



# REWARD BASED CROWDFUNDING IN SERBIA:

## Analysis of practices and recommendations for improving the legal framework for greater social and economic effect

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### SUMMARY

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# Introduction

Reward based crowdfunding, in accordance with global trends, is increasingly being used to fund a diverse range of projects in Serbia. It is a method particularly well suited to fund-raising for various development or creative projects, or projects with a social component and expressed public interest.

The goal of this study is to review the legal framework relevant for the implementation of crowdfunding campaigns in Serbia and to propose measures to eliminate unnecessary obstacles, as well as to implement certain measures that would provide for even greater popularization of crowdfunding. This study is dedicated exclusively to the analysis of reward based crowdfunding, since this method of funding is particularly well suited for youth entrepreneurship, social entrepreneurship, innovation and start-ups.

After a summary of the entire study, contained in the first part, the study consists of four sections. The second part presents the overall crowdfunding mechanism, in order to review its economic and social importance. The third part presents crowdfunding experiences in Serbia and assesses the potential of this form of funding. The fourth part presents an analysis of the legal framework relevant for implementing these campaigns in Serbia. Regulations and procedures are analysed that deal with the influx of foreign currency from abroad, along with regulations on taxation, reviewed through various legal forms that the campaign organizer may have. Other procedures have also been analysed regarding the sending of gifts and rewards after the campaign project is implemented. The fifth part uses the findings of the legal analysis and specific practices to propose recommendations for improving the legal framework and promoting crowdfunding. The overall conclusion is that with a few relatively easily implementable recommendations it would be possible to increase the scope of crowdfunding, which is important for projects that often do not have alternative means of funding - start-ups and cultural projects.

The study was drafted during the period February - June 2018. The approach in drafting the study consisted of an analysis of publicly available information on practices, a quantitative analysis applied to assess market potential, interviews about six financed projects and one specific crowdfunding platform, along with an analysis of relevant regulations.

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# Summary

## *The term and importance of reward based crowdfunding*

Crowdfunding is a project funding method that was created through websites, i.e. platforms that developed as mediators to connect the two sides of the market in various areas, including the area of funding. This form of funding was created and became particularly wide-spread during the years following the global economic crisis after 2008. It has reached significant amounts globally, measured in tens of billions of dollars. World Bank forecasts indicate that by 2020 the crowdfunding market will be valued at 96 billion dollars<sup>1</sup>. Crowdfunding is best developed in North-American markets, with intensive development in certain European countries, as well as Asia.

There are three key participants in the crowdfunding process. The campaign/project organizer, raising the funds to implement their idea, the platform that plays the role of mediator for an agreed-upon percentage of the funds collected, and project backers, i.e. persons investing their money in projects.

Regarding the complexity of the relationship between those supporting the campaign and those raising funds through a campaign, we can distinguish four dominant forms of crowdfunding: donation based crowdfunding, reward based crowdfunding, lending-based crowdfunding and equity crowdfunding. Donation based crowdfunding is the simplest model, where backers pay money without expecting to receive anything in return. At its core this model is no different from classical donations, but it collects money for a specific project within a precisely defined timeframe. Reward based crowdfunding is specific in that when collecting funds on a platform, backers who give money are promised and given, in return, certain rewards, so-called perks. Lending-based crowdfunding is a form of online lending where backers invest their money in a project, often at lower interest rates than those charged by commercial banks, yet higher than those they would obtain from a bank for a savings account. Equity based crowdfunding is the most complex form of crowdfunding, where backers investing money thus purchase a share in the legal entity they finance. It is important to note that these forms of crowdfunding are mutually complementary, i.e. they mostly do not compete with one another, because the motives of those supporting projects in each of the different forms of crowdfunding are different. It is also important to note that the degree of development of lending-based models and equity based models is strongly determined by the presence and restrictiveness of relevant regulations in individual countries, since they produce more complex and long-term relationships between campaign backers, campaign organizers, and the platform, with greater risk.

The reward based crowdfunding mechanism works so that the campaign organizer who wishes to raise funds to finance a project presents their project through videos or photos on an online crowdfunding platform. The organizer must first prepare the campaign well, notifying the general public, including their network of contacts, friends and relatives. The campaign lasts for a given period of time, and during this period all those who wish to support the project (potential backers) can pay a certain amount through the platform, receiving some of the perks offered in return. Every campaign, as a rule, has several categories of perks based on the amount of money paid - from symbolic to significant amounts, providing backers with the option of supporting the campaign with as much as they can and wish. These perks can be symbolic, or they can be specific products that are intended to be developed / produced within the project that is raising funds through the campaign. During and after the campaign the organizer communicates regularly with backers, responds to questions by potential backers, provides updates on the progress and completion of the project and sends out the perks if the project is successful.

This has produced another funding mechanism that contains elements of traditional forms of funding - donations, loans and equity shares, but with a specific element regarding the method of raising funds. Namely, unlike traditional methods where we have a single person as the investor - a natural person, legal person (company, bank, other financial institution) or the state (if the funding is public), here, due to the platform, we have a large number of individuals as

investors (natural and legal persons) paying as much as they want to participate in financing the proposed project. This collective nature with the presence of mediators, but in the form of the platform website, makes the legal framework itself complex and represents a challenge for legal regulation, which still varies across different countries.

Precisely due to the “crowd”, i.e. “public” nature of the fund-raising mechanism, it has developed in practice as very favourable for financing projects in areas of public importance, such as film, culture, community-based initiatives, financing start-ups (e.g. video games), as well as for projects in research and development, as well as for financing innovative technological solutions. Considering the nature of projects that contain, to an extent, public interest, and since the funding of these projects is provided from a large number of small individual contributions, crowdfunding by its nature reminds of public funds, i.e. budget financing. Namely, in many cases it can be understood as a form of supplementary budget financing, i.e. as a “voluntary contribution” (but it should not be wrongly understood as a replacement for budget financing of public goods and services). The collective nature of the funding mechanism is particularly useful as a measure of market or public interest in a certain idea presented in a campaign. Furthermore, it provides a connection with part of the community, and/or market around a certain idea or product.

Reward based crowdfunding is particularly well-suited for financing specific projects. The nature of projects appearing on reward based crowdfunding platforms varies, but their social and economic significance and later legal nature can be tracked through three dominant groups of projects.

