

ZENTRALER KREDITAUSSCHUSS

MITGLIEDER: BUNDESVERBAND DER DEUTSCHEN VOLKSBANKEN UND RAIFFEISENBANKEN E.V. BERLIN · BUNDESVERBAND DEUTSCHER BANKEN E.V. BERLIN
BUNDESVERBAND ÖFFENTLICHER BANKEN DEUTSCHLANDS E.V. BERLIN · DEUTSCHER SPARKASSEN- UND GIROVERBAND E.V. BERLIN-BONN
VERBAND DEUTSCHER PFANDBRIEFBANKEN E.V. BERLIN

29 January 2007
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Committee of European Securities Regulators
11-13 avenue de Friedland
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Call for Evidence on the Supervisory Functioning of the Prospectus Directive and Regulation ZKA: 413-EU-PROSP

Dear Sirs,

the ZENTRALER KREDITAUSSCHUSS welcomes the opportunity to comment on the Call for Evidence on the Supervisory Functioning of the Prospectus Directive and Regulation (CESR Ref.: 06-515) and it is our pleasure to enclose a document outlining our joint position to this effect. Should you have any queries regarding our comments, please do not hesitate to contact us.

Yours sincerely
on behalf of
the ZENTRALER KREDITAUSSCHUSS
Deutscher Sparkassen- und Giroverband



Dr. Thomas Schürmann



Dr. Lars Röh

Enclosure

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**Comments
of
the ZENTRALER KREDITAUSSCHUSS¹
on the
Call for Evidence of the Committee of European Securities Regulators (CESR)
on the Supervisory Functioning
of the Prospectus Directive and Regulation**

CESR Ref: 06-515

29 January 2007

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 2,500 banks.

A. General Remarks

The German credit industry welcomes the initiative CESR has taken to assess potential obstacles to an efficient working-on-the-ground of the European prospectus regime and its actual contribution to the development of the single market for securities. As has been the case in the past, the Prospectus Directive (PD) proves once more to be the cutting-edge of the Lamfalussy procedure - this time, in terms of challenges which the concept of supervisory convergence at Level 3 faces when applied to day-to-day practise.

In this respect, we also welcome the Q-&A-section which CESR has put in place on its website and which has already proved to be a useful tool for issuers looking for reliable guidelines on the proper handling of pan-European prospectus requirements.

Although the European prospectus regime has proved to work reasonably well in the first year of its existence, it has to be noted that issuers still encounter supervisory disparities and inconsistencies. For this reason, CESR should further proceed with the alignment of a “common understanding” of what is required by the PD and the Prospectus Regulation (PR).

B. Specific Remarks

In the course of their business our members have come across the following issues which have not been satisfactorily solved at a European level yet:

1. Publication of notices

In our view, which is apparently shared by the vast majority of the European supervisory authorities it is not in the capacity of the competent authority of the host Member State to require the publication of a notice stating how the **prospectus** or the **final terms** has been made available and where it can be obtained by the public. The reason for this is, that the provision of Art. 14 para. 3 PD does only give the **home Member State** the power to require such kind of publications. In all other cases, i.e. where a prospectus has been notified by a supervisory authority in another Member State and now the issuer wants to make use of the prospectus by way of notification in a host Member State, the competent authority of the host Member State cannot make reference to Art. 14 para. 3 PD.

We would very much welcome if *all* supervisory authorities could come to an unanimous view on this issue which is of high practical importance for market participants.

2. Confirmation of notification

In order to make the “state of play” of the notification process fully transparent to the issuer, it would be helpful if the competent authority of the home Member State, which provides the competent authority of the host Member State with a certificate of approval according to Art. 18 para. 1 PD, informs the issuer as soon as the certificate of approval has been sent off.

3. Requirements in addition to notification

In some host Member States issuers have to fulfil requirements that transcend the notification of the prospectus in order to apply for a listing in a regulated market or to start a public offer, while in others the notification is sufficient. These additional requirements lead to difficulties concerning the market access of foreign issuers as well as to additional cost and labour input.

