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From Pockets to Boards: Legal Pathways for Individual Investment and Corporate Governance in Kosovo Startups - an EU Perspective

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ABSTRACT

This thesis adopts an EU perspective to examine the legal pathways through which individual investors can participate in startup financing in Kosovo, analyzing the extent to which Kosovo's legal framework enables and protects retail investment compared with the harmonized EU regulatory standard. The central research question is: to what extent does Kosovo law enable and protect retail investment in startups compared with the harmonized EU framework, and what need for reform remains? Using comparative legal analysis, the thesis examines the EU's regulatory framework for crowdfunding and investor protection — including Regulation (EU) 2020/1503 on European Crowdfunding Service Providers, MiFID II, and Directive 2013/34/EU — as the benchmark against which Kosovo law is assessed. The analysis reveals that the EU framework represents a sophisticated multilayered system balancing market access with robust retail investor protection through disclosure obligations, platform governance requirements, and investor categorization mechanisms. Kosovo, by contrast, lacks the regulatory architecture necessary to support equity crowdfunding and retail investment in startups at an equivalent standard. Key gaps identified include the absence of a dedicated crowdfunding framework, inadequate disclosure obligations, no investor categorization system, limited minority shareholder remedies, and weak enforcement capacity. The thesis concludes that Kosovo's EU accession trajectory provides both the framework and the incentive for reform, proposing a calibrated crowdfunding regime modelled on the ECSP Regulation, combined with strengthened minority shareholder remedies and institutional capacity building, as the foundation for a transparent and investor-friendly startup ecosystem aligned with EU standards.

ZUSAMMENFASSUNG

Diese Masterarbeit nimmt eine EU-Perspektive ein und untersucht die rechtlichen Möglichkeiten, durch die Einzelinvestoren in Kosovo an der Startup-Finanzierung teilnehmen können, und analysiert, inwieweit der kosovarische Rechtsrahmen Privatanleger-Investitionen im Vergleich zum harmonisierten EU-Regulierungsstandard ermöglicht und schützt. Die zentrale Forschungsfrage lautet: Inwieweit ermöglicht und schützt das kosovarische Recht Privatanleger-Investitionen in Startups im Vergleich zum harmonisierten EU-Rahmen, und welcher Reformbedarf besteht? Mittels vergleichender Rechtsanalyse untersucht die Arbeit den EU-Regulierungsrahmen für Crowdfunding und Anlegerschutz — einschließlich der Verordnung (EU) 2020/1503, MiFID II und der Richtlinie 2013/34/EU — als Maßstab, an dem das kosovarische Recht gemessen wird. Die Analyse zeigt, dass der EU-Rahmen ein ausgereiftes, vielschichtiges System darstellt, das Marktzugang mit robustem Anlegerschutz durch Offenlegungspflichten, PlattformGovernance-Anforderungen und Anlegerkategorisierungsmechanismen verbindet. Kosovo hingegen verfügt nicht über die regulatorische Infrastruktur, die für Equity-Crowdfunding und Privatanleger-Investitionen in Startups auf vergleichbarem Niveau erforderlich wäre. Die wesentlichen Lücken umfassen das Fehlen eines spezifischen Crowdfunding-Rahmens, unzureichende Offenlegungspflichten, kein Anlegerkategorisierungssystem, begrenzte Minderheitsaktionärsrechte sowie schwache Durchsetzungskapazitäten. Die Arbeit kommt zu dem Schluss, dass Kosovos EU-Beitrittsperspektive sowohl den Rahmen als auch den Anreiz für Reformen bietet, und schlägt einen kalibrierten Crowdfunding-Rahmen nach dem Vorbild der ECSP-Verordnung vor, kombiniert mit gestärkten Minderheitsaktionärsrechten und institutionellem Kapazitätsaufbau, als Grundlage für ein transparentes und anlegerfreundliches Startup-Ökosystem im Einklang mit EU-Standards.

Acknowledgements

I dedicate this thesis to an idea — one that I worked hard to develop from the very beginning. I wanted to write about something that directly affects me and the people I love: the pursuit of a better life through investment, both in Europe and in Kosovo.

I would like to express my sincere gratitude to my supervisor, Thomas Ratka, whose expertise in business and commercial law helped me navigate this thesis with precision and dedication. His guidance throughout this process has been invaluable.

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Finally, and most importantly, I thank my family, my friends, and my hometown. This thesis is for you.

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1. Introduction

The swift progress of digital finance has changed how businesses are financed and invested in. One of the most significant developments in this area is the emergence of crowdfunding — a mechanism for raising funds through online platforms by aggregating small contributions from large numbers of individual investors, including for startups and small and medium-sized enterprises (SMEs). Investment-based crowdfunding has become an increasingly prominent topic in the European Union as a means of broadening access to finance, stimulating innovation, and fostering entrepreneurial development.

At the same time, the emergence of crowdfunding has generated new challenges relating to investor protection, transparency, and corporate governance. Regulatory frameworks must strike a balance between enabling market access and providing adequate legal safeguards for retail investors, who typically possess less financial knowledge and face greater investment risk than professional market participants. In response, the European Union has progressively developed a harmonized legal basis for crowdfunding services and investor protection, including Regulation (EU) 2020/1503 on European Crowdfunding Service Providers (ECSP Regulation), MiFID II, and the relevant corporate reporting legislation.

This topic is of particular relevance in the context of Kosovo. One of the principal obstacles confronting startups and small businesses in Kosovo is access to finance, with traditional sources of funding — particularly bank loans — remaining largely inaccessible to earlystage businesses. Although alternative financing mechanisms have expanded considerably within the European Union, Kosovo lacks a comprehensive legislative framework governing crowdfunding and retail investor participation in startup financing. This gap creates uncertainty for both investors and entrepreneurs, potentially constraining investment activity and startup growth.

This thesis therefore examines the legal pathways through which individual investors can participate in startup financing without compromising investor protection and corporate governance standards. It focuses on the relationship between investment law, company law, and corporate governance rights in startup companies, adopting an EU perspective to assess the extent to which the existing legal framework in Kosovo is aligned with the development of European legal standards and principles.

The central research question is: to what extent does Kosovo law enable and protect retail investment in startups compared with the harmonized EU framework, and what reforms remain necessary? Subsidiary questions address the structure of EU crowdfunding regulation and its investor protection mechanisms; the corporate governance obligations applicable to companies receiving such investment under EU law; the extent to which private investment and investor protection are enforceable under Kosovo law; and the gaps and obstacles within Kosovo's existing legal framework that reform could address.

Methodologically, the thesis employs comparative legal analysis. It first examines relevant EU law governing crowdfunding, investor protection, and corporate transparency, before reviewing the Kosovo legal framework with respect to company law, investment regulation, and financial reporting requirements. The two systems are then compared, regulatory gaps and institutional challenges in Kosovo's legal system are identified, and potential areas for legal reform and harmonization with EU standards are proposed.

The thesis is structured in six substantive chapters. Chapter Two examines the concept of crowdfunding, retail investment, and startup financing, including the governance gap between venture capital and equity crowdfunding. Chapter Three analyses the EU legal framework for crowdfunding, investor protection, and transparency. Chapter Four examines the legal environment for startup investment and corporate governance in Kosovo. Chapter Five undertakes a comparative analysis of EU and Kosovo law. Chapter Six identifies the principal legal and institutional gaps in Kosovo and proposes targeted reforms. The thesis concludes by summarizing its key findings and considering Kosovo's prospects for alignment with EU standards in the field of startup financing and corporate governance.

2. Crowdfunding, Retail Investment and Startup Financing

Investment-based crowdfunding has emerged as a significant phenomenon at the intersection of finance, economics, and European international business law. It presents a viable capital-raising solution for SMEs while simultaneously offering retail investors access to new investment opportunities.

Crowdfunding is generally understood as an internet-based financing mechanism that connects entrepreneurs and SMEs with a large pool of investors who contribute relatively small amounts of capital, typically through equity or debt instruments.[1] This thesis focuses specifically on investment-based crowdfunding, where financial returns are expected, distinguishing it from donation-based or reward-based models. The central legal concern is the balance between facilitating access to finance for SMEs and ensuring adequate protection for retail investors participating in high-risk investment environments.

Jurisdictions characterized by low returns on traditional financial instruments often show increased interest in crowdfunding as an alternative investment channel. However, such environments also expose retail investors to higher levels of financial risk, requiring proportionate regulatory safeguards.[2]

2.1 Definition and Types of Crowdfunding

Crowdfunding derives from the broader concept of crowdsourcing, which refers to the use of collective input from a large number of individuals to achieve a common objective.[3] In contrast, crowdfunding specifically involves the contribution of capital rather than ideas or labor.

