5 December 2024.

¹² Ibid.

¹³ Ibid.

¹⁴ Lynn, ‘How Peer-to-Peer Lending Supports Financial Inclusion’ (*Funding Societies*, 8 November 2018) <<https://blog.fundingsocieties.com/fintech/how-peer-to-peer-lending-supports-financial-inclusion/>> accessed 5 December 2024.

¹⁵ Ibid.

¹⁶ Tianzi Bao and others, ‘Throwing Good Money After Bad: Risk Mitigation Strategies in the P2P Lending Platforms’ [2024] 26 *Information Systems Frontiers* 1453.

¹⁷ Rainer Lenz, *Peer-to-Peer Lending: Opportunities and Risks* (JSTOR, 2016) <<https://www.jstor.org/stable/24890927>> accessed 6 December 2024.

While P2P lending demonstrates substantial benefits, it still presents challenges that can have a negative effect and contribute to the detriment of users.¹⁸ For instance, as P2P lending continues to grow and transform swiftly, regulatory frameworks struggle to match the same pace, leaving borrowers and lenders exposed to various risks and vulnerable to fraud and unfair practices.¹⁹ Without standardized regulatory measures, P2P platforms might not function securely and consumers among different regions may struggle to understand the rights and protections that they possess against these platforms.²⁰ This minimal oversight and the lack of strong regulatory standards for risk management can leave investors exposed to high defaults on loans by borrowers without being fully informed.²¹

1.2. Problem Statement: The Challenge of Balancing Consumer Protection and Innovation

In light of the above, this dissertation investigates the challenges between fostering innovation in P2P lending while ensuring consumer protection at European Union (EU) level. As noted earlier, P2P lending offers consumers an alternative to traditional financial institutions and has become a transformative force in the financial sector. However, without proper due diligence or strong risk management, it can expose consumers to risks and harm.²² Current EU policies seek to balance innovation with oversight. For example, the Digital Finance Strategy supports digital transformation of finance while regulating its risk²³ while the Fintech Action Plan works to improve supervisory convergence towards technological innovation while ensuring consumer protection.²⁴ In this context, the present research focuses on the tension between fostering innovation in the P2P lending market and the need for adequate regulation for the protection of consumers. It critically evaluates whether current EU frameworks sufficiently address this balance. Concerns such as safeguarding transparency and consumer rights to circumvent potential risks inherent in P2P lending are explored. Furthermore, through the

¹⁸ Elise Huang, 'Rethinking Regulations for P2P Lending' (2024) Seton Hall Law <https://scholarship.shu.edu/cgi/viewcontent.cgi?article=2493&context=student_scholarship> accessed 6 December 2024.

¹⁹ Ibid 8.

²⁰ Rainer Lenz, (n 17) 13.

²¹ Ibid 14.

²² Ibid.

²³ European Commission, 'Digital Finance Package' (*European Commission*, 24 September 2020) <https://finance.ec.europa.eu/publications/digital-finance-package_en> accessed 6 December 2024.

²⁴ European Commission, 'FinTech Action Plan: For a More Competitive and Innovative European Financial Sector' (*European Commission*, 8 March 2018) <https://finance.ec.europa.eu/publications/fintech-action-plan-more-competitive-and-innovative-european-financial-sector_en> accessed 6 December 2024.

analysis of current EU regulatory frameworks and their implementation, this dissertation evaluates whether existing measures are sufficient to secure consumer's interests and innovative solutions.

1.3. Research questions

To address the challenges outlined above, this research will focus on examining the following question: "To what extent does the regulatory framework in the European Union balance consumer protection and the promotion of innovation in the P2P lending model?". This main question is further broken down into three sub-questions to delve deeper and provide a comprehensive analysis of the main topic, namely:

- How do current EU laws support or hinder innovation in P2P lending?
- What are the primary consumer protection issues in P2P lending under current EU regulations?
- To what extent can consumer protection be enhanced without stifling innovation in FinTech in the EU?

1.4. Methodology

The methodology for the proposed research applies a combination of doctrinal, comprehensive desk research and comparative research methodology. In addition, the research employs a qualitative research approach to analyze the balance between consumer protection and financial innovation in P2P lending. Considering the growing nature of FinTech regulations, a qualitative analysis allows for a comprehensive examination of existing regulatory frameworks and market dynamics. The research is designed to focus on: Examining the regulatory landscape of P2P lending within the EU; Identifying the risks and challenges associated with P2P lending for consumers and financial stability and assessing the impact of regulatory measures on innovation.

The doctrinal research methodology follows the "close analysis of rules and the comparison of appellate opinions" and is employed in examining different scholarly sources to conclude the current state of literature on the case of balancing innovation and consumer protection and ways to improve for optimal performance.²⁵ Furthermore, comprehensive desk

²⁵ Lee McConnel and Rhona Smith, *Research Methods in Human Rights* (Routledge, 2018) 51.

research - a method used to conduct secondary research by collecting and analyzing information from available secondary sources - is undertaken extensively to gather empirical facts and evaluate the different measures carried at EU level, and how these measures impact the development of P2P lending and at the same time, the protection of EU consumers. This process involves the collection and revision of legally relevant reports and academic publications by different scholars, international organizations and input from different stakeholders and the interpretation of the collected sources.

The research includes academic literature including peer-reviewed journal articles, books, research papers on FinTech regulation, consumer protection and P2P lending. Regulatory documents such as EU directives, reports from the European Banking Authority (EBA), European Securities and Markets Authority (ESMA), and European Central Bank (ECB) are also considered. Additionally, reports from the World Bank, International Monetary Fund (IMF), and Financial Stability Board (FSB) were collected. Lastly, case studies from different P2P lending platforms in Europe are also taken into consideration to understand how they operate and which protections they provide to consumers. A comparative analysis is employed to identify best practices that help balance innovation and consumer protection.

1.5. Structure of the Thesis

This thesis is structured to explore the key aspects of P2P lending focusing on the regulatory framework, consumer protection, and innovation within the EU. Firstly, a literature review is provided under Chapter II to set the foundational context and discuss the evolution of FinTech and P2P lending listing key stakeholders, consumer risks, and regulatory challenges. Chapter III delves into the regulatory landscape of the EU, analyzing the ECSPR which applies to P2P lending platforms in addition to the CCD and MiFID II in the view of their applicability. Chapter IV provides for a comparative examination and case studies from selected EU Member States (MSs). Finally, Chapter V presents a thorough analysis of the effectiveness of EU regulations and presents recommendations for enhancing consumer protection without hindering innovation, followed by a conclusion summarizing the findings.

Chapter II: Literature Review

2.1 Consumer Protection and Innovation in the Financial Sector

In an era of digital-driven solutions, financial transactions can be processed in seconds. This ease brought by technology sparks debates on how to efficiently safeguard consumers without stifling innovation.²⁶ On one hand, scholars argue that innovation is fundamental for the financial industry to grow as innovative technologies promote efficiency, facilitate lower costs and greater access to products and services.²⁷ They further note that regulatory oversight is nevertheless key in maintaining global competitiveness.²⁸ On the other hand, critics emphasize that consumer protection is of paramount concern and rapid technological advancements without proper safeguards can lead to exposure of risks to consumers.²⁹

In this context, from a market dynamics perspective, it has been established that a competitive economy can only prosper when its sustained rate of productivity is able to drive overall economic growth and consequently income and welfare (European Commission (EC), n.d.).³⁰ According to the EBA, part of this sustained rate of productivity can be achieved by exploiting technological and process innovation to fundamentally enhance living standards and ensure the effective functioning of the financial sector.³¹ The latter, plays a pivotal role in supporting economic development, where innovation and technology emerge as key enablers in increasing its performance and accessibility.³² In this sense, technology is leveraged to drive and deliver new financial products and services to consumers and alternative financing mechanisms. (Bank for International Settlements (BIS), 2021).³³

²⁶ P Barkas, 'Consumer Protection and Financial Innovation: Microeconomic, Policy, and Behavioral Considerations for the Digital Era' in D Katsikas, MA Del Tedesco Lins and A Ribeiro Hoffmann (eds), *Finance, Growth and Democracy: Connections and Challenges in Europe and Latin America in the Era of Permacrisis* (Springer 2025).

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ European Commission, 'Competitiveness' (*European Commission*) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:competitiveness>> accessed 7 December 2024.

³¹ European Banking Authority, 'Digital Finance: Confidence and Resilience as a Foundation for Well-Functioning Financial Markets' (Keynote speech, 30 January 2024) <https://www.eba.europa.eu/sites/default/files/2024-01/690f7f02-4496-4e44-ada6-469dbc351235/JM%20Campa%20key-note%20speech%20at%208th%20annual%20FinTech%20and%20Regulation%20Conference_Afore%20consulting.pdf> accessed 7 December 2024.

³² Ibid 2.

³³ Erik Feyen and others (n 3).

These alternative financing mechanisms, however, pose a range of risks that need to be mitigated for FinTech to fully benefit consumers (World Bank, 2022).³⁴ Consumers are faced with greater accessibility to unfamiliar and complex financial products and are exposed to new manifestations of existing risks that become more pronounced during periods of crisis and economic stress.³⁵ In contrast to consumers of traditional financial products, it is reported that consumers of FinTech products may be exposed to lower protections due to gaps in regulatory coverage.³⁶ Fintech entities might not be duty-bound to address an extensive range of consumer risks and consumers may lack access to measures such as complaint mechanisms applicable to these platforms to enforce their rights (World Bank, 2021).³⁷

Users may be vulnerable to suffering losses from fraud and misconduct as they might not possess the necessary skills to appropriately manage digital financial products and platforms may fail to provide adequate information necessary for informed decisions.³⁸ Platforms can also be subject to unreliability to external threats, having a range of adverse impacts on consumers spanning from poor service to monetary losses.³⁹ Moreover, the benefits from the intersection between finance and technology become unattainable in the absence of a sound and resilient structure and high standards of consumer protection (EBA, 2024).⁴⁰ For the financial sector to prosper, innovation is a critical driver for its development and growth whereas consumer protection must remain a fundamental concern.⁴¹

2.2 Striking an Equilibrium Between Consumer Protection and Innovative Advancements

Common supervisory and regulatory approaches aimed to demystify and enrich the acceptance of the use of technologies, its governance and risk management are vital - yet

³⁴ Gian Boeddu and Jennifer Chien, 'Financial Consumer Protection and Fintech: An Overview of New Manifestations of Consumer Risks and Emerging Regulatory Approaches' (*World Bank*, 2022) <<https://documents1.worldbank.org/curated/en/099735204212299868/pdf/P17300605103480e90baef084f653576421.pdf>> accessed 7 December 2024.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Gian Boeddu, Jennifer Chien and Ivor Istuk, 'Consumer Risks in Fintech: New Manifestations of Consumer Risks and Emerging Regulatory Approaches' (*World Bank*, 2021) <<https://documents1.worldbank.org/curated/en/515771621921739154/pdf/Consumer-Risks-in-Fintech-New-Manifestations-of-Consumer-Risks-and-Emerging-Regulatory-Approaches-Policy-Research-Paper.pdf>> accessed 7 December 2024.

³⁸ Ibid 82.

³⁹ Ibid 24.

⁴⁰ EBA, (n 31).

⁴¹ Ibid.

challenging to attain (IMF, 2022).⁴² In the past, the 2008 crisis highlighted the need to reform regulatory structures to ensure financial stability and avoid widespread misrepresentation of financial products and excessive risk-taking with interconnected institutions such as investment and commercial banks (IMF, 2009).⁴³ After the crisis, an increased number of non-financial institutions have come into existence.⁴⁴ However, regulatory frameworks find it difficult to adapt to models that differ from conventional paradigms (Indrani Bhattacharjee, 2024)⁴⁵. FinTech poses difficulties to policymakers as platforms are able to service across borders, making it difficult to monitor complex transactions by public authorities.⁴⁶ In addition, regulation is not harmonized across different territories, leaving some actors outside the reach of regulation.⁴⁷

Lastly, FinTech's tend to rise quickly, increasing the level of disintermediation and putting pressure on regulators to respond swiftly.⁴⁸ Efforts to align distinct regulatory frameworks with overlapping and parallel policies across different ministries can create policy gaps that impede the development of innovation and proper consumer protections (World Bank Group, 2020).⁴⁹ With the growing uncertainty and risks that arise from these models, experts state that relying in former regulatory conditions can result in the build-up of different vulnerabilities (IMF, 2024).⁵⁰ Policymakers and regulators must find an equilibrium whereas regulation ensures the correct implementation and adoption of digital finance while at the same ensuring adequate consumer protection (Financial Frontiers institute, 2023).⁵¹

⁴² Antonio Garcia Pascual and Fabio Natalucci, 'Fast-Moving FinTech Poses Challenge for Regulators' (*IMF*, 13 April 2022) <<https://www.imf.org/en/Blogs/Articles/2022/04/13/blog041322-sm2022-gfsr-ch3>> accessed 10 December 2024.

⁴³ IMF, 'Lessons of the Financial Crisis for Future Regulation of Financial Institutions and Markets and for Liquidity Management' (*IMF*, February 2009) <<https://www.imf.org/external/np/pp/eng/2009/020409.pdf>> accessed 10 December 2024.

⁴⁴ Juan Jose Cortina Lorente and Sergio L. Schmukler, 'The Fintech Revolution: A Threat to Global Banking?' (*World Bank Group*, 2018) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3255725> accessed 10 December 2024.

⁴⁵ Indrani Bhattacharjee and Nidhi Srivastava, 'The Rise of Fintech: Disrupting Traditional Financial Services' [2024] 30(4) *Educational Administration Theory and Practice* 89–97.

⁴⁶ World Bank, 'How Regulators Respond to FinTech: Evaluating the Different Approaches - Sandboxes and Beyond' (*World Bank*, 23 April 2020) <<https://documents1.worldbank.org/curated/en/579101587660589857/pdf/How-Regulators-Respond-To-FinTech-Evaluating-the-Different-Approaches-Sandboxes-and-Beyond.pdf>> accessed 12 December 2024.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ IMF, 'Global Financial Stability Report, October 2024: Steadying the Course: Uncertainty, Artificial Intelligence, and Financial Stability' (*IMF*, 22 October 2024) <<https://www.imf.org/en/Publications/GFSR/Issues/2024/10/22/global-financial-stability-report-october-2024>> accessed 12 December 2024.

⁵¹ Nolwazi Hlophe, 'Enable Innovation, Ensure Positive Consumer Outcomes, Repeat' (*Digital Frontiers Institute*, 2023) <<https://digitalfrontiersinstitute.org/enable-innovation-ensure-positive-consumer-outcomes-repeat/>> accessed 12 December 2024.

From one perspective, it is argued that the current regulatory model is characterized by an unlevel playing field.⁵² FinTech models are subject to lighter regulations while credit institutions must comply with tighter regulations due to the risks posed by the activities they perform to overall financial stability.⁵³ The regulatory landscape for FinTech's is rather directed to promoting increasing competition or financial inclusion by implementing temporarily more flexible requirements to ease compliance burdens rather than to control the specific risks they pose (Ramona Rupeika-Apoga, 2022).⁵⁴ General adjustments to regulation to include their activities as providers of financial services are small.⁵⁵ While lighter regulations help FinTech's grow rapidly, they may encourage immoderate risk-taking making the financial system less stable and thereby exposing consumers to additional risks (IMF, 2022).⁵⁶ Excessive regulation, conversely, is argued to discourage innovation.⁵⁷ It creates a culture of risk aversion instead of encouraging an environment "conducive to experimentation" (GIS Reports, 2023).⁵⁸ Moreover, experts find that the EU commits to enforcing more stringent regulatory controls taking precedence over innovation to hedge risks brought by technology.⁵⁹ Over-regulation can create administrative burdens and deprive creators of resources and time that could be otherwise applied differently (EC, 2014).⁶⁰ This also impacts innovation if firms are demanded to modify significantly their behavior to comply.⁶¹ The extent to which regulation can create compliance burdens has an effect to the overall expected benefit from an innovative activity.⁶² Contrastingly, a study developed by Michael Porter, namely the "Porter Hypothesis", suggests that well-designed regulation can incentivize innovation and result in competitiveness gains (ECB, 2024).⁶³

⁵² European Banking Institute, *Fintech Regulation and the Licensing Principle* (European Banking Institute, January 2023) 28.

⁵³ Ibid.

⁵⁴ Ramona Rupeika-Apoga, 'FinTech Development and Regulatory Scrutiny: A Contradiction? The Case of Latvia' [2022] 10(9) *Risks* 167.

⁵⁵ Fernando Restoy, 'Fintech Regulation: How to Achieve a Level Playing Field' (BIS, February 2021) <<https://www.bis.org/fsi/fsipapers17.pdf>> accessed 13 December 2024.

⁵⁶ IMF (n 42).

⁵⁷ Jacques Pelkmans and Andrea Renda, 'How Can EU Legislation Enable and/or Disable Innovation' (*European Commission*, July 2014) <https://ec.europa.eu/futurium/en/system/files/ged/39-how_can_eu_legislation_enable_and-or_disable_innovation.pdf> accessed 13 December 2024.

⁵⁸ Henrique Schneider, *Europe's Innovation Problem: Trying to Regulate the Future* (GIS Reports, 2024) <<https://www.gisreportsonline.com/r/innovation-regulation/>> accessed 13 December 2024.

⁵⁹ Ibid.

⁶⁰ Jacques Pelkmans and Andrea Renda (n 57).

⁶¹ Ibid.

⁶² Ibid.

⁶³ Nicola Benatti and others, 'The impact of environmental regulation on clean innovation: are there crowding out effects?' (ECB, 2024) <<https://www.ecb.europa.eu/pub/pdf/scpwps/ecb.wp2946~844af1ac30.en.pdf>> accessed 13 December 2024.

