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AK Position Paper

AK-Position on the revision of the Insurance Mediation Directive (IMD)

About us

The Federal Chamber of Labour is by law representing the interests of about 3.2 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

Herbert Tumpel
President

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, community- and military service - of the 3.2 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Werner Muhm
Director

Executive Summary

AK also supports raising the standard of professional requirements for mediators

- The AK welcomes the fact that the Commission as part of the revision of the Insurance Mediation Directive (in short: IMD) is aiming at strengthening consumer protection.
- We share the opinion of the Commission that need for action exists with regard to conflicts of interests and in particular in respect of commission and cost transparency.
- Apart from that, the AK also supports raising the standard of professional requirements for mediators.
- However, the simultaneous revision of several Directives (MiFID, IMD) as well as the PRIIPS Initiative (on Packaged Retail Investment Products), which are directly connected as to contents and which contain many cross references in the Commission documents make the evaluation of individual issues of the present Consultation more difficult. Given the fact that the MiFID is also being revised, the so-called "benchmark role" of MiFID for the revision of the IMD, which has been named in the discussion, is not quite clear in our opinion.

The AK position in detail

Consumers are often not sure about the legal meaning of the different types of mediation

Staff at the consumer advice bureaus of the Chambers of Labour indicate that many consumers do not know the status of their insurance mediator, i.e. whether they concluded a contract with a broker, an agent or an employed field representative of an insurance company. Apart from that, consumers are often not sure about the legal meaning of the different types of mediation. Consumers often only know the rather vague terms of insurance advisor resp. financial advisor.

This is clearly demonstrated by a website check of various insurance mediators, which had been carried out by AK Vienna in February 2011: searching under the term "insurance agency", the AK made a spot check of self-employed insurance mediators on the internet to examine to what extent and how clearly these mediators declared themselves on their websites (as at February 2011). Of 13 examined websites, which can be found under the search term "Insurance agency",

- 8 were insurance brokers
- 3 insurance agents
- 1 was the field representative of an insurance company (with his own homepage)

- and 1 a financial advisor, who is entitled to mediate life and accident insurances.

Although the entrepreneurial capacity resp. the concrete title as mandated by trade law was normally included in the imprint (with the exception of one: 1 insurance broker completely concealed his entrepreneurial capacity as mandated by trade law); however, they were not clearly stated on the homepage.

Hence, many prospective customers and "passing" website visitors do not know in advance what kind of insurance mediator they are dealing with. This lack of being able to identify mediators is made worse by the fact that a number of insurance mediators are in possession of several trade licenses, making it not very clear in what capacity a mediator meets customers.

The details concerning the balanced examination, which are also provided for in the Insurance Mediation Directive and in the Austrian Trade Regulation Act - and which are used so formalistically in practice - are often very technical; hence the meaning of these details is very difficult to comprehend for the legal layman. It is therefore doubtful whether a consumer, based on the current legal position, is able to recognise on which side the mediator is resp. whether the mediator represents the consumers or one/several insurance companies. Improvements with regard to the central disclosure obligation con-

The AK calls a mandatory product information sheet for all types of insurance and a general right of withdrawal from the insurance contract

cerning the definition of the roles of the parties appear to be necessary. One option to increase awareness concerning the roles of the parties would be to provide a standardised option for the status of the mediators (insurance broker, insurance agent resp. other possible licensees) as well as with reference to the representation (representative of the customers, representative of the insurance company, status of power of attorney, etc.) in the pre-contractual information material. The mediator has to complete the status together with the customer prior to concluding the contract. This provides the customer with the option to see the various types of mediator resp. the representation and power of attorney status and to ask questions immediately in case of any uncertainties.

In our opinion, option, which Art 12 Section 1 lit e provides to the non-exclusive agent, where the agency relationships only have to be disclosed at the request of the customer, is counterproductive; the same applies to double licensees (broker and agent), which occur in practice and which almost inevitably result in further customer confusion - and even conflicts of interest. Prior to the implementation of the IMD in Austria, the Austrian Trade Regulation provided for a ban on carrying out a double profession ("Acting simultaneously as an insurance broker and an insurance agent is prohibited"). The AK is in favour of embedding this ban in the IMD.

In our experience, all points mentioned above can also result in the fact that consumers buy unsuitable products, which may have adverse consequences; be it that too expensive policies are taken out or that some policies and special tariffs of a property insurance do not meet the requirements of the customer. Big losses can occur in case of life insurances: the problems range from maturities that are far too long and customer loyalty up to life insurances, where the consumer unwillingly bears the investment risk and where big losses may occur.

Apart from that, there are two significant requests from the consumer's point of view, which are also to be integrated in the IMD2 and which would ensure an increase in the transparency of insurance products and a strengthening of consumer protection:

- A mandatory product information sheet for all types of insurance, which are offered to the consumer - based on the German model
- A general right of withdrawal from the insurance contract resp. the mediation contract (non-gratuitous consultancy contract) without stating any reasons.

Another accompanying measure, which is also necessary in the insurance sector to enforce consumer rights is the introduction of class action

In Austria, measures to strengthen out-of-court settlements are not very developed and therefore do not play a great role in practice. The situation is that in Austria no arbitration boards were set up, in particular in respect of direct sales resp. for large areas of mediation areas through agents. More detailed provisions in the IMD would improve this situation.