Belleflamme, Lambert and Schwienbacher define crowdfunding as an open call, primarily via the internet, for the provision of financial resources in exchange for future products, rewards, or equity participation.[4] Similarly, Mollick describes crowdfunding as

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[1] Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European Crowdfunding Service Providers [2020] OJ L 347/1, Arts 1–2.

[2] World Bank, *Crowdfunding's Potential for the Developing World* (World Bank 2013).

[3] OECD, *Financing SMEs and Entrepreneurs* (OECD Publishing 2022).

[4] Paul Belleflamme, Thomas Lambert and Armin Schwienbacher, 'Crowdfunding: Tapping the Right Crowd' (2014) 29 *Journal of Business Venturing* 585.

entrepreneurial efforts to raise funds from a large number of individuals through small contributions, without reliance on traditional financial intermediaries.[5] The key legal distinction is that crowdfunding introduces direct investment relationships between retail investors and issuers, raising specific regulatory concerns regarding investor protection, disclosure, and corporate governance.

Donation-based crowdfunding involves contributions made without any expectation of financial return. Backers are motivated by charitable or community objectives rather than investment considerations, and this model raises minimal regulatory concerns given that no financial claims are created between the contributor and the recipient.

Reward-based crowdfunding offers contributors a non-financial benefit in exchange for their contribution, such as early access to a product or a symbolic acknowledgement. Despite the significant scale achieved by platforms such as Kickstarter, this model falls outside the scope of financial services regulation, including the ECSP Regulation, as no financial claims or investment relationships are created.

Lending-based crowdfunding, also referred to as peer-to-peer lending, involves retail investors providing loans to businesses through an online platform. Investors receive interest payments and repayment of principal, creating a creditor relationship governed by financial services law. The ECSP Regulation accommodates this model through its loan facilitation provisions.

Equity-based crowdfunding — the primary concern of this thesis — involves the issuance of transferable securities, typically shares or profit-sharing arrangements, to retail investors through an online platform in exchange for capital contributions. Of all crowdfunding models, this form most directly engages questions of investor protection, corporate governance, and securities regulation, as it establishes a lasting ownership relationship between investors and the funded company.[6]

Crowdfunding represents more than a financing mechanism; it reflects a structural shift in how investment decisions are made. Unlike traditional financial systems, where investment is largely delegated to professional intermediaries such as banks, venture capital funds, and

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[5] Ethan Mollick, 'The Dynamics of Crowdfunding: An Exploratory Study' (2014) *29 Journal of Business Venturing* 1.

[6] Belleflamme, Lambert and Schwienbacher (n 4); Mollick (n 5)

asset managers, crowdfunding enables a broader group of individuals to participate directly in the allocation of capital. In this sense, crowdfunding expands access to finance for startups while simultaneously widening participation in investment activity. The growth of crowdfunding has therefore been associated with what some scholars describe as the democratization of finance, whereby lower investment thresholds and direct access to investment opportunities reduce the distance between ordinary citizens and financial decision-making.[7]

Investment crowdfunding is best understood as the public offering of unregistered securities through an independent online platform, with the platform acting as a gatekeeper between issuers and investors. Schwartz argues that the design of the legal framework matters, but that effective market functioning also depends on private ordering and platform incentives.[8]

2.2 Advantages and Challenges of Startup Financing

Alternative financing mechanisms have become increasingly important in supporting entrepreneurship and innovation, particularly in environments where traditional sources of capital remain limited.[9]

Innovative startups frequently encounter difficulties in obtaining conventional bank financing because they often lack collateral and stable revenue streams. As a result, equitybased financing mechanisms, particularly venture capital, have developed as an important source of funding for firms whose value derives primarily from innovation, intellectual capital, and growth potential rather than tangible assets.[10]

Venture capital financing is often regarded as a critical driver of innovation because it supports firms operating in technology-intensive sectors where traditional financing mechanisms are frequently unavailable. Startups frequently face funding gaps during their early stages of development due to their limited operating history, lack of tangible collateral, and uncertain business prospects. Venture capital emerged as a response to these market

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[7] Belleflamme, Lambert and Schwienbacher (n 4) 588–590.
[8] Andrew A Schwartz, *Investment Crowdfunding* (Oxford University Press 2023) ch 1, ch 5.
[9] UNCTAD, *World Investment Report 2024* (United Nations 2024) 112–118.
[10] John Armour and Douglas Cumming, 'The Legislative Road to Silicon Valley' (2006) 58 *Oxford Economic Papers* 596, 598.

imperfections by providing equity financing to high-risk, high-growth enterprises that would otherwise struggle to attract investment.[11]

Despite its importance, venture capital remains largely inaccessible to ordinary retail investors. Regulatory restrictions, investor sophistication requirements, and high minimum investment thresholds have historically limited participation in venture financing to institutional investors and high-net-worth individuals. This exclusivity contributed to the emergence of crowdfunding as a mechanism through which smaller investors can gain access to early-stage investment opportunities, while enabling startups to diversify their sources of finance.[12]

One of the principal advantages of crowdfunding for startups is its ability to broaden access to capital beyond traditional financing channels. By connecting entrepreneurs directly with a large pool of individual investors, crowdfunding may reduce dependence on banks and venture capital investors. Furthermore, crowdfunding allows investors to support projects they consider socially, environmentally, or economically valuable, creating a financing model that combines capital formation with greater public participation in investment decisions.

Nevertheless, crowdfunding faces significant challenges. The sector has experienced concerns relating to investor protection, inadequate disclosure, and the risk of inappropriate investment products being marketed to inexperienced investors. Regulatory authorities across Europe have therefore emphasized transparency requirements, platform supervision, and investor safeguards as necessary conditions for sustainable market development.[13]

A defining characteristic of entrepreneurial finance is the severity of information asymmetry between entrepreneurs and prospective investors. Entrepreneurs typically possess private information regarding the quality of their projects and their own capabilities that outside investors cannot readily verify. This informational gap gives rise to two distinct problems: adverse selection, whereby investors are unable to reliably distinguish high-quality ventures from weaker ones prior to committing capital; and moral hazard, whereby entrepreneurs may pursue strategies that serve their own interests at the expense of investors once funding has

[11] Paul Gompers and Josh Lerner, 'The Venture Capital Revolution' (2001) 15(2) *Journal of Economic Perspectives* 145, 145.
[12] Gompers and Lerner (n 10) 152.
[13] Schwartz (n 8) ch 1.

been secured. These challenges are particularly acute in early-stage companies that lack an established operating history, audited financial statements, or a demonstrable track record in the market.[14]

2.3 The Governance Gap: Venture Capital versus Equity Crowdfunding

The governance challenges associated with startup financing can be explained through agency theory. Jensen and Meckling define an agency relationship as a contractual arrangement whereby one-party delegates decision-making authority to another. Because both parties are assumed to pursue their own interests, conflicts may arise between investors and managers. Agency costs consist of monitoring expenditures incurred by investors, bonding costs incurred by managers, and the residual loss resulting from remaining divergences of interest. These costs become particularly relevant when ownership and control are separated.[15][16]

A useful distinction can be drawn between venture capital financing and equity crowdfunding. Venture capital investors typically provide substantial capital contributions and frequently negotiate extensive governance rights, including board representation, veto rights, enhanced information rights, and influence over strategic business decisions. In this sense, venture capital investment is closely linked to active corporate governance and investor control.

Venture capital investors typically reduce agency risks through active monitoring and contractual governance mechanisms. Unlike passive investors, venture capitalists frequently obtain governance rights that allow them to influence managerial decision-making and monitor company performance.

The governance rights negotiated by venture capital investors are typically extensive and carefully calibrated to address the agency problems inherent in startup financing. These rights commonly include anti-dilution protections, which preserve the investor’s ownership

[14] Thomas Chemmanur and Paolo Fulghieri, 'Entrepreneurial Finance and Innovation' (2014) 27 *Review of Financial Studies* 1, 2–4

[15] Michael C Jensen and William H Meckling, 'Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure' (1976) 3 *Journal of Financial Economics* 305, 308.