2.3 A Fintech Business Model: P2P Lending

P2P Lending is a FinTech model focused on the provision of FinTech credit, which encompasses all credit activities that are facilitated by electronic (online) platforms and that are not managed by commercial banks (BIS, 2018).⁶⁴ These platforms allow investors to find borrowers at better terms in comparison to traditional banks, removing the reliance of large middlemen such as bankers (Rashed Jahangir, 2019).⁶⁵ In essence, surveys indicate that borrowers prefer the convenience of using a web-based platform to secure funding as the loan application process is shorter and there is the possibility of non-collateralized loans at lower conditions (R Lenz, 2016).⁶⁶ The platform assesses the underlying credit risk and sets a risk-appropriate rate. Lenders prefer P2P lending as it is an opportunity for risk diversification and higher potential returns.⁶⁷ They place their offers and when there is a match, a loan is originated.⁶⁸ However, investors benefit only if the financial returns secured compensate the risk taken compared to other investment opportunities of similar risk.⁶⁹

Due to the lack of bank intermediation, P2P lending is argued to disrupt traditional finance as it provides monitoring and servicing functions at lower costs (Wolfgang Pointner, 2018).⁷⁰ In addition, P2P participants usually bear the credit risks instead of the lending platforms.⁷¹ Notwithstanding, its success is evidenced in areas with lower levels of financial access due to the unwillingness of financial institutions to lend to individuals (Oh and Rosenkranz, 2022).⁷²

In terms of its classification, the model is classified as a crowdfunding activity. Primarily, crowdfunding allows individuals or businesses to raise capital in the form of either investments or donations from multiple individuals (World Bank Group, 2014).⁷³ There are four main types of crowdfunding, including: donation crowdfunding, reward-based crowdfunding, equity

⁶⁴ BIS, 'Quarterly Review, September 2018' (BIS, September 2018) <https://www.bis.org/publ/qrtrpdf/r_qt1809e.pdf> accessed 14 December 2024.

⁶⁵ Rashed Jahangir, 'Peer-to-Peer (P2P) Lending' [2019] 30(4) Educational Administration Theory and Practice journal 89-97.

⁶⁶ Rainer Lenz (n 17).

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Wolfgang Pointner & Burkhard Raunig, 'A primer on peer-to-peer lending: immediate financial intermediation in practice' [2018] Monetary Policy & the Economy, Oesterreichische Nationalbank 36-51.

⁷¹ Ibid.

⁷² Eun Young Oh and Peter Rosenkranz 'Determinants of Peer-to-Peer Lending Expansion: The Roles of Financial Development and Financial Literacy.' [2022] 2 Journal of FinTech 2250001.

⁷³ World Bank, 'Crowdfunding's Potential for the Developing World' (World Bank, 2013) <<https://documents.worldbank.org/en/publication/documents-reports/documentdetail/409841468327411701/crowdfundings-potential-for-the-developing-world>> accessed 15 December 2024.

crowdfunding, and lastly, debt-based crowdfunding (crowdlending), where individuals lend with the expectation of receiving a return (ICR, 2021).⁷⁴ Evidently, P2P lending is considered debt-based crowdfunding. Debt-based crowdfunding is further divided into loan-based and investment-based crowdfunding.⁷⁵ The distinction between both lies on the nature of the financial instruments and the role assumed by investors. On the one hand, loan-based crowdfunding is targeted to consumer or business loans, adopting a similar role to traditional credit markets with the focus laying on the borrower, where lenders expect repayment with interest.⁷⁶ On the other hand, investment-based crowdfunding is directed to lenders that wish to assume a role similar to investors in financial markets with the objective to support a diversified portfolio, investing in transferrable securities or other instruments rather than making a direct loan to a single borrower.⁷⁷ As such, crowdfunding serves as the umbrella term for a variety of financing methods, with P2P lending being a significant component of the loan-based crowdfunding category.⁷⁸

2.4 Consumer Risks and Challenges in P2P Lending

P2P lending presents specific risks that are inherent from its activity. Information asymmetry is a key risk pertinent to these platforms as it can bring moral hazard or adverse selection which impacts their viability and success (Journal of Internet Banking and Commerce, 2011).⁷⁹ In this model, borrowers set their requirements for funding and provide, depending on the platform, a relatively limited amount of information to comply with the due diligence process.⁸⁰ This can include, among others, information regarding the purpose of the loan, detailed information regarding their income, employment and debt.⁸¹ After the requested information has been provided, it is up to the P2P lending platform to decide whether to list the loan request.

⁷⁴ ICR, 'Crowdfunding: An Opportunity to Increase Access to Finance for MSMEs in ACP Countries' (ICR, September 2021) <https://www.icr-facility.eu/wp-content/uploads/2023/08/icreport_crowdfunding_english.pdf> accessed 15 December 2024.

⁷⁵ Financial Conduct Authority, 'Loan-based ('peer-to-peer') and investment-based crowdfunding platforms: Feedback on our post-implementation review and proposed changes to the regulatory framework' (FCA, July 2018) <<https://www.fca.org.uk/publication/consultation/cp18-20.pdf>> accessed 15 December 2024.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ EIB, 'Crowdfunding and ESF Opportunities: Future Perspectives for Managing Authorities' (*FI-Compass*, July 2020) <https://www.fi-compass.eu/sites/default/files/publications/Crowdfunding%20and%20ESF%20opportunities%20future%20perspectives%20for%20managing%20authorities_0.pdf> accessed 15 December 2024.

⁷⁹ Shabeen Afsar Basha, Mohammed M. Elgammal and Bana M. Abuzayed, 'Online Peer-To-Peer Lending: A Review of the Literature' [2011] 16 *Journal of Internet Banking and Commerce* 2.

⁸⁰ Mark Cummins and others, 'Addressing Information Asymmetries in Online Peer-to-Peer Lending' in Theo Lynn, John Mooney, Pierangelo Rosati and Mark Cummins (eds), *Disrupting Finance* (Palgrave Pivot, 2019).

⁸¹ Ibid.

The investment decision and the credit risk are however transferred to the lender which only has access to the information provided by the platform and may lack the expertise to assess loan risks effectively.⁸² It has been argued that lenders might not understand in full the credit quality of the borrowers.⁸³ An example of this is the platform Funding Circle, which advertises that it facilitates the acquisition of funding without the need to “pitch or present business plans” and the process of applying through the platform can take around seven minutes “with just uploading a few documents”, undermining the need of a thorough and rigorous onboarding process.⁸⁴ Furthermore, scholars point out that P2P lending platforms have to implement mechanisms to reduce risks by employing platforms rules, due diligence measures, regular monitoring and safeguards to consumers funds (European Banking Institute, 2023).⁸⁵ In addition, collecting as much data as possible and requiring mandatory disclosures supports the assessment made by the platform of a borrower’s creditworthiness which in turn allows to predict how successfully one is able to fulfill its obligations towards the loan (Mark Cummins, 2019).⁸⁶ If there is a high credit risk, a borrower may not be able to repay its obligations according to the contract, incurring losses to the lender. This is a concern and uncertainty that has been growing around the implementation of this model as it is difficult to control the risk of default of a user (Dongmei Li, 2021).⁸⁷

2.5 Regulatory Landscape for P2P Lending in the EU

As the P2P lending market grows, regulatory approaches vary across the EU. As of 2020, MSs had developed unique regimes and licensing requirements for P2P lending platforms to operate legally.⁸⁸ This allowed MSs to tailor crowdfunding rules to their needs however, this system posed challenges for lending companies as services offered in one MS may not have been allowed in another depending on the jurisdiction.⁸⁹ This created fragmentation

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Funding Circle, ‘Crowdfunding for UK Businesses’ (*Funding Circle UK*) <<https://www.fundingcircle.com/uk/businesses/crowdfunding/>> accessed 15 December 2024.

⁸⁵ European Banking Institute (n 52).

⁸⁶ Mark Cummins and others (n 80).

⁸⁷ Dongmei Li and others, ‘Credit Risk Assessment Management in China’s P2P Lending Platforms’ [2021] 28(4) 1145.

⁸⁸ ESMA, ‘Crowdfunding in the EU 2024’ (*ESMA*, January 2025) <https://www.esma.europa.eu/sites/default/files/2025-01/ESMA50-2085271018-4039_ESMA_Market_Report_-_Crowdfunding_in_the_EU_2024.pdf> accessed 15 February 2025.

⁸⁹ Ibid.

and hindered the provision of cross-border activities for this service (ESMA, 2025).⁹⁰ In addition, the lack of uniform regulatory measures created high compliance and operational costs, limiting the potential for this market.⁹¹ Furthermore, there were significant differences on adoption and levels of activity of P2P lending platforms between MSs.⁹² Germany, for example, was considered the second-largest market for European P2P platforms, accounting for more than 5% of total European P2P lending volume since the industry's inception in 2016 (Verified Market Research, 2022)⁹³.

Over the past decade, the crowdfunding market has experienced remarkable growth. From 0.3 billion EUR in 2013, the market expanded significantly to reach 6.5 billion EUR in 2018.⁹⁴ Faced with this exponential growth, the EU introduced the initiative for a Capital Markets Union in 2015 with the objective to improve access for companies to non-bank finance, to diversify sources of funding and make markets more efficient and integrated (Alexander Lehmann, 2020).⁹⁵ Subsequently, in 2021, it implemented the ECSPR to harmonize rules across the EU.⁹⁶ The ECSPR objective was to create a unified regulatory framework for crowdfunding, including investment-based and lending-based crowdfunding (EC, 2020).⁹⁷ EU P2P platforms must acquire a license as "Crowdfunding Service Providers" (CSPs), allowing investors to choose a safe platform to conduct business as platforms holding a license consequently become more credible (Explore P2P, 2022).⁹⁸ Contrastingly, it is argued that this has an effect in the reduction of non-compliant platforms, as the decrease in demand would eventually cease their activities (Lender Market, 2022).⁹⁹ Post the introduction of the regulation around 5000 loan-based crowdfunding projects were introduced in 2023 with over 1.7 million investor

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Verified Market Research, *Europe Peer-to-Peer (P2P) Lending Market (VMR, May 2024)* <<https://www.verifiedmarketresearch.com/product/europe-peer-to-peer-p2p-lending-market/>> accessed 17 December 2025.

⁹³ Ibid.

⁹⁴ European Commission, 'Crowdfunding Potential for the European Structural and Investment Funds' (EC, 2021) <https://ec.europa.eu/regional_policy/sources/studies/crowdfunding_potential_esif_en.pdf> accessed 17 December 2024.

⁹⁵ Alexander Lehmann, 'Emerging Europe and the Capital Markets Union' (*Bruegel*, September 2020) <https://www.bruegel.org/system/files/wp_attachments/PC-17-2020-170920.pdf> accessed 17 December 2024.

⁹⁶ Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European Crowdfunding Service Providers for Business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 [2020] OJ L347/1.

⁹⁷ Ibid.

⁹⁸ Explore P2P, 'New P2P Regulations Are Coming. Here's 8 Reasons Why P2P Will Become Better & Safer' (*Explore P2P*, 28 February 2022) <<https://explorep2p.com/eu-p2p-rules/>> accessed 17 December 2024.

⁹⁹ Lendermarket, 'P2P Lending Industry: How Is It Regulated Within Europe?' (*Lendermarket*, 2022) <<https://lendermarket.com/blog/p2p-lending-industry-how-is-it-regulated-within-europe/>> accessed 17 December 2024.

participants (ESMA, 2025).¹⁰⁰ Notwithstanding, several studies argue the need to further regulate P2P lending.¹⁰¹ Currently, P2P lending is regulated in conjunction with other crowdfunding models however, due to the distinct nature of the lending activities and the associated financial risks, scholars advance that it should be regulated separately.¹⁰² P2P lending poses risks to consumers and, as these risks are not typically present in other types of crowdfunding, agencies recommend for regulation to take place standalone (FSGU, 2024).¹⁰³

Besides the ECSPR, consumers are also protected by the provisions in the MiFID II and the CDD. The MiFID II aims to increase investor protection and reduce systemic risk by setting standards and harmonizing rules for investment firms operating in the EU.¹⁰⁴ Although P2P lending is not covered by MiFID II, the directive may apply if platforms deal in financial instruments.¹⁰⁵ The CDD sets minimum standards for consumer protection and harmonizes EU rules on credit granted to consumers while improving transparency of contract terms (European Parliament, 2023). However, the directive does not cover direct crowdfunding credit services or P2P lending.¹⁰⁶ While the CDD and MiFID II do not have specific provisions for P2P lending, they remain relevant in certain circumstances where they could indirectly impact platforms. The Commission and the Parliament have advanced that P2P lending should be included in the scope of the CDD (The European Consumer Organization, 2022).¹⁰⁷ This demonstrates that while the EU's regulatory framework provides for relevant measures, the P2P lending model poses concerns that are not fully covered by these frameworks.

In conclusion, the literature review highlights the complexity inherent in regulating financial technology, particularly the P2P Lending model. The review outlines the P2P business model, its risks and benefits. Regulatory frameworks are critical for addressing consumer concerns by implementing transparency requirements, investor protection mechanisms, and

¹⁰⁰ ESMA (n 88).

¹⁰¹ European Commission, 'FSUG Recommendations to the Commission 2024–2029' (EC) <https://finance.ec.europa.eu/document/download/28692ef6-b5e1-45c9-86fa-efc4cc15aa5a_en?filename=fsug-recommendations-2024-2029_en.pdf&prefLang=da> accessed 18 December 2024.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU [2014] OJ L173/349.

¹⁰⁵ Ibid.

¹⁰⁶ Linklaters, 'Political Agreement on New Consumer Credit Directive' (Linklaters, 5 May 2023) <<https://www.linklaters.com/en/knowledge/publications/alerts-newsletters-and-guides/2023/may/05/political-agreement-on-new-consumer-credit-directive>> accessed 18 December 2024.

¹⁰⁷ BEUC, 'Members Consultation: CCD Position Paper for Trilogues' (BEUC, 8 September 2022) <https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-091_Members_consultation_CCD_position_paper_for_trilogues.pdf> accessed 18 December 2024.

The Balance Between Consumer Protection and Innovation in the Fintech sector in Peer-2-Peer Lending

platform accountability regulations. Over-regulation may inhibit innovation, while under-regulation may compromise consumer protection. To achieve a level playing field, adaptive regulatory models are recommended to support innovation and ensure consumer safeguards.

Chapter III: Regulatory Landscape for P2P Lending in the EU

In the EU, P2P lending does not benefit from a regulatory framework designed exclusively to its characteristics.¹⁰⁸ Instead, the model falls under the premise of existing regulations designed for broader financial activities such as crowdfunding, consumer credit, and consumer protection. Its regulatory treatment depends on the platform's structure and the degree of financial intermediation involved. In this sense, this section outlines the regulatory framework relevant to the application of P2P lending with a focus on the ECSPR, MiFID II and the CCD.

3.1 The European Crowdfunding Service Providers Regulation

3.1.1 Purpose and Rationale

The regulatory framework governing P2P lending in the EU is primarily defined by the ECSPR.¹⁰⁹ The ECSPR was adopted in 2020 with the objective to provide for a harmonized framework for crowdfunding services across the EU, allowing new crowdfunding platforms to enter easily the market and increasing investor protection from potential losses.¹¹⁰ The regulation came into existence as several MSs had implemented different domestic regimes on crowdfunding tailored to the characteristics of their markets and investors.¹¹¹ These differences posed a direct effect on the functioning of the internal market and entailed added legal costs for retail investors.¹¹² In this context, a fundamental premise of the ECSPR is that consumer protection and market innovation must co-exist. To that end, it establishes provisions around transparency, operational integrity, investor categorization, while also ensuring that CSPs remain neutral facilitators rather than lenders or asset managers themselves.¹¹³ In the interest of maintaining a high standard of investor protection, the regulation mandates CSPs to implement a policy designed to ensure that projects are selected in a professional, fair and transparent manner.¹¹⁴

¹⁰⁸ European Commission (n 101) 5.

¹⁰⁹ ECSPR (n 96).

¹¹⁰ ECSPR, Recital 1.

¹¹¹ ECSPR, Recital 5.

¹¹² ECSPR, Recital 6.

¹¹³ ECSPR, Recital 26.

¹¹⁴ ECSPR, Recital 18.

3.1.2 Scope and Applicability

The ECSPR provisions cover the roles of three actors: the first being the project owner (who proposes the project to be funded); the investors who fund the proposed project; and the organization in charge of intermediation, in this case the CSP that connects project owners to investors via an online platform.¹¹⁵ The regulation governs two forms of crowdfunding: P2P business lending (lending-based crowdfunding) and investment-based crowdfunding.¹¹⁶ Notably, P2P consumer lending and donation/reward-based crowdfunding are out of scope and remain subject to national legislation and other regulatory frameworks.¹¹⁷

With respect to lending-based crowdfunding, the regulation encompasses crowdfunding services that involve facilitating loan grants.¹¹⁸ This extends not only the presentation of crowdfunding offers to potential investors but also to the pricing or assessment of the credit risk of crowdfunding projects or owners.¹¹⁹ Crowdfunding services include different business models that aim to enable contractual loan agreements between investors and project owners.¹²⁰

Crucially, agreements must satisfy the obligations to repay an amount of money agreed to the investor without the CSP acting at any circumstance as a creditor and acting only as a facilitator to the conclusion of loan agreements.¹²¹ This activity is to be distinguished from the services provided by a credit institution.¹²² In contrast, investment-based crowdfunding involves the offer and transfer of securities and shares, including those incorporated under the national laws of MSs.¹²³ The onus is placed on transferability as it allows investors to exit their positions through secondary markets.¹²⁴

¹¹⁵ ECSPR, Recital 2.

¹¹⁶ Ibid (n 110).

¹¹⁷ Central Bank of Ireland, 'Guidance Note on Completing an Application for Authorisation as a Crowdfunding Service Provider (Under Regulation (EU) 2020/1503)' (*Central Bank of Ireland*, February 2024) <<https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/crowdfunding-service-providers/authorisation-process/guidance-note-for-authorisation-as-a-crowdfunding-service-provider.pdf>> accessed 20 December 2024.

