

ZENTRALER KREDITAUSSCHUSS

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Comments on the Communication from the Commission to the European Parliament and the Council Packaged Retail Investment Products

COM(2009) 204 final

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Dear Mr Bassi,

We appreciate the opportunity to share the following comments and observations on the “Communication from the Commission to the European Parliament and the Council “Packaged Retail Investment Products” COM (2009) 204 final“. ZKA (Zentraler Kreditausschuss¹) endorses the Commission efforts and seek to fix the legal environment for investment advice at a homogenous and high level that is neutral in terms of competition and based on MiFID. We welcome your initiative aimed at enhancing the efficiency of investment advice for the purposes of improved investor protection. The

¹ The ZKA is the joint committee operated by the central associations of the German banking industry. These associations are the *Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR)*, for the cooperative banks, the *Bundesverband deutscher Banken (BdB)*, for the private commercial banks, the *Bundesverband Öffentlicher Banken Deutschlands (VÖB)*, for the public-sector banks, the *Deutscher Sparkassen- und Giroverband (DSGV)*, for the savings banks financial group, and the *Verband deutscher Pfandbriefbanken (VdP)*, for the mortgage banks. Collectively, they represent more than 2,200 banks.

forthcoming harmonisation of the regulation of financial products which is currently geared to product classes seeks to create a level playing field for this exercise. The provision of key information covering the material product features and product risks as well as transaction costs in an understandable form should help improve investor protection.

We welcome this goal behind the communication. German investors already benefit from a high quality standard for financial services which is ensured by the current financial advice practice in Germany. After the implementation of MiFID there are now binding guidelines in the field of investment advice which make the consideration of the investors' personal requirements compulsory. The investment firm needs to tailor its recommendations to the respective customer and has to ensure the necessary information and instruction.

More specifically, as far as the ongoing discussion is concerned, we should like to share the following comments:

- Advice process

We welcome the fact that you renounced to the use of the term “substitute products”. This is a commendable reflection of the fact that the product range is extremely heterogeneous. The comparability with regard to financial products is limited; during practical operations, the main job (and sometimes also the main challenge) therefore consists in communicating the differences and peculiarities to the investor. Investment advice in Germany caters to this need by differentiating on the basis of products - for instance deposits, securities, and insurance policies. In the case of securities, the customer is informed about product properties and product risks by means of the instructional brochure “Basic information on securities investment”. Furthermore, already today key information is prepared and provided on a host of financial instruments. This is especially true for structured instruments. The key information can only be meaningful if it is embedded in general information. A precondition for this is a sound general financial education meaning that the result is an information pyramid consisting of general financial education, the basic information and product specific key information.

- Scope of application and covered product range

We feel it is appropriate to provide key information only for those products which the bank has included into its product offering for retail clients. Professional clients do not need such additional information. This is due to the fact that they can assess the material product features and risks as well as transaction costs on the basis of their own experience. Without endangering the underlying goal of enhanced investor protection, such a qualification of the scope of application can lead to cost containment for financial institutes.

In our preliminary understanding, we furthermore take it that traditional deposits like saving deposits, demand deposits and time deposits shall be exempt from the regulatory scope. After all, these products resist volatility and do not feature the same information need as securities or insurance policies. From the perspective of banking practice, it would constitute an unacceptable burden if, in terms of advice, for instance pass books or call deposit accounts were subject to the same MiFID rules as financial instruments. Furthermore, this will not be fit for purpose either because these products are invariably simple and straightforward.

- No 1:1 application of the Key Information Document

As far as packaged retail investment products are concerned, the Commission announces key information for the point of sale. We should like to reiterate that in Germany, information flyers are already part of standard market practices. CESR's consultation of the Key Information Document (KID) for UCITS is currently in its final stages and we are one of the contributors. We explicitly welcome the fact that you rule out a 1:1 application to the packaged retail investment products in your reference to KID and that you highlight the need for adjustment to product specific features. KID is intended for products which are standardised under investment legislation. It refers to a product range which features legal cornerstones (collective asset management for and on behalf of third parties) that are at least broadly comparable.