[16] Jensen and Meckling (n 15) 308–309.

percentage in subsequent financing rounds; liquidation preferences, which ensure that venture capital investors recover their investment before founders receive proceeds in a sale or liquidation; drag-along rights, which allow majority investors to compel minority shareholders to participate in a sale; and information rights, which provide investors with regular access to financial data and management accounts. Collectively, these contractual mechanisms give venture capital investors both the information and the legal tools necessary to monitor and influence company performance, fundamentally distinguishing the venture capital relationship from that of a passive retail investor in an equity crowdfunding transaction.[17]

By contrast, crowdfunding investors generally contribute relatively small amounts of capital and often remain passive participants in the governance structure of the company. Rather than exercising direct control, retail investors rely primarily on regulatory safeguards, disclosure obligations, and investor protection mechanisms established by law. This creates a governance gap between venture capital financing and crowdfunding models: while both provide capital to startups, they differ significantly in the extent to which investors can participate in corporate decision-making. The ECSP Regulation focuses primarily on transparency, disclosure, and investor protection rather than on granting governance rights to retail investors. Consequently, crowdfunding investors are protected mainly through regulatory mechanisms rather than through direct participation in company management or board structures.[18]

2.4 Nominee Structures and Platform Substitutes for Governance Rights

Equity crowdfunding platforms have developed nominee structures as a mechanism to aggregate investor interests and partially substitute for the governance rights that retail investors would otherwise lack. For example, UK platform Seedrs acts as a nominee on behalf of its investors, signing investment agreements that grant pre-emption rights, tagalong rights, and negative control (veto rights) over significant corporate decisions, including

[17] Douglas Cumming and Sofia Johan, *Venture Capital and Private Equity Contracting* (2nd edn, Academic Press 2014) 187–195.
[18] John Armour and Luca Enriques, 'The Promise and Perils of Crowdfunding: Between Corporate Finance and Consumer Contracts' (2018) 81 *Modern Law Review* 51, 54.

winding-up, changes to the business, issuance of preference shares, transfer of assets, certain loans, and increases in director salaries beyond an agreed threshold.[19]

As the number of investors increases, the costs associated with monitoring managerial behavior also increase. Collective representation mechanisms such as nominee structures can reduce governance inefficiencies by centralizing investor oversight, thereby partially addressing the agency costs that arise from dispersed retail ownership.[20]

2.5 Coordination Failure and the Limits of Retail Investor Participation

In practice, most equity crowdfunding transactions do not employ nominee or collective governance mechanisms, primarily because of the high coordination costs faced by dispersed retail investors. The desire to reduce these costs can leave investors exposed to entrepreneur opportunism. Some equity crowdfunding transactions provide investors with securities that lack voting rights and are subordinated to entrepreneurs' equity claims, further limiting investor participation in governance.

Because monitoring is costly and individual investors may lack incentives to incur these costs independently, dispersed ownership structures often create collective-action problems. Investors may therefore rely on the decisions of others rather than undertaking independent assessments, further weakening the governance function of retail investor participation.[21]

2.6 The Herding Problem: Capital Deployment Without Governance

The investment pattern of equity crowdfunding investors — passive, largely uninformed, and widely diversified — resembles that of traditional retail investors in public equity markets rather than that of venture capitalists investing in early-stage companies. This creates a structural mismatch: investors are exposed to the risk’s characteristic of startup investment without the governance protections typically negotiated by professional investors.

[19] Armour and Enriques (n 18) 58.
[20] Jensen and Meckling (n 15) 308–309.
[21] Jensen and Meckling (n 15).

Investor empowerment requires more than access to investment opportunities; it also requires mechanisms that enable investors to engage collectively, share information, vote, and coordinate their efforts. Institutional investor platforms are relevant in this context precisely because they can aggregate investor voice and exert influence over corporate behavior and governance outcomes.[22]

[22] Wolf-Georg Ringe, 'Investor Empowerment for Sustainability' (2023) *Review of Economics* (De Gruyter) 44–45.

3. EU Legal Framework for Crowdfunding and Investor Protection

3.1 Background to EU Crowdfunding Regulation

The theoretical case for regulating crowdfunding markets rests on a well-established principle in comparative corporate law: that legal protection of outside investors is a prerequisite for the development of external finance. La Porta, Lopez-de-Silanes, Shleifer and Vishny have demonstrated that countries with stronger shareholder protections exhibit more developed capital markets, higher IPO activity, and greater access to external finance for firms.[23] This foundational insight underpins the regulatory rationale of the EU's harmonized crowdfunding framework.

Prior to the introduction of a harmonized legal framework, the crowdfunding market within the European Union was highly fragmented. Platforms operating across multiple Member States faced divergent licensing regimes and inconsistent regulatory requirements, significantly increasing compliance costs and limiting cross-border scalability. This fragmentation reduced access to finance for SMEs and created legal uncertainty regarding applicable regulatory regimes.

To address these issues, the European legislator adopted Regulation (EU) 2020/1503 on European Crowdfunding Service Providers (ECSP Regulation), establishing a harmonized legal framework for crowdfunding services across the Union. The Regulation introduces a single authorization system — commonly referred to as an EU passport — enabling crowdfunding service providers to operate across Member States on the basis of a unified regulatory framework. This significantly enhances cross-border capital mobility and reduces regulatory fragmentation. The Regulation also introduces enhanced investor protection measures, including mandatory disclosure obligations, governance requirements for platforms, and supervisory powers for national competent authorities.

The absence of a harmonized regulatory framework had been identified as a systemic problem by European supervisory authorities prior to legislative intervention. In 2014, the European Securities and Markets Authority published an opinion on investment-based crowdfunding, highlighting the risks of market fragmentation and regulatory arbitrage

[23] Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer and Robert Vishny, 'Investor Protection and Corporate Governance' (2000) 58 *Journal of Financial Economics* 3, 14–15.

arising from the divergence of national approaches across Member States. ESMA noted that this lack of consistency created significant uncertainty for platforms seeking to operate on a cross-border basis and for investors participating in offers governed by unfamiliar regulatory regimes.[24]

The ECSP Regulation must also be understood within the broader context of the Capital Markets Union initiative. Launched by the European Commission in 2015, the CMU Action Plan identified the fragmentation of capital markets across Member States as a structural obstacle to investment and growth throughout the EU. One of its central objectives was to develop alternative financing channels for SMEs, reducing their dependence on bank credit and broadening their access to investors across the single market. The ECSP Regulation represented one of the first concrete legislative deliverables of the CMU program, translating this policy objective directly into a binding regulatory framework.[25]

3.2 The ECSP Regulation: Structure and Key Provisions

The ECSP Regulation establishes uniform requirements for the authorization, operation, and supervision of crowdfunding service providers within the European Union. Article 1 defines the scope of the Regulation, including requirements relating to authorization, organizational governance, transparency, and marketing communications, as well as the EUR 5 million threshold applicable to crowdfunding offers. Key provisions include Articles 1–2 on scope and definitions; Articles 4 and 8 on governance and organizational requirements; and Articles 18–23 on investor protection and disclosure obligations. Recitals 5 and 6 highlight the need for harmonization due to fragmentation in national legal systems and barriers to cross-border crowdfunding activity.

Articles 23–24 of the ECSP Regulation require project owners to provide investors with a standardized disclosure document — the Key Investment Information Sheet — covering the nature and risks of the investment, the financial position of the issuer, the intended use of proceeds, platform fees, and any conflicts of interest. The KIIS must be intelligible to a nonspecialist audience and may not exceed a prescribed length, ensuring that retail investors

[24] European Securities and Markets Authority, Opinion: Investment-Based Crowdfunding (ESMA/2014/1378, ESMA 2014) 3–7
[25] European Commission, 'Action Plan on Building a Capital Markets Union' COM(2015) 468 final, 3–5

receive material information in an accessible and concise format rather than through the lengthy and complex prospectus-style documentation traditionally associated with securities offerings.[26] One of the most significant features of the ECSP framework is the distinction between sophisticated and non-sophisticated investors. Article 2(1)(k) defines sophisticated investors by reference to criteria including professional experience in the financial sector, portfolio size, and relevant employment history. Non-sophisticated investors — the default category for most retail participants — receive a higher level of regulatory protection, including mandatory risk warnings, a four-calendar-day reflection period during which they may withdraw their investment offer without penalty, and investment limits calibrated to their individual financial circumstances. This tiered approach reflects the recognition that ordinary retail investors operate at a meaningful informational and analytical disadvantage relative to professional market participants, and that proportionate safeguards are therefore necessary to ensure that participation in crowdfunding markets does not expose them to risks they are ill-equipped to assess.[27] The organizational requirements imposed on crowdfunding service providers under Articles 4 and 8 of the ECSP Regulation address conflicts of interest, remuneration policies, complaint handling procedures, and the segregation of client assets. These provisions reflect the recognition that crowdfunding platforms occupy a critical gatekeeping role within the investment ecosystem: they determine which projects are listed, present investment opportunities to retail investors, and manage the ongoing flow of information between issuers and investors. The integrity of the crowdfunding market as a whole therefore depends not only on the quality of the individual investment opportunities offered but on the governance standards to which the platforms facilitating those opportunities are held.[28]