¹¹⁸ ECSPR, Recital 11.

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid.

¹²³ ECSPR, Recital 13.

¹²⁴ Ibid.

Key provisions relevant to P2P lending

The provisions of the regulation lay out specific obligations that CSP's must fulfill to operate legally within the EU. This section analyses the provisions of particular relevance organized into main regulatory themes that touch upon investor protection, transparency requirements and disclosure obligations.

▪ Investor Protection

To safeguard investors participating in crowdfunding activities, the ECSPR establishes a framework that distinguishes between sophisticated and non-sophisticated investors.¹²⁵ This differentiation is made by reference to an investor's experience and knowledge of crowdfunding.¹²⁶ A sophisticated investor is defined as any natural or legal person who is a professional client with sufficient financial knowledge and capacity to manage and understand risks associated with investments in crowdfunding projects or, those approved by the CSP to be treated as sophisticated investors.¹²⁷ In contrast, a non-sophisticated investor is any individual or legal entity that does not meet the criteria described.¹²⁸ Consequently, CSPs are required to run an entry knowledge test for prospective non-sophisticated investors before granting them full access to their services.¹²⁹ This includes collecting information about their experience, investment objectives and financial situation.¹³⁰ If an investor lacks sufficient knowledge or declines to provide the necessary details, the provider must issue a risk warning highlighting the possibility of the investor losing the entire investment, which the investor must acknowledge.¹³¹ Sophisticated investors are not required to undergo the test as they are, by definition, aware of the risks that crowdfunding entails. Furthermore, CSPs are required to undertake at least the minimum level of due diligence applicable to project owners that propose their projects to be funded via the platform.¹³² This includes obtaining evidence and verifying that the project owner does not have a criminal record infringing national rules and is not established in a non-cooperative jurisdiction.¹³³

¹²⁵ ECSPR, Recital 42.

¹²⁶ Ibid.

¹²⁷ ECSPR, Art. 2(1(j)).

¹²⁸ ECSPR, Art. 2(1(k)).

¹²⁹ ECSPR, Art. 21(1).

¹³⁰ ECSPR, Art. 21(2).

¹³¹ ECSPR, Art. 21(4).

¹³² ECSPR Art. 5(1).

¹³³ ECSPR, Art. 5(2(a)).

- **Investment thresholds**

Non-sophisticated investors must simulate their ability to bear a potential loss of 10% of their net worth based on their income, assets, and financial commitments.¹³⁴ This simulation is reviewed annually, while the knowledge assessment is updated every two years.¹³⁵ For investments exceeding €1,000 or 5% of an investor's net worth, the CSP must ensure the investor receives a risk warning, giving explicit consent to the platform and demonstrating understanding of the risks involved.¹³⁶

- **Reflection period**

The ECSPR introduces a four-day reflection period for prospective non-sophisticated investors where they can revoke an offer to invest without providing a reason or facing any penalties.¹³⁷ The reflection period begins at the time of the offer and expires after four calendar days.¹³⁸ CSPs are required to inform investors both before and after the investment is made.¹³⁹ All offers, and expressions of interest must be recorded.¹⁴⁰

- **Transparency and disclosure agreements**

CSP's must deliver fair, clear, and non-misleading information regarding their services, associated costs, risks, and project selection criteria.¹⁴¹ They must clearly inform clients that their services are not protected by deposit guarantee or investor compensation schemes.¹⁴² In addition, CSPs must ensure transparency around loan performance by disclosing their default rates.¹⁴³ They must implement adequate policies and procedures, including segregation of duties.¹⁴⁴ Platforms must assess the risks associated with the loans they intermediate to ensure that lending operations are carried out in a fair and secure manner while contributing to transparency on how lending decisions and recommendations are made.¹⁴⁵ CSPs must undertake a reasonable assessment of the credit risk associated with project owners based on

¹³⁴ ECSPR, Art. 21(5).

¹³⁵ ECSPR, Art. 21(3).

¹³⁶ ECSPR, Art. 21(7).

¹³⁷ ECSPR, Art. 22(3).

¹³⁸ Ibid.

¹³⁹ ECSPR, Art. 22(6(a)).

¹⁴⁰ ECSPR, Art. 22(4).

¹⁴¹ ECSPR Recital 39.

¹⁴² ECSPR Art. 19(2).

¹⁴³ ECSPR Art. 20(1).

¹⁴⁴ ECSPR Art. 4(1).

¹⁴⁵ ECSPR Art. 4(2).

sufficient information including audited accounts where available.¹⁴⁶ Furthermore, the credit risk assessment methodologies employed by CSPs must be published and the pricing of a crowdfunding offer must be justified as both fair and appropriate.¹⁴⁷ For P2P lending, this is crucial to ensure that any pricing or risk scoring provided to investors is based on objective criteria.

- Key Investment Information Sheet (KIIS)

The ECSPR imposes on CSP's the obligation to provide a KIIS for each crowdfunding project disclosed by the project owner.¹⁴⁸ This document must be written in a language accepted by the relevant competent authority and include a specific disclaimer and risk warning, clarifying that the crowdfunding offer is not verified by authorities and carries a risk of partial or full loss.¹⁴⁹ The KIIS is limited to six A4 pages and it must be clear, concise and presented separately from marketing material.¹⁵⁰ It must include the content outlined in Annex I and be regularly updated.¹⁵¹ Project owners are responsible for the KIIS completeness, and any material changes must be communicated to investors.¹⁵² Furthermore, the KIIS must delineate the principal activities of the project owner and the products or services offered by it.¹⁵³ The project owner must include a hyperlink to its most recent financial statements and figures.¹⁵⁴ In addition, the KIIS should mention the main aspects of the crowdfunding process and inform prospective investors about the conditions for the capital raising and the main risk factors associated.¹⁵⁵

If a CSP identifies any omissions or inaccuracies in the KIIS that could impact returns, it must alert the project owner and suspend the offer if no corrections are made.¹⁵⁶ Interested investors are informed and can, during this period, revoke their interest. The document also fulfills the obligation to provide a key information document under Regulation (EU) No 1286/2014.¹⁵⁷

¹⁴⁶ ECSPR Art. 4(4(b)).

¹⁴⁷ ECSPR Art. 4(4(d)).

¹⁴⁸ ECSPR Art. 23(1).

¹⁴⁹ ECSPR Art. 23(6(c)).

¹⁵⁰ ECSPR Art. 23(7).

¹⁵¹ ECSPR Art. 23(6(a)).

¹⁵² ECSPR Art. 23(8).

¹⁵³ ECSPR, Annex I, (c).

¹⁵⁴ ECSPR, Annex I, (d), (e), (f).

¹⁵⁵ ECSPR, Annex I, part C.

¹⁵⁶ ECSPR, Art. 23(12).

¹⁵⁷ ECSPR, Art. 23(15).

- **Operational Requirements and Licensing**

The ECSPR establishes that CSPs are required to maintain safeguards equal to the higher of either EUR 25,000 or one quarter of their fixed overheads from the previous year, including the costs associated with servicing loans for three months where applicable.¹⁵⁸ These safeguards may take the form of own funds or alternatively, a suitable insurance policy or a combination of both.¹⁵⁹ Regarding licensing, CSPs must comply with a detailed procedure for obtaining authorization to operate as a CSP within the EU.¹⁶⁰ In order for a legal person to provide crowdfunding services, it mandates that it must apply for authorization to the competent authority of the MS where it is established.¹⁶¹

- **Supervision**

CSPs must be supervised by the competent authorities that granted the authorization. To this end, a CSP must notify the respective authority of any changes to the conditions of authorization.¹⁶² They must also report on an annual basis a list of projects funded through their crowdfunding platform specifying the information relating to each project.¹⁶³

- **Complaint Handling and dispute resolution**

The ECSPR mandates CSP's to establish effective and transparent procedures for prompt, fair and consistent complaint resolution.¹⁶⁴ In addition, CSPs must develop and make available to clients a standard template for complaints and keep record of all complaints received and the measures taken to resolve them.¹⁶⁵ Each complaint must be duly investigated in a timely and fair manner and the results must be communicated within a reasonable period of time.¹⁶⁶ The standard requirements, formats and procedures must follow the regulatory technical standards developed by ESMA.¹⁶⁷

¹⁵⁸ ECSPR, Art. 11(1).

¹⁵⁹ ECSPR, Art. 11(2).

¹⁶⁰ ECSPR, Art. 12(1).

¹⁶¹ Ibid.

¹⁶² ECSPR, Art. 15(3).

¹⁶³ ECSPR, Art. 16(1).

¹⁶⁴ ECSPR, Art. 7(1).

¹⁶⁵ ECSPR, Art. 7(3).

¹⁶⁶ ECSPR, Art. 7(4).

¹⁶⁷ ECSPR, Art. 7(5).

3.2 The Markets in Financial Instruments Directive II

3.2.1 Purpose and Rationale

The Markets in Financial Instruments Directive, adopted under Directive 2014/65/EU, plays a central role in shaping the regulatory framework for investment services across the EU.¹⁶⁸ As a response to the developments of financial markets and instruments, and as investors are provided with more complex financial services, the directive aims to increase investor protection and reduce systemic risk by setting standards and harmonizing rules for investment firms operating in the EU, being to a certain extent relevant to P2P lending platforms.¹⁶⁹ The Directive acknowledges that, since the financial crisis, weaknesses and gaps in the transparency of financial markets have been identified, being necessary to enhance the single market for investments firms to avoid incorrect conduct when providing services to clients with the potential to lead to their detriment and loss of confidence.¹⁷⁰ MiFID II sets standards for key areas such as market transparency, transaction reporting, product governance and investor protection. This section explores the consumer protection mechanisms embedded in MiFID II such as suitability assessments, information disclosure, and execution.

3.2.2 Scope and Applicability

MiFID II is applicable to EU-based investment firms, market operators, data reporting services providers, and third-country firms providing investment services or performing investment activities through the establishment of an EU branch.¹⁷¹ MiFID II mainly establishes requirements on the authorization and operation conditions for investment firms, the authorization and operation of regulated markets and, supervision and enforcement by competent authorities.¹⁷²

¹⁶⁸ MiFID II (n 104).

¹⁶⁹ MiFID II, Recital 4.

¹⁷⁰ MiFID II, Recital 5.

¹⁷¹ MiFID II Art. 1(1).

¹⁷² MiFID II Art. 1(2).

▪ **Investor protection**

Similarly to the ECSPR, the MiFID II categorizes investors as professional and retail clients or eligible counterparties. Professional clients are those that have the experience and expertise to make their own investment decisions while properly assessing the risks involved.¹⁷³ Retail clients are those that do not fall under the category of professional clients and are not eligible counterparties.¹⁷⁴ An investor has to possibility to request a classification as a professional client if all regulatory minimum conditions are fulfilled, consequently decreasing the level of investor protection provided.¹⁷⁵ Firms must act honestly, fairly and professionally, having in mind the best interests of the client.¹⁷⁶ They must assess the compatibility of the instruments offered towards the needs of their clients when providing services and all information must be clear and not misleading.¹⁷⁷ In addition, when proposing investment strategies, the firm must include appropriate guidance on the risks that are entailed by the investments, provide warnings when necessary and specify whether the financial instrument offered is intended for retail or professional clients.¹⁷⁸

▪ **Investment threshold**

The MiFID II does not limit the amount of money retail investors can invest however, the investment firm remains obligated to collect information about the investor's ability to bear losses and their financial situation, when providing investment advice or portfolio management.¹⁷⁹ This is done so that the firm is able to recommend to the client or potential client the investment services and financial instruments that are most appropriate.¹⁸⁰ Moreover, albeit there is no investment limit, an investor can receive a risk warning when trying to proceed with an investment not appropriate due to their loss sensitivity.¹⁸¹

¹⁷³ MiFID II, Annex II.

¹⁷⁴ Ibid.

¹⁷⁵ Deutsche Bank, 'MiFID II - Introduction and Order Execution Policy' (*Deutsche Bank*, July 2022) <<https://www.deutschewealth.com/dam/deutschewealth/docs/mifidlux/220726-MiFiD-II-Lux-EN.pdf>> accessed 22 December 2024.

¹⁷⁶ MiFID II, Art. 24(1).

¹⁷⁷ MiFID II, Art. 24(2).

¹⁷⁸ MiFID II, Art. 24(4(b)).

¹⁷⁹ MiFID II, Art. 25(2).

¹⁸⁰ Ibid.

¹⁸¹ MiFID II, Art. 25(3).

- **Reporting and the Suitability and appropriateness test**

MiFID II establishes that when natural persons provide for investment advice on behalf of an investment firm, the firm must demonstrate to the competent authority that they possess the necessary knowledge and competence.¹⁸² In the provision of investment advice, the firm must obtain the relevant information regarding the client's knowledge and experience in the investment field connected to the service being employed as well as their financial situation - such as one's ability to bear losses in addition to its investments objectives and risk tolerance.¹⁸³ This is crucial to allow the firm to provide recommendations to the client. Where the investment firm considers that the product or service is not appropriate to the client or potential client, the investment firm shall issue a warning.¹⁸⁴ The same applies if the clients do not provide the information required, or where they provide insufficient information, whereas the investment firm becomes unable to determine whether the service or product envisaged is appropriate for them.¹⁸⁵

- **Transparency and disclosure**

In terms of transparency, a retail investor is provided with disclosures regarding the investment firm, all costs and charges, including costs in connection with the investment service and advice and the safeguarding of financial instruments and client funds, including a summary of any applicable investor compensation.¹⁸⁶ Investment firms are also under the duty to provide investors with regular reports on the type of service the firm is undertaking on their behalf as well as reports relating to costs and charges.¹⁸⁷ Furthermore, a record including all the documents between the firm and the client, setting out the rights and obligations of the parties and the terms of their agreement must be kept.¹⁸⁸

- **Operational requirements and licensing**

The MiFID II provides that the delivery of investment services or the performance of investment functions as a regular occupation or business performed professionally must be subject to prior authorization by the competent MS authority.¹⁸⁹ The authorization must specify

¹⁸² MiFID II, Art. 25(1).

¹⁸³ MiFID II, Art. 25(2).

¹⁸⁴ MiFID II, Art. 25(3).

¹⁸⁵ Ibid.

¹⁸⁶ MiFID II, Art. 24(4).

¹⁸⁷ MiFID II, Art. 24(4(c)).

¹⁸⁸ MiFID II, Art. 25(5).

¹⁸⁹ MiFID II, Art. 5(1).

the investment services or activities which the investment firm is authorized to provide.¹⁹⁰ This licensing requirement ensures that only firms meeting regulatory standards operate in the financial markets. The investment firm shall provide all relevant information, including a programme of operations outlining the types of business foreseen and the organizational structure pertinent to allow the competent authority to verify that the investment firm has established all the necessary arrangements to meet its obligations.¹⁹¹

▪ **Supervision**

MiFID II requires MSs to monitor the activities of investment firms to ensure compliance with the operating conditions listed in the directive.¹⁹² The directive imposes obligations on national competent authorities to enforce compliance by firms offering investment services and activities.¹⁹³ These supervisory duties include conducting regular assessments of firms' organizational structures, requesting relevant information, carrying out inspections and assessing their overall compliance with the directive.¹⁹⁴

3.3 The Consumer Credit Directive

3.3.1 Purpose and Rationale

The Directive on Consumer Credit Agreements (Directive (EU) 2023/2225), has been amended extensively over the past years as it started falling behind developments in the sector.¹⁹⁵ MSs reported the need for a revised directive to include other types of credit or new credit agreements that were not previously covered under Directive 2008/48/EC.¹⁹⁶ This resulted in the adoption of the CDD currently in force.¹⁹⁷ In addition to expanding its scope, the directive strives to achieve a greater level of harmonization in the field of consumer credit agreements to ensure a high level of consumer protection.¹⁹⁸ Thus, it is relevant to P2P lending to assess how existing consumer safeguards can be adapted or reinforced to protect retail investors. The following provisions are therefore referenced for this purpose:

¹⁹⁰ MiFID II, Art. 6(1).

¹⁹¹ MiFID II, Art.7(2).

¹⁹² MiFID II, Art. 22.

¹⁹³ MiFID II. Art. 67(2).

¹⁹⁴ MiFID II. Art. 69(2).

¹⁹⁵ Directive (EU) 2023/2225 of the European Parliament and of the Council of 18 October 2023 on credit agreements for consumers and repealing Directive 2008/48/EC [2023] OJ L 2023/2225.

¹⁹⁶ CCD, Recital 3-7.

¹⁹⁷ CCD, Recital 8.

¹⁹⁸ CCD, Recital 10.

- **Transparency and disclosure**

The CCD imposes a broad obligation on CSP's facilitating credit agreements to ensure that all information provided to consumers and prospective clients - including general information relating to the underlying conditions pertaining to the credit agreement, advertisements, marketing communications and platform content - are communicated in a clear, concise and not misleading manner.¹⁹⁹ This is reinforced under article 13 on the presentation of personalized offers to clients based on automated processing of personal data.²⁰⁰ This general principle is crucial in the context of P2P lending to ensure that investors and consumers are not exposed to unfamiliar risks.²⁰¹ Moreover, the aforementioned supports informed decision-making as it requires platforms to provide consumers with clarity, consequently building a stronger relationship between investor and crowdfunding platforms.²⁰² In addition, the CCD obliges creditors and credit intermediaries to provide consumers with clear, timely, and comprehensive pre-contractual information to support decision-making and the comparison of different offers before entering into a credit agreement.²⁰³ The CCD maintains that credit intermediaries must provide adequate explanations to consumers on proposed credit agreements and any ancillary services that allow the consumer to analyze whether the proposed offers are adapted to the consumers' needs and financial situation.²⁰⁴ The explanation must be provided free of charge and before concluding the credit agreement. When advisory services can be provided, the intermediary must explicitly inform the consumer.²⁰⁵ Credit can only be granted to consumers if they have prior requested it and explicitly agreed.²⁰⁶ Unsolicited granting of credit is prohibited.²⁰⁷

- **Creditworthiness assessment**

The CCD establishes an obligation to assess the creditworthiness of the consumer to prevent irresponsible lending practices and over-indebtedness.²⁰⁸ MSs must ensure that any modification made to a credit agreement, must be communicated by the creditor to the

¹⁹⁹ CDD, Recital 33.