The first group consists of mainly non-profit projects from areas with significant public interest (culture, art, education, grassroots initiatives). Since crowdfunding is a fund-raising mechanism providing for efficient collective choice, i.e. the prioritization and discovery of the will of a broader community of persons, it makes it possible to support projects the community wants. This is particularly important when providing funding for projects in areas where budget funds are, as a rule, limited, yet there is enough public interest. This group includes projects the state does not recognize sufficiently as public interest projects, even though they essentially are (e.g. human rights, feminism and women's rights, environmental protection). We note that this should not be the rule, i.e. crowdfunding should not replace budget support for these projects.

The second group consists of projects that are potentially profitable, but are in an early phase of product or service development. The public relevance of these projects is reflected in the fact that they often have an expressed creative, innovative and technical nature and represent a good basis for start-ups that can be drivers of economic growth and new employment (video games, innovation, IT, social entrepreneurship). The economic significance of crowdfunding in this case is reflected in increased access to finance, something that is generally insufficient in this early phase of business development and mainly relies only on acquaintances, family and personal savings. The crowdfunding mechanism provides access to a broader public to collect the necessary start-up funds to develop a business and implement innovative ideas. Primarily for projects that, due to scarce financing (by angel investors or other early business development funds) might not be implemented otherwise. In addition to the provision of funds, a significant benefit of the crowdfunding mechanism for this type of project is market testing. Namely, the campaign itself may fail due to insufficient public interest, which occurs in practice in over 60% of cases. This clearly tells the campaign organizer that the project is not yet ready for the market.

The third group consists of commercial projects by relatively experienced companies. These also often have an expressed research and development nature, i.e. a certain degree of innovation, and naturally carry a greater risk of failure, but the campaign organizer can, as a rule, more easily bear them as an already established company. Even though type one and type two projects are far more numerous, the third type of campaign draws a greater share of the total value of funds raised through crowdfunding. For companies that are behind this type of campaign, the advantages of crowdfunding, in addition to providing additional funds (not necessarily the primary motive for organizing the campaign) are reflected particularly in market research and networking with future buyers, as well as the promotion of the new product. This reduces the

risk of failure and provides better future product placement to buyers worldwide. For these projects, crowdfunding often represents sales with advance payment (contractual payment of the price in advance, so-called advance sales), dealing with a product that is yet to be produced (future item) at the time when the backers effect payment. Risk regarding delivery, i.e. the success of manufacture, remains with the buyers, i.e. the backers who financially support the manufacture, and/or development of the specific product (by paying in advance).

In addition to the financial risk, significantly diversified across a large number of individuals due to the crowdfunding mechanism, with each “financier” bearing the risk by choosing the amount to invest, the reward based crowdfunding mechanism (although far less than loan-based and equity based crowdfunding) bears certain business risks that must be taken into account. Thus, this form of crowdfunding is exposed both to business risks related to various e-commerce frauds, as well as the risk of copying the presented idea. Furthermore, it should be kept in mind that frequently the campaign organizers are not familiarized in advance with all the rights and obligations regarding the organization and realization of the campaign, often spanning several different markets, and thus legal systems.

#### *Project crowdfunding experiences in Serbia*

During recent years, in line with the global trend of the expansion of the practice of funding project ideas through crowdfunding, this practice in Serbia has been developing and growing year on year. Serbia mainly uses two crowdfunding models, donation based and reward based, due to the lower complexity of relationships between participants and simpler regulations.

The Council for Innovative Entrepreneurship and Information Technologies of the Government of the Republic of Serbia recognized crowdfunding in 2018 as important for the development of this area.

The German-Serbian Initiative for Sustainable Growth and Employment also recognized the potential that crowdfunding could have in Serbia, and has been supporting this innovative concept since 2017. After a study on challenges for youth entrepreneurship, noting that the greatest challenge is precisely access to capital, the German-Serbian Initiative for Sustainable Growth and Employment, in cooperation with the Brodoto social enterprise, started popularizing the concept of crowdfunding in Serbia. Activities include: Drafting of a study on the state of crowdfunding in Serbia, development of the informational-promotional website ([www.crowdfunding.rs](http://www.crowdfunding.rs)), organization of the “Belgrade Crowdfunding Convention”, education as part of the Crowdfunding Academy, implementation of numerous workshops across Serbia, educational video materials and the Facebook page crowdfunding.rs.

Current experiences regarding crowdfunding show that campaign organizers from Serbia mainly use foreign platforms. No Serbian platform for reward based crowdfunding has been developed during the past period. This is not surprising, since there are numerous benefits to using well established systems on popular foreign platforms.

Regarding project ideas financed by crowdfunding, they are fully in line with international experiences. Projects range from the area of creative industries (culture, art, video games, or design), to projects with elements of social entrepreneurship and projects of a significant innovative and technological nature, i.e. with elements of research and development. The experience of project campaigns from Serbia shows a significant number of unsuccessful campaigns, also in line with global practices.

Regarding successful campaigns, campaign organizers, particularly those with the first and second type of projects (in accordance with the typology from the previous section), often with little business experience, ran into various unforeseen obstacles during project implementation. These obstacles were mostly resolved by contriving various solutions on a case by case basis. All of the difficulties encountered can be grouped into two key categories:

- (i) Obstacles partly arising from their lack of business experience, lack of information and insufficiently well envisaged business plan,
- (ii) Obstacles arising from certain circumstances that are the result of an insufficiently adapted legal framework. These legal and procedural difficulties were related to:
  - Influx of foreign currency funds from abroad,
  - Taxation,
  - Procedures related to the shipping of perks and/or export of products that need to be delivered to the backers after the campaign, particularly noted in projects implemented by beginners in business.

One of the key findings of the analysis of current practices is that greater use of this form of project funding in Serbia requires increasing public knowledge about this form of funding, i.e. the opportunities it provides, as well as further dissemination of education to potential campaign organizers on project preparation, campaign preparation, and key factors for its successful implementation. It is particularly important, as part of the training of future (start-up) entrepreneurs, to train them in sales and product marketing, since these skills, reflected on the quality of campaign, are rather poorly developed in culture and education in Serbia.