[26] Regulation (EU) 2020/1503, Arts 23–24
[27] Regulation (EU) 2020/1503, Arts 2(1)(k), 21–23
[28] Regulation (EU) 2020/1503, Arts 4, 8

3.3 MiFID II and the Investor Protection Framework

Investor protection constitutes one of the central objectives of modern financial regulation. Corporate governance scholarship has increasingly focused on the risk that insiders — including managers and controlling shareholders — may divert corporate assets for private benefit at the expense of minority investors. Such conduct may take various forms, including excessive compensation, related-party transactions, self-dealing arrangements, and the appropriation of corporate opportunities. Effective investor protection frameworks therefore seek to reduce opportunities for expropriation and strengthen confidence in capital markets.[29]

The protection of investors extends beyond substantive legal rights and includes procedural mechanisms designed to prevent abusive conduct. These mechanisms typically include disclosure obligations, approval requirements for related-party transactions, access to legal remedies, and the ability of minority shareholders to challenge transactions that may unfairly benefit controlling parties. Such safeguards are particularly relevant in crowdfunding and startup financing contexts where information asymmetries between issuers and investors are especially pronounced.[30]

The expansion of retail participation in financial markets has intensified the need for effective investor protection mechanisms. Retail investors frequently possess less information, experience, and bargaining power than professional market participants. Directive 2014/65/EU (MiFID II) establishes a comprehensive regulatory framework for financial markets in the European Union, with a strong focus on investor protection and market transparency.[31]

MiFID II distinguishes between retail and professional clients. A retail client is defined as a client who does not qualify as a professional client and therefore receives the highest level of regulatory protection.[32] Key investor protection mechanisms under MiFID II include

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[29] Simeon Djankov and others, 'The Law and Economics of Self-Dealing' (2008) 88 *Journal of Financial Economics* 430, 430.
[30] Djankov and others (n 29) 433–436.
[31] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (MiFID II) [2014] OJ L 173/349.
[32] MiFID II, Art 4(1)(11) and Annex II.

suitability and appropriateness assessments, the obligation to provide fair, clear, and nonmisleading information, best execution requirements, and conduct of business rules requiring firms to act honestly, fairly, and professionally.

Although crowdfunding services under the ECSP Regulation fall outside the scope of MiFID II, the Regulation adopts similar investor protection principles, particularly through the distinction between sophisticated and non-sophisticated investors.[33] This reflects regulatory convergence between traditional financial markets and emerging crowdfunding platforms. The EU's commitment to strengthening retail investor protection is further demonstrated by the 2023 Retail Investment Package, which proposes targeted amendments to MiFID II and related legislation. The Package introduces enhanced value for money assessments for investment products, stricter rules on the use of inducements in the distribution of financial products, and clearer disclosure standards designed to enable retail investors to compare products and make informed investment decisions. Although the Package postdates the ECSP Regulation, it reinforces the broader trajectory of EU financial regulation toward stronger retail investor empowerment. For the purposes of this thesis, it is particularly relevant as an indicator of the direction in which EU standards continue to develop — further widening the regulatory gap between the EU framework and Kosovo's comparatively underdeveloped investor protection regime.[34]

3.4 Financial Transparency and Corporate Reporting under Directive 2013/34/EU

Directive 2013/34/EU harmonizes financial reporting obligations across EU Member States by establishing uniform rules for annual and consolidated financial statements.[35] The Directive applies proportionately to undertakings depending on size classification — micro, small, medium, and large enterprises — ensuring that regulatory burdens are proportionate to company size.

[33] Regulation (EU) 2020/1503, Recital 42.

[34] European Commission, 'Proposal for a Directive amending Directive 2014/65/EU' COM(2023) 279 final, 3–8

[35] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings [2013] OJ L 182/19.

Financial transparency is particularly relevant for crowdfunding markets, as SMEs seeking investment are required to provide reliable financial information to investors. The ECSP Regulation builds on these principles by requiring disclosure of key investment information to support informed investment decisions. Transparency and disclosure obligations play a fundamental role in reducing information asymmetries between companies and investors, and EU corporate governance policy emphasizes that accountability and disclosure contribute to investor confidence and market efficiency.[36]

3.5 Governance Rights of Crowdfunding Investors under EU Company Law

The ECSP Regulation establishes a robust framework governing the authorization and organizational requirements of crowdfunding platforms, imposing significant obligations on both service providers and issuers with respect to disclosure, governance, and investor protection. Critically, however, the Regulation does not itself confer governance rights on investors. The extent to which crowdfunding investors may participate in the management and decision-making of the companies they fund is determined not by the ECSP Regulation but by the national company law of the Member State in which the issuing company is incorporated. This distinction is fundamental to understanding the legal position of retail crowdfunding investors under EU law: while they are protected as investors through the regulatory framework, their position as shareholders or creditors within the funded company is governed by an entirely separate body of law.[37]

The governance rights available to equity crowdfunding investors depend on the legal form of the issuing company and the class of securities acquired. Where investors receive ordinary shares in a company incorporated as a private limited company or its equivalent, they are entitled to the rights attached to those shares under the applicable national company law. These rights typically include the right to vote at general meetings, the right to receive dividends on a pro-rata basis, the right to access information regarding the company's financial position, and the right to participate in any distribution of assets upon winding-up. However, the practical value of these rights for retail crowdfunding investors

[36] European Commission, Corporate Governance in the EU: Principles and Policy Objectives (European Commission 2019) 11–18.
[37] Regulation (EU) 2020/1503, Recital 10 and Art 1(2).

is significantly constrained by several structural features inherent to crowdfunding transactions, each of which is examined in turn below.[38]

First, the fragmentation of ownership that characterizes equity crowdfunding transactions — in which hundreds or thousands of investors each hold a minimal percentage of the company's share capital — means that individual investors lack the voting power necessary to meaningfully influence corporate decisions. Resolutions at general meetings are determined by majority vote, and a retail investor holding a fraction of one percent of the total share capital has no realistic prospect of affecting the outcome of any contested resolution. The governance rights formally conferred by national company law are therefore largely theoretical for the individual crowdfunding investor acting in isolation, existing on paper without translating into any practical capacity to shape the direction of the funded company.[39] Second, the securities issued through crowdfunding platforms are not always ordinary voting shares. Issuers frequently offer non-voting shares, profit-participation certificates, or subordinated debt instruments that carry economic entitlements but confer no governance rights whatsoever. In such cases, crowdfunding investors have no formal basis for participating in corporate decision-making regardless of the magnitude of their investment. While this practice is commercially rational from the founder's perspective — enabling capital to be raised without any dilution of control — it fundamentally severs the connection between investment and governance that equity participation is conventionally understood to entail, leaving retail investors with a financial stake in the company's performance but no voice in the decisions that determine it.[40]

Third, even where crowdfunding investors hold ordinary voting shares, the high coordination costs associated with organizing a widely dispersed shareholder base render the collective exercise of governance rights practically unfeasible. Individual retail investors face strong rational incentives to free-ride on the monitoring efforts of others rather than independently incurring the costs of oversight and engagement. The result is a governance vacuum in which founders and management operate with limited accountability to their investor base, notwithstanding the formal existence of shareholder

[38] Kraakman and others, *The Anatomy of Corporate Law* (3rd edn, Oxford University Press 2017) 35–42.
[39] Armour and Enriques, 'The Promise and Perils of Crowdfunding' (2018) 81 *Modern Law Review* 51, 54–56.
[40] Armour and Enriques, 'Individual Investors' Access to Crowdinvesting: Two Regulatory Models' in Cumming and Hornuf (eds), *The Economics of Crowdfunding* (Palgrave Macmillan 2018) 108–110.

rights under the applicable company law. The gap between legal entitlement and practical capacity is therefore not merely a function of the size of any individual holding, but reflects a deeper structural problem inherent to dispersed retail ownership as a governance mechanism.

