
Deutscher Industrie- und Handelskammertag

Zum Thema: **Konsultation: „CESR’s technical advice at level 2 on the format and content of Key Information Document disclosures for UCITS“**

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Thank you for giving us the opportunity to take part in the consultation on **“CESR’s technical advice at level 2 on the format and content of Key Information Document disclosures for UCITS“**

The crisis of the financial market is also a crisis of confidence between credit institutions and their customers, the companies and investors. This affects the overall economic development. The Association of German Chambers of Industry and Commerce (DIHK), representing 3.6 million German Companies, therefore supports all suitable measures to re-establish the confidence of the investors. The answers to the present crisis of confidence should be found by means of European regulations, and the key investor document specified by the UCITS directive are a good approach. The duties to supply information provided by the consumer credit directive, the MiFID and the UCITS directive are so extensive that non-professional investors usually have difficulties to understand it. In this case, too much information does not lead to better information of the investors. Therefore a restriction to the really important information related to the key investor documents is helpful and should be taken as an opportunity to harmonise the other duties to supply information included in the various directives and to check, to which extent they are still required. For entrepreneurs in the financial service industry it is getting increasingly difficult to see the disclosure duties to be met.

Particularly in times of economic crisis it is important, that the European legislation does without burdensome and bureaucratic regulations. Consultations as the present one should therefore be used to check the consequences of a law at an early stage. Consultations of the comitology committees should be held as widely as possible and with special seriousness. In this connection it is unfortunate that the present consultation was published only in English and responses are only

accepted in English language. This prevents small and medium-sized enterprises from reacting to the consultation.

Contents of the key investor documents, p. 7ff

The key investor documents should contain, in a standardized form, the information proposed in the consultation document. Some suggest that a disclaimer, pointing out that the issuing company is not responsible for the completeness of the information, should be incorporated the KIDs. According to them this is necessary, since the abstracts cannot be as complete as the brochure.

Volume of the key investors document, p. 14f

The amount of two – in case of structured funds – up to three pages is generally regarded as sufficient. Also, the key investor documents should be written in simple and understandable language (no technical terms) and concentrate on the interest of the investor. Partly however, multi-page documents are rejected in the interest of the investors.

Description of the goal and the strategy of the security, p. 17ff

The key investor documents should include a description of the strategy and the goal of the security as well as the information proposed in the consultation document.

Risk and reward indicator, p. 21ff

Regarding the question, whether a numerical specification of the risk of a security should be included by introducing a “risk and reward indicator“ in the key investor documents, there is no agreement within the German industry.

Although there is agreement, that describing the risk in text form is the more suitable assistance for decision-making, with regard to the contents. Some argue however, that nevertheless, particularly for the superficial reader or for quick first access, the diagram with the scale from 1 to 6 has major advantages: At one glance one roughly can see, whether the investment involves a high risk, hence a closer look should be indicated. Contrary to the colour marking which should be rejected, because for some investments it may provide a wrong feeling of security, the diagram on page 83 of the CESR consultation paper shows, that no freedom of any risk is being promised. As far as the offerers cannot express themselves completely correctly with the diagram, they may use the explaining text supplements for themselves.

Some, however, are strictly against a numerical specification of the risk. According to them, the “risk and reward indicator“ would favour an over-simplification of the investment decision on the investor’s side which is inappropriate in the matter, in particular regarding the desired comparison of funds. For this reason a narrative representation in the short information sheet is preferable. The investors’ demand for further simplification of the investment decision via a signal-type feature

should not be met, since the complexity of the investment decisions cannot be reduced. Last but not least, it is an experience from the financial crisis that one-dimensional risk assessments may fail.

Accordingly, one should stay away from any dedicated risk classification system. As regards the distributing banks, particularly the strict requirement of six risk classes will probably not be feasible. At least however, a clear definition of the relations with the obligations in accordance with art. 19 (49 MiFID) would be required.

There is agreement however, that a traffic light marking system for financial service products (red for risky, green for safe), as some people in Germany are demanding, should be rejected. Such system does not come up to the complexity of the products, is patronizing the customer and may even be misleading. For example, an investment product which is recommendable for a 30-year-old may have major financial disadvantages for a person who is 80. Also the risk assessment of investment products is not possible without evaluating a constantly changing market environment. Besides, as the market environment changes, the marking of the products would also have to be adjusted. This would cause intransparency and legal insecurity for advisers, financial service providers and investors.

Due to the complexity of the investment products a simple traffic light marking is neither appropriate, nor does it suit different interests. It gives a wrong impression of the respective importance of the investment products. Likewise, such a rough system often does not take into consideration the different and very individual situation of the investors. Already the failure of the rating agencies in assessing the risks before the financial crisis revealed the impossibility of a guaranteed safe judgement. The assessment as "green" suggests that there would be something like a "safe investment product". This gives the consumer the wrong impression, that he will not have to worry and will be "on the safe side", independently from the market trends, if he exclusively buys products assessed as "green". This would promote the already existing trend, that many consumers make little use of the existing information offers and do not inform themselves about the intricacies of the financial market. The fluctuations on the financial markets require the consumer to deal with the current developments on a continuous basis, however. Last but not least, there is the question of liability, if, for example, the German Federal Financial Supervisory Authority, BaFin, classifies a product as "green" which later turns out to be very risky. In addition, consumers are prevented from purchasing products classified as "yellow" and "red", although they might even be more favourable for them.

Disclosure of fees, p. 31ff

Fees should have to be indicated in per cent and not in Euro. Otherwise an individual adjustment of the key investor documents would be required, which would considerably increase the transaction costs. In the long run, the investor would have to bear the cost.

Contrary to CESR we do not share the view, that a methodological registration of the transactions of the portfolio will be possible later, since these costs never can be invoiced in advance, because they depend on the corresponding capital market development which may trigger strategy-related restructuring, as well as on the costs of security transactions and the way they are handled.

The statement made in box 7 (p. 35) is extremely vague, as regards the mathematics of finance. Annex 3 too, does not contribute to the definition of the mathematics of finance. For example, the document does not specify

- at what time the “combined effect” shall be measured,
- that, depending on the time of comparison, it must be a discounted comparative calculation,
- that a comparison – including with other fund products – provides meaningful results only on a net yield basis, but not on an absolute basis.

Therefore we object to the intended statement, because it is not practicable this way. In addition, enterprises have raised doubts to disclose to the customer in writing any estimates which are based on a multiplicity of assumptions, require a lot of explanation and are therefore hardly practicable. Finally, the exceptions have a certain binding effect for future costs, since they are explained to the customer in such a way. Such a long-term self-commitment cannot be requested, however. For providing the required comprehensive liability relief, the disclaimer falls much too short.

Representation of the performance of the security, p. 40

The representation of the performance of the security during recent years in a bar chart makes sense.

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