Furthermore, significant potential was found to exist for additional growth of this form of project funding in Serbia. Namely, the two most frequent international platforms used to run campaigns from Serbia, Kickstarter and Indiegogo, were used to collect around 120 thousand dollars per year in 2015 and 2016. However, according to all the data collected (that did not necessarily cover all the campaigns implemented in Serbia), around 700 thousand dollars were collected in 2017 on three platforms only. In addition to the popular foreign platforms Kickstarter and Indiegogo, the Katana platform also had a lot of success in 2017. It was developed during the same year, through a scientific research project (EU - Horizon 2020 programme), specialized for financing innovative projects in the field of information technology applications and internet of things in food production.

Another point in favour of the significant space for increasing the crowdfunding market in Serbia is the Slovenian-Serbian development project in the field of the use of blockchain technologies to monitor the origin of foodstuffs, collecting as much as EUR 22.5 million in early 2018 through a specific form of crowdfunding - issuing their token, i.e. cryptocurrency through a mechanism for the initial public offer of tokens on a website specialized for this form of crowdfunding, by way of a related company in Slovenia. The dynamic development of cryptocurrencies and blockchain technologies that, due to resolving the issue of mutual lack of trust among a large number of individuals and thus replacing the role of one mediator in solving numerous common problems, hints at significant opportunities both for the collective creation of joint infrastructure in various areas of public interest, as well as for their crowdfunding.

The Serbian market, as well as the broader market of the region of South-Eastern Europe, due to the specific heritage in the field of education (especially technical) and other factors (culture, creativity, language skills), has extraordinary innovation potential<sup>ii</sup>. This potential is particularly expressed and important regarding the potential "offer" of crowdfunding projects coming from Serbia, able to attract unknown backers worldwide with their originality. Furthermore, there are several specific factors on the "demand" side speaking in favour of the great potential of this form of funding in Serbia. Namely, a large diaspora with links to the home country, as reflected in considerable annual remittance influx (up to 8% of the GDP), represents a significant source of potential crowdfunding by friends and relatives of the campaign organizer. Likewise, local networks are very strong, with considerable solidarity for projects originating from the local community. This is also reflected in the large number of humanitarian campaigns used during recent years as a method to fund medical treatments.

Having all of the above factors in mind, the estimate is that the project crowdfunding market in Serbia can easily approach an amount of several million euros, with last year's sum of 700 thousand dollars already comparable in importance with the value of existing state programmes

of incentives for innovative projects and start-ups (approximately EUR 2.5 million annually for grants and innovation by way of the Innovation Fund and approximately EUR 1.2 million for business start-up grants for small enterprises through a Ministry of Economy programme in 2017).

#### *Legal regulation of reward based crowdfunding*

With regards to Serbian regulations related to reward based crowdfunding, we should primarily bear in mind regulations related to the status of the campaign organizer, determining the tax treatment of funds collected through crowdfunding platforms. The focus is also on regulations related to foreign currency influx to Serbia, as well as regulations and procedures related to sending perks both within the country and abroad, Figure 1 on page 15. Namely, unlike larger markets where the organizers and the majority of backers, as well as the platform itself, are most frequently in the same country or same market (e.g. the EU), in Serbia, as a small open economy, the legal issue is further marked by the fact that the majority of transactions, i.e. legal relations, include the element of internationality. This makes the work of campaign organizers more complex and leads to numerous legal uncertainties in operation that could lead to the issues presented in detail in the segment on risks (2.3).

#### Status of the campaign organizer

With regards to the status of the campaign organizer, we should bear in mind that this could be a natural person not registered under any legal form. This occurs in practice with non-profit projects, as well as start-up projects. With certain non-profit campaigns, a person may implement the entire campaign independently, but if they have a profit interest, only up to the moment they start implementing the project. Start-up founders most frequently choose between the legal forms of limited liability company, entrepreneur or association. It is important to note that the choice of legal form affects the method of registration, scope of liability, business operations, tax treatment and costs of doing business. Regarding the business operations of a natural person, it is important to note that they can conduct their business as entrepreneurs, in accordance with the provisions of the Company Law<sup>iii</sup>.

When a legal person is behind the campaign organizer, we differentiate between non-profit organizations or companies. With non-profit projects, the campaign organizer may be a non-profit organization that may be founded or registered as an association (an NGO – non-governmental organization), endowment or foundation. In practice, they are mainly associations. Another legal person, and/or company may be behind the campaign organizer, most frequently organized as a limited liability company, the most frequent form of company in Serbia.

#### Foreign exchange influx from abroad and rules for preventing money laundering

The project crowdfunding mechanism in Serbia delves deeply into the field of payment regulations and foreign currency operations, specially regulated in all countries due to fraud-related risks. Rules for the prevention of money laundering should also be kept in mind. With regards to foreign currency influx from abroad based on crowdfunding through a foreign platform, we note that the banks implement the same procedure regardless of whether dealing with foreign currency received by a natural or legal person.

As for the treatment of foreign currency influx, we primarily need to keep in mind the provisions of the Law on Foreign Exchange Operations<sup>iv</sup>, as well as the two by-laws adopted based on this law by the National Bank of Serbia, namely the Decision on the conditions and method of conducting foreign payment operations<sup>v</sup> and the Instructions for implementing the Decision on the conditions and method of conducting foreign payment operations<sup>vi</sup>. These regulations envisage:

- The beneficiary of payments from abroad is obliged to provide the bank with details necessary to execute the payment based on this collection and to provide a document if it is prescribed as a condition for executing the payment;
- The bank in Serbia is obliged, when receiving funds from a foreign bank, including funds collected through a reward based crowdfunding platform, to notify the campaign organizer on the same day;

- The campaign organizer is obliged to submit to the bank, on the same or following day as of the date of receiving the notice from the bank, data necessary for executing the payment (i.e. to clarify from whom and on what grounds are they receiving the money), and to present a document as evidence if this is prescribed as a condition for executing the payment.

In accordance with current experiences of non-profit projects organized by a natural person, these foreign currency influxes have been, in fact, presented as gifts, with a statement issued to the bank since there was no other evidence; for projects that were by their nature closer to non-profit projects, but organized by a company, their grounds for the received fund were an invoice delivered to the foreign platform for services provided by them to the platform with the aim of presenting the project; with for-profit projects, the grounds were a contract on mediation for fundraising through a foreign platform (these are cases where it was not possible for the campaign organizer from Serbia to independently access the platform) and this contract was presented in the bank.