It is against this backdrop that the EU regulatory framework has responded to the structural governance deficit primarily through the nominee structure model, which has emerged as a private ordering solution rather than a legislatively mandated requirement. Under this arrangement, a crowdfunding platform — or a specially constituted nominee entity — holds shares on behalf of all investors and exercises governance rights collectively in their name. As discussed in Chapter 2, platforms such as Seedrs in the United Kingdom have developed nominee structures that aggregate investor interests and provide collective representation in shareholder decisions, including pre-emption rights, tag-along rights, and negative control over specified corporate actions. This model partially bridges the gap between the governance rights formally conferred by national company law and the practical inability of dispersed retail investors to exercise those rights individually, offering a degree of meaningful investor participation that the regulatory framework alone does not provide.[41]

But nominee structures would still be a voluntary solution offered by platforms instead of a compulsory EU regulatory requirement. This Regulation does not impose any obligations for platforms to set up arrangements of nominees, nor do any requirements exist for investors to be represented in any particular way in the collective governance. This means that the availability and nature of governance safeguards for the crowdfunding investors depends on the platform and on the Member State involved, with a resulting two-tiers market: investors on platforms with nominee arrangements will have a certain level of participation in governance, while investors on platforms without nominee arrangements will only have regulatory protection.[42]

The interplay between the ECSP Regulation and EU company law therefore reveals a significant structural tension at the heart of the EU crowdfunding framework. The Regulation is designed to facilitate retail investment in startups by reducing barriers to market entry and ensuring investor protection through disclosure obligations and platform

[41] Armour and Enriques (n 18) 58.
[42] Armour and Enriques (n 18) 60–62.

oversight requirements. Yet the governance dimension of that investment — the rights that investors acquire as members or creditors of the funded company — falls largely outside the Regulation's scope and remains subject to national company laws that were not designed with the specific circumstances of crowdfunding investors in mind. This tension is directly relevant to the comparative analysis undertaken in Chapter 5. Kosovo law shares the same structural characteristic: its company law framework was developed for a traditional corporate financing context and does not address the particular governance needs of retail crowdfunding investors. The critical difference, however, is that EU Member States can draw on a mature and relatively investor-friendly body of national company law to fill the gaps left by the ECSP Regulation, whereas Kosovo's company law framework provides weaker baseline protections and lacks any platform-level governance mechanisms to compensate for those shortcomings.[43]

[43] Regulation (EU) 2020/1503, Recital 10 (fn 1); Kraakman and others (n 23) 35–42; La Porta and others (n 23) 7–8.

4. Kosovo Legal Framework for Startup Investment and Corporate Governance

4.1 Business Organizations and Corporate Structures

The Law on Business Organizations provides that a business organization acquires legal personality upon registration and exists as a separate legal entity from its founders and shareholders.[44] This principle is fundamental to startup investment, as it enables limited liability and reduces investor risk exposure.

The limited liability company (Sh.P.K.) is the most commonly used legal form for startups in Kosovo due to its flexible governance structure and simplified incorporation requirements. It allows founders to retain managerial control while enabling external investment participation. Compared to EU corporate frameworks, the Kosovo LLC model provides operational flexibility but remains less developed in terms of sophisticated investment instruments. Ownership transfer rules, including consent requirements and preemption rights, aim to preserve stability in early-stage companies but may limit liquidity and investment attractiveness.

The joint stock company provides a more structured corporate governance framework than the limited liability company and is the preferred vehicle for larger enterprises anticipating external investment from institutional or public sources. Under the Law on Business Organizations, the joint stock company is required to establish a board of directors responsible for strategic oversight and management supervision, hold annual shareholder meetings with defined voting procedures, and maintain formal records of shareholder decisions. Shareholders possess statutory rights to attend and vote at general meetings, receive dividends on a pro-rata basis, and access information regarding the company's financial position. These structural features more closely approximate EU corporate governance standards than the LLC model, making the joint stock company the more appropriate vehicle for startups anticipating crowdfunding investment from a large number of retail investors.

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[44] Law No 06/L-016 on Business Organizations (Kosovo), Arts 5–9.

4.2 Investment Regulation and Startup Financing

The Law on Foreign Investment ensures equal treatment of foreign and domestic investors, protection against expropriation, free transfer of funds, and access to dispute resolution mechanisms including arbitration.[45] Similarly, the Law on Sustainable Investments promotes strategic investments and aligns Kosovo's investment environment with international ESG principles and EU-oriented investment policies.[46] These legal instruments collectively form the entry point for investment into Kosovo's startup ecosystem.

Despite progress in legislative alignment with EU standards, challenges relating to legal certainty, institutional effectiveness, and enforcement continue to affect Kosovo's investment environment.[47] Access to finance remains one of the most significant constraints affecting business growth and entrepreneurial activity in developing and transition economies.[48]

Investment ecosystems characterized by diversified financing channels tend to provide greater opportunities for innovative enterprises and early-stage ventures.[49] Western Balkan economies continue to face structural challenges relating to investment mobilization, capital market development, and entrepreneurial finance.[50] Recent policy initiatives have sought to support entrepreneurship through innovation programs, startup promotion measures, and business development initiatives.[51]

Kosovo's financial sector remains predominantly bank-centered, with commercial banks continuing to represent the principal source of external financing available to businesses. The dominance of bank financing may create funding constraints for innovative startups that lack collateral or an established operating history. Consequently, alternative financing

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[45] Law No 04/L-220 on Foreign Investment (Kosovo), Arts 3–11.
[46] Law No 08/L-209 on Sustainable Investments (Kosovo), Arts 1–10.
[47] European Commission, Kosovo Report 2024 (Commission Staff Working Document) SWD(2024) final, 34–39.
[48] World Bank, *Business Enabling Environment Report: Kosovo* (World Bank 2024) 42–48.
[49] UNCTAD, *World Investment Report 2024* (United Nations 2024) 120–126.
[50] EBRD, *Transition Report 2024–25: Western Balkans* (EBRD 2024) 75–81.
[51] Kosovo Investment and Enterprise Support Agency, *Annual Report 2024* (KIESA 2024) 15–21.

mechanisms such as crowdfunding may offer a complementary source of capital for earlystage enterprises.

The dominance of bank financing in Kosovo creates structural disadvantages for innovative startups that do not fit the collateral-based lending model of commercial banks. The Central Bank of Kosovo's Financial Stability Report documents that commercial bank lending remains concentrated in sectors with tangible asset bases, including trade, construction, and real estate, while lending to technology-intensive or service-based startups represents a marginal share of total credit.[52]

These financing constraints are consistent with patterns observed across the Western Balkans region more broadly. The World Bank's Western Balkans Regular Economic Report identifies access to finance as one of the three principal structural constraints on private sector development in the region, alongside rule of law deficiencies and regulatory quality gaps. Firms in the Western Balkans are significantly more likely to identify access to finance as a major obstacle to growth than firms in comparable EU Member States, reflecting both the underdevelopment of capital markets and the limited availability of alternative financing instruments.[53]

The OECD's Western Balkans Competitiveness Outlook similarly identifies regulatory quality and access to finance as the two principal barriers to private sector development across the region. Kosovo's startup ecosystem, despite recent growth in incubation and acceleration programmes, continues to face a persistent gap between early-stage support and growth-stage financing — the so-called missing middle — which limits the ability of innovative firms to scale beyond their initial development phases.

Kosovo's legislative approximation to EU standards is not confined to a single domain. The 2022 Law on Protection of Competition demonstrates that the SAA's harmonization obligation has driven substantive reform across Kosovo's economic regulatory framework, bringing competition rules into alignment with Articles 101 and 102 TFEU — a model that could equally inform future reform of investment regulation.[54]

[52] Central Bank of Kosovo, *Financial Stability Report 2024* (CBK 2024) 28–35.
[53] World Bank, *Western Balkans Regular Economic Report No 24: Braving the Storms* (World Bank 2023) 18–22.
[54] Gentjan Skara, 'Reform of Kosovo Competition Law: Closer to EU Competition Law' (2023) 14 *Journal of European Competition Law & Practice* 171, 172.

4.3 Corporate Governance and Investor Protection in Kosovo Startups

Unlike the classical corporate governance model found in the United States, where governance debates primarily focus on conflicts between dispersed shareholders and managers, many European jurisdictions are characterized by concentrated ownership structures. In such systems, the principal governance challenge often arises from conflicts between controlling shareholders and minority investors. This distinction is particularly relevant for Kosovo, where startup companies are commonly founded and controlled by a small group of individuals who retain significant decision-making power after receiving external investment.[55]

Members of limited liability companies enjoy governance rights, including voting participation, appointment of managers, and decision-making authority. These rights enable investors to participate actively in corporate governance structures. Fiduciary duties imposed on managers include duties of care, loyalty, and avoidance of conflicts of interest — obligations essential for ensuring accountability and protecting investor interests.

However, enforcement mechanisms remain comparatively underdeveloped.[56]

Joint stock companies provide a more structured governance model, including shareholder meetings, board structures, and formal voting procedures. Boards of directors are responsible for oversight and strategic management. Investors frequently seek board representation in investment arrangements, reflecting the transition toward institutional governance structures. Minority shareholder protections exist, including access to information and legal remedies, but are less developed compared to EU corporate governance standards.

