German Banking Industry Committee

Die Deutsche Kreditwirtschaft

Position paper

of the German Banking Industry Committee on the European Commission's proposal of 24 May 2023 for a Retail Investment Strategy – MiFID amendments

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The **German Banking Industry Committee** 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 finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks.

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1. General remarks

The German Banking Industry Committee (in the following: GBIC) supports the European Commission's intention to use the retail investment strategy (RIS), developed as part of the capital markets union, to make the securities business more consumer-friendly and thereby encourage retail investors to invest in EU capital markets.

However, the European Commission has presented a proposal which cannot achieve most of these aims and may even work to counter them. While the European Commission has rightly opposed a complete ban on inducements, its proposal raises other concerns:

- The RIS would not only lead to **more and more complex regulation**, it would also make **participation in the securities business more difficult**, particularly for those clients that are supposed to be guided towards the capital markets.
- The RIS would lead to **higher costs**, which clients would ultimately have to pay for.
- The RIS contains some elements that are close to **price regulation**.
- The RIS would lead to a **limitation on the range of products offered** in investment advice and would **influence the market**.
- The RIS remains vague on many requirements, **thus deferring key political decisions** to delegated acts to be issued by the European Commission (Level 2) or to the European Securities and Markets Authority, ESMA (Level 3).

2. Ban on inducements for non-advised services and inducements in connection with portfolio management

- The European Commission is proposing a ban on inducements for non-advised services. The GBIC considers this proposal **inappropriate and disproportionate**.
- It is **not clear** from the European Commission's proposal **what purpose a ban on inducements for non-advised** services would serve. Certainly, the reason cannot be to prevent conflicts of interest, since it is the client who decides which product to purchase.
- In future, clients would experience higher costs for non-advised services and a significantly smaller range of products and services: Investment firms already provide a **wide range of information and other forms of support to help the so called self-directed investors make their own decisions** about choosing a suitable financial instrument as part of non-advised services. **In the event of a ban on inducements**, these services could **no longer be financed by inducements received** and would instead, be billed to the client or simply no longer offered.
- It is also important to remember that **non-advised** services are already **strictly regulated** and are subject to extensive requirements for investment firms, which **entail** additional **costs and effort**. Apart from the suitability test and suitability report, investment firms are obligated to meet almost the same requirements that they are for investment advice.
- Furthermore, the provision of payments in connection with portfolio management should continue to be permitted. A ban is not appropriate and, in particular, would make **cooperation models**, where portfolio managers work together with other investment firms that provide direct client services and in return receive remuneration from the portfolio manager, **impossible**.

3. Investment advice

- In future, a **best-interest test** is to apply to investment advice (Article 24 para. 1a MiFID draft) This includes three requirements that the GBIC is very much opposed to.
  - It is **unclear what criteria are to be used for assessing** whether there is an "appropriate range of financial instruments".
  - Regarding the assessment of cost-effectiveness, it is **unclear how this relates to the already obligatory equivalence test** (Article 54 para. 9 Delegated Regulation (EU) 2017/565). An additional requirement is not necessary. It also **remains unclear which groups of products are to be compared with one another**. The GBIC is concerned that the investment firms may end up having to compare the costs of "apples with oranges".
  - **Focussing solely on costs without considering quality features** would neither be in the interest of the clients nor in the interest of the investment firms. Focussing solely on particular cost factors ignores the fact that product features can be particularly beneficial under certain market conditions, but also come at a cost.

  As a result, the European Commission's proposals **significantly disrupt the business models of investment firms**. And it will be small and medium-sized investment firms, and those with a high degree of specialisation, that are affected the most. There is a substantial risk that they will no longer be able to continue to offer their advice services, particularly to retail investors, due to the increases in fixed costs that continue to rise sharply. This **runs counter to the aim of the RIS to encourage retail investors to access the capital markets**. The GBIC believes the new requirements are counterproductive. And should not, therefore, be introduced.
- The European Commission's proposal also **favours fee-based advice in a one-sided manner** over other types of investment advice, by lowering the requirements that govern it. This represents an unjustified intervention in the market.
- The proposed **requirements** for the necessary **expertise for investment advisors** are **not appropriate**. The **need for further training** must continue to be evaluated **on a case-by-case basis** and **in-house training must remain a possible option**, also to keep costs low.

4. Appropriateness test

- The draft also includes **considerably more extensive client assessments for non-advised services**.
- Thus, investment firms should also assess the client's **ability to bear losses and risk tolerance** when performing an appropriateness test, in addition to assessing the client's knowledge and experience. The GBIC is opposed to this new requirement. **There is no recognisable need for these additional requirements in practice.**
- Non-advised securities services would become fundamentally more complicated and time-consuming, which would be a **considerable burden to self-directed investors** who already complain about the unnecessary complexity caused by the regulatory requirements.
- The proposal would eliminate the reasonable distinction between investment advice and non-advised services and would patronize **clients** who wish to make their own investment decisions.

5. Value for money (Article 16-a MiFID draft)

- In future, as part of the legal requirements for product governance, new processes relating to "**value for money**" are to be implemented which could generate **enormous implementation costs**.
- The proposals **risk erring towards price regulation**. This may lead to competition for the cheapest products within the benchmarks set by ESMA, irrespective of quality features that are important to clients but not necessarily relevant for the benchmark in question ("**race to the bottom**").
- The proposals for price regulation and a one-sided focus on costs were also heavily criticized in a study published on 27 June 2023 (Filippo Annunziata: "Retail Investment Strategy - How to boost retail investors' participation in financial markets", p. 21) commissioned by the ECON Committee of the European Parliament. This criticism reinforces the German Banking Industry Committee´s s concerns and opposition to the proposals.
- The GBIC sees a risk that the design of these benchmarks will lead to **interventions in competition**. This is due to certain business models not being adequately reflected in the benchmarks. Here too, the GBIC is concerned that apples will be compared with oranges in the benchmarks.
- Furthermore, the **proposals** appear **impractical** considering the large number of products involved. The European Commission also seems to be aware of the risk of insufficient benchmarks, as it also refers to the possibility of initial quality defects ("...and refine their quality") in Recital 17 of its draft.
- For this reason, the GBIC is opposed to the European Commission's proposal.

6. Client information

- In the context of client information, including cost information and marketing communications, the European Commission is proposing **numerous new obligation** requirements to provide additional information and even **more bureaucracy** for investment firms and their clients. Since a greater workload also **makes the investment service more expensive**, the principle of **proportionality** should be applied to the **effort and client benefit** involved. The **current draft does not reflect this**.
- In addition, the draft may **worsen** the problem of **"information overload"**, which clients are already complaining about today.

7. Transposition period and review clause for inducements

- The proposed **implementation period is too short for investment firms**. It must be extended and begin only after the measures have been published at Level 2 of the European legislative process, since investment firms can only start implementing the new requirements at this stage.
- The European Commission's draft provides for a review of the impact of inducements on retail investors within three years. **The GBIC is opposed to the obligation to implement such a short-term review**, especially since the European Commission appears to have already pre-empted the outcome of any such review. There is a risk that the extensive amendments are merely interim solutions.

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