### *Codebook*

In accordance with the above instructions, the bank uses a Codebook for grounds of collection, payment and transfer in international payment operations<sup>vii</sup>. The bank establishes these codes, for statistical purposes. Reviewing the existing codebooks, bank officers (who mainly do not know what crowdfunding is) are having difficulties using the information obtained from clients to determine what code, i.e. what grounds to use to register this foreign currency influx, since the acceptable grounds in existing regulations related to foreign currency operations do not contain influx based on crowdfunding campaigns. Therefore, we may say there are problems when money collected through a crowdfunding platform needs to be transferred to a foreign currency account in Serbia. In practice, depending on the bank in Serbia and poor familiarity with the reward based crowdfunding mechanism, various (existing) grounds were used as relevant, most frequently - assistance and gifts from abroad, requiring a prepared relevant document (contract on a gift to a natural person, donation to an association, or in some cases just a statement by the natural person on the origin of the funds if there are no written grounds), and/or exchange of goods for a company.

### *Control of the origin of money*

We should also bear in mind that banks are currently implementing procedures related to the control of the origin of money based on the Law on the Prevention of Money Laundering and Financing of Terrorism<sup>viii</sup>. Banks must apply this law. It lists the bank as the bearer of the obligation of implementing actions and measures to know and monitor client operations that, among others, include collection of information on the purpose and intent of transactions and other data in accordance with this law. The foreign bank / other payment institution collecting money from the backers through the crowdfunding platform also performs risk assessments and implements measures related to the prevention of money laundering. We can see that the load is higher on the foreign bank / payment institution, since it must keep account of all backer transactions, unlike the bank in Serbia that only covers a single transaction.

However, the Serbian bank is also implementing measures and actions for the prevention of money laundering and financing of terrorism as prescribed by this law, and may request the Serbian campaign organizer at any moment to provide additional clarification, data and documentation related to the foreign currency transaction, and the banks have, without exception, done so in practice. Although, in the cases we have analysed, the business relations between the bank in Serbia and campaign organizer have already been established (since funds are incoming to their account in the bank, which was opened previously), in practice the bank has asked for further clarification, documentation, and/or campaign organizer statements when lacking relevant documentation, to ensure having undertaken all necessary actions and measures related to the prevention of money laundering.

## Taxation during project implementation

Regarding tax regulations, key differences in the legal regime result from the legal status of the campaign organizer. Namely, the subsequent tax treatment differs depending on whether it is a natural person or a legal person (non-profit organization or company).

If the funds have arrived to the account of a natural person, they may treat them two ways, as a gift or as a type of income, and their subsequent tax treatment depends on this.

In case the funds are treated as a gift, they have the obligation of paying 2.5% of the received amount as tax, in accordance with the Law on Property Tax<sup>x</sup>.

In a situation where the received amount is treated as a form of income - other revenue, a natural person has the obligation of paying income tax of 20% for the received funds (grounds: other revenues), in accordance with the Law on Personal Income Tax<sup>x</sup>.

Furthermore, if the income of an individual exceeds the annual limit for the annual personal income tax (relevant for larger campaigns of 20 thousand or more euros) they are obliged to pay the annual personal income tax of an additional 10%, and/or 15% for the taxable amount over the relevant limits.

Regarding legal persons, for funds acquired by an association (non-profit organization) founded to achieve an objective of public benefit, registered in accordance with the law - pays no gift tax for property received as a gift and serving exclusively for the purposes the association has been established for, in accordance with the Law on Property Tax<sup>xii</sup>.

When an association treats the received amount as a donation, and this must be covered by a donation agreement, it is fully exempt from paying taxes to the amount of the donation, but the donated funds must be used for the purpose they were received for and it must be registered for the business activity it received the donation for (Law on Donations and Humanitarian Aid<sup>xiii</sup>).

For companies, corporate income tax is calculated and paid against the achieved business income, as a difference between income (both that from the campaign and other based on the sale of the products and services of the company) and expenses. Thus a company collecting money through a campaign must calculate and pay corporate income tax in accordance with the Law on Corporate Income Tax<sup>xiii</sup>, i.e. it must calculate the money collected through the campaign as income when calculating the basis for corporate income tax.

On the other hand, with regards to a reward that represents a product by the legal person behind the campaign organizer and something that is, most frequently, being promoted by this campaign, we speak of advance sales of products. This foreign-currency influx is taxable, also in the manner and in accordance with the Law on Corporate Income Tax. The basis for the corporate income tax is taxable income. The corporate income tax rate is proportional and uniform and amounts to 15%.

Regarding the advance sale of products, it is important to keep in mind the provisions of the Law on Value Added Tax<sup>xiv</sup>. The subject matter of VAT taxation are the delivery of goods and provision of services performed by the taxpayer in Serbia with a reimbursement, as part of their business activities, as well as the import of goods to Serbia. Having in mind this provision, a difference must be made in whether the relevant product (perk) is exported abroad, or delivered to backers in Serbia.

- VAT is not calculated if the product is being exported.
- If, on the other hand, we are dealing with the trade and delivery of goods in Serbia, the price of product includes VAT against the value of the product, unless the company is outside the VAT system, i.e. if their annual turnover is under RSD 8 million, then VAT is not calculated. The general VAT rate for taxable trade in goods and services or import of goods is 20%.

### Other procedures (export, sending of rewards and gifts)

With reward based crowdfunding the campaign organizers commit to sending, after the (successful) campaign, promised perks to the backers who invested money on the platform to implement the campaign organizer's project.

With regards to the sending of products, the campaign organizer acts differently depending on whether the perks are being sent to backers from Serbia or abroad. Furthermore, there is a difference depending on whether the goods are being sent by a natural or legal person, thus a natural person may send the perk as a gift, while a legal person sends their product with an invoice. Finally, the size of the package also dictates the method of sending, thus there is a difference in whether it is sent as a parcel or a letterpost item.

The procedure of sending parcels in domestic transport in Serbia is simple and does not require a lot of time<sup>xv</sup>. Parcels in domestic transport are handed over sealed, i.e. pre-packed. Only the parcel address slip is filled in at the post office, stating, in addition to basic data on the parcel sender and recipient, the value of the item. When sending letterpost items by natural and legal persons in Serbia, the procedure is the simplest and cheapest, only the basic data for the recipient and sender need to be filled in.

If the sending of rewards by a legal person is treated as advance sales, and if the product by the campaign organizer is in fact a perk being sent to any location in Serbia, it is sent with a Serbian-language invoice, including value added tax if the sender is a VAT taxpayer.