The presence of controlling shareholders creates the risk of minority shareholder expropriation through practices commonly referred to as self-dealing or tunnelling — the transfer of value from a company to individuals or entities associated with controlling shareholders through related-party transactions or other mechanisms not conducted on arm's-length terms. These risks are particularly significant in startup companies where

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[55] Luca Enriques and Paolo Volpin, 'Corporate Governance Reforms in Continental Europe' (2007) 21(1) *Journal of Economic Perspectives* 117, 117–118.
[56] Law No 06/L-016 on Business Organizations (Kosovo), Arts 136–143.

founders often maintain effective control despite raising capital from outside investors.[63] Corporate governance plays a central role in attracting investment and protecting shareholders in startup companies. Comparative corporate law scholarship defines corporate governance as the system through which companies are directed and controlled. Effective governance structures contribute to investor confidence by establishing mechanisms for accountability, oversight, and the protection of shareholder interests. The significance of corporate governance is particularly evident in companies seeking external financing, where governance arrangements ensure transparency, managerial accountability, and effective monitoring of decision-making.[57]

Pistor, Raiser and Gelfer argue that in transition economies the decisive issue is not simply whether shareholder and creditor rights exist on the books, but whether legal institutions can enforce those rights in practice. They observe that although formal legal reform substantially improved investor protection in several transition economies, these changes did not necessarily produce stronger law enforcement or greater access to external finance, concluding that legal transplants and formal reforms are insufficient unless supported by effective institutions. Kosovo's civil law heritage creates a structural constraint on investor protection.

La Porta and others demonstrate that civil law jurisdictions — particularly those in the French civil law tradition — afford the weakest protection to outside investors of all major legal families, and that civil law judges, unlike their common law counterparts, cannot apply a general fairness assessment to self-dealing transactions not explicitly prohibited by statute. Kosovo's company law shares this structural limitation.[58]

In countries with poor investor protection, control tends to concentrate in the hands of founders or families because dispersed ownership is structurally unsafe for outside investors. This dynamic is particularly relevant in Kosovo's startup environment: retail crowdfunding investors represent the most vulnerable class of outside investor, operating in a context where governance protections are limited and enforcement mechanisms are

[57] Marco Ventoruzzo and others, *Comparative Corporate Law* (West Academic Publishing 2015).

[58] La Porta and others (n 23) 8–9.

underdeveloped.[59] Even where outright expropriation is formally prohibited, weak legal protection does not eliminate the diversion of value from minority investors; it merely forces insiders into more wasteful methods of extracting private benefits. This concept — which La Porta and others describe as the 'expropriation technology' — is instructive for understanding the structural risks faced by crowdfunding investors in Kosovo.[60] International governance standards emphasize that investors should be afforded effective mechanisms for protecting their ownership rights and participating in major corporate decisions.

The OECD Principles identify shareholder protection as a central pillar of effective corporate governance.[61] Governance challenges identified across Southeast European jurisdictions include weak enforcement mechanisms, limited transparency, and insufficient protection of minority shareholders — challenges particularly relevant in transitional economies seeking to attract investment.[62] Good governance practices are increasingly recognized as important for SMEs and startups, improving investor confidence, facilitating access to finance, and contributing to long-term business sustainability.[63] The European Commission continues to emphasize the importance of strengthening rule of law institutions and improving regulatory enforcement in Kosovo to enhance investor confidence and business certainty.[64] Kosovo's limited liability company provides a relatively accessible corporate structure for startup formation, but is ill-suited in its current form to support equity crowdfunding investment.

The Law on Business Organizations enables member participation and imposes fiduciary duties on managers, but contains significant gaps with respect to the protections necessary for retail crowdfunding investors — including mandatory disclosure obligations, investor categorization mechanisms, platform authorization requirements, and minority shareholder remedies. The joint stock company offers a more structured governance framework and more closely approximates EU corporate governance standards, but even this form requires

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[59] La Porta and others (n 23) 13–14.
[60] La Porta and others (n 23) 5–6.
[61] OECD, *G20/OECD Principles of Corporate Governance* (OECD Publishing 2023) 43–55.
[62] OECD, *Corporate Governance in Southeast Europe: A Policy Framework* (OECD Publishing 2021) 18–32.
[63] International Finance Corporation, *Corporate Governance Methodology* (IFC 2019) 9–15.
[64] European Commission, Kosovo Report 2024 (Commission Staff Working Document) SWD(2024) final, 21–28.

substantial supplementary regulation before it could adequately support equity crowdfunding activity. In the absence of a dedicated crowdfunding framework, neither corporate form currently provides a sufficient legal basis for retail investment in startups consistent with the standards envisaged by the ECSP Regulation. Indeed, equity crowdfunding has been identified as a prohibited activity under Kosovo's current legal framework, meaning that legislative reform or the targeted incorporation of EU regulatory principles will be a necessary precondition for any lawful crowdfunding market to develop. Despite this, the Western Balkans region — including Kosovo — represents an increasingly attractive market for entrepreneurial finance, given its high levels of entrepreneurial activity and relatively low barriers to business formation, suggesting that the demand-side conditions for a regulated crowdfunding market already exist.[65][66][67]

[65] Law No 06/L-016 on Business Organizations (Kosovo), Arts 5–9 and 136–143.
[66] Regulation (EU) 2020/1503, Arts 1–2.
[67] Albulena Shala, 'Equity Crowdfunding: A Review of Legislation in Central and Eastern Europe' (2022) 4(1) *Proceedings of FEB Zagreb International Odyssey Conference on Economics and Business* 647, 649–651.

5. Comparative Analysis: EU Standards and Kosovo Law

As a candidate country, Kosovo is expected to progressively align its legal framework with the EU acquis, including standards relating to financial services, investor protection, and corporate governance.[68] Although Kosovo has adopted numerous reforms inspired by EU standards, implementation challenges remain evident when compared with the more comprehensive investor protection framework applicable within the European Union.

Empirical research on the relationship between regulatory design and crowdfunding market development suggests that the level and form of regulation significantly affects platform activity and investor participation. Hornuf and Schwienbacher find that light-touch securities regulation — exempting small crowdfunding offers from full prospectus requirements while maintaining basic disclosure and platform oversight obligations — is associated with higher levels of crowdfunding activity than either fully unregulated markets or comprehensively regulated securities markets. This finding supports the ECSP Regulation's calibrated approach of proportionate disclosure rather than full prospectus requirements, and has direct implications for Kosovo: a reform framework that imposes excessive regulatory burdens on crowdfunding platforms would likely suppress market development, while a complete absence of regulation would fail to protect retail investors.

5.1 From Access to Accountability: Retail Investment in the EU Framework

An important development within EU capital markets is the increasing participation of retail investors in investment activities traditionally reserved for institutional actors. Crowdfunding platforms have facilitated this transition by enabling individuals to invest directly in entrepreneurial ventures and startups. From a governance perspective, this trend raises questions regarding the relationship between dispersed retail ownership and corporate accountability. The EU regulatory framework attempts to balance two objectives: facilitating access to capital for innovative businesses and ensuring that retail investors receive adequate protection through disclosure obligations, transparency requirements, and suitability

[68] European Commission, Communication on EU Enlargement Policy 2024 COM(2024) final, 8–12.

assessments.[69] The Capital Markets Union (CMU) represents the EU's broader strategic effort to develop a single market for capital, enhancing financing options for businesses and creating new opportunities for savers and investors across Member States. A central goal of the CMU is to facilitate access to finance for SMEs and startups through alternatives to bank financing, while promoting retail investor participation through improved investor protection and financial literacy initiatives. Kosovo's legal framework has only partially addressed these objectives. While company law provides the basic structures for shareholder participation, specific mechanisms designed for crowdfunding and retail investor engagement remain underdeveloped compared with EU standards.

5.2 Shareholder Rights and Investor Protection: EU Standards and Kosovo Law

The EU Retail Investment Strategy aims to promote greater retail investor participation in capital markets by ensuring that investment products are designed to meet investors' needs and provide genuine value. The strategy seeks to enhance transparency, improve investor protection, and implement clearer disclosure rules to empower retail investors to make informed decisions. Despite high levels of household savings across the EU, retail participation in capital markets remains limited, and the strategy accordingly seeks to mobilize private savings and channel them into productive investments driving economic growth and innovation.