²⁰⁰ CDD, Art. 13.

²⁰¹ CDD, Recital 46.

²⁰² CDD, Recital 9.

²⁰³ CCD, Art. 10(1).

²⁰⁴ CCD, Art. 12(1).

²⁰⁵ CCD, Art. 16(1).

²⁰⁶ CCD, Art. 17.

²⁰⁷ Ibid.

²⁰⁸ CCD, Art. 18(1).

consumer prior such changes take place.²⁰⁹ Credit intermediaries accurately submit the necessary information obtained from the consumer to the relevant creditor.²¹⁰ The assessment must be undertaken on the basis of accurate information on the consumer's income and expenses and other circumstances which are necessary and proportionate to the nature, duration, value and risks of the credit for the consumer.²¹¹ This may include evidence of income or other sources of repayment, information on financial assets and liabilities, or information on other financial commitments.²¹² The information acquired must be verified appropriately if needed via independent verifiable information.²¹³ MSs can only allow credit to be granted by the creditor if the results of the assessment indicate that obligations are likely to be fulfilled.²¹⁴ Most importantly, the regulation provides the consumer with the right of withdrawal from the credit agreement without giving any reason within a timeframe of 14 calendar days.²¹⁵ The period begins from the day of conclusion of the credit agreement or from the day the consumer receives the contractual terms.²¹⁶

▪ **Supervision**

The CCD establishes that supervision falls under the national competent authorities appointed by each MS, to ensure the proper enforcement of the CCD.²¹⁷ These authorities are empowered with investigative and enforcement powers such as to impose sanctions and require credit providers to comply with transparency and disclosure obligations.²¹⁸ Lastly, the CCD supports the education of consumers in relation to responsible borrowing and debt management, in particular those who engage by digital means in credit agreements for the first time.²¹⁹ Independent debt advisory services should be made accessible to consumers facing challenges in meeting their financial commitments.²²⁰

In conclusion, the EU regulatory framework governing P2P lending falls in general within the scope of the ECSPR, the CCD, and MiFID II. MiFID II ensures market integrity and

²⁰⁹ CCD, Art. 22.

²¹⁰ CCD, Art. 18(2).

²¹¹ CCD, Art. 18(3).

²¹² Ibid.

²¹³ Ibid.

²¹⁴ Ibid 6.

²¹⁵ CCD, Art. 26(1).

²¹⁶ Ibid.

²¹⁷ CCD, Art. 41(1).

²¹⁸ Ibid.

²¹⁹ CCD, Art. 34(1).

²²⁰ CCD, Art. 36(1).

The Balance Between Consumer Protection and Innovation in the Fintech sector in Peer-2-Peer Lending

investor protection where lending platforms engage in investment-type activities or offer financial instruments. In contrast, the CCD provides a regime focused mostly on consumers, in terms of transparency and responsible lending credit agreements. Lastly, the ECSPR introduces a harmonized regime for CSP's, setting common rules and cross-border access within the internal market. Altogether, these instruments provide for a layered regulatory ecosystem with the objective to balance innovation with the protection of investors and borrowers, depending on the nature of the lending activity and the profile of the parties involved.

Chapter IV: Deconstructing the EU regulatory landscape

To understand how EU regulation interacts with the P2P lending environment in regard to innovation and consumer protection, it is necessary to critically examine the effectiveness of these protections in practice. First, this section introduces a case study on Afranga - a P2P lending platform based in Bulgaria that connects investors across Europe with business borrowers. The company operates under the ECSPR, enabling the evaluation of consumer protection mechanisms within the framework and providing insight into the practical limitations of EU-level harmonization efforts. Later, a second case study is introduced on the company Mintos. Mintos is one of the largest European P2P lending platforms based in Latvia and its analysis supports in understanding the suitability of the MiFID II. While the ECSPR aims to harmonize consumer protection across CSP's platforms in the EU, Mintos falls outside of its scope. The platform operates under an investment firm license since it issues "Notes" (asset-backed securities) that qualify as financial instruments under MiFID II. As such, it is subject to MiFID II obligations under the oversight of the Latvian Financial and Capital Market Commission. Through the comparison of both frameworks, this section aims to critically assess how they balance investor protection and innovation in practice.

4.1 Case Study I: Afranga as a Model for P2P Lending in Bulgaria

Afranga is a Bulgarian-based P2P lending platform launched in 2020 and subsequently authorized to operate under the ECSPR in 2023.²²¹ The company functions as a cross-border investment platform, regulated by the Bulgarian Financial Supervision Commission.²²²

Afranga connects retail and professional investors and offers them the opportunity to invest in short-term (unsecured) consumer loans originated by Stikcredit AD, an affiliated non-bank lender.²²³ In the platform, investors are able to select individual loans or the auto-invest feature (a feature to be launched in the future, as per the company's plans), with a minimum investment of €10 per loan.²²⁴ While the ECSPR framework permits both equity and lending models, Afranga has opted to specialize in loan-based crowdfunding.²²⁵ Afranga's shift to

²²¹ Afranga, 'Afranga - European Crowdfunding Platform' <<https://afranga.com>> accessed 12 January 2025.

²²² Ibid.

²²³ Afranga, 'Who can invest on Afranga' <<https://help.afranga.com/hc/en-us/articles/33201194176529-Who-can-invest-on-Afranga>> accessed 12 January 2025.

²²⁴ Afranga, 'How much time do I need to manage my investments' <<https://help.afranga.com/hc/en-us/articles/33201666564881-How-much-time-do-I-need-to-manage-my-investments>> accessed 12 January 2025.

²²⁵ Ibid.

ECSPR licensing displays its progression from a largely unregulated P2P environment to one governed by harmonized investor protection rules within the EU.

4.1.1 Afranga's Investor Onboarding Process

This section outlines the steps required for individuals to become registered investors on the Afranga platform:

1. *Account Registration*: users must provide basic personal information such as their name, email and country of residence. To meet KYC and AML regulations, users must verify their identity by uploading a valid ID.²²⁶ No deposits or investments can be made if this step is not fulfilled. Afranga reserves the right to suspend or terminate a user profile in case of suspected fraudulent activity.²²⁷
2. *Entry knowledge test and simulation of the ability to bear loss*: As part of registration, investors are asked to complete a dedicated request form including a knowledge test and a simulation.²²⁸ This then allows for the correct investor category (sophisticated or non-sophisticated) to be assigned.²²⁹ If the result identifies one as a sophisticated investor, additional evidence might be requested by the platform.²³⁰ The test can be retaken at any time via the investor's user profile.²³¹
3. *Funding the Account*: Once verification is complete; investors may transfer funds to their accounts. The funds are deposited to a client account segregated from the company's operational funds for added security.²³² There are no deposit fees.²³³
4. *Browsing and Selecting Loans*: Following the transfer of funds, investors can manually browse available loans by filtering loans details based on the interest rate, loan term or risk profile).²³⁴ The investor can then choose a loan that meets its investment preferences and

²²⁶ Ibid (n 223).

²²⁷ Afranga, 'General Terms and Conditions' <https://afranga.com/docs/pdf/General_Terms_and_Conditions.pdf> accessed 14 January 2025.

²²⁸ Afranga, 'Why do I need to take a suitability and assessment test' <<https://help.afranga.com/hc/en-us/articles/33209092093969-Why-do-I-need-to-take-a-suitability-and-assessment-test>> accessed 14 January 2025.

²²⁹ Ibid.

²³⁰ Ibid.

²³¹ Afranga, 'Can I retake the test?' <<https://help.afranga.com/hc/en-us/articles/33210141748241-Can-I-retake-the-test>> accessed 14 January 2025.

²³² Afranga, 'Where are investors' funds kept?' <<https://help.afranga.com/hc/en-us/articles/33211438096657-Where-are-investors-funds-kept>> accessed 14 January 2025.

²³³ Afranga, 'How long does it take to see the funds in my investor account?' <<https://help.afranga.com/hc/en-us/articles/33211484777489-How-long-does-it-take-to-see-the-funds-in-my-investor-account>> accessed 14 January 2025.

²³⁴ Afranga, 'How can I invest into a loan?' <<https://help.afranga.com/hc/en-us/articles/33210687283857-How-can-I-invest-into-a-loan>> accessed 16 January 2025.

enter the amount he wishes to invest. Furthermore, the investor can also review the KIIS provided for each loan.²³⁵

5. *Monitoring*: Investors are able to monitor their portfolio through Afranga's dashboard which provides for active and repaid loans, interest and principal received and upcoming payments.²³⁶

4.1.2 Afranga's Consumer Protection Mechanisms

- **Disclosures and the KIIS**

As an ECSP, Afranga is mandated to provide, for each loan listed, an in-depth KIIS offering comprehensive details about the borrower and loan terms.²³⁷ The KIIS functions as the risk disclosure resource for the investor. Each KIIS must contain information regarding the loan terms, special conditions, security details (any options for early repayment or loan extension), use of funds and borrower information.²³⁸ To access the KIIS, investors can click on any loan ID in the loan marketplace and find it under the documents section.²³⁹ The platform highly recommends investors reviewing the KIIS before making any investment.²⁴⁰ Furthermore, Afranga provides investors with key essential risk information to consider when investing. It provides that loan repayments are dependent on the financial health of borrowers and it adds that market conditions, including borrowers' defaults and other external factors can impact returns.²⁴¹ Most importantly, it reiterates that the platform does not guarantee the return of the investment or interest and one can lose part or even all of the invested capital.²⁴² Therefore, the investor is responsible for reviewing each loan's details carefully before making an investment and diversify their portfolio across multiple loans to reduce exposure.²⁴³

²³⁵ Ibid.

²³⁶ Afranga (n 224).

²³⁷ Afranga, 'What's a Key Investment Information Sheet (KIIS)?' <<https://help.afranga.com/hc/en-us/articles/33210992364305-What-s-a-Key-Investment-Information-Sheet-KIIS>> accessed 16 January 2025.

²³⁸ Ibid.

²³⁹ Ibid.

²⁴⁰ Ibid.

²⁴¹ Afranga, 'What are the associated risks of the loan?' <<https://help.afranga.com/hc/en-us/articles/33211012967185-What-are-the-associated-risks-of-the-loan>> accessed 16 January 2025.

²⁴² Afranga, 'Is investing on Afranga risky?' <<https://help.afranga.com/hc/en-us/articles/33200676306705-Is-investing-on-Afranga-risky>> accessed 16 January 2025.

²⁴³ Ibid.

▪ **Borrower Creditworthiness**

Afranga only permits pre-approved borrowers to issue loans on the platform.²⁴⁴ Usually, borrowers are SME's searching for additional capital to aid in growth and working capital needs.²⁴⁵ The platform requires borrowers to comply with a strict due diligence process that includes the financial analysis and credit risk assessment, an assessment of the company's creditworthiness and repayment capacity, business model evaluation, background and compliance checks.²⁴⁶ The platform then continues to perform continuous monitoring of all approved borrowers.²⁴⁷ If a borrower fails to make a payment on time, interest accrues on the overdue installment. The platform maintains communication with the borrower to ensure resolution when possible.²⁴⁸ If any negative trends are identified, Afranga may restrict the borrower's ability to issue new loans, or offboard the borrower entirely from the platform to protect investor interests.²⁴⁹

▪ **Entry knowledge test and simulation of the ability to bear loss**

The entry knowledge test evaluates whether and which proposed crowdfunding services are suitable for the investor in addition to gathering information on the investor's knowledge and experience.²⁵⁰ Moreover, Afranga may request specific information about the investor's understanding of the risks associated with lending through the platform as well as their experience in investing through crowdfunding.²⁵¹ The information to be collected includes, but is not restricted to, the types of investment services the investor is familiar with; the level of education and occupation, investment objectives and, where appropriate, their risk profile and preferences regarding the sustainability of the investments.²⁵² Furthermore, to complete the assessment, Afranga requires investors to make a simulation of their loss bearing capacity. This is done through an online tool provided by the platform and assesses the ability of investors to incur a loss calculated as 10% of their net worth.²⁵³ Afranga may therefore

²⁴⁴ Afranga, 'Who can issue loans on Afranga?' <<https://help.afranga.com/hc/en-us/articles/33200474461201-Who-can-issue-loans-on-Afranga>> accessed 16 January 2025.

²⁴⁵ Ibid.

²⁴⁶ Ibid.

²⁴⁷ Afranga, 'Do you evaluate the Borrowers?' <<https://help.afranga.com/hc/en-us/articles/33200781934353-Do-you-evaluate-the-Borrowers>> accessed 16 January 2025.

²⁴⁸ Afranga, 'What happens if a Borrower misses a payment?' <<https://help.afranga.com/hc/en-us/articles/33200924293777-What-happens-if-a-Borrower-misses-a-payment>> accessed 16 January 2025.

²⁴⁹ Ibid.

²⁵⁰ Terms and conditions (227) 5.5.

²⁵¹ Ibid 5.6.

²⁵² Ibid.

²⁵³ Ibid 5.8.

request information concerning the investors total income and their assets. The platform is not liable for the results of a knowledge test and simulation arising from any false or incomplete information submitted by the investor.²⁵⁴

- **Deposit Guarantee Scheme**

Investments provided by the platform are not covered by European deposit guarantee schemes. Therefore, funds invested in loans are not insured or guaranteed. This means that investors engaging with the platform risk their capital and do not have guarantees of return.²⁵⁵

- **Segregation of client funds**

Afranga's places investors funds in dedicated accounts managed by Lemonway.²⁵⁶ Lemonway is a licensed electronic money institution which holds investors' funds in segregated accounts to ensure security and transparency.²⁵⁷ Moreover, each investor has their individual accounts, keeping funds separate from the platform's operational accounts. In the event the company ever ceases operations, investors will retain full access to their funds through Lemonway and to all information related to their investments.²⁵⁸

- **Dispute Resolution**

Afranga provides for dispute resolution with investors in a spirit of mutual understanding and good will.²⁵⁹ If a dispute is not resolved via informal means, investors can take recourse to the competent national court. Users may also submit formal complaints through Afranga's platform. Afranga ensures a fair review process, responding within 20 working days and extending this period only in exceptional cases.²⁶⁰

²⁵⁴ Ibid 5.10.

²⁵⁵ Afranga, 'Is my investment protected by any financial compensation scheme?' <<https://help.afranga.com/hc/en-us/articles/33201181553425-Is-my-investment-protected-by-any-financial-compensation-scheme>> accessed 16 January 2025.

²⁵⁶ Afranga (n231).

²⁵⁷ Afranga, 'What happens if Afranga goes out of business?' <<https://help.afranga.com/hc/en-us/articles/33201110303121-What-happens-if-Afranga-goes-out-of-business>> accessed 16 January 2025.

²⁵⁸ Ibid.

²⁵⁹ Terms and conditions (227) 11.1.

²⁶⁰ Ibid.

4.1.3 Evaluating Consumer Protection under ECSPR: The Case of Afranga

Unlike MiFID II, which applies primarily to investment firms offering financial instruments, Afranga operates within the ECSPR, which directly targets platforms that facilitate the connection of business borrowers with investors. This makes the company more fit to the classic P2P lending model. Afranga's structure and regulatory compliance provides for a useful contribution to understand to what extent the ECSPR protects consumers in practice.

First, the provision of the KIIS for each project listed ensures transparency for the investor. This efficiently allows retail investors to access core decision-making information without needing to interpret complex financial documents, reducing the occurrence of asymmetric information and unequal material knowledge between parties.²⁶¹ Including warnings helps retail investors understand possible disadvantages when making investment decisions. Studies show that these warnings have the potential to impact one's behavior in investment choices.²⁶² Conversely, while the KIIS provides the investor with a simplified document, it might not provide for a full in-depth explanation on complex risks and platform-specific features, which might fail to fully support inexperienced non-sophisticated investors.²⁶³ Furthermore, the KIIS standardized format may not be designed to newer or more complex P2P investments models. Moreover, this can provide generic risk disclosures that might not capture platform individual risks.

Second, Afranga incorporates borrower creditworthiness assessment into its operational model which is crucial as it protects investors by filtering out high-risk borrowers, helping them make informed decisions through borrower credit risk scores and ratings.²⁶⁴ To achieve this, the company developed an internal risk methodology inspired by the models used by major credit rating agencies.²⁶⁵ This is also in compliance with the CCD, as it requires platforms to assess a borrower's ability to comply with its repayment obligations, enhancing

²⁶¹ ECSPR, Recital 51 and Art. 23(2).

²⁶² The Investing and Saving Alliance (TISA), 'Risk Warnings Summary Report' (*TISA*, March 2024) <<https://www.tisa.uk.com/wp-content/uploads/2024/03/Risk-Warnings-Summary-Report.pdf>> accessed 16 January 2025.

²⁶³ Miroslav Durić, 'The EU Crowdfunding Regulation: a German Perspective' (*Taylor Wessing*, 14 September 2021) <<https://www.taylorwessing.com/en/insights-and-events/insights/2021/09/the-eu-crowdfunding-regulation-a-german-perspective>> accessed 16 January 2025.

²⁶⁴ FasterCapital, 'Creditworthiness thresholds: Investor Confidence: How Creditworthiness Impacts Funding Rounds' (*FasterCapital*, April 2025) <<https://www.fastercapital.com/content/Creditworthiness-thresholds--Investor-Confidence--How-Creditworthiness-Impacts-Funding-Rounds.html#The-Role-of-Creditworthiness-in-Attracting-Investment>> accessed 1 March 2025.