Sending perks abroad requires the use of rules and procedures related to the export of products, along with procedures related to shipping items abroad. The procedure and relevant documentation differs on whether the sender is a legal or natural person. Furthermore, the very nature of the item may affect the sending and export regimes.

Nearly all goods being sent abroad from Serbia by post (with a few listed exceptions), whether as a letterpost item or parcel, are subject to a so-called Customs Control. Thus they are submitted as open, and the procedure in the post office is very time-consuming, since the packing of the product must be performed, and/or completed at the post office. If this involves a large number of shipments, a lot of time is spent to send them abroad. The average time spent by a sender in a post office to send a package abroad is 40 minutes<sup>xvi</sup>, and includes filling out the relevant documentation, reception by a post officer, customs control, measurement, packing and payment. The price of the service of sending a parcel abroad is not negligible<sup>xvii</sup>. A product send abroad by a legal person (export) is accompanied by the original invoice by the exporter without calculated VAT, in accordance with the Law on Value Added Tax. The invoice must be in the Serbian and in the English language, and the date of issue of the invoice must be the same as the date of sending the product. The sending of letterpost items is significantly cheaper<sup>xviii</sup> than the sending of parcels, regardless of whether sending them within Serbia or abroad.

**Figure 1.** Campaign organizer activities and obligations upon completing the campaign

	Non-profit projects		For-profit projects (LLC)
	Natural persons	Associations	
Funds received from abroad through a payment institution			x
Funds received from abroad through a bank	x	x	x
Grounds for foreign-currency payment			
Statement in the bank	x		
Statement/Agreement on a donation		x	
Invoice (indiegogo)			x
Contract (Kickstarter, mediator)			x
Tax			
2.5% for a gift	x	x	
20% for other income + 10/15% annual personal income tax (over the prescribed limit)	x		
0% for a donation		x	
15% as per the Law on Corporate Income Tax			x
Sending perks locally			
Sending parcels (Post Office)	x	x	x
Invoice including VAT (if in the VAT system)			x
Sending perks internationally			
Sending parcels (Post Office)	x	x	x
Customs procedure	x	x	x

Source: Authors

An overview has been produced of legislation at the level of the European Union and several relevant European countries in order to clearly review all existing and potential obstacles for the unencumbered functioning of crowdfunding in Serbia and to produce specific recommendations for the improvement of the functioning of this form of project funding. The conclusion is that there is no single legislation that regulates reward based crowdfunding at the European level, nor at the level of the individual countries observed. The only special legislation related to crowdfunding in developed EU countries like France is related to the founding and operation of equity and lending based crowdfunding platforms.

Since the focus of this study is on reward based crowdfunding, particularly on the legal treatment of the business operation of the campaign organizers who, in most cases, are collecting funds on foreign platforms, we will mainly reflect on the tax treatment, the treatment of the sending of perks, and certain aspects of payments. Namely, in regards to tax treatment, an approach similar in principle is used to tax these funds in various legislations, with potential differences only in the tax rates in effect. The tax treatment mostly depends on the status of the campaign creator, i.e. whether they are a natural, for-profit or non-profit legal person, and therefore the campaign organizer is either a taxpayer for income tax, corporate income tax, or if the projects are non-profit and contribute to goals of public interest, then under certain conditions there is no tax. Throughout all the countries reviewed transactions related to crowdfunding are controlled in accordance with European Union regulations (namely Directive 2015/849/EC on the prevention of money laundering and the Regulation<sup>xix</sup> on information accompanying transfers of funds). Both documents aim to prevent money laundering and application to any type of financial transaction, including crowdfunding<sup>xx</sup>. Regarding the procedure of sending shipments abroad in the reviewed countries, items are handed in sealed (unlike in Serbia), and when a natural person sends a parcel abroad, most procedures can be completed independently, at home, and under certain conditions and in certain countries the item need not even be handed over in person at the post office.

## ***Recommendations for improving the legal framework and increasing the use of crowdfunding in Serbia***

After the implemented study we may conclude that crowdfunding, as a form of raising funds for various project ideas, although not separately regulated, does exist in Serbia, and the implementation of projects from the moment the funds from the platform arrive to Serbia to the moment of sending out the perks is implemented on a case by case basis and depends on a number of different circumstances (from the understanding of the nature of this type of funding by various bank officials, tax administration, postal workers, to familiarity with positive regulations by the campaign organizers who, in their current practice, have largely relied on "figuring it out as they go"). In order to facilitate the recognition of crowdfunding in our legal system and stimulate campaign organizers to raise funds in this way to implement their ideas in areas of great social importance and scarce access to funding, work needs to continue along several tracks. Primarily, it is clear that promotion and the education of participants in this process has played a key role in successfully implemented campaigns, and this requires further work. The second recommendation is in regards to the introduction of additional incentives to encourage participants, based on the advantages of this type of funding. The third group of recommendations are related to simplifying the remaining procedures relevant for facilitating crowdfunding, regarding clarifications of the grounds for foreign currency influx to the country and postal procedures when sending perks abroad.

### **Education and promotion**

#### ***Education of potential campaign organizers***

The first general recommendation certainly relates to the need to implement various forms of trainings, i.e. continuing the current activities of the Crowdfunding Academy to educate potential campaign organizers on the rules and opportunities in crowdfunding. In regards to this it is particularly important to note that the curriculum for these trainings should also include: all relevant information related to the legal treatment, in Serbia, of funds collected through successful reward based crowdfunding campaigns on foreign platforms. Furthermore, the curriculum should include various techniques for producing business plans, i.e. the essentials of entrepreneurship, since familiarity with economics, the basics of business and finance is generally at a rather low level in Serbia among youth entering the labour market. Finally, when drafting business plans potential campaign creators need to be shown all the expenses they need to take into consideration regarding the implementation of the campaign. Furthermore, it is desirable and necessary for existing trainings programmes for entrepreneurs implemented by relevant institutions (Serbian Chamber of Commerce and Industry, Development Agency of Serbia, Technological Park in Belgrade, Innovation Fund, etc.) to include promotion of crowdfunding so that future entrepreneurs and existing start-ups can be introduced to this model of funding which is particularly favourable for the development of innovative ideas.