While EU governance standards require robust protection of shareholder rights, Kosovo law provides more limited safeguards in practice, particularly in relation to minority investors and startup financing structures.[70] The distinction between legal rules and enforcement quality is decisive in this context: Kosovo may adopt provisions modelled on EU-style investor protection, but where enforcement mechanisms are weak, those provisions will not deliver meaningful protection in practice.

Armour and Enriques identify two broad regulatory models governing individual investor access to equity crowdfunding. The first — the disclosure model — relies primarily on

[69] Belleflamme, Lambert and Schwienbacher (n 4) 588–590.
[70] OECD, *G20/OECD Principles of Corporate Governance* (OECD Publishing 2023) 43–60.

mandatory disclosure of material information by issuers and platforms, combined with investor self-assessment tools, to enable informed investment decisions. The second — the substantive protection model — imposes binding investment limits on retail investors calibrated to their individual financial capacity. The ECSP Regulation adopts elements of both: it requires extensive disclosure through the KIIS requirement while simultaneously imposing investment limits and appropriateness assessments for non-sophisticated investors. Kosovo's current legal framework corresponds to neither model. It lacks both a systematic disclosure regime applicable to crowdfunding issuers and any form of investment limit or appropriateness assessment for retail investors participating in startup financing. This represents not merely a technical gap but a structural absence: there is currently no legal framework in Kosovo within which equity crowdfunding could operate with any meaningful degree of investor protection.[71]

5.3 The Governance Gap in Practice: Crowdfunding Investors and Corporate Decision-Making

The governance challenges facing retail investors in Kosovo startups must be understood against the background of what Shleifer and Vishny identify as the central agency problem in most of the world's corporations: not the conflict between dispersed shareholders and professional managers, but the conflict between controlling shareholders and minority investors. Where ownership is concentrated — as it typically is in Kosovo startups — the principal risk is that controlling founders will use their decision-making power to extract private benefits at the expense of outside investors rather than maximising firm value for all shareholders.[72]

Empirical research by Morck, Shleifer and Vishny further demonstrates that at intermediate levels of insider ownership, managerial interests become entrenched rather than aligned with those of outside shareholders, reducing firm value and increasing the risk of value-extracting behaviour. In the Kosovo startup context, where founders typically retain majority ownership after receiving crowdfunding investment, this entrenchment dynamic is likely to

[71] John Armour and Luca Enriques, 'Individual Investors' Access to Crowdinvesting: Two Regulatory Models' in Douglas Cumming and Lars Hornuf (eds), *The Economics of Crowdfunding* (Palgrave Macmillan 2018) 105–112.

[72] Andrei Shleifer and Robert Vishny, 'A Survey of Corporate Governance' (1997) 52 *Journal of Finance* 737, 740–742.

be particularly pronounced given the absence of countervailing governance mechanisms such as independent boards, activist shareholders, or effective minority shareholder remedies.[73]

A comparison of EU corporate governance standards with the legal framework applicable in Kosovo demonstrates the importance of effective mechanisms aimed at preventing selfdealing and protecting minority shareholders. Comparative research suggests that disclosure requirements, independent review procedures, shareholder approval mechanisms, and accessible judicial remedies play a significant role in limiting opportunities for insider expropriation. The effectiveness of these measures is particularly relevant in startup environments where founders frequently occupy multiple governance roles and where ownership structures are highly concentrated.[74]

The European Commission's annual Kosovo reports document progress in enterprise policy, innovation, digital transformation, foreign investment screening, and the rule of law. In the area of enterprise and industrial policy, the Commission identifies institutional shortcomings in entrepreneurship and SME development. It also highlights the absence of a dedicated Law on Innovation and Entrepreneurship, gaps in the alignment of digital services with EU standards, incomplete harmonization of foreign investment screening legislation, and concerns regarding judicial independence — all of which affect the investment environment and investor confidence in Kosovo.

A direct comparison of the regulatory frameworks applicable to crowdfunding investors in the EU and Kosovo reveals significant disparities across five dimensions. First, with respect to disclosure, the ECSP Regulation requires issuers to prepare a Key Investment Information Sheet containing standardized material information presented in an accessible and intelligible format. Kosovo's Law on Accounting, Financial Reporting and Auditing imposes financial reporting obligations on registered entities, but these are not designed for investorfacing disclosure in a crowdfunding context and do not include the risk warnings, projectspecific information, or fee transparency requirements mandated under the ECSP framework. Second, with respect to platform authorization, the ECSP Regulation requires

[73] Randall Morck, Andrei Shleifer and Robert Vishny, 'Management Ownership and Market Valuation: An Empirical Analysis' (1988) 20 *Journal of Financial Economics* 293, 295–298.
[74] Djankov and others (n 29) 433–436.

all crowdfunding service providers to obtain authorization from a national competent authority and comply with ongoing supervisory obligations. Kosovo has no equivalent authorization regime for crowdfunding platforms. Third, with respect to investor categorization, the ECSP Regulation's sophisticated and non-sophisticated investor distinction — with its associated investment limits and reflection periods — has no counterpart in Kosovo law. Fourth, with respect to minority shareholder remedies, EU company law frameworks generally provide access to derivative actions, unfair prejudice remedies, and statutory rights to challenge related-party transactions. Kosovo's company law provides more limited remedies, particularly in relation to startup and LLC structures. Fifth, with respect to enforcement, EU Member States are required to designate competent authorities with specific supervisory and enforcement powers over crowdfunding service providers. Kosovo has no equivalent regulatory body with dedicated competence over crowdfunding or retail investment in startups.[75]

5.4 Enforcement Quality and the Limits of Legal Transplantation

Formal shareholder and creditor protections do not automatically translate into better financial development. The decisive factor is legal effectiveness — the capacity of institutions to enforce rights in practice rather than merely on paper.

This insight applies directly to the comparison between EU crowdfunding regulation and Kosovo law. The ECSP Regulation operates within a legal environment characterized by mature supervisory institutions, functioning courts, and established enforcement cultures. Kosovo's legal framework, by contrast, must be assessed against the backdrop of a transitional legal system in which the gap between formal legal rules and their practical enforcement remains significant. La Porta and others' distinction between legal rules and enforcement quality is therefore central to understanding why a legislative transplant of EU crowdfunding rules into Kosovo law, without corresponding institutional reform, would be unlikely to produce equivalent outcomes for retail investors.[76]

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[75] Regulation (EU) 2020/1503, Arts 2, 21–24; Law No 06/L-032 on Accounting, Financial Reporting and Auditing (Kosovo); Law No 06/L-016 on Business Organizations (Kosovo), Arts 136–143 [84]Pistor, Raiser and Gelfer (n 57) 341–344, 356–357. [85]La Porta and others (n 23) 7–8.
[76] La Porta and others (n 23) 7–8.

Coffee argues that functional convergence in corporate governance can occur even in the absence of formal legal convergence. Companies operating in jurisdictions with weak investor protection may voluntarily adopt governance practices associated with stronger legal systems — through cross-listing on foreign exchanges, adopting international financial reporting standards, or incorporating contractual governance protections in their constitutional documents — as a means of credibly committing to investor-friendly behaviour and accessing foreign capital on more favourable terms.

This insight has direct implications for Kosovo's reform strategy: while full legislative alignment with the ECSP framework would require significant regulatory infrastructure, Kosovo startups seeking to attract EU investors could in principle adopt contractual governance standards modelled on EU requirements, providing a meaningful degree of functional protection even in the absence of formal regulation.[77]

Ringe and Ruof argue that regulatory sandboxes — controlled environments in which fintech operators can test innovative business models under relaxed regulatory requirements and close supervisory oversight — offer a proportionate mechanism for regulators in developing markets to gain experience with novel financial services before committing to permanent legislative frameworks. For Kosovo, a sandbox approach to crowdfunding regulation could allow the competent authorities to develop supervisory expertise, identify the most significant investor protection risks in the local market, and design a regulatory framework

[77] John C Coffee Jr, 'The Future as History: The Prospects for Global Convergence in Corporate Governance and its Implications' (1999) 93 *Northwestern University Law Review* 641, 644–648.

calibrated to Kosovo's specific conditions rather than simply transposing EU provisions developed for more mature capital markets.[78]

[78] Wolf-Georg Ringe and Christopher Ruof, 'Keeping up with Innovation: A Regulatory Sandbox for Fintech' (2020) 4 *European Journal of Risk Regulation* 597, 599–603.