²⁶⁵ Afranga, 'How it works' <<https://afranga.com/how-it-works>> accessed 1 March 2025.

regulatory legitimacy.²⁶⁶ In terms of innovation however, the assessment slows down loan issuance as a result of the necessity of complying with credit checks.²⁶⁷ Additionally, this also entails further operational costs especially for small platforms in implementing a rigorous credit assessment process, having to potentially take recourse to third-party originators to perform the process.²⁶⁸ Furthermore, Afranga does not bear the credit risk of the loans it facilitates. Therefore, providing for a credit risk analysis based on their own criteria can present a risk for investors. Still, the creditworthiness assessment remains crucial to mitigate default risks and consequently, better protect investors.

Third, the entry knowledge test and simulation of the ability to bear losses plays an important role in differentiating between investors with the purpose of protecting them.²⁶⁹ It provides investors with a tool to test their knowledge while at the same time educate them concerning risks that could arise.²⁷⁰ The questions presented in the assessment, however, should be designed in a way that is clear so that it does not prevent investors from engaging in the market. The simulation to bear a loss also further enhances investor protection since upon a risk warning, the decision to invest falls under the investors full responsibility as they become aware of potential losses.

In regard to the platform's safeguard of segregating client funds, similarly to Mintos, which will be further explored in the next section - there is a reduction of risk of loss in the event of platform insolvency, making it an important safeguard in protecting investor's funds.²⁷¹ The ECSPR however does not impose a formal deposit guarantee scheme and additional investor protections are limited in accordance with local financial regulations. This shows that ECSPR's harmonization effort in terms of consumer protections remain limited as some measures may be jurisdiction dependent, whereas enforcement of consumer protection measures may vary across different MSs, depending on local implementation.

In conclusion, Afranga illustrates the benefits and downsides of investor protection under the ECSPR. The company demonstrates a move to balance investor autonomy with

²⁶⁶ CCD, Art. 18(1).

²⁶⁷ Alfredo Burlando, Michael A. Kuhn & Silvia Prina, *Evaluating the Impact of Digital Credit Delivery Speed on Borrower Behavior* (Policy Insights, Northeastern University, December 2023) <<https://cssh.northeastern.edu/gap/wp-content/uploads/sites/62/2023/12/Policy-Insights-Too-Fast.pdf>> accessed 1 March 2025.

²⁶⁸ Ibid.

²⁶⁹ ECSPR, Art. 21(1).

²⁷⁰ Joseph Lee, 'Investor Protection on Crowdfunding Platforms' in Pietro Ortolani and Marije Lousse (eds), *The EU Crowdfunding Regulation* (Oxford University Press 2021) 123.

²⁷¹ Financial Conduct Authority, 'CASS 7.13 Segregation of Client Money' (*FCA*) <<https://www.handbook.fca.org.uk/handbook/CASS/7/13.html>> accessed 7 March 2025.

safeguards and although this is done consistently with the regulation, there still exist practical enforcement challenges and limited investment risk controls to guarantee stronger investor protection. To sufficiently meet the P2P model needs, regulation may need to evolve further to address the complexity and risks of P2P lending.

4.2 Case Study 2: Mintos - A Model of P2P Lending

Mintos is a Latvian P2P Lending platform which presents long-term investors with an online vehicle offering a mix of alternative and traditional investments.²⁷² The company was founded in 2013 and aims to empower investors by simplifying investment management and reduce the time and effort required to oversee their portfolios.²⁷³ Mintos provides for automated portfolios, using algorithms to build and adjust them based on the investor's goals and risk tolerance.²⁷⁴ This works by investing in loans of different loan types, geographies and lending companies and considering different factors to reach the diversification rate, such as the demand for specific investments and their availability.²⁷⁵ In addition to loans, Mintos has recently introduced bonds and electronically traded funds (ETFs) to the platform, allowing investors to invest in an asset combination and earn passive income on a single platform.²⁷⁶

Unlike conventional P2P platforms that facilitate direct lending between investors and borrowers, Mintos has transitioned to a securitized investment model, wherein investors purchase notes-backed securities issued by a Special Purpose Entity (SPE) within the Mintos group. Sets of notes are created by pooling 6-20 loans with similar properties together.²⁷⁷ The notes are then placed on the platform for investors. Notwithstanding, Mintos underlying economic function still reflects the P2P lending model as investors fund loans issued to individuals or small businesses, and receive returns based on their repayments. Mintos depicts a shift from the common lending model to one based on financial instruments.

²⁷² Mintos, 'What is Mintos?' <<https://help.mintos.com/hc/en-us/articles/115002857885-What-is-Mintos>> accessed 15 March 2025.

²⁷³ Ibid.

²⁷⁴ Mintos, 'What Are Automated Portfolios?' (Mintos, 13 February 2025) <<https://help.mintos.com/hc/en-us/articles/360011842677-What-are-automated-portfolios>> accessed 15 March 2025.

²⁷⁵ Mintos, 'How does Core Loans diversify the portfolio?' <<https://help.mintos.com/hc/en-us/articles/360001769437-How-does-Core-Loans-diversify-the-portfolio>> accessed 15 March 2025.

²⁷⁶ Ibid.

²⁷⁷ Mintos, 'What are Notes?' <<https://help.mintos.com/hc/en-us/articles/5625282806417-What-are-Notes>> accessed 15 March 2025.

4.2.1 Mintos Investor Onboarding Process

This section outlines the steps required for individuals to become registered investors on the Mintos platform:

- 1) *Account Registration*: Investors must create a personal account providing basic information such as their name, email address and the country in which they reside.²⁷⁸ The investor's identity is then verified in accordance with AML directives by providing valid identifying documents.²⁷⁹ The investor must also acknowledge upon the registration application that it has read and understood the information contained in the documents provided under terms and conditions.²⁸⁰
- 2) *Suitability and Appropriateness Assessment*: Investors must comply with the suitability and appropriateness test to ensure that they are aware of the risks of investing and that their financial situation allows them to bear risks. Furthermore, the assessment explores whether the financial products offered are suitable for the investor's knowledge and experience.²⁸¹ The platform will then, based on the assessment, make certain ways of investing available and set a responsible investment limit for the account. The assessment can be retaken twice every 30 days.²⁸²
- 3) *Funding the Account*: Once verification is completed; investors may transfer funds to their accounts.²⁸³
- 4) *Investment Strategy Selection*: Mintos offers two main types of loan investments: Core loans (automated portfolio strategy) and custom loans (automated/manual investing). With core loans, the investor is provided with a ready-to-use portfolio where small portions of many different sets of notes are bought to optimize diversification and return-risk balance.²⁸⁴ With custom loans, investors can manage manually and select their preferences

²⁷⁸ Ibid.

²⁷⁹ Mintos, 'How do I create a company account?' <<https://help.mintos.com/hc/en-us/articles/27923538033297-How-do-I-create-a-company-account>> accessed 15 March 2025.

²⁸⁰ Mintos, 'Terms and Conditions of Mintos Investment Platform' <<https://assets.mintos.com/50659FA2-CE35-2962-E51D-E2720DF187C0.pdf>> accessed 15 March 2025.

²⁸¹ Mintos, 'What is the Suitability and Appropriateness assessment and how does it affect me?' <<https://help.mintos.com/hc/en-us/articles/6173936149649-What-is-the-Suitability-and-Appropriateness-assessment-and-how-does-it-affect-me>> accessed 1 September 2025.

²⁸² Ibid.

²⁸³ Mintos, 'How do I invest?' <<https://help.mintos.com/hc/en-us/articles/115002860245-How-do-I-invest>> accessed 1 September 2025.

²⁸⁴ Mintos, 'How does Core Loans diversify the portfolio?' <<https://help.mintos.com/hc/en-us/articles/360001769437-How-does-Core-Loans-diversify-the-portfolio>> accessed 15 March 2025.

and criteria if they desire to make it automated as well as select individual notes based on loan characteristics.²⁸⁵

- 5) *Monitoring*: The investor can follow up on the performance of their portfolio in real time using the Mintos dashboard. Investors have the option to reinvest earnings or withdraw funds to their linked bank account.²⁸⁶

4.2.2 Mintos Consumer Protection Mechanisms

As noted earlier, the Mintos platform is subject to the requirements of the MiFID II as it falls under the directive scope. This section aims to explore how the requirements of the MiFID II are applied in practice:

- **Transparency and disclosure**

Mintos provides a base prospectus and Key Information Documents (KIDs) to support with the evaluation of investment opportunities. The base prospectus is based on the Prospectus Regulation (PR) which provides for a single regime establishing the content, format, approval and publication for a prospectus.²⁸⁷ The PR aims to ensure that adequate and equivalent disclosure standards are in place across the EU for investors being offered securities.²⁸⁸ Thus, it allows investors to make an informed assessment of the financial position, prospects, profits and losses of the issuer and of any guarantor.²⁸⁹ Companies offering financial instruments must comply with the PR and customize its base prospectus to fit the needs of its potential investors, depending on the type of financial instrument.²⁹⁰ Most importantly, the PR establishes the EU Growth Prospectus, a simplified disclosure document available for SMEs.²⁹¹ The level of required disclosure is designed to be proportionate to the size of the company and its capital-raising needs, while also considering the cost of preparing a prospectus.²⁹²

²⁸⁵ Ibid.

²⁸⁶ Ibid.

²⁸⁷ Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC [2017] OJ L168/12.

²⁸⁸ Ibid.

²⁸⁹ Ibid.

²⁹⁰ Mintos, 'What is a Prospectus?' (*Mintos*, 18 December 2024) <<https://www.mintos.com/blog/what-is-a-prospectus/>> accessed 15 March 2025.

²⁹¹ PR (n 287).

²⁹² Ibid.

Mintos loan securities prospectus contain specific details on the securities' underlying loans (including information about the lending company responsible for originating the loans) and the underlying assets and contractual agreements.²⁹³ The prospectus is approved by the Central Bank of Latvia and cannot be modified, apart from supplementary modifications. In case the prospectus contains mistakes or inaccuracies, the issuer must justify it.²⁹⁴ Additionally, Mintos also provides KIDs which consist of concise, standardized documents designed to help retail investors better understand complex financial products.²⁹⁵ They provide a clear summary of the product's structure, associated risks, expected costs, and potential returns under different market scenarios - all in plain and non-technical language.²⁹⁶

- **Suitability and appropriateness assessment**

The suitability and appropriateness assessment ensures that investors understand the risks associated with investing.²⁹⁷ By evaluating an investor's financial situation, investment knowledge, prior experience and goals, Mintos establishes if investments are suitable and appropriate for each individual.²⁹⁸ When assessing suitability, Mintos obtains the necessary information regarding the knowledge or experience of the investor, its financial situation (the sources of the client's income, ability to bear losses, its assets and regular financial conditions) and investment objectives (client's risk preferences and purpose of investment).²⁹⁹

In this way, the firm is able to recommend appropriate investment services and financial instruments. Regarding appropriateness, firms must assess whether a financial instrument is appropriate for an investor when providing services without advice.³⁰⁰ If investors fail to provide sufficient information, the firm becomes unable to provide advice and may limit or suspend certain investment services or products on the platform as it deems appropriate and provide warnings to the investor.³⁰¹

²⁹³ Ibid (n 290).

²⁹⁴ Ibid.

²⁹⁵ Mintos, 'Where can I find more detailed legal and risk documentation?' (*Mintos*) <<https://help.mintos.com/hc/en-us/articles/36607100051089-Where-can-I-find-more-detailed-legal-and-risk-documentation>> accessed 15 March 2025.

²⁹⁶ Ibid.

²⁹⁷ Mintos, 'What is the Suitability and Appropriateness assessment and how does it affect me?' (*Mintos*, 5 August 2024) <https://help.mintos.com/hc/en-us/articles/6173936149649-What-is-the-Suitability-and-Appropriateness-assessment-and-how-does-it-affect-me> accessed 15 March 2025.

²⁹⁸ Ibid.

²⁹⁹ PwC, Ortec Finance & VU University Amsterdam, *MiFID II: Suitability and Appropriateness - Practical Guidelines for Investment Services* (September 2016) <https://research.vu.nl/ws/portalfiles/portal/66310936/MiFID_II_white_paper_PwC_Ortec_Finance_VU_sept_2016.pdf> accessed 15 March 2025.

³⁰⁰ Terms and conditions (n 280) 4.10.

³⁰¹ Ibid.

- **Segregation of Client Funds**

Mintos safeguards investor's assets by holding them separately from the company's assets. This means that if something goes wrong operationally, Mintos has a system in place to ensure that all investor assets are safeguarded.³⁰² Notes belonging to investors are held in personal financial instruments accounts, meaning that they are not to be treated as Mintos assets, such as in the case of unregulated platforms.³⁰³

In the case of uninvested funds, these are held in safeguarding accounts in banks licensed in the EU.³⁰⁴ Their primary purpose is to support investor orders for investing or withdrawing funds, as well as covering fees and charges due.³⁰⁵ The platform cannot use them for other purposes.

- **Investor Compensation Scheme**

Mintos is covered by the Latvian investor compensation scheme which functions as a safeguard in case the platform suffers operational errors or is involved in fraud or administrative malpractice.³⁰⁶ Investors can claim compensation under the compensation scheme limited to Mintos' outstanding liabilities, up to 20 000 EUR.³⁰⁷ This protection however does not apply to investment risk related to poor performance or liquidity.

- **Buyback obligation**

While Mintos operates under the MiFID II, the platform also offers extra investor protection by implementing buyback obligations which consist of a contractual commitment by lending companies to repurchase notes in case of borrower default.³⁰⁸ Although not a regulatory requirement, this feature is crucial to increasing Mintos' investor confidence. However, its effectiveness depends on the financial health and reliability of the lending companies, making it potentially a fragile safeguard.³⁰⁹

³⁰² Mintos, 'Safeguarding of Investors' Assets on Mintos Following MiFID II' (*Mintos*, 8 June 2022) <<https://www.mintos.com/blog/safeguarding-of-investors-assets-on-mintos-following-mifid-ii/>> accessed 20 March 2025.

³⁰³ Ibid.

³⁰⁴ Ibid.

³⁰⁵ Ibid.

³⁰⁶ Ibid.

³⁰⁷ Ibid.

³⁰⁸ Mintos, 'What is a buyback obligation?' (*Mintos*, 2 April 2024) <<https://www.mintos.com/blog/what-is-a-buyback-obligation/>> accessed 16 March 2025.

³⁰⁹ Ibid.

▪ **Dispute Resolution**

Mintos offers investors a formal complaint handling procedure accessible through the platform. Unresolved complaints may be escalated to relevant authorities, including the national competent authority or the Consumer Rights Protection Centre in Latvia.³¹⁰

4.2.3 Evaluating Consumer Protection under MiFID II: The Case of Mintos

Although Mintos offers the provision of certain safeguards such as the base prospectus, the KID, client fund segregation, and participation in the investor compensation scheme, the effectiveness of these measures for protecting retail investors is still a concern. On the one hand, the platform adheres to several high standards of disclosure and procedural transparency. By adhering to the PR, which strives to find an equilibrium between cost-effective access to financial markets, it becomes easier for businesses to obtain funding and improve investor protection by providing investors with shorter yet detailed and comprehensive information on investment products.³¹¹ In addition, with the EU Growth Prospectus, the platform is able to offer for a simplified, proportionate, and more cost-efficient disclosure framework for SMEs.³¹² The EU Growth Prospectus is efficient as it lowers regulatory barriers for smaller platforms seeking to issue securities, such as asset-backed Notes.³¹³ Therefore, companies require less demanding disclosure standards. Preceding the introduction of the EU Growth Prospectus, SME's in the P2P lending sector encountered complex and costly disclosure obligations, often disproportionate to their size and risk profile.³¹⁴ The rigid disclosure obligations, high costs of producing a full prospectus and the burden of ongoing compliance, disincentivize platforms from offering investment products to a broader EU audience.³¹⁵ The PR however also poses a burden on issuers to make subjective judgments in their disclosure and include only those risk factors which are both specific to the issuer and/or the securities involved and material for making an informed investment decision.³¹⁶

³¹⁰ Terms and conditions (n 280) 13.

³¹¹ European Parliamentary Research Service, *Prospectuses for Investors (Briefing, July 2017)* <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599289/EPRS_BRI\(2017\)599289_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599289/EPRS_BRI(2017)599289_EN.pdf)> accessed 1 May 2025.

³¹² Council of the European Union, 'New Rules on Prospectuses: Improving Access to Capital Markets for Companies' <<https://www.consilium.europa.eu/en/policies/prospectus/>> accessed 1 May 2025.

³¹³ Ibid.

³¹⁴ Ibid.

³¹⁵ Ibid.

³¹⁶ Cleary Gottlieb Steen & Hamilton LLP, 'The New Prospectus Regulation – The Story So Far' (*Cleary Gottlieb, 7 March 2019*) <<https://www.clearygottlieb.com/-/media/files/alert-memos-2019/the-new-prospectus-regulation-the-story-so-far.pdf>> accessed 1 May 2025.

Furthermore, the suitability and appropriateness test are important in ensuring that investors are aware of the risks associated with complex financial instruments such as Notes. Although this mechanism offers a degree of investor protection, several key aspects remain insufficiently developed. The assessment depends on investors to manually update their profiles and this can result in outdated evaluations if anything changes, as Mintos will consider the original answers as valid.³¹⁷ New investors may still access high-risk instruments if they pass the assessment superficially. Considering the introduction of periodic reassessments would improve the system's response. In addition, although Mintos evaluates investor knowledge, it does not offer mandatory education content or modules to reinforce investors in understanding risk-prone products like Notes. To advance its model, the platform could provide additional support for inexperienced investors.