#### ***Education of relevant officials***

We should not forget that it is equally important to implement trainings for other participants in this process in Serbia, especially bank officers, postal workers in Serbia, tax administration officers, so that they understand crowdfunding, are introduced to various models of crowdfunding platforms, and the importance this method of funding has for implementing various types of projects in Serbia. Finally, it is necessary to point out, to each of them in their own domain, the regulations they can and should use regarding crowdfunding through crowdfunding platforms based on rewards, so that practice in Serbia becomes uniform, and to eliminate any doubts in the legality and legitimacy of funds thus collected by the campaign organizers.

### *Promotion and education in the financial sector (particularly for banks)*

Another recommendation is for commercial banks to treat innovative micro and small enterprises differently regarding risk assessment when awarding loans, in cases where they have previously successfully raised funds through reward based crowdfunding, since they have thus shown that they have significant potential (with their project idea) for survival on the market. In order to further stimulate banks to treat such aspects more favourable from the standpoint of risk, the National Bank of Serbia could consider the criteria for classification of bank assets by degree of risk, used as a basis for calculating bank reservations and thus reflecting the price of loans to certain categories of risk where specific placements to specific clients are sorted. Integrating a designation regarding previously raised project funds on a crowdfunding platform that a loan is sought for as a grounds for a more favourable classification of that specific loan from the aspect of risk for the bank would provide for cheaper loans to small enterprises. This treatment is justified because crowdfunding in itself represents a type of mechanism for testing the acceptance of an idea, and/or future product on the market (thereby contributing to risk mitigation, as described in detail in section 2.3).

### *Promotion and education of the general public*

Regarding the education and information of the general public in Serbia, it is certainly very important to provide more media coverage (radio, TV, daily press, websites) on the importance of crowdfunding, primarily with the aim of raising awareness on the existence and advantages of this type of funding and its importance regarding business start-up financing, and/or the implementation of project ideas. The website crowdfunding.rs can be further promoted for this purpose, already contributing to a certain extent to education and information of persons interested in crowdfunding in Serbia. Informing the general public on crowdfunding opportunities also contributes to expanding the circle of potential backers.

The Government Council for Innovative Entrepreneurship and Information Technologies recently included the promotion of crowdfunding in its list of priorities.

### Further incentives promoting reward based crowdfunding

Furthermore, in addition to campaigns and trainings, certain additional specific incentives could be considered for the use of reward based crowdfunding, relying on the benefits of this form of financing regarding the mitigation of the risk of project failure. We should bear in mind here that, despite the importance of reward based crowdfunding as an instrument for fundraising, particularly for projects in the field of culture, arts, labour and employment, science, education, or healthcare, under no condition may it be allowed for crowdfunding to be a justification for decreasing state investments in these areas. We should not lose sight of the fact that large projects in these areas need to be supported in an institutional manner, that the state must stand behind them since they require systemic solutions to implement them, and that these are, above all, projects of the greatest interest for the quality of life of society as a whole. Thus the existence of incentives should not have repercussions such as loss of exercise of rights guaranteed by the state (e.g. coverage of medical treatment expenses that should legally be borne by the Health Insurance Fund), but as their supplement, i.e. a correction for the existing system of taxation with additional “voluntary” tax (self-contribution) that contains an element of direction / prioritization of the use of “public” funds, i.e. the decision on a public interest project given priority by a certain social group (backers) whose association was enabled by existing crowdfunding platforms.

### *Tax benefits*

The following benefits are related to proposals for the introduction of tax exemptions for legal and natural persons who have raised funds, and/or invested funds based on donation and reward based crowdfunding.

The introduction of tax exemptions for (newly founded) legal persons may be considered to stimulate start-ups. In this case, the Law on Corporate Income Tax should include, as a grounds for tax exemption, donation and reward based crowdfunding, with a limit on the total amount.

This amendment of the Law on Corporate Income Tax ("Official Gazette of RS", No 25/2001, 80/2002, 80/2002 - other law, 43/2003, 84/2004, 18/2010, 101/2011, 119/2012, 47/2013, 108/2013, 68/2014 - other law, 142/2014, 91/2015 - authentic interpretation, 112/2015 and 113/2017), can be implemented by adding a new Article 44 a: "A taxpayer established during the preceding two years (company, and/or other legal person established to perform business activities with the purpose of gaining profits) shall be exempt from paying income tax on the grounds of funds received through donation or reward based crowdfunding platforms, up to the amount of e.g. EUR 100 thousand or another amount, under the condition that:

- 1) They provide evidence that the campaign creator (natural person as the owner or representative of the legal person, procurer) had e.g. at least 50 backers from at least 3 different states - thereby preventing abuse;
- 2) The campaign creator is registered in the company registry kept by the Business Registers Agency as a person for representation, manager, procurer, or holds another managerial role in the company seeking exemption.

To an amount of funds exceeding e.g. EUR 100 thousand or another amount, collected based on funds received through donation or reward based crowdfunding platforms, taxes shall be calculated and paid in accordance with the law."

#### *Incentives for potential backers*

In order to expand the circle of potential backers, for companies that wish to support projects on reward or donation based crowdfunding platforms, it would be desirable to amend the Law on Corporate Income Tax ("Official Gazette of RS", No 25/2001, 80/2002, 80/2002 - other law, 43/2003, 84/2004, 18/2010, 101/2011, 119/2012, 47/2013, 108/2013, 68/2014 - other law, 142/2014, 91/2015 - authentic interpretation, 112/2015 and 113/2017), under Article 15, by adding a new paragraph 10, stating: "Expenditures for investments into projects for which funds have been raised by way of donation or reward based crowdfunding shall be accepted as expenditures to the amount of at most up to 5% of total income".

#### *Incentives for natural persons - campaign organizers*

With the aim of tax exemption for natural persons, since the income from a crowdfunding campaign can be treated as income under the category "Other income" taxable by 20%, we propose that the Law on Personal Income Tax introduce a tax exemption for the grounds of donation or reward based crowdfunding up to a certain amount. The proposed amount of EUR 10 thousand is given as an example, and the specific amount of the limit should be further elaborated. Therefore, the proposal is for the Law on Personal Income Tax ("Official Gazette of RS", No 24/2001, 80/2002, 80/2002 - other law, 135/2004, 62/2006, 65/2006 - corrigendum, 31/2009, 44/2009, 18/2010, 50/2011, 91/2011 - CC decision, 7/2012 - harmonized RSD amt, 93/2012, 114/2012 - CC decision, 8/2013 - harmonized RSD amt, 47/2013, 48/2013 - corrigendum, 108/2013, 6/2014 - harmonized RSD amt, 57/2014, 68/2014 - other law, 5/2015 - harmonized RSD amt, 112/2015, 5/2016 - harmonized RSD amt, 7/2017 - harmonized RSD amt, 113/2017 and 7/2018 - harmonized RSD amt), under Article 9, paragraph 1, to include item 31, stating: "funds received by a natural person from a donation or reward based crowdfunding platform up to an amount of EUR 10 thousand".

