

# Investment recommendations by journalists: The German legal framework

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Disclaimer: This presentation expresses the personal opinion of the author which is not necessarily identical to the official BaFin position.

What do the MAD rules on investment recommendations aim at ?

Publication of investment recommendation concerning a specific financial instrument (e.g. shares, funds)

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At the same time possession of financial instruments which are being recommended

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Conflict of interest



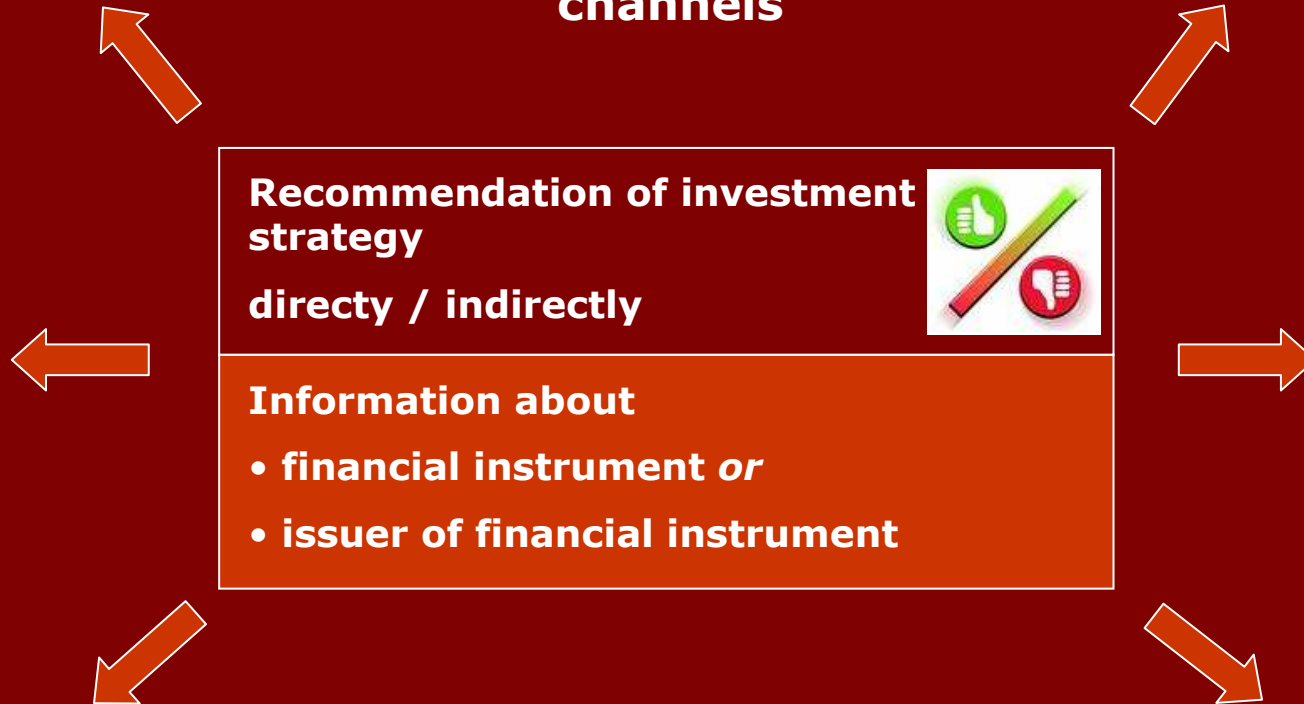
Disclosure to the readers



Readers can assess the reliability of the recommendation

# **„Investment recommendation“:**

**general public/distribution  
channels**



**Recommendation of investment  
strategy**

**directy / indirectly**



**Information about**

- financial instrument *or*
- issuer of financial instrument

Rules for the presentation and dissemination of investment recommendations in Germany:



EU legislation (**M**arket **A**buse **D**irective)



German Capital Markets Act (WpHG)



Rules of WpHG



Self regulatory system  
(§ 34b (4) WpHG):

If journalists are subject to a system of self-regulation and effective controlling mechanisms similar to the provisions in the WpHG

- BaFin does not formally and expressly accept or approve a self-regulatory system