The segregation of client funds and access to national investor compensation schemes provides a layer of protection against platform-level insolvency.³¹⁸ The segregation of funds protects investors in the event of financial distress and reduces the risk of client funds to be used for unintended purposes, adding to transparency.³¹⁹ From the perspective of innovation, this brings operational complexity and compliance costs that P2P lending companies must bear, as it increases administrative burden. Nonetheless, this measure remains fundamental in the P2P lending environment as investor risks and vulnerability are heightened. Mintos' adherence to fund segregation supports a more stable and trustworthy fintech model whereas the investor compensation scheme provides an additional protection to investors.

Lastly, the buyback obligation, while not mandated by the MiFID II and EU regulation, provides for an important safeguard for investor funds. This obligation requires the loan originator to repurchase a loan if the borrower defaults beyond a certain period (usually 60 days).³²⁰ Hence, consumer protection is enhanced by reducing the risk for investors.³²¹ This provides for an increase in consumer trust as a strong safeguard for their investments. The buyback guarantee however, may hide the underlying credit risk as investors tend to focus more on the presence of the guarantee than the financial health of the loan originator.³²² In

³¹⁷ Mintos (n 281).

³¹⁸ European Commission, 'Evaluation of the Investor Compensation Scheme Directive' (EC, November 2016) <https://finance.ec.europa.eu/system/files/2016-11/evaluation-investor-compensation-scheme-directive-022005_en.pdf> accessed 1 May 2025.

³¹⁹ Mintos (n 302).

³²⁰ Mintos (n 308).

³²¹ Tamara Trojáková, *Credit Risk Modelling on P2P Markets* (Masaryk University, 2022) <https://is.muni.cz/th/hrskz/Credit_Risk_Modelling_on_P2P_Markets.pdf> accessed 1 May 2025.

³²² P2P Empire, 'P2P Lending with Buyback Guarantee' (*P2P Empire*) <<https://p2pempire.com/en/p2p-lending-with-buyback-guarantee>> accessed 1 May 2025.

The Balance Between Consumer Protection and Innovation in the Fintech sector in Peer-2-Peer Lending

several cases including Mintos, defaulted loan originators have failed to honor these obligations, leaving millions of EUR locked in long-term recovery processes.³²³ From an innovative perspective, dependence on buybacks can discourage the development of transparent credit risk assessment tools.³²⁴ Different from the protections found in MiFID II or ECSPR, buyback obligations do not have regulatory oversight. Moreover, although Mintos complies with MiFID II, the platform's model remains complex for ordinary consumers. This illustrates a limitation in applying capital markets regulation to P2P-like platforms.

³²³ Ibid.

³²⁴ Mintos (n 308).

Chapter V: Regulatory Approaches to Crowdfunding and P2P Lending in the EU: A Comparative and Forward-Looking Analysis

5.1 Comparative Analysis of EU Regulatory Frameworks in P2P Lending

Within the EU, the regulatory framework for the treatment of P2P Lending is reflected under the ECSPR, the MIFID II and the CCD. Each framework can be applied to different categories of platforms and financial activities and their relevance to P2P lending depends significantly on the business models of the platforms involved. This section starts by comparing the ECSPR and the MIFID II in light of the cases examined and their regulatory objectives and protection mechanisms. The CCD is also incorporated in the discussion. Moreover, this section covers whether the EU's regulatory measures are successfully achieving the dual goal: to protect retail investors while enabling innovation and growth of P2P lending.

▪ **Regulatory Objectives and Scope**

MiFID II regulates investment firms that engage in the provision of financial instruments, including securities and other financial products.³²⁵ Its main goal is to enhance transparency and investor protection within the EU.³²⁶ Although Mintos does not facilitate direct contact between investors and borrowers, the case study remains relevant to assess investor protection measures under the MiFID II. By contrast, the ECSPR covers crowdfunding and P2P lending platforms such as Afranga, that connect investors directly with project owners.³²⁷ The regulation aims to harmonize rules and foster cross-border investment and investor protection.³²⁸ Furthermore, the CCD covers consumer credit agreements and therefore does not directly apply to Mintos, as the platform does not itself issue consumer credit but instead offers structured notes backed by loans originated by third-party lenders.³²⁹ Therefore, compliance with CCD obligations falls on the originating entities.³³⁰ The same applies to Afranga.

³²⁵ MiFID II (n 104).

³²⁶ Ibid.

³²⁷ ECSPR (n 96).

³²⁸ Ibid.

³²⁹ CCD (n 195).

³³⁰ European Commission, 'EU rules on consumer credit' (EC) <https://commission.europa.eu/business-economy-euro/financial-services/retail-financial-services/consumer-credit_en> accessed 15 May 2025.

▪ **Investor Protection Measures**

The investor protection measures applicable to each framework are discussed based on factors deemed important in ensuring a safe environment for investors while encouraging innovation. In regard to investor categorization, both MiFID II and ECSPR apply, under different designations, the category of retail clients (called non-sophisticated investors under the ECSPR) and professional clients (sophisticated investors). The MiFID II, however, applies for stricter categorization rules and hence, an investor might qualify as a sophisticated investor under the ECSPR, but not meet the stricter professional client criteria under MiFID II.³³¹ Both frameworks apply the core principle that a CSP or firm should act honestly, fairly and professionally while representing the best interests of its clients.³³²

Concerning investor thresholds, non-sophisticated investors are, under the ECSPR, limited in case investments exceed €1,000 or 5% of an investor's net worth.³³³ When this happens, the investor must acknowledge a risk warning providing their consent. On the other hand, MiFID II does not impose such restriction to investors. This indicates a more restrictive approach to investor protection under the ECSPR. Notwithstanding, imposing an investment limit may still pose challenges to investors. In the case of an investor with a lower net worth, incurring a small loss below this threshold may still have a negative effect, whereas on the opposite case, investors with greater funds might find the limit as blocking their diversification needs.³³⁴ Investors are however free to acknowledge their consent if they wish to proceed. While the ECSPR does not require a formal appropriateness test, it imposes an entry knowledge test and investment caps as well as additional risk warnings for non-sophisticated retail investors, aiming to preserve accessibility while preventing overexposure to high-risk investments.³³⁵ Sophisticated investors on the other hand, are deemed to be already aware of the risks associated with investments and hence, CSPs are not required to impose an entry knowledge test or issue risk warnings.³³⁶ In addition, the ECSPR further protects non-sophisticated investors by providing them with a reflection period where they can revoke an offer, preventing impulsive or

³³¹ MiFID II, Recital 42.

³³² ECSPR Art.3, MiFID II Art. 24.

³³³ ECSPR 21(7).

³³⁴ Ibid (n 270).

³³⁵ ECSPR 21.

³³⁶ ECSPR, Recital 44.

uninformed decisions by investors.³³⁷ Conversely, the MiFID II does not provide such period for investors.

Similar to the MiFID II, the ECSPR introduces investor protection measures specific to crowdfunding such as assessing the investor's ability to bear losses, setting investment limits, and offering a pre-contractual reflection period. Notably, the ECSPR's entry knowledge test is broader than MiFID's appropriateness test, as it collects more detailed information on an investor's financial situation and investment objectives.³³⁸ There are however some differences between the appropriateness assessment and the entry knowledge test. First, the appropriateness assessment applies to all clients, differing from the ECSPR that is only directed to non-sophisticated investors. Furthermore, unlike MiFID II, the ECSPR requires a review of entry knowledge test every two years.³³⁹

In terms of transparency and disclosure, MiFID II standardizes disclosure across investment firms through KIDs which outline general information on product details, cost, risk returns and performance scenarios to support investor protection.³⁴⁰ KIDs do not require pre-approval by competent authorities however, firms are responsible for their accuracy and compliance.³⁴¹ Under the ECSPR, platforms must provide investors with KIIS. Like KIDs, KIIS do not need pre-approval from authorities, their completeness and accuracy must be checked by the CSP.³⁴² This responsibility reinforces trust by positioning platforms as gatekeepers of essential information.

The EU Growth Prospectus regime helps these frameworks by offering a simplified prospectus that makes it easier for smaller issuers to access capital markets.³⁴³ However, even with this simpler format, new companies may still find the process demanding and complex. In addition, the PR is limited to securities offerings, not applying to traditional P2P lending models.³⁴⁴ While the Growth Prospectus gives more information about the issuer compared to KIIS, some investors may not have the financial knowledge needed to understand these

³³⁷ ECSPR, Recital 47.

³³⁸ ESMA, 'ESMA publishes MiFID II Supervisory Briefing on Appropriateness and Execution-Only' (*ESMA*) <<https://www.esma.europa.eu/press-news/esma-news/esma-publishes-mifid-ii-supervisory-briefing-appropriateness-and-execution-only>> accessed 20 May 2025.

³³⁹ ECSPR 21(5).

³⁴⁰ PwC, *PRIIPs Regulation and the New Key Information Document (KID)* (PwC) <<https://www.pwc.com/it/publications/assets/docs/priips-regulation-and-the-new-jid.pdf>> accessed 25 May 2025.

³⁴¹ Ibid.

³⁴² Ibid.

³⁴³ Council of the European Union, (n 321).

³⁴⁴ Ibid (n 287).

disclosures. Nonetheless, insufficient disclosure may equally deter participation due to lack of transparency.

The creditworthiness assessment is an important component of the EU framework for P2P lending. Based on the CCD, a creditworthiness assessment must be performed for granting consumer credit, whereas lenders are required to evaluate a borrower's ability to fulfill its obligations dependent on sufficient and reliable information.³⁴⁵ In comparison, the ECSPR does not impose this obligation on platforms. It requires CSP's to conduct a reasonable assessment of the credit risk associated with project owners; however, this requirement does not constitute a thorough evaluation of creditworthiness.³⁴⁶ The regulation requires platforms to clearly disclose their credit risk assessment methodologies, promoting transparency.³⁴⁷ The evaluation of borrower risk therefore falls more heavily onto investors, who are expected to review disclosures. Lastly, under MiFID II, the concept of creditworthiness is not directly relevant. Instead, investment firms conduct suitability or appropriateness assessments when providing investment services with a focus on investor protection rather than inspecting borrowers. Moreover, the CCD provides for strict creditworthiness assessments whereas the ECSPR introduces lighter risk evaluation with disclosure obligations while the MiFID II prioritizes investor protection through suitability standards.

▪ **Implications on Innovation**

Within the realm of innovation, MiFID II provides investment firms with more flexibility to explore different forms of financing. Mintos for example, provides not only loan-backed securities but also traditional financial instruments like ETFs and bonds.³⁴⁸ This flexibility allows investors to expand diversification towards other assets. At the same time, such flexibility may also enhance complexity and increase the risk of mis-selling or a lack of understanding on the part of the investors regarding the offered products and services. In contrast, the ECSPR provides for narrow set of rules, focusing specifically on loan and equity-based crowdfunding.³⁴⁹ This greatly reduces the opportunity to expand to other innovative financial products, but contrastingly, helps to increase the amount of regulatory certainty, which helps foster a more simple and clear structure for retail investors. However, there are still regulatory divergences which may emerge in practice. Mintos, for example, holds a MiFID II license and

³⁴⁵ CCD, Art. 18.

³⁴⁶ ECSPR Art. 4(4(b)).

³⁴⁷ ECSPR Art. 4(2).

³⁴⁸ Mintos (n 272).

³⁴⁹ ECSPR (n 96).

is supervised by the Latvian Central Bank. Afranga is licensed in Bulgaria under the ECSPR. This indicates that even platforms with similar features may adhere to different rules and standards, resulting in uneven regulation across the EU.

The imposition of investor categorization also contributes to innovation. Platforms introduce digital mechanisms (e.g., algorithmic assessments) that tailor risks disclosures and adaptive onboarding processes.³⁵⁰ Additionally, AI-driven matchmaking ensures that lenders' preferences align with borrowers' profiles, enhancing platform efficiency.³⁵¹ Thus, this measure allows for regulatory innovation as it can help in reducing exclusionary effects, while still maintaining the integrity of investor protection regimes. This is also relevant regarding the credit scoring methods employed by platforms. Moreover, traditional credit scoring methods are usually based on limited data sets, leaving borrowers underserved due to “lack of credit history or non-traditional income streams”.³⁵² AI-driven algorithms allow for the analysis of a broader range of data points including behavioral patterns, creating more comprehensive borrower profiles and thus, highly contributing to innovation.³⁵³

Additionally, the EU passporting regime attached to licensing can also be considered a driver to innovation. By lowering entry barriers, passporting allows platforms to operate in all MSs, making it easier for them to grow.³⁵⁴ The ECSPR license, for instance, creates a unified legal framework that encourages EU crowdfunding platforms to emerge and uses a simpler disclosure process, as described in the KIIS.³⁵⁵ Similarly, MiFID II also gives investment firms passporting rights.³⁵⁶ However, these systems can create compliance challenges. Obtaining a license can be expensive and may make it hard for startups to enter the market.

Last but not least, P2P lending platforms largely depend on fees charged to investors and borrowers to generate revenue.³⁵⁷ As P2P lending platforms rely on investor participation, priority might be given to establishing a safe environment to enhance trust and reduce risks. This can discourage innovation or a company's potential to adapt its policies. The need of

³⁵⁰ IJRPR, *The Evolution of Peer-to-Peer (P2P) Lending Platforms in the Fintech Industry* [2025] 6 IJRPR 3714.

³⁵¹ Ibid 3718.

³⁵² Ibid.

³⁵³ Ibid.

³⁵⁴ European Commission, ‘Crowdfunding in the EU Capital Markets Union’ (EC) <https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/financial-markets/crowdfunding_en> accessed 17 August 2025.

³⁵⁵ Ibid.

³⁵⁶ PwC, “Markets in Financial Instruments Directive II (MiFID II) - Level 2: ESMA's Technical Advice to the Commission on MiFID II and MiFIR” (PwC, February 2015) <<https://www.pwc.lu/en/mifid/docs/pwc-markets-in-financial-instruments-directive-2-mifid-2-level-2.pdf>> accessed 12 June 2025.

³⁵⁷ Olena Havrylchyk and others, ‘What Drives the Expansion of Peer-to-Peer Lending?’ (EBA, 2016) <<https://www.eba.europa.eu/documents/10180/1431348/71e6cdeb-eb8f-4782-9087-53bade9e54a6/Paper%20-%20Session%203.%20Olena%20Havrylchyk.pdf>> accessed 12 June 2025.

rigorous disclosures might also challenge start-ups. Consequently, protecting the investor, gaining their trust while prioritizing profits, leads towards a more conservative approach which slows the adoption of technologies and innovative products. Platforms must perform the role of information gatekeepers and therefore need to have procedures in place through which they can verify the completeness and clarity of information provided to consumers and consequently enhance innovation.³⁵⁸

In conclusion, the EU regulatory landscape for the P2P lending market is fragmented. MiFID II provides a comprehensive framework for platforms that deal in financial instruments. This structure may affect transparency and move the burden of risk evaluation onto investors. The ECSPR promotes clarity and covers direct relationships between investors and borrowers, becoming more accessible to consumers, though it may be less accommodating of financial innovation. Moreover, platforms like Mintos may be better suited to sophisticated investors familiar with financial instruments, while platforms like Afranga may be more appropriate for consumers searching for simple traditional P2P investments. This highlights the necessity for future reforms to achieve a more cohesive framework.

5.2 Implications for the EU Regulatory Balance

The EU regulatory framework for P2P lending includes different instruments rather than a single dedicated regime. This results in fragmentation as applicable rules depend on whether platforms facilitate credit, investment products or crowdfunding services.³⁵⁹ Fragmentation arises when several legal instruments apply to a business model, creating inconsistencies and amplifying uncertainty for firms.³⁶⁰ For starting P2P lending platforms, the regulatory burden can be significant. The ECSPR governs lending and investment-based crowdfunding, while MiFID II applies to platforms providing for investment services or securities. The CCD covers the credit provision to consumers, and the PR and KIDs may also become relevant depending on the disclosure context. In addition, further national requirements or platform-specific protections can apply, such as the implementation of buyback obligations as seen with

³⁵⁸ J. Armour and L. Enriques, 'The Promise and Perils of Crowdfunding: Between Corporate Finance and Consumer Contracts' (2018) 81 *Modern Law Review* 51, 84.

³⁵⁹ Jonathan Kalodimos, *Financial Disclosure under Regulatory Fragmentation* (Oregon State University College of Business Policy Insights Working Paper, written 11 November 2024, posted 16 April 2024 [last revised 17 November 2024]) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4785824> accessed 18 July 2025.

³⁶⁰ *Ibid* 1.

Mintos. Moreover, overlapping rules challenge efficient frameworks and their application as certain activities may be partially covered by different regimes.³⁶¹

The case studies of Mintos and Afranga demonstrate the impact of these regulatory frameworks in the P2P lending sector. While these frameworks address important aspects, they still do not completely address the tension between fostering innovation and safeguarding investor rights. This call into question whether the EU should take advantage of best practices from different regimes, take leverage from their respective strengths, or pursue a hybrid approach combining elements from multiple instruments.³⁶² This would allow for more effective investor protection while at the same time supporting innovation.

On one hand, MiFID II provides for layered protections such as the mandatory suitability and appropriateness tests as well as other disclosure requirements.³⁶³ These measures support investor confidence, but in the context of P2P lending, where products such as notes and loan exposures are quite complex, they may not always be accessible or easily understood by consumers. While this structure enables innovation, it distances the investor from the underlying borrower, arguably weakening the traditional nature of P2P lending. In addition, Mintos employs other safeguards via the PR and additional platform level safeguards such as the buyback obligation (on its own initiative).³⁶⁴ On the other hand, Afranga's ECSPR-regulated model provides a simpler framework through the KIIS and investor caps that protect consumers from excessive exposure to risks and ensures transparency.³⁶⁵ Yet, the narrow product range and access to secondary markets leaves investors limited. In addition, the CCD imposes more strictly creditworthiness assessment obligations than the remaining frameworks. Therefore, it is recognized through the analysis that each framework possesses elements that strengthen protections and innovation while others may to a certain extent lack it. To achieve a balanced regulatory environment, integrating the strengths of each framework could improve effectiveness. For example, the ECSPR could be enhanced by incorporating MiFID II attitude towards consumer's risk profiling, thereby improving investor awareness and reducing exposure to less appealing loans, while MiFID II could benefit from certain aspects arising from the ECSPR's disclosure structure and regime.