The institution competent for implementing these recommendations within the Government of the Republic of Serbia is the Ministry of Finance.

#### *New financial incentives programme for innovations respecting the advantages of crowdfunding*

Having in mind current measures implemented by the Government of Serbia regarding incentives for innovative small and medium-sized enterprises, with many implemented by way of programmes by the Innovation Fund, existing programmes could be further enriched by the introduction of a new programme (e.g. through the Innovation Fund or another agency). This

new programme could provide organizers of projects in various areas that have an expressed innovative and scientific research component and that have successfully raised funds through a crowdfunding platform with or without rewards with additional financing from the budget of the Republic of Serbia to an amount proportional to the amount of funds raised through crowdfunding, with a potential limit regarding the maximum budget grant amount. The competent institution for implementing this recommendation is the Government of the Republic of Serbia through the Ministry of Finance, Ministry of Education, Science and Technological Development, and potentially - the Ministry of Economy.

#### Simplification of other procedures of relevance for reward based crowdfunding

##### *Creation of relevant grounds for foreign currency influx (supplement to the Codebook of the National Bank of Serbia)*

As for the treatment of foreign currency influx to Serbia, we should primarily have in mind the provisions of the Law on Foreign Currency Operations, i.e. the Instructions for implementing the Decision on the conditions and method of conducting foreign payment operations adopted based on that law. In accordance with the above instructions, the bank in Serbia uses a Codebook for grounds of collection, payment and transfer in international payment operations. The bank establishes these codes, for statistical purposes. Reviewing the existing codebooks, bank officers (who are generally not familiar with crowdfunding) are having difficulties using the information obtained from clients to determine what code, i.e. what grounds they should use to register this foreign currency influx, since the acceptable grounds in existing regulations related to foreign currency operations do not contain "influx based on crowdfunding campaigns". In order to resolve uncertainties when receiving foreign currency in a bank in Serbia, it would be desirable to supplement the Codebook of grounds of collection, payment and transfer in foreign payment operations, so that the segment "Current account-secondary income account", under the section - Aid and gifts-other sectors (code767) would be supplemented behind the words "fortune" with ", funds received with or in relation to donation or reward based crowdfunding platforms, mediating in the raising of funds for crowdfunding of projects", or add a new subtitle "crowdfunding of projects" and assign a new code. The competent institution for implementing this recommendation is the National Bank of Serbia.

#### *Simplification of postal procedures when sending perks abroad*

With regards to the Serbian Post Office procedure for sending items abroad, the time the campaign organizer needs to spend in a post office to send perks to backers can last up to around 40 minutes per item (parcel). This without a doubt has to do with the procedures of the Serbian Post Office whereby the content of nearly all items must undergo customs control, thus items for abroad are received in the post office as **open**. After completing the customs control, the contents are measured, the items are packed (or additionally packed) with payment of the relevant costs of Customs Control and services to the Post Office, all this taking a lot of time that gets multiplied in case of sending a greater number of items to different individual addresses, as usual when sending perks in crowdfunding. In the practice of most other countries the sender can measure the product they are sending, pack the item, and the procedure of Customs Control, its logic being, *inter alia*, the control of sending prohibited products, is implemented in the Post Office using relevant customs scanners and is likely based on a sample, not on 100% insight, as is the case in Serbia.

The recommendation is to revise the procedure for the Customs Control of items in the Post Office and harmonize it with international practices and the revised Kyoto Convention, Specific Annex J, Chapter 2 on Postal Transport, Standard 7, envisaging that the designated operator shall not be required to present postal items to the Customs during export for customs control unless they contain: goods that must be confirmed for export; goods subject to prohibition or limitation of export or export customs duties and taxes; goods to an amount exceeding the amount stated in national legislation; or goods selected for customs control based on a selective or random choice<sup>xxi</sup>.

Furthermore, we may consider the introduction of (online) support services by the post office when sending items based on international experiences (how to measure, check and package the item) to reduce the time required for the procedure in the post office.

<sup>i</sup> Tania Ziegler, Rotem Shneor, Kieran Garvey, Karsten Wenzlaff, Nikos Yerolemou, Rui Hao, Bryan Zhang (2017), „Expanding Horizons-The 3rd European alternative finance industry report”, Cambridge Centre for Alternative Finance (available at [https://uploads-ssl.webflow.com/5a5a19d59629620001cd714d/5a92f57ba44ab70001e96519\\_The%203rd%20Cambridge%20European%20Alternative%20Finance%20Report.pdf](https://uploads-ssl.webflow.com/5a5a19d59629620001cd714d/5a92f57ba44ab70001e96519_The%203rd%20Cambridge%20European%20Alternative%20Finance%20Report.pdf))

<sup>ii</sup> Interview no. 7, held on 16 April 2018, at 11:00, in Novi Sad; Participant in the creation of the Katana platform

<sup>iii</sup> Republic of Serbia, Company Law, “Official Gazette of RS”, No 36/2011, 99/2011, 83/2014 – other law and 5/2015.

Available at: [https://www.paragraf.rs/propisi/zakon\\_o\\_privrednim\\_drustvima.html](https://www.paragraf.rs/propisi/zakon_o_privrednim_drustvima.html)

<sup>iv</sup> Republic of Serbia, Law on Foreign Exchange Operations, Official Gazette of RS, No 62/2006, 31/2011, 119/2012, 139/2014 and 30/2018.

