

**Comment of the Federation of German Consumer Organisations -
Verbraucherzentrale Bundesverband (vzbv) - on CESR`s Second Consultation
Paper *Inducements under MiFID*, Ref: CESR/07-228**

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.

vzbv`s view on the Second Consultation Paper *Inducements under MiFID* regarding CESR`s new recommendations and estimation of the examples (positive and negative examples to show the application of the recommendation)

vzbv appreciates the rules of the MiFID set out in article 21 and 26 of the implementing Directive (2006/73/EC). 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 concerning 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 and to investors.

With this in mind we support the recommendations of this consultation paper as far as possible.

We do however not agree with CESR`s assessment that inducement payments are permitted if the benefit of the payment is determined for a group of clients instead of the particular client that is receiving the investment service. From our point of view paragraph 26 of MiFID prescribes a clear connection between the payment and the requirement to improve the quality of the relevant service that is provided to the client. To prevent any conflict of interest we think 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.

Therefore we disagree with CESR`s illustrative examples number XI and XII. We think that it is not acceptable to regard providing a training of the staff of an investment advisor by a product provider as a permitted non-monetary payment. In this case the potential conflict of interest is obvious and the direct benefit for the client is missing. We also think that it must be clearly regarded as a forbidden inducement in case a broker provides general office equipment such as computer equipment to an investment firm. Again, this is a case of an obvious potential conflict of interest and a missing direct benefit for the client.

Finally we are doubtful as to CESR`s interpretation of recital 39 of the level 2 Directive. CESR's view is that recital 39 makes it clear that such a type of remuneration can be

legitimate, provided that the investment firm's advice or general recommendation to its client is not biased although the investment firm received that commission. If this condition is met then the advice or recommendation should be considered as having met the condition of being designed to enhance the quality of the service to the client.

From our point of view it should not be possible just to assume that an investment firm's advice is not biased as a result of the receipt of that commission without fulfilling any criteria that prove the independence of the advice. We think that CESR has to define criteria to differ between biased and not biased recommendations.