- However, the self-regulatory systems currently known in Germany have been developed in cooperation with BaFin



expresses indirectly BaFin's opinion that these systems do currently comply with the legal requirements of the MAD

## Self-regulatory systems currently known in Germany

Press Council  
(*Presserat*)

Texts (print &  
online)

Public Radio &  
TV  
broadcasting  
networks

Private Radio  
& TV  
broadcasting  
networks

Individual  
self-regulatory  
systems in  
publishing  
companies

## Complaints Procedure

### **German Press Council (*Deutscher Presserat*)**

#### **Press Code (*Pressekodex*)**

Applicable to journalistic texts (print and online media):

- 16 Sections on general ethical behaviour of journalists
- Additional Guidelines

**Additional Journalistic Practical Principles and Recommendations concerning economic and financial markets news coverage (2006)**

## Submission to the Press Code and Complaints Procedure:

members of subdivisions of  
the Press Council

individual non-members

individual submission  
declaration  
&  
acceptance by Press Council

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graph TD; A[members of subdivisions of the Press Council] --> C[individual submission declaration & acceptance by Press Council]; B[individual non-members] --> C;
```

## Sanctions available under the Press Code:

### For publishing houses:

- reprimand (*Rüge*)
- notice of censure (*Missbilligung*)
- advice notice (*Hinweis*)

### For employees of publishing houses by employment contract:

- contractual penalties
- layoff

Procedure before Press Council (special internal procedural rules)

## Sanctions available under the Capital Markets Act:

- penalties up to 200.000,- €

General administrative law procedures (appeal to tribunal possible)

**Comparison of  
substantial rules in  
MAD and Press Code**

**MAD:** Any recommendation discloses clearly and prominently

- name and job title of the individual person who prepared the recommendation
- name of the (legal) person responsible for its production (art. 2 MAD)

**General German press laws:** name of the person legally responsible for a publication must always be disclosed

## **MAD:**

Facts are clearly distinguished from interpretations, estimates, opinions and other types of non-factual information

## **Press Code:**

Unconfirmed reports, rumours or assumptions must be quoted as such.

## **MAD:**

All sources are reliable or, where there is any doubt as to whether a source is reliable, this is clearly indicated.

Reasonable care to be taken to ensure that any recommendation can be substantiated as reasonable upon request by the competent authorities.

## **Press Code:**

Research is an indispensable instrument of journalistic due diligence. The publication of specific information in word, picture and graphics must be carefully checked in respect of accuracy in the light of existing circumstances.

**MAD:**

All projections, forecasts and price targets are clearly labelled as such and the material assumptions made in producing or using them are indicated.

**Press Code:**

No express equivalent

## **MAD:**

Disclosure of all relationships and circumstances that may reasonably be expected to impair the objectivity of the recommendation, in particular where relevant persons have a significant financial interest in one or more of the financial instruments which are the subject of the recommendation, or a significant conflict of interest with respect to an issuer to which the recommendation relates.

Where the relevant person is a legal person, that requirement shall apply also to any legal or natural person working for it, under a contract of employment or otherwise, who was involved in preparing the recommendation.

### **Press Code:**

Conflicts of interest in drawing up or passing on financial analyses shall be revealed in an appropriate manner.

### **Practical Principles:**

- *e.g. internal* register about shareholding of employees
- *e.g. open or anonymous internal* disclosure of individual shareholdings to employer
- *e.g. disclosure of shareholding to external* notary
- *external* disclosure of shareholding of employees *in the media* would be welcome, but is not mandatory due to enormous administrative and organisational costs
- disclaimer mentioning the general *possibility* of shareholding by employees is considered to be of limited value only

## **MAD:**

A summary of a recommendation produced by a third party must be clear and not misleading and must mention the source document and where the disclosures related to the source document can be directly and easily accessed by the public provided that they are publicly available.

## **Press Code:**

The sense of a publication must not be distorted or falsified by editing, title or picture captions.

## **Practical Principles:**

A summary of a recommendation of a third party must be accurate as to its contents. A link to the original document and disclosures of conflicts of interest that have been made public in that document are normally considered to be a part of journalistic accuracy.

**THANK YOU!!**