Available at: [https://www.paragraf.rs/propisi/zakon\\_o\\_deviznom\\_poslovanju.html](https://www.paragraf.rs/propisi/zakon_o_deviznom_poslovanju.html)

<sup>v</sup> Republic of Serbia, Decision on the conditions and method of conducting foreign payment operations, “Official Gazette of RS”, No 24/2007, 31/2007, 38/2010 and 111/2015. Available at [https://www.nbs.rs/internet/latinica/20/bop/platni\\_bilans\\_uputstvo\\_platni\\_promet\\_n.pdf](https://www.nbs.rs/internet/latinica/20/bop/platni_bilans_uputstvo_platni_promet_n.pdf)

<sup>vi</sup> Republic of Serbia, Instructions for implementing the Decision on the conditions and method of conducting foreign payment operations, “Official Gazette of RS”, No 24/2007, 31/2007, 41/2007, 3/2008, 61/2008, 120/2008, 38/2010, 92/2011, 62/2013, 51/2015, 111/2015 and 82/2017. Available at [https://www.nbs.rs/internet/latinica/20/bop/platni\\_bilans\\_uputstvo\\_platni\\_promet\\_n.pdf](https://www.nbs.rs/internet/latinica/20/bop/platni_bilans_uputstvo_platni_promet_n.pdf)

<sup>vii</sup> Republic of Serbia, Codebook of grounds of collection, payment and transfer in international payment operations, available at: <http://devizni.gov.rs/PDF/PR13%20-%20sifarnik%20osnova.pdf>, Website access on 30 April 2018.

<sup>viii</sup> Republic of Serbia, Law on the Prevention of Money Laundering and Financing of Terrorism, Official Gazette of RS, No 113/2017 Available at:

[https://www.paragraf.rs/propisi/zakon\\_o\\_sprecavanju\\_pranja\\_novca\\_i\\_finansiranja\\_terorizma.html](https://www.paragraf.rs/propisi/zakon_o_sprecavanju_pranja_novca_i_finansiranja_terorizma.html)

<sup>ix</sup> Republic of Serbia, Law on Property Tax (“Official Gazette of RS”, No 26/01 , 45/02 - CC, Official Journal of FRY, No 42/02 - CC, Official Gazette of RS, No 80/02 - other law, 80/02 , 135/04 , 61/07 , 5/09 , 101/10 , 24/11 , 78/11, 57/12 - CC, 47/13 , 68/14 – other law)

<sup>x</sup> Republic of Serbia, Law on Personal Income Tax (“Official Gazette of RS”, No 24/2001, 80/2002, 80/2002 – other law, 135/2004, 62/2006, 65/2006 - corrigendum, 31/2009, 44/2009, 18/2010, 50/2011, 91/2011 – CC decision, 7/2012 - harmonized RSD amt, 93/2012, 114/2012 – CC decision, 8/2013 - harmonized RSD amt, 47/2013, 48/2013 - corrigendum, 108/2013, 6/2014 - harmonized RSD amt, 57/2014, 68/2014 - other law, 5/2015 - harmonized RSD amt, 112/2015, 5/2016 - harmonized RSD amt, 7/2017 - harmonized RSD amt, 113/2017 and 7/2018 - harmonized RSD amt)

<sup>xi</sup> Republic of Serbia, Law on Property Tax (“Official Gazette of RS”, No 26/01 , 45/02 - CC, Official Journal of FRY, No 42/02 - CC, Official Gazette of RS, No 80/02 - other law, 80/02 , 135/04 , 61/07 , 5/09 , 101/10 , 24/11 , 78/11, 57/12 - CC, 47/13 , 68/14 – other law)

<sup>xii</sup> Republic of Serbia, Law on Donations and Humanitarian Aid, Official Journal of FRY, No 53/2001, 61/2001 - corrigendum and 36/2002 and “Official Gazette of RS”, No 101/2005 - other law, available at:

[https://www.paragraf.rs/propisi/zakon\\_o\\_donacijama\\_i\\_humanitarnoj\\_pomoci.html](https://www.paragraf.rs/propisi/zakon_o_donacijama_i_humanitarnoj_pomoci.html)

<sup>xiii</sup> Republic of Serbia, Law on Corporate Income Tax, Official Journal of RS, No 25/2001, 80/2002, 80/2002 - other law, 43/2003, 84/2004, 18/2010, 101/2011, 119/2012, 47/2013, 108/2013, 68/2014 - other law, 142/2014, 91/2015 – authentic interpretation, 112/2015 and 113/2017

Available at: [https://www.paragraf.rs/propisi/zakon\\_o\\_porezu\\_na\\_dobit\\_pravnih\\_lica.html](https://www.paragraf.rs/propisi/zakon_o_porezu_na_dobit_pravnih_lica.html)

<sup>xiv</sup> Republic of Serbia, Law on Value Added Tax, Official Journal of RS, No 84/2004, 86/2004 - corrigendum, 61/2005, 61/2007, 93/2012, 108/2013, 6/2014 - harmonized RSD amt, 68/2014 – other law, 142/2014, 5/2015 - harmonized RSD amt, 83/2015, 5/2016 - harmonized RSD amt, 108/2016, 7/2017 - harmonized RSD amt, 113/2017, 13/2018 - harmonized RSD amt and 30/2018

<sup>xv</sup> Portal Posta.rs, „Pošalji“ / „Paket“. Available at <http://www.posta.rs/struktura/lat/postalji/paket-unutrasnji-pravna-lica.asp>. Website accessed on 30 April 2018.

<sup>xvi</sup> Interview no. 3, held on 2 March 2018, at 10:00, in Belgrade; campaign organizer - project in the field of design;

<sup>xvii</sup> Portal Posta.rs, „Pošalji“ / „PostExport-Izvoz robe“. Available at [http://www.posta.rs/dokumenta/cenovnici/Cenovnik%20pismenosnih%20usluga%20za%20fizicka%20lica%20MPS.pdf](http://www.posta.rs/dokumenta/cenovnici/Cenovnik-za-Postexport.pdf). Website accessed on 30 April 2018.

<sup>xviii</sup> Portal Posta.rs, Price list of postal services in international postal transport. Available at <http://www.posta.rs/dokumenta/cenovnici/Cenovnik%20pismenosnih%20usluga%20za%20fizicka%20lica%20MPS.pdf>. Website accessed on 30 April 2018.

<sup>xix</sup> Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (Text with EEA relevance), available at: <https://publications.europa.eu/en/publication-detail/-/publication/abb3dbb8-0b48-11e5-8817-01aa75ed71a1/language-en>

<sup>xx</sup> Robano, V. (2015), “Case study on crowdfunding”, OECD SME and Entrepreneurship Papers, No. 4, OECD Publishing, Paris. (Available at: <http://dx.doi.org/10.1787/f493861e-en>)

<sup>xxi</sup> Kyoto Convention, guidelines for postal transport, specific annex, chapter 2, postal transport