This is not always the case with regard to structured products. More often than not, structured products will feature strong differences with regard to the material product features. We should like to mention, for instance, the underlying investment strategy and its associated risks. This means that a framework regulation for product information leaflets will have to be found which provides sufficient flexibility for case-by-case presentations. Furthermore, any rigid blueprint for the forthcoming product information leaflets would incur the danger of no longer rendering a true and fair view of the product

differences. As a result, the investor would be misled into believing that certain products are similar.

When it comes to developing such blueprints, we would like to gladly assist in developing corresponding drafts.

- Relation to existing rules

Any preparation of the specifications for said key information should also take account of the interaction with existing rules. Otherwise, this could result in contradictory or duplicate provisions.

Hence, in this context the relation between the key information and the summary under the Prospectus Directive which is currently being revised would have to be clarified. From our point of view, there shall be no parallel existence of summary and key information. After all, both documents will contain substantially identical information and will be geared towards an identical client group.

Furthermore, as regards the provisions on investment advice, special attention needs to be given to the interaction with the MiFID.

- Need for a liability regime

In particular, we should like to point out that – when compared to the prospectus - such key information can obviously not be complete. Hence, a liability regime is necessary to the effect that the author cannot be held liable for the completeness of the information. In any case, the forthcoming regime needs to be defined in an unambiguous manner. With regard to the obligation to provide the key document, the Bundesverband Öffentlicher Banken Deutschlands and the Bundesverband deutscher Banken feel that the distributor of the packaged retail investment product should be responsible knowing the conditions of the offer in full detail, e.g. transaction costs whereas the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken and the Deutscher Sparkassen- und Giroverband share the opinion that the issuer of the product should be responsible knowing the product in full detail.

- Content of the key information document

As far as content is concerned, we feel that it is worth noting that the risk and reward indicator envisaged during the present CESR KID consultation round fosters an oversimplification of the investment decisions on the part of the investor. This is not appropriate, particularly with regard to the envisaged comparison between products. We are therefore in favour of an exclusively narrative presentation of the packaged retail investment product's risk aspects in the key information leaflet.

One critical point that ought to be borne in mind during the development of rules for the description of asset performance is that the forthcoming rules will have to be suitable both for initial public offerings and also for structured products featuring a payout profile which has been firmly fixed in advance. For obvious reasons, during initial public offerings, a presentation of past performance is not possible. If at all, a fictitious retroactive calculation appears only meaningful to a limited extent. It is not possible to rule out the danger of misunderstandings. Also for structured securities and deposits with a formula-based payout profile, the meaningfulness of disclosures of asset performance based on historical data appears problematic to say the least. At this juncture, the verification of the payout profile by means of a balanced scenario analysis for the future will be much more meaningful.

As regards the presentation of prices/costs/inducements/distribution fees, it should become clear that merely those prices/costs/inducements/distribution fees have to be disclosed which are being paid in order to maintain the sales structures; product related costs (production, costs for hedging etc.), however, shall be exempt.

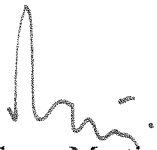
- Implementation of the Directive's harmonisation

Concerning the investment products (which are to be defined) under the forthcoming European harmonisation measures which you are currently preparing, we subscribe to the Commission's point of view that MiFID should be the benchmark for the relevant advice standard. As far as the implementation is concerned, however, we are of the opinion that MiFID has already caused a considerable implementation effort for credit institutions; hence, a renewed amendment at the present point in time would not appear judicious. Furthermore, there should be no overlapping areas with existing Directives.

Dear Mr Bassi, we would welcome the opportunity to engage in a personnel exchange of opinions with you on this project which will be decisive for the future of the European capital market legislation. If you, too, wish to make an appointment, please feel free to contact Mr Diedrich Lange.

Yours sincerely,

on behalf of the Zentraler Kreditausschuss
Bundesverband der Deutschen
Volksbanken und Raiffeisenbanken e.V. BVR
National Association of German Cooperative Banks



Dr. Andreas Martin



by proxy

Dr. Diedrich Lange