4. Guidelines on supplements

Issuers still face some degree of uncertainty as to the question under which circumstances a supplement to the prospectus has to be filed according to Art. 16 PD. In particular, the question arises in which cases new information published in the issuers interim reports has to be regarded as a “significant new factor” in the meaning of Art. 16 para. 1 PD. In our view, if non-equity-securities be issued, this is not the case where such new information lies within the scope of the general business overview set out in the prospectus.

Further, some authorities do not allow that supplements refer to the registration document. This causes issuers to file supplements for a vast member of publicly offered securities (i.e. in the respective securities notes). Therefore, it should be considered whether this prescriptive practise is in line with Art. 16 and 12 para. 2 PD.

5. Interpretation of public offer

Different interpretations exist also in respect of the term “public offer”. Although we understand, that it would be a challenging exercise for CESR to come to a full convergence on the interpretation of “public offer”, it would at least be helpful if CESR can give some basic “safe harbour”-guidance in this respect. For example, some authorities require a prospectus for the issue of non-equity-securities with a denomination of less than € 50,000 because they assume that such securities are finally distributed to retail investors. We believe that this is not in line with the PD in cases where the issuer accurately states that his offer is exclusively addressed to qualified investors or a limited number of investors.

6. Use of registration documents

Further, there has been uncertainty about the use of registration documents on a cross-border basis. Some authorities have argued that a registration document which is approved in one Member State cannot be used for prospectuses filed in another Member State by way of incorporation. In our view, this is not in line with the provision in Art. 5 para. 3 PD which allows issuers to provide a central description of the issuer as a basis for all his prospectuses irrespective of whether they are filed on a domestic or a cross-border basis. Instead, it should be common practise that where registration documents have been approved in the issuers home Member State, they should be fully recognized in all other Member States including the allowance of incorporation by reference.

In addition, we would welcome if CESR can recommend in its Report to the Commission that also business reports may be incorporated by reference into the prospectus without filing the report with the competent authority.

7. Advertisements

Some authorities tend to hinder the distribution of certain securities on the national markets by making reference to the rules on advertisements (Art. 15 PD). With a view to Art. 15 para. 6 PD, which provides that the responsibilities for advertisements exclusively lies with the authorities of home Member States, we do not believe that this is a favourable practise.

8. Language regime

Where translations of the prospectus are provided in addition to the mandatory translations on a voluntary basis, some authorities refuse to give an approval of the prospectus which also covers the voluntary translation. This gives the misleading impression to the investor that the prospectus has not been approved in a language other than those required by the PD. Therefore, we would request CESR to recommend a more investor-oriented practise in such cases.

Unfortunately almost all Member States that do not have English as an official language do not accept English prospectus summaries. The cost and labour involved to provide a translation lead to a certain unattractiveness of notifications to host Member States.

9. Annual information document

As to the information, which has to be provided in an annual document pursuant to Art. 10 PD, multi-jurisdictional issuers of non-equity securities who have elected more than one Member State as their home Member State face the problem that they have to publish the annual information document several times, i.e. in each of their home Member States. Especially in the light of the Transparency Directive, it would be favourable if Art. 10 allows issuers to confine to one Euro-

pean-wide publication in one of their home Member States and to inform the other competent authorities accordingly. In case that such interpretation appears to be incompatible with the current wording of Art. 10 PD, we would request CESR to address this issue in its Report to the Commission.

10. Consistent Interpretation of the Annexes to the Commission Regulation No 809/2004

As to the very detailed requirements in the Annexes I - XVII to the Commission Regulation No 809/2004 there is a strong need to reduce different interpretations about form and content of a prospectus between competent authorities. Otherwise there is a concrete risk for issuers to be liable to a investor if there are inconsistent information between two prospectuses.