³⁶¹ IJRPR, 'Regulatory Challenges and Innovations in FinTech Technology' [2024] 5 International Journal of Research Publication and Reviews 4983.

³⁶² Ibid 4991.

³⁶³ MiFID II, Art. 25(1).

³⁶⁴ Ibid (n 308).

³⁶⁵ Ibid (n 148).

Therefore, in achieving a balance between consumer protection and innovation, an adaptive regulatory framework that allows for learning and adjustments over time would benefit the model.³⁶⁶ Adaptive regulation responds and adapts to changes in the market and technology, which is especially useful for P2P lending.

5.3 Towards a Unified or Tiered Regulatory Framework?

The intersection of different regulatory approaches serves as a starting point for a more coherent ecosystem for P2P lending. By taking inspiration in the different investor protection tools, disclosure standards, and platform obligations from the studied frameworks, regulators can prioritize harmonization and consequently address the growing complexity of P2P models without unnecessary barriers. The EU should therefore consider moving towards a legal framework specifically designed for P2P lending. P2P loans do not belong to a restricted asset class as they can be grouped into different sectors, such as from real estate to SME finance. A unified framework could address the inefficiencies revealed in this paper. A harmonized EU regulation would provide for requirements such as the KIIS, investor disclosures, and platform licensing applicable to all P2P lending platforms. Crucially, it would also define P2P lending platforms as a distinct regulatory category.

Building on this base, platforms offering more complex products could be subject to additional requirements drawn from MiFID II or the PR. This would entail that platforms consisting of simpler models would avoid excessive burdens, while more complex platforms would, accordingly, oblige with stricter standards of investor protection. By leveraging good practices from existing regimes, the creation of a dedicated P2P lending regulation would enhance regulatory stability and investor confidence. In this sense, to achieve a more coherent framework, policymakers, based on thorough research, should design a regulation that reflects a deep understanding of the state of the market and consumer risks.³⁶⁷ In practice, this can be enforced by amending existing financial consumer protection rules or through the development of standalone provisions specific to P2P lending.³⁶⁸ Most importantly, regulation must remain adaptive and proportionate, in contrast to the implementation of rigid obligations that could

³⁶⁶ Lori S Benneer and Jonathan B Wiener, *Adaptive Regulation: Instrument Choice for Policy Learning over Time* (Nicholas School of the Environment & Sanford School of Public Policy, 12 February 2019) <<https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/Regulation%20-%20adaptive%20reg%20-%20Benneer%20Wiener%20on%20Adaptive%20Reg%20Instrum%20Choice%202019%2002%2012%20clean.pdf>> accessed 17 August 2025.

³⁶⁷ World Bank Group, (n 34) 43.

³⁶⁸ Ibid.

contribute to hindering smaller innovators.³⁶⁹To implement this effectively, coordination between national and international authorities is critical.³⁷⁰ In addition, to reduce regulatory arbitrage, supervision and enforcement must be central to ensure that regulation is properly enforced.³⁷¹Following a principles-based approach combined by supervisory oversight, could offer platforms flexibility to innovate while safeguarding core consumer protections.³⁷²

In this context, and in order to achieve an equilibrium between innovation and consumer protection in the P2P lending sector, the following regulatory measures are suggested:

- The establishment of a unified EU regulatory framework tailored specifically to P2P lending. As argued before, this measure would reduce fragmentation and clarify the responsibilities of different stakeholders. This would not only enhance legal certainty but also contribute to a level playing field.³⁷³
- Second, coordinated supervision is needed to help maintain investor confidence. This can be achieved by assigning oversight to an existing EU supervisory agency or by expanding ESMA's role to promote consistency among MSs.
- Thirdly, harmonization of disclosure standards is needed to streamline the current patchwork of investor documents under MiFID II, ECSPR, PRIIPs, and the PR.
- Fourth, to achieve proportionate regulation, compliance obligations should reflect the size, and complexity of platforms.³⁷⁴ Smaller platforms dealing with straightforward consumer loans have to comply with less burdens in comparison to larger platforms offering securitized instruments.
- Fifth, adaptive mechanisms such as regulatory sandboxes should be deployed to allow experimentation. Sandboxes provide a supervised environment in which regulators can learn from industry practice and adjust rules in response to risks.³⁷⁵
- Sixth, RegTech solutions should be encouraged to reduce compliance burdens and improve monitoring. By using cutting-edge technologies, RegTech facilitates the performance

³⁶⁹ Ibid (n 34) 45.

³⁷⁰ Ibid 44.

³⁷¹ Ibid 45.

³⁷² Ibid (n 370).

³⁷³ IJRPR (n 350) 3719.

³⁷⁴ World Bank, (n 34) 45.

³⁷⁵ European Commission, 'Detailed Summary of Individual Responses to the 'Public Consultation on FinTech: a More Competitive and Innovative European Financial Sector'' (*European Commission*, September 2017) <https://finance.ec.europa.eu/system/files/2017-09/2017-fintech-summary-of-responses-annex_en.pdf> accessed 17 August 2025.

The Balance Between Consumer Protection and Innovation in the Fintech sector in Peer-2-Peer Lending

of compliance related tasks and the analysis of large sets of data, allowing companies to adapt quickly to changing regulations.³⁷⁶

- Finally, investor education including mandatory onboarding modules would highly contribute to investors decision-making and understanding regarding the risks inherent to P2P lending.

These measures are a starting point in achieving a regulatory landscape adaptive to innovative dynamics.

³⁷⁶ Omolara Patricia Olaiya and others, 'RegTech Solutions: Enhancing Compliance and Risk Management in the Financial Industry' [2024] 20 GSC Advanced Research and Reviews 008-015.

Conclusion

This dissertation sets out to assess the extent to which the EU's regulatory framework balances consumer protection with the promotion of innovation in the P2P lending model. The analysis of the regulatory frameworks and case studies of Mintos and Afranga shows that while current regimes address important consumer protection needs, they do not fully resolve the tensions that arise when fostering innovation in parallel with safeguarding investors.

First, the research addressed the initial sub-question by examining the nature of the EU's regulatory landscape. It highlighted that frameworks such as the ECSPR, the MiFID II, the CCD, and the PR operate in different ways, resulting in inconsistencies. For instance, while the MiFID II provides for safeguards such as suitability and appropriateness tests, these measures might not be tailored specifically P2P models. This can create legal uncertainty, especially for smaller firms.

Second, the study highlights that while licensing under MiFID II and the ECSPR can decrease obstacles to cross-border access, this might also burden smaller companies with disproportionate compliance obligations. Requirements such as KIDs or KIIS under ECSPR promote transparency however, they may restrict how platforms design or communicate their products. Thus, regulatory intent and practical effect are not always aligned.

Third, the analysis highlighted how adaptive and forward-looking approaches could help resolve this tension. Regulatory sandboxes offer an environment which promotes for innovation while RegTech solutions can lower compliance costs through automation of reporting and compliance services. In this way, these tools can reduce regulatory issues and help platforms adapt to market conditions, provided they are implemented with clear standards and consistent coordination across MSs.

In conclusion, the findings indicate that a unified, P2P-specific EU framework can be a plausible solution in balancing investors protection with innovative developments. Such framework could set up protections reinforcing transparency, disclosure and licensing rules while applying additional requirements to more complex cases. By doing so, regulation would not only reduce fragmentation and regulatory loopholes but also clarify responsibilities and liabilities for platforms, ensuring consistent enforcement across the EU. Striking the right balance between innovation and investor protection in P2P lending requires rules that fit the sector's unique risks. A unified and flexible framework would better safeguard investors and strengthen trust while leaving space for companies to innovate.

Legislation

Directive (EU) 2023/2225 of the European Parliament and of the Council of 18 October 2023 on credit agreements for consumers and repealing Directive 2008/48/EC [2023] OJ L 2023/2225

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU [2014] OJ L173/349.

Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC [2017] OJ L168/12.

Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European Crowdfunding Service Providers for Business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 [2020] OJ L347/1.

Bibliography

Afranga, 'Afranga - European Crowdfunding Platform' <<https://afranga.com>> accessed 12 January 2025.

Afranga, 'Can I retake the test?' <<https://help.afranga.com/hc/en-us/articles/33210141748241-Can-I-retake-the-test>> accessed 14 January 2025.

Afranga, 'Do you evaluate the Borrowers?' <<https://help.afranga.com/hc/en-us/articles/33200781934353-Do-you-evaluate-the-Borrowers>> accessed 16 January 2025.

Afranga, 'General Terms and Conditions' <https://afranga.com/docs/pdf/General_Terms_and_Conditions.pdf> accessed 14 January 2025.

Afranga, 'How can I invest into a loan?' <<https://help.afranga.com/hc/en-us/articles/33210687283857-How-can-I-invest-into-a-loan>> accessed 16 January 2025.

The Balance Between Consumer Protection and Innovation in the Fintech sector in Peer-2-Peer Lending

Afranga, 'How it works' <<https://afranga.com/how-it-works>> accessed 1 March 2025.

Afranga, 'How long does it take to see the funds in my investor account?' <<https://help.afranga.com/hc/en-us/articles/33211484777489-How-long-does-it-take-to-see-the-funds-in-my-investor-account>> accessed 14 January 2025.

Afranga, 'How much time do I need to manage my investments' <<https://help.afranga.com/hc/en-us/articles/33201666564881-How-much-time-do-I-need-to-manage-my-investments>> accessed 12 January 2025.

Afranga, 'Is investing on Afranga risky?' <<https://help.afranga.com/hc/en-us/articles/33200676306705-Is-investing-on-Afranga-risky>> accessed 16 January 2025.

Afranga, 'Is my investment protected by any financial compensation scheme?' <<https://help.afranga.com/hc/en-us/articles/33201181553425-Is-my-investment-protected-by-any-financial-compensation-scheme>> accessed 16 January 2025.

Afranga, 'What are the associated risks of the loan?' <<https://help.afranga.com/hc/en-us/articles/33211012967185-What-are-the-associated-risks-of-the-loan>> accessed 16 January 2025.

Afranga, 'What happens if Afranga goes out of business?' <<https://help.afranga.com/hc/en-us/articles/33201110303121-What-happens-if-Afranga-goes-out-of-business>> accessed 16 January 2025.

Afranga, 'What happens if a Borrower misses a payment?' <<https://help.afranga.com/hc/en-us/articles/33200924293777-What-happens-if-a-Borrower-misses-a-payment>> accessed 16 January 2025.

Afranga, 'What's a Key Investment Information Sheet (KIIS)?' <<https://help.afranga.com/hc/en-us/articles/33210992364305-What-s-a-Key-Investment-Information-Sheet-KIIS>> accessed 16 January 2025.

Afranga, 'Where are investors' funds kept?' <<https://help.afranga.com/hc/en-us/articles/33211438096657-Where-are-investors-funds-kept>> accessed 14 January 2025.

Afranga, 'Who can invest on Afranga' <<https://help.afranga.com/hc/en-us/articles/33201194176529-Who-can-invest-on-Afranga>> accessed 12 January 2025.

The Balance Between Consumer Protection and Innovation in the Fintech sector in Peer-2-Peer Lending

Afranga, 'Why do I need to take a suitability and assessment test' <<https://help.afranga.com/hc/en-us/articles/33209092093969-Why-do-I-need-to-take-a-suitability-and-assessment-test>> accessed 14 January 2025.

Armour J and Enriques L, 'The Promise and Perils of Crowdfunding: Between Corporate Finance and Consumer Contracts' (2018) 81 *Modern Law Review* 51, 84.

BEUC, 'Members Consultation: CCD Position Paper for Trilogues' (*BEUC*, 8 September 2022) <https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-091_Members_consultation_CCD_position_paper_for_trilogues.pdf> accessed 18 December 2024.

BIS, 'Quarterly Review, September 2018' (*BIS*, September 2018) <https://www.bis.org/publ/qtrpdf/r_qt1809e.pdf> accessed 14 December 2024.

Bao T and others, 'Throwing Good Money After Bad: Risk Mitigation Strategies in the P2P Lending Platforms' [2024] 26 *Information Systems Frontiers* 1453.

Barkas P, 'Consumer Protection and Financial Innovation: Microeconomic, Policy, and Behavioral Considerations for the Digital Era' in D Katsikas, MA Del Tedesco Lins and A Ribeiro Hoffmann (eds), *Finance, Growth and Democracy: Connections and Challenges in Europe and Latin America in the Era of Permacrisis* (Springer 2025).

Basha S A, Elgammal M and Abuzayed B, 'Online Peer-To-Peer Lending: A Review of the Literature' [2011] 16 *Journal of Internet Banking and Commerce* 2.

Benatti N and others, 'The impact of environmental regulation on clean innovation: are there crowding out effects?' (*ECB*, 2024) <<https://www.ecb.europa.eu/pub/pdf/scpwps/ecb.wp2946~844af1ac30.en.pdf>> accessed 13 December 2024.

Benbear S and Wiener J B, *Adaptive Regulation: Instrument Choice for Policy Learning over Time* (Nicholas School of the Environment & Sanford School of Public Policy, 2019) <<https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/Regulation%20-%20adaptive%20reg%20-%20Benbear%20Wiener%20on%20Adaptive%20Reg%20Instrument%20Choice%202019%2002%2012%20clean.pdf>> accessed 17 August 2025.

The Balance Between Consumer Protection and Innovation in the Fintech sector in Peer-2-Peer Lending

Bhattacharjee I and Srivastava N, 'The Rise of Fintech: Disrupting Traditional Financial Services' [2024] 30(4) Educational Administration Theory and Practice 89–97.

Boeddu G and Chien J, 'Financial Consumer Protection and Fintech: An Overview of New Manifestations of Consumer Risks and Emerging Regulatory Approaches' (World Bank, 2022) <<https://documents1.worldbank.org/curated/en/099735204212299868/pdf/P17300605103480e90baef084f653576421.pdf>> accessed 7 December 2024.

Boeddu G, Chien J and Istuk I, 'Consumer Risks in Fintech: New Manifestations of Consumer Risks and Emerging Regulatory Approaches' (World Bank, 2021) <<https://documents1.worldbank.org/curated/en/515771621921739154/pdf/Consumer-Risks-in-Fintech-New-Manifestations-of-Consumer-Risks-and-Emerging-Regulatory-Approaches-Policy-Research-Paper.pdf>> accessed 7 December 2024.

Burlando A, Kuhn M & Prina S, Evaluating the Impact of Digital Credit Delivery Speed on Borrower Behavior (Policy Insights, Northeastern University, December 2023) <<https://cssh.northeastern.edu/gap/wp-content/uploads/sites/62/2023/12/Policy-Insights-Too-Fast.pdf>> accessed 1 March 2025.

Castro P, Rodrigues J P and Teixeira J G, 'Understanding FinTech Ecosystem Evolution Through Service Innovation and Socio-Technical System Perspective' in H Nóvoa, M Drăgoicea and N Kühl (eds), Exploring Service Science (Springer 2020).

Central Bank of Ireland, 'Guidance Note on Completing an Application for Authorisation as a Crowdfunding Service Provider (Under Regulation (EU) 2020/1503)' (Central Bank of Ireland, February 2024) <<https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/crowdfunding-service-providers/authorisation-process/guidance-note-for-authorisation-as-a-crowdfunding-service-provider.pdf>> accessed 20 December 2024.

Cleary Gottlieb Steen & Hamilton LLP, 'The New Prospectus Regulation – The Story So Far' (Cleary Gottlieb, 7 March 2019) <<https://www.clearygottlieb.com/-/media/files/alert-memos-2019/the-new-prospectus-regulation--the-story-so-far.pdf>> accessed 1 May 2025.

The Balance Between Consumer Protection and Innovation in the Fintech sector in Peer-2-Peer Lending

Council of the European Union, 'New Rules on Prospectuses: Improving Access to Capital Markets for Companies' <<https://www.consilium.europa.eu/en/policies/prospectus/>> accessed 1 May 2025.

Cummins M and others, 'Addressing Information Asymmetries in Online Peer-to-Peer Lending' in Theo Lynn, John Mooney, Pierangelo Rosati and Mark Cummins (eds), *Disrupting Finance* (Palgrave Pivot, 2019).

Deutsche Bank, 'MiFID II - Introduction and Order Execution Policy' (*Deutsche Bank*, July 2022) <<https://www.deutschewealth.com/dam/deutschewealth/docs/mifidlux/220726-MiFiD-II-Lux-EN.pdf>> accessed 22 December 2024.

Duarte J, Siegel S and Young L, 'The Evolution of P2P Lending' (2023) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4476944> accessed 3 December 2024.

Durić M, 'The EU Crowdfunding Regulation: a German Perspective' (*Taylor Wessing*, 14 September 2021) <<https://www.taylorwessing.com/en/insights-and-events/insights/2021/09/the-eu-crowdfunding-regulation-a-german-perspective>> accessed 16 January 2025.

E F and others, *Fintech and the digital transformation of financial services: Implications for Market Structure and Public Policy* (BIS Papers No 117, July 2021) 10.

EIB, 'Crowdfunding and ESF Opportunities: Future Perspectives for Managing Authorities' (*FI-Compass*, July 2020) <https://www.fi-compass.eu/sites/default/files/publications/Crowdfunding%20and%20ESF%20opportunities%20future%20perspectives%20for%20managing%20authorities_0.pdf> accessed 15 December 2024.