6. Legal Gaps and Recommendations for Reform

Future reforms concerning crowdfunding and startup investment in Kosovo should be designed with a view toward facilitating gradual approximation to the EU acquis and supporting Kosovo's EU integration objectives.[79]

6.1 Identified Legal Gaps in Kosovo's Investment and Governance Framework

Kosovo remains heavily dependent on traditional financing channels, whereas EU policy increasingly promotes diversified investment sources including venture capital, crowdfunding, and capital markets. OECD assessments confirm that non-bank financing instruments — capital markets, private equity, venture capital, crowdfunding, leasing, and factoring — remain underdeveloped or absent across most Western Balkan economies, including Kosovo. Access to finance remains a structural constraint, with approximately 20% of SMEs in the region credit-constrained and alternative finance sources remaining shallow. A persistent gap between incubation and growth-stage financing limits the ability of firms to scale successfully — the so-called 'missing middle' problem. Kosovo has developed a comparatively strong credit guarantee framework, which has contributed to significant SME credit growth; however, the broader alternative investment ecosystem remains underdeveloped.

In the area of corporate governance and investor protection, Kosovo lacks specific regulatory mechanisms for crowdfunding platforms, including authorization requirements, mandatory disclosure obligations for issuers, and risk warning requirements for investors. The absence of a dedicated crowdfunding framework creates uncertainty for both platforms and investors, and limits the ability of Kosovo's startup ecosystem to access the diversified financing channels that EU policy actively promotes.

[79] European Commission, Communication on EU Enlargement Policy 2024 COM(2024) final, 8–12.

6.2 Recommendations: Enabling Retail Investment and Strengthening Governance

Kosovo should consider adopting a regulatory framework specifically designed for crowdfunding and retail investment participation in startup financing. Such a framework should encourage broader access to capital while simultaneously ensuring adequate investor protection. In particular, legislative reforms could introduce disclosure requirements for issuers, platform authorization rules, risk warnings for investors, and governance obligations for funded companies. By enabling individuals to participate directly in startup financing, Kosovo could diversify available funding sources and reduce the financing gap faced by innovative enterprises, while alignment with EU standards would strengthen investor confidence and contribute to the development of a more transparent and accountable startup ecosystem.

The principal reform priority is not only legislative harmonization but institutional effectiveness. The experience of transition economies demonstrates that extensive legal transplants and rapid statutory reform are insufficient when the legal system cannot enforce rights consistently. For Kosovo, this implies that improving the corporate and crowdfunding framework must go hand in hand with stronger courts, clearer procedures, and more effective market oversight if the law is to have practical value for investors and startups.[80]

A further reform area concerns the treatment of entrepreneurial failure. Comparative evidence suggests that bankruptcy regimes offering a quicker fresh start may encourage entrepreneurial activity and increase demand for startup investment.[81]

OECD assessments suggest that governance reforms should focus not only on legislative harmonization but also on strengthening enforcement capacity and regulatory oversight.[82] Governance mechanisms such as formal board structures, disclosure policies, and internal control procedures may increase the attractiveness of startup enterprises to prospective investors.[83] Reducing regulatory barriers and improving access to finance are frequently

[80] Pistor, Raiser and Gelfer (n 57) 341–344, 356–357.
[81] Armour and Cumming (n 10) 602.
[82] OECD, *Corporate Governance in Southeast Europe: A Policy Framework* (OECD Publishing 2021) 65–70.
[83] International Finance Corporation, *Corporate Governance Methodology* (IFC 2019) 20–27.

identified as key policy priorities for encouraging private sector development.[84] Strengthening financial market infrastructure and broadening access to alternative finance remain important policy objectives throughout the Western Balkans region.[85]

Kosovo's track record of legal reform under SAA pressure — demonstrated, for example, by the 2022 competition law reform — suggests that EU accession incentives can drive substantive legislative change. However, enforcement remains the persistent gap even after legislative reform. The reform of Kosovo's investment and crowdfunding framework must therefore be accompanied by meaningful institutional capacity-building if it is to produce outcomes comparable to the EU regulatory standard.[86] A foundational reform priority is the strengthening of minority shareholder remedies in Kosovo company law.

Kraakman and others identify three core legal strategies for protecting minority shareholders: the affiliation strategy, requiring related-party transactions to be approved by disinterested parties; the trusteeship strategy, imposing fiduciary duties enforceable through derivative actions; and the governance rights strategy, giving minority shareholders direct rights to participate in or veto certain corporate decisions. Kosovo company law contains elements of the trusteeship strategy through its fiduciary duty provisions but lacks effective enforcement mechanisms and does not adequately implement the affiliation strategy regarding related-party transactions — a particularly significant gap in startups where founders frequently transact with entities they control.[87]

[84] World Bank, *Business Enabling Environment Report: Kosovo* (World Bank 2024) 55–62.

[85] EBRD, *Transition Report 2024–25: Western Balkans* (EBRD 2024) 82–87.
[86] Skara (n 52) 176.
[87] Reinier Kraakman and others, *The Anatomy of Corporate Law* (3rd edn, Oxford University Press 2017) 35–42

The OECD SME Policy Index for the Western Balkans identifies four specific policy actions directly relevant to Kosovo’s startup financing gap: the development of a legal framework for alternative finance instruments including crowdfunding and angel investment; the strengthening of capital market infrastructure to provide exit options for early-stage investors; the expansion of financial literacy and investor education programmes targeting entrepreneurs and retail investors; and the improvement of bankruptcy and insolvency procedures to reduce the stigma and financial cost associated with entrepreneurial failure. Each of these recommendations directly corresponds to a legal or institutional gap identified in this thesis and provides a practical reform roadmap grounded in comparative regional analysis rather than abstract legal transplantation.[88]

[88] OECD, *SME Policy Index: Western Balkans and Türkiye 2024* (OECD Publishing 2024) 17–25.

7. Conclusion

This thesis has examined a topic of fundamental importance to the development of modern financial systems: the legal pathways through which individual investors can participate in startup financing and, in doing so, acquire a stake in the governance of the enterprises they fund. The title — *From Pockets to Boards* — captures the central argument: that the journey from individual investment to meaningful corporate participation is not merely a financial transaction but a legal one, shaped at every stage by the quality of the regulatory framework within which it takes place.

The thesis has proceeded through several interconnected stages of analysis. It began by establishing the theoretical and conceptual foundations of crowdfunding and startup financing, examining the different models of crowdfunding and their distinct regulatory implications. It then analyzed the governance gap that separates venture capital investors — who typically negotiate extensive board rights, veto powers, and information entitlements — from retail crowdfunding investors, who contribute capital but frequently receive little in return by way of governance participation. The nominee structure, coordination costs, and the herding problem were identified as the principal mechanisms through which this gap manifests in practice, leaving retail investors exposed to the agency risks inherent in startup financing without the contractual or institutional protections available to professional investors.

The analysis of the EU legal framework demonstrated that the European legislator has developed a sophisticated and multi-layered response to these challenges. The ECSP Regulation, MiFID II, and the Directives collectively establish a framework that balances access to finance for SMEs with proportionate investor protection through disclosure obligations, platform governance requirements, and investor categorization. Kosovo, by contrast, possesses a legal framework that contains solid foundational elements — particularly in its Law on Business Organizations — but lacks the specific regulatory architecture necessary to support crowdfunding and retail investment in startups in a manner consistent with EU standards.

The comparative analysis revealed that the gap between EU and Kosovo law is not primarily legislative but institutional. Kosovo can adopt provisions modelled on EU law, and the SAA's harmonization obligation provides a strong political incentive to do so.

However, as the experience of other transition economies demonstrates, formal legal reform is insufficient where enforcement institutions lack the capacity to give those rules practical effect. The decisive question for Kosovo is therefore not only what rules to enact, but how to build the supervisory, judicial, and regulatory infrastructure necessary to make those rules work for investors and startups alike.

The recommendations advanced in Chapter Six reflect this conclusion. A calibrated crowdfunding framework modelled on the ECSP Regulation, adapted to Kosovo's market conditions, would provide the foundational legal infrastructure for retail investment in startups. Strengthened minority shareholder remedies, improved disclosure requirements, and a dedicated authorization regime for crowdfunding platforms would together address the most significant investor protection gaps identified in this thesis. These reforms should be accompanied by institutional capacity-building measures — including judicial training, regulatory oversight, and financial literacy initiatives — without which legislative reform alone will not deliver meaningful outcomes for investors.

Kosovo's trajectory toward EU accession provides both the framework and the incentive for this reform agenda. The development of a transparent, well-governed startup ecosystem is not only a legal priority but an economic one: access to diversified financing channels, including retail investment through regulated crowdfunding platforms, is a prerequisite for the kind of innovation-driven growth that EU membership is intended to support. From pockets to boards — from individual investment decisions to active participation in the governance of tomorrow's enterprises — the legal pathways examined in this thesis are, ultimately, pathways toward that broader goal.

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