

Ms. Kerstin Malmer  
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Ref. 08-1181  
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10 September 2008

**Re: Review of the scope of the Directive on the taxation of savings income and aspects of a level playing field among retail savings products**

Dear Ms. Malmer,

The ongoing review of the current rules of the Directive on the taxation of savings income is of the highest importance for the investment management industry. The Commission's report on the operation of the Directive that will be sent to Council in the near future has a central significance in this context.

EFAMA is committed to contributing to an informed and balanced consideration of the related issues. As such, we would like to invite you to reflect further on certain aspects that relate to a comprehensive understanding of the impact of possible changes to existing rules. In particular the Directive's scope of application and the question of the realization of a level playing between competing or "substitute" retail savings products constitutes an issue that is particularly decisive for the investment management industry as well as for investors looking for options for medium to long-term investments.

On July 15, the European Commission held an Open Hearing enabling a very constructive discussion on the regulatory treatment of retail investment products. Market participants and representatives of European institutions, including Commission officials held an open debate on the need for comparable regulation with respect to certain retail products that bear comparable economic characteristics and are sold to retail investors for the purpose of building up medium or long-term savings.

In this debate a broad consensus manifested itself on the question of enhancing competition and rendering the market more efficient through the creation of a balanced and fair set of rules and overall legal framework at European level.

The product types discussed on this occasion were in particular investment funds, structured products and unit-linked life products. In his opening remarks Charlie Mc Creevy, Commissioner for the Internal Market and Services, stated that these products were in fact competing for retail savings. Even though these products were not identical, the core economic function was just the same as they were investment products marketed to retail investors regardless of the wrapper.

In the Commission's call for evidence on the *Need for a Coherent Approach to Product Transparency and Distribution Requirements for "Substitute" Retail Investment Products* issued in November 2007, stakeholders were asked the question whether it was appropriate to regard certain retail investment products—regardless of their legal structure - as substitutable. In the list of products supplied in this context, the following product types were mentioned: UCITS funds, nationally regulated retail funds, unit-linked life insurance (especially where the mortality risk level is small or nil) and retail tranches of structured notes.

The call for evidence also stated that “sales of investment funds, unit linked insurance products and retail tranches of structured products take place through similar distribution channels”.

EFAMA's response to the call for evidence reflected that “substitute products are those with similar risk features, fulfilling similar investment needs and targeting the same type of retail investor”.

Along the same line the feedback statement *on contributions to the call for evidence on “substitute” retail investment products*, released in March 2008, presents as the result of the consultation the fact that “(...) the majority of contributors did consider that the products listed in the call for evidence – with the exception of some ‘annuities’ – were broadly substitutable (...)”. Stakeholders who supported this view had considered that these products “performed similar economic functions; served similar consumer needs; offered a return over a similar time horizon (medium to long term); were retail-focused; and offered similar risk/return characteristics”.

Another question posed in the call for evidence referred to the possible factors driving the promotion and sales of particular investment products. According to the feedback statement “taxation” had been cited most frequently as a factor relevant for investors' choices of certain product types and “this was considered particularly influential for unit-linked life insurance products (...)”

On this basis EFAMA urges the Commission to reflect on the effect the limited ‘product scope’ of the Savings Directive can have on the market where the above mentioned products are already sold cross-border or where there is a tendency to increase their

cross-border sales. In both cases the market may be influenced by the combined effects of particular differences in national legislation and the restricted scope of the Savings Directive. The establishment of a level playing field between investment funds, unit-linked life insurance and structured products entails therefore that the treatment under the Savings Directive should be same.

Should you have any question, please do not hesitate to contact us.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Peter DE PROFT', with a large, sweeping flourish extending to the right.

Peter DE PROFT  
Director General