ESMA, 'Crowdfunding in the EU 2024' (*ESMA*, January 2025) <https://www.esma.europa.eu/sites/default/files/2025-01/ESMA50-2085271018-4039_ESMA_Market_Report_-_Crowdfunding_in_the_EU_2024.pdf> accessed 15 February 2025.

ESMA, 'ESMA publishes MiFID II Supervisory Briefing on Appropriateness and Execution-Only' (ESMA) <<https://www.esma.europa.eu/press-news/esma-news/esma-publishes-mifid-ii-supervisory-briefing-appropriateness-and-execution-only>> accessed 20 May 2025.

The Balance Between Consumer Protection and Innovation in the Fintech sector in Peer-2-Peer Lending

European Banking Authority, ‘Digital Finance: Confidence and Resilience as a Foundation for Well-Functioning Financial Markets’ (Keynote speech, 30 January 2024) <https://www.eba.europa.eu/sites/default/files/2024-01/690f7f02-4496-4e44-ada6-469dbc351235/JM%20Campa%20keynote%20speech%20at%208th%20annual%20FinTech%20and%20Regulation%20Conference_Afore%20consulting.pdf> accessed 7 December 2024.

European Banking Institute, Fintech Regulation and the Licensing Principle (European Banking Institute, January 2023) 28.

European Commission, ‘Competitiveness’ (*European Commission*) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:competitiveness>> accessed 7 December 2024.

European Commission, ‘Crowdfunding Potential for the European Structural and Investment Funds’ (*EC*, 2021) <https://ec.europa.eu/regional_policy/sources/studies/crowdfunding_potential_esif_en.pdf> accessed 17 December 2024.

European Commission, ‘Crowdfunding in the EU Capital Markets Union’ (*EC*) <https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/financial-markets/crowdfunding_en> accessed 17 August 2025.

European Commission, ‘Detailed Summary of Individual Responses to the ‘Public Consultation on FinTech: a More Competitive and Innovative European Financial Sector’ (*European Commission*, September 2017) <https://finance.ec.europa.eu/system/files/2017-09/2017-fintech-summary-of-responses-annex_en.pdf> accessed 17 August 2025.

European Commission, ‘Digital Finance Package’ (*European Commission*, 24 September 2020) <https://finance.ec.europa.eu/publications/digital-finance-package_en> accessed 6 December 2024.

European Commission, ‘EU rules on consumer credit’ (*EC*) <https://commission.europa.eu/business-economy-euro/financial-services/retail-financial-services/consumer-credit_en> accessed 15 May 2025.

The Balance Between Consumer Protection and Innovation in the Fintech sector in Peer-2-Peer Lending

European Commission, 'Evaluation of the Investor Compensation Scheme Directive' (EC, November 2016) <https://finance.ec.europa.eu/system/files/2016-11/evaluation-investor-compensation-scheme-directive-022005_en.pdf> accessed 1 May 2025.

European Commission, 'FSUG Recommendations to the Commission 2024–2029' (EC) <https://finance.ec.europa.eu/document/download/28692ef6-b5e1-45c9-86fa-efc4cc15aa5a_en?filename=fsug-recommendations-2024-2029_en.pdf&prefLang=da> accessed 18 December 2024.

European Commission, 'FinTech Action Plan: For a More Competitive and Innovative European Financial Sector' (European Commission, 8 March 2018) <https://finance.ec.europa.eu/publications/fintech-action-plan-more-competitive-and-innovative-european-financial-sector_en> accessed 6 December 2024.

European Commission, 'Peer-to-peer lending' (European Commission) <https://single-market-economy.ec.europa.eu/access-finance/guide-crowdfunding/different-types-crowdfunding/peer-peer-lending_en> accessed 3 December 2024.

European Parliamentary Research Service, Prospectuses for Investors (Briefing, July 2017) <[https://www.europarl.europa.eu/Reg-Data/etudes/BRIE/2017/599289/EPRS_BRI\(2017\)599289_EN.pdf](https://www.europarl.europa.eu/Reg-Data/etudes/BRIE/2017/599289/EPRS_BRI(2017)599289_EN.pdf)> accessed 1 May 2025.

Explore P2P, 'New P2P Regulations Are Coming. Here's 8 Reasons Why P2P Will Become Better & Safer' (Explore P2P, 28 February 2022) <<https://explorep2p.com/eu-p2p-rules/>> accessed 17 December 2024.

FasterCapital, 'Creditworthiness thresholds: Investor Confidence: How Creditworthiness Impacts Funding Rounds' (FasterCapital, April 2025) <<https://www.fastercapital.com/content/Creditworthiness-thresholds--Investor-Confidence--How-Creditworthiness-Impacts-Funding-Rounds.html#The-Role-of-Creditworthiness-in-Attracting-Investment>> accessed 1 March 2025.

Financial Conduct Authority, 'CASS 7.13 Segregation of Client Money' (FCA) <<https://www.handbook.fca.org.uk/handbook/CASS/7/13.html>> accessed 7 March 2025.

The Balance Between Consumer Protection and Innovation in the Fintech sector in Peer-2-Peer Lending

Financial Conduct Authority, 'Loan-based ('peer-to-peer') and investment-based crowdfunding platforms: Feedback on our post-implementation review and proposed changes to the regulatory framework' (*FCA*, July 2018) <<https://www.fca.org.uk/publication/consultation/cp18-20.pdf>> accessed 15 December 2024.

Financial Stability Board, 'Financial Innovation' (*Financial Stability Board*, 22 October 2024) <<https://www.fsb.org/work-of-the-fsb/financial-innovation-and-structural-change/financial-innovation/>> accessed 1 December 2024.

Funding Circle, 'Crowdfunding for UK Businesses' (*Funding Circle UK*) <<https://www.fundingcircle.com/uk/businesses/crowdfunding/>> accessed 15 December 2024.

Govindharaj Y, 'Revolutionizing Financial Services: The Role of Emerging Technologies and E-masters in Financial Technology and Management', [2024] 8 STD 128.

Havrylchuk O and others, 'What Drives the Expansion of Peer-to-Peer Lending?' (*EBA*, 2016) <<https://www.eba.europa.eu/documents/10180/1431348/71e6cdeb-eb8f-4782-9087-53bade9e54a6/Paper%20-%20Session%203.%20Olena%20Havrylchuk.pdf>> accessed 12 June 2025.

Hlophe N, 'Enable Innovation, Ensure Positive Consumer Outcomes, Repeat' (*Digital Frontiers Institute*, 2023) <<https://digitalfrontiersinstitute.org/enable-innovation-ensure-positive-consumer-outcomes-repeat/>> accessed 12 December 2024.

Huang E, 'Rethinking Regulations for P2P Lending' (2024) Seton Hall Law <https://scholarship.shu.edu/cgi/viewcontent.cgi?article=2493&context=student_scholarship> accessed 6 December 2024.

ICR, 'Crowdfunding: An Opportunity to Increase Access to Finance for MSMEs in ACP Countries' (*ICR*, September 2021) <https://www.icr-facility.eu/wp-content/uploads/2023/08/icreport_crowdfunding_english.pdf> accessed 15 December 2024.

IJRPR, The Evolution of Peer-to-Peer (P2P) Lending Platforms in the Fintech Industry [2025] 6 IJRPR 3714.

The Balance Between Consumer Protection and Innovation in the Fintech sector in Peer-2-Peer Lending

IJRPR, 'Regulatory Challenges and Innovations in FinTech Technology' [2024] 5 International Journal of Research Publication and Reviews 4983.

IMF, 'Global Financial Stability Report, October 2024: Steadying the Course: Uncertainty, Artificial Intelligence, and Financial Stability' (IMF, 22 October 2024) <<https://www.imf.org/en/Publications/GFSR/Issues/2024/10/22/global-financial-stability-report-october-2024>> accessed 12 December 2024.

IMF, 'Lessons of the Financial Crisis for Future Regulation of Financial Institutions and Markets and for Liquidity Management' (IMF, February 2009) <<https://www.imf.org/external/np/pp/eng/2009/020409.pdf>> accessed 10 December 2024.

Jahangir R, 'Peer-to-Peer (P2P) Lending' [2019] 30(4) Educational Administration Theory and Practice journal 89-97.

Kalodimos J, Financial Disclosure under Regulatory Fragmentation (Oregon State University College of Business Policy Insights Working Paper, written 11 November 2024, posted 16 April 2024 [last revised 17 November 2024]) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4785824> accessed 18 July 2025.

Lee J, 'Investor Protection on Crowdfunding Platforms' in Pietro Ortolani and Marije Louisse (eds), The EU Crowdfunding Regulation (Oxford University Press 2021) 123.

Lehmann A, 'Emerging Europe and the Capital Markets Union' (Bruegel, September 2020) <https://www.bruegel.org/system/files/wp_attachments/PC-17-2020-170920.pdf> accessed 17 December 2024.

Lendermarket, 'P2P Lending Industry: How Is It Regulated Within Europe?' (Lendermarket, 2022) <<https://lendermarket.com/blog/p2p-lending-industry-how-is-it-regulated-within-europe/>> accessed 17 December 2024.

Lenz R, Peer-to-Peer Lending: Opportunities and Risks (JSTOR, 2016) <<https://www.jstor.org/stable/24890927>> accessed 6 December 2024.

Li D and others, 'Credit Risk Assessment Management in China's P2P Lending Platforms' [2021] 28(4) 1145.

The Balance Between Consumer Protection and Innovation in the Fintech sector in Peer-2-Peer Lending

Linklaters, 'Political Agreement on New Consumer Credit Directive' (*Linklaters*, 5 May 2023) <<https://www.linklaters.com/en/knowledge/publications/alerts-newsletters-and-guides/2023/may/05/political-agreement-on-new-consumer-credit-directive>> accessed 18 December 2024.

Lorente C and Schmukler S, 'The Fintech Revolution: A Threat to Global Banking?' (*World Bank Group*, 2018) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3255725> accessed 10 December 2024.

Lynn, 'How Peer-to-Peer Lending Supports Financial Inclusion' (*Funding Societies*, 8 November 2018) <<https://blog.fundingsocieties.com/fintech/how-peer-to-peer-lending-supports-financial-inclusion/>> accessed 5 December 2024.

McConnel L and Smith R, *Research Methods in Human Rights* (Routledge, 2018) 51.

Mintos, 'How does Core Loans diversify the portfolio?' <<https://help.mintos.com/hc/en-us/articles/360001769437-How-does-Core-Loans-diversify-the-portfolio>> accessed 15 March 2025.

Mintos, 'Safeguarding of Investors' Assets on Mintos Following MiFID II' (*Mintos*, 8 June 2022) <<https://www.mintos.com/blog/safeguarding-of-investors-assets-on-mintos-following-mifid-ii/>> accessed 20 March 2025.

Mintos, 'Terms and Conditions of Mintos Investment Platform' <<https://assets.mintos.com/50659FA2-CE35-2962-E51D-E2720DF187C0.pdf>> accessed 15 March 2025.

Mintos, 'What are Notes?' <<https://help.mintos.com/hc/en-us/articles/5625282806417-What-are-Notes>> accessed 15 March 2025.

Mintos, 'What is a Prospectus?' (*Mintos*, 18 December 2024) <<https://www.mintos.com/blog/what-is-a-prospectus/>> accessed 15 March 2025.

Mintos, 'What is a buyback obligation?' (*Mintos*, 2 April 2024) <<https://www.mintos.com/blog/what-is-a-buyback-obligation/>> accessed 16 March 2025.

The Balance Between Consumer Protection and Innovation in the Fintech sector in Peer-2-Peer Lending

Mintos, 'What is the Suitability and Appropriateness assessment and how does it affect me?' <<https://help.mintos.com/hc/en-us/articles/6173936149649-What-is-the-Suitability-and-Appropriateness-assessment-and-how-does-it-affect-me>> accessed 1 September 2025.

Mintos, 'Where can I find more detailed legal and risk documentation?' (*Mintos*) <<https://help.mintos.com/hc/en-us/articles/36607100051089-Where-can-I-find-more-detailed-legal-and-risk-documentation>> accessed 15 March 2025.

Mintos, 'How do I create a company account?' <<https://help.mintos.com/hc/en-us/articles/27923538033297-How-do-I-create-a-company-account>> accessed 15 March 2025.

Mintos, 'How do I invest?' <<https://help.mintos.com/hc/en-us/articles/115002860245-How-do-I-invest>> accessed 1 September 2025.

Mintos, 'How does Core Loans diversify the portfolio?' <<https://help.mintos.com/hc/en-us/articles/360001769437-How-does-Core-Loans-diversify-the-portfolio>> accessed 15 March 2025.

Mintos, 'What Are Automated Portfolios?' (*Mintos*, 13 February 2025) <<https://help.mintos.com/hc/en-us/articles/360011842677-What-are-automated-portfolios>> accessed 15 March 2025.

Mintos, 'What is Mintos?' <<https://help.mintos.com/hc/en-us/articles/115002857885-What-is-Mintos>> accessed 15 March 2025.

Mintos, 'What is the Suitability and Appropriateness assessment and how does it affect me?' (*Mintos*, 5 August 2024) <https://help.mintos.com/hc/en-us/articles/6173936149649-What-is-the-Suitability-and-Appropriateness-assessment-and-how-does-it-affect-me> accessed 15 March 2025.

Oh E Y and Rosenkranz P, 'Determinants of Peer-to-Peer Lending Expansion: The Roles of Financial Development and Financial Literacy.' [2022] 2 *Journal of FinTech* 2250001.

Olaiya O P and others, 'RegTech Solutions: Enhancing Compliance and Risk Management in the Financial Industry' [2024] 20 *GSC Advanced Research and Reviews* 008–015.

The Balance Between Consumer Protection and Innovation in the Fintech sector in Peer-2-Peer Lending

Pascual A G and Natalucci F, 'Fast-Moving FinTech Poses Challenge for Regulators' (*IMF*, 13 April 2022) <<https://www.imf.org/en/Blogs/Articles/2022/04/13/blog041322-sm2022-gfsr-ch3>> accessed 10 December 2024.

Pelkmans J and Renda A, 'How Can EU Legislation Enable and/or Disable Innovation' (*European Commission*, July 2014) <https://ec.europa.eu/futurium/en/system/files/ged/39-how_can_eu_legislation_enable_and-or_disable_innovation.pdf> accessed 13 December 2024.

P2P Empire, 'P2P Lending with Buyback Guarantee' (*P2P Empire*) <<https://p2pempire.com/en/p2p-lending-with-buyback-guarantee>> accessed 1 May 2025.

Pointner W & Raunig B, 'A primer on peer-to-peer lending: immediate financial intermediation in practice' [2018] *Monetary Policy & the Economy*, Oesterreichische Nationalbank 36-51.

PwC, Ortec Finance & VU University Amsterdam, MiFID II: Suitability and Appropriateness - Practical Guidelines for Investment Services (*PwC*, September 2016) <https://research.vu.nl/ws/portalfiles/portal/66310936/MiFID_II_white_paper_PwC_Ortec_Finance_VU_sept_2016.pdf> accessed 15 March 2025.

PwC, 'PRIIPs Regulation and the New Key Information Document (KID)' (*PwC*) <<https://www.pwc.com/it/it/publications/assets/docs/priips-regulation-and-the-new-jid.pdf>> accessed 25 May 2025.

PwC, "Markets in Financial Instruments Directive II (MiFID II) - Level 2: ESMA's Technical Advice to the Commission on MiFID II and MiFIR" (*PwC*, February 2015) <<https://www.pwc.lu/en/mifid/docs/pwc-markets-in-financial-instruments-directive-2-mifid-2-level-2.pdf>> accessed 12 June 2025.

Renton P, 'Understanding Peer-to-Peer Lending' (*Fintech Nexus*, 2015) <<https://www.fintech-nexus.com/Understanding-Peer-to-Peer-Lending.pdf>> accessed 5 December 2024.

Restoy F, 'Fintech Regulation: How to Achieve a Level Playing Field' (*BIS*, February 2021) <<https://www.bis.org/fsi/fsipapers17.pdf>> accessed 13 December 2024.

The Balance Between Consumer Protection and Innovation in the Fintech sector in Peer-2-Peer Lending

Rupeika-Apoga R, 'FinTech Development and Regulatory Scrutiny: A Contradiction? The Case of Latvia' [2022] 10(9) Risks 167.

Schneider H, 'Europe's Innovation Problem: Trying to Regulate the Future' (*GIS Reports*, 2024) <<https://www.gisreportsonline.com/r/innovation-regulation/>> accessed 13 December 2024.

The Investing and Saving Alliance (TISA), 'Risk Warnings Summary Report' (*TISA*, March 2024) <<https://www.tisa.uk.com/wp-content/uploads/2024/03/Risk-Warnings-Summary-Report.pdf>> accessed 16 January 2025.

Trojáková T, Credit Risk Modelling on P2P Markets (*Masaryk University*, 2022) <https://is.muni.cz/th/hrskz/Credit_Risk_Modelling_on_P2P_Markets.pdf> accessed 1 May 2025.

Verified Market Research, 'Europe Peer-to-Peer (P2P) Lending Market' (*VMR*, May 2024) <<https://www.verifiedmarketresearch.com/product/europe-peer-to-peer-p2p-lending-market/>> accessed 17 December 2025.

World Bank, 'Crowdfunding's Potential for the Developing World' (*World Bank*, 2013) <<https://documents.worldbank.org/en/publication/documents-reports/documentdetail/409841468327411701/crowdfundings-potential-for-the-developing-world>> accessed 15 December 2024.

World Bank, 'How Regulators Respond to FinTech: Evaluating the Different Approaches - Sandboxes and Beyond' (World Bank, 23 April 2020) <<https://documents1.worldbank.org/curated/en/579101587660589857/pdf/How-Regulators-Respond-To-FinTech-Evaluating-the-Different-Approaches-Sandboxes-and-Beyond.pdf>> accessed 12 December 2024.