

**Comment of the Federation of German Consumer Organisations -
Verbraucherzentrale Bundesverband (vzbv) - on the CESR Consultation Paper
*Inducements under MiFID, Ref: CESR/06-687***

We appreciate the opportunity to comment on the above mentioned Consultation Paper.

The Federation of German Consumer Organisations - vzbv - is a non-governmental organisation acting as an umbrella for 40 German consumer and social associations. We represent the interests of consumers in public and vis-à-vis legislators, the private sector and civil society.

Our goal is to protect and empower the consumer. We do this by lobbying and campaigning at national and European levels, by taking collective legal action on behalf of consumers and by ensuring that our message receives broad media coverage. We also provide professional training for the staff of consumer organisations.

General statement

The vzbv appreciates the rules of the MiFID set out in article 21 and 26 of the Directive combined with the proposals and analysis of this consultation paper. We think that the avoidance of inappropriate inducements is an important measure to avoid mis-selling and bad advice. Furthermore the transparency of inducements is an important precondition for a proper competition of the lowest cost. We also consider it very important that all necessary measures are taken to maintain and support consumer confidence. Failure to set the right framework will cause significant damage to the financial market.

Question 1: Do you agree with CESR that Article 26 applies to all and any fees, commissions and non-monetary benefits that are paid or provided to or by an investment firm in relation to the provision of an investment or ancillary service to a client?

Yes, we fully agree that article 26 must apply to all and any fees, commissions and non-monetary benefits.

Vzbv clearly disagrees to any attempts to interpret the term *proper fee* widely. A wide interpretation of this term would imply the danger that a very wide range of payments would not fall under article 26. In this sense we support CESR's view that any items that are not of a type similar to the costs *custody costs, settlement and exchange fees, regulatory levies or legal fees* are unlikely to fall into the exception for *proper fees*.

Question 2: Do you agree with our analysis of the general operation of Article 26 of the MiFID Level 2 Implementing Directive and of its interaction with Article 21?

Yes. The vzbv is sharing CESR's view that a payment to a third party or a receipt from a third party in relation to a service provided to a client could put the investment firm in breach of its duty to act in the best interests of the client.

Question 3: Do you agree with CESR's view of the circumstances in which an item will be treated as a "fee, commission or non-monetary benefit paid or provided to or by ... a person acting on behalf of the client"?

Yes, we agree.

In order to prevent any eventualities of avoidance respecting the circumstances described under Nr. 13 of this consultation paper any circumstances where investment firm A and investment firm B intend to share commissions should not fall under article 26 (a) nor should the sharing of commissions fall under article 26 (c). In order to prevent any conflicts of interests sharing commissions should in any case fall under article 26 (b).

Question 4: What, if any, other circumstances do you consider there are in which an item will be treated as a "fee, commission or non-monetary benefit paid or provided to or by the client or a person acting on behalf of the client"?

We do not see any other items.

Question 5: Do you have any comments on the CESR analysis of the conditions on third party receipts and payments?

First of all vzbv likes to point out that commission-payments must directly benefit the client in relation to the provided service, and not to an unspecific group of clients. There must be a clear relation between the commission payment, the provided service and the clients benefit.

In Nr. 22 CESR explains that a commission can only be regarded as permitted if the commission is not disproportionate to the value of the services provided to the client. We think the term *disproportionate* needs further clarification. There should be a definition of an appropriate limit for commission-payments regarded as proportionate. In this context we disagree with CESR's view that there should not be any cap on the level of commissions.

We especially do agree with CESR's assessment in example 3. This is a clear example for a conflict of interest with negative consequences for the investors.

Regarding example 8 and the aspect that the management company of the UCITS pays a commission to the advising/portfolio management investment firm: We know that these payments out of the management fee are quite common but we disbelieve that these payments should be permitted at all - as some investors buy UCITS directly. This group does not use any advising service. So there is no reason at all that this group should pay commissions to the distributor. If the management fee is - as common - misused to pay commissions back to the distributor - this would have the consequence that also direct investors pay the fee.

From our point of view all distribution fees should be paid directly. Any kinds of kick-backs are intransparent and lead to disadvantages.

Question 6: Do you have any comments on the factors that CESR considers relevant to the question whether or not an item will be treated as designed to enhance the quality of a service to the client and not impair the duty to act in the best interests of the client? Do you have any suggestions for further factors?

We have nothing to add.

Question 7: Do you agree that it would not be useful for CESR to seek to develop guidance on the detailed content of the summary disclosures beyond stating that: such a summary disclosure must provide sufficient and adequate information to enable the investor to make an informed decision whether to proceed with the investment or ancillary service; and, that a generic disclosure which refers merely to the possibility that the firm might receive inducements will not be considered as enough?

The vzbv would appreciate CESR to develop an exact and standardised content and structure for the summary. The format of the information must be designed in a clearly understandable manner. The “normal investor” must be able to read and understand the information to make an informed decision on the basis the summary disclosure.

We also support CESR’s view that a generic disclosure which refers merely to the possibility that the firm might receive inducements is not sufficient to enable the investor to make an informed decision. We support that such a generic disclosure therefore can not be considered as meeting the requirements of Article 26.

Question 8: Do you agree with CESR’s approach that when a number of entities are involved in the distribution channel, Article 26 applies in relation to fees, commissions and non-monetary benefits that can influence or induce the intermediary that has the direct relationship with the client?

In order to prevent or at least reduce the negative consequences of conflicts of interest that result of inducements we think that all commission payments in the complete chain should be disclosed.

Question 9: Do you have any comments on CESR’s analysis of how payments between an investment firm and a tied agent should be taken into account under Article 26 of the Level 2 Directive?

We do agree with CESR that the higher amount respectively the sum of both payments need to be disclosed to investor.