Consultation on enhancing the coherence of EU financial services legislation

Dear Madam,

Dear Sir,

Thank you for the opportunity to contribute to the public consultation on enhancing the coherence of EU financial services legislation.

The German Property Federation ZIA is a membership organization founded in order to represent the interests of the whole real estate industry. We pursue the objective to create an environment in which real estate investments can prosper. Therefore, ZIA advocates the interests of the German real estate industry vis-à-vis the political decision makers in Germany and in the EU. Our more than 170 members represent the industry at any stage of the supply chain. They include the biggest companies in the property industry as well as 21 associations representing 37,000 members. ZIA was founded in 2006 and is a member of the Federation of German Industries.

The real estate industry is highly capital intensive and our members are dependent of well-functioning financial markets. Therefore, ZIA supports prudent rules as market stability is fundamental for the economy and the European property industry. However, we are very concerned about the cumulative effect of the various financial market regulation proposals on the property industry. As a key sector for growth and employment the real estate industry occupies an outstanding position in Europe. In spite of its great economic importance, the interests of the real estate industry are considered only inadequately when it comes to financial market regulation.

Berlin, June 14th, 2013
The wave of regulation in the last few years has clearly changed the investment situation in our industry. Many of the recently discussed measures, such as the revision of the EU banking capital requirements directives (CRD IV) or the revision of the directive on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II) have direct impact on the financing situation of our members. An example is the leverage ratio under CRD IV. The leverage ratio proposed by the Basel Committee is calibrated at 3%. This means that an institution’s gross borrowings must not exceed 33 times the institution’s Tier 1 capital. This would reduce the attractiveness of lower risk loan engagements like mortgage debt and could jeopardize the credit supply especially in the property industry.

It is also of utmost importance that regulatory proposals provide clear and unmistakable rules on scope. In the past, the real estate sector has been hit by regulatory proposals that led to many difficulties and questions regarding the applicability of the instrument for different parts of our sector. For example, shortly before the end of the transposition period it still remains unclear if Real Estate Investment Trusts (REITs) or other listed real estate companies fall under the AIFM Directive or not. The European Commission has until now refrained from giving further indications on the scope in this respect. The legal uncertainty of an important part of the real estate sector remains high.

The coherence of EU financial services legislation and a clear identification of business models which qualify as AIF under the AIFMD is all the more important, because other European instruments such as the European Market Infrastructure Regulation ‘EMIR’ (OTC derivatives) which has already entered into force, or the discussed draft directive on a common system of financial transaction tax (‘FTT’), refer to the definition of AIF according to the AIFM Directive. The real estate industry will encounter serious difficulties in assessing its business in the light of the ongoing regulation of the financial markets, as long as the scope of the AIFM Directive is not clarified.

Also, the distinction between financial and non-financial entities according to article 2 (8) EMIR is too roughly drawn as a number of non-financial businesses – which use derivatives only to hedge commercial risks and not for speculative purposes – are wrongly treated as financial entities. The definition of financial counterparty in this regulation provides that all alternative investment funds as defined in the AIFM Directive are automatically financial counterparties, although a significant number of entities are clearly part of the real economy.

The real estate sector urges the European Institutions not to bring forward new proposals on financial market regulation without first having found clear and practice-oriented criteria to determine the instruments and markets that should be regulated. The regulatory scope of upcoming proposals such as a possible regulation of shadow banks or rules on the recovery and resolution of nonbank financial institutions has to be clear from the outset.
Finally, we would like to stress the importance of the real estate sector for long-term investment strategies. The European Commission has recently published a Green Paper on the long-term financing of the European economy. Although real estate clearly is a long-term asset class and has an important social and economic function, it is not considered adequately in this paper. Any strategy on long-term investments should also focus on the real estate sector.

We would very much appreciate if these comments were taken into account. Please do not hesitate to contact us, if further advice on these matters is required.

Yours sincerely,

Axel von Goldbeck

Nadine Rossmann