Another accompanying measure, which is also necessary in the insurance sector to enforce consumer rights is the introduction of class action. If this instrument is available, more successes can also be achieved by way of out-of-court settlement, because it is a fact that big losses and high values in dispute resp. high legal costs prevent many consumers to take their legal disputes with insurance companies to the courts.

A 1. Do you agree with the Commission services general approach outlined in the box above? Should information requirements as contained in Article 12 of the IMD be extended to direct writers taking into account the specificities of existing distribution channels?

The AK supports the idea that in future uniform information requirements should apply across the insurance industry. Sometimes, employed field representatives of insurance companies approach consumers in a similar manner to agents. Based on an activ-

ity-oriented definition, any exemptions from the scope of the Directive do not seem to be justified. However, it has to be assumed that including field representatives of the insurance company into the scope of the Directive will result in the fact that the insurance company itself - as liability umbrella for its vicarious agents - will be rated as insurance mediator.

A 4. In the context of the information requirements, do you think a definition of "advice" should be introduced? Please provide reasons for your reply.

A 5. If you think that a definition of advice is needed for the mediation of insurance products other than PRIPs, would a definition similar or identical to the definition in MiFID12 be appropriate? Please provide reasons for your reply.

Consumers are looking for expert advice with regard to a mediated insurance policy. In view of the large variety of mediators (order related versus non-order related), the extent of the different types of carrying out a trade (as a main occupation versus part-time) an exact definition of "advice" is urgently required. The same standards should apply to all insurance products. The AK is in favour of not having any differentiation of the rules of conduct with regard to insurance PRIPs and other Insurance products.

The AK is in favour of carrying out at least an appropriateness test for all mediations of an insurance product

A 6. Do you consider that certain insurance products (other than PRIPs) can be sold without advice? If yes, which products would you have in mind and how could possible detriment for consumers be mitigated?

The AK is in favour of carrying out at least an appropriateness test for all mediations of an insurance product. Insurances are also called “invisible products”. Insurance benefits - in particular also in case of “non-PRIPS insurance / property insurance” - are mainly described in the insurance terms and difficult to understand by consumers. However, these are significant and often long-term contracts for the policy holder, which represent a considerable burden on household finances. For this reason, the AK is in favour of introducing the obligation to provide advice in case of consumer contracts.

B 1. What high level principles would you propose to effectively manage conflicts of interest, taking into account the differences between investments packaged as life insurance policies and other categories of insurance products?

B 2. How could these principles be reconciled for all participants involved in the selling of insurance products?

B 3. Do you agree that the MiFID Level 1 regime could be regarded as starting point for the management of conflicts of interests? If not, please explain why.

B1 – B3: MiFID1 is currently being reviewed with regard to effectively prevent conflicts of interest. Hence, following the MiFID1 automatically, is therefore not required with regard to managing conflicts of interest when mediating insurance contracts. Fact is that there is a broad need for regulation. When consumers complain about insurance brokers in the AK consumer advice bureau, their problems are mainly circling around controversial fees. In some concrete cases the complaints concerned subsequent fees of the broker charged to the policy holder, after the latter had used his contractual right to prematurely terminate his life insurance contract. The brokers demanded compensation from customers, because they had to pay back their sales commission - which had been taken by the insurance companies – to the insurance company because the contract had been terminated prematurely. These cases show the necessity of reviewing the commission schemes in the mediation sector and in particular in the life insurance sector.

Another negative example of a remuneration system and an incentive system, which can have a negative impact on insurance customers, is the common practice that bank employees too often receive rigid sales guidelines by the management and their direct superiors for the sale of insurance products. A concrete number of various products have to be sold per time unit (week or month). Sales targets, which were previously determined for larger units

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(e.g. an entire bank branch), are now frequently specified for each individual member of staff. Some branches base their marketing on a so-called "product of the month", which has to be strongly recommended to all customers. In some cases, "successful" sales are controlled by direct superiors on a daily basis and employees have to justify their conclusions of contracts in regular discussions. Anybody failing to deliver the required sales figures, is often put under a lot of pressure. Incentives include bonus payments, for example six promille of the premium volume sold in the calendar year, which is equivalent to one or two additional monthly salaries. Very good sales people are rewarded by insurance companies, in their capacity as product providers, with special incentives in form of short holidays in good hotels.

In its circular dated December 2009, the Austrian Financial Market Authority has confirmed the experiences of the AK consumer advice bureau, i.e. that "the structure of certain remuneration systems" in respect of investment services "leads to conflicts of interest", which "are suitable to affect the interests of customers." It is obvious that a sales employee, who receives a special reward for selling a certain product, will be more inclined to recommend this product. The Securities Supervision Act - the Implementation Act for MiFID - itself determines that conflicts of interest have to be avoided from the outset. The securities service providers must therefore adopt procedures and take measures to guarantee this. The AK is

convinced that it is also necessary to integrate the avoidance of conflicts of interest - as it is the case in the rules of conduct of the MiFID - as a priority objective in the insurance sector and therefore supports the motion that both in the securities and in the insurance sector remuneration systems, which are independent of success and sales figures, should be increasingly applied.

B.4. How can the transparency of remuneration in the sale of non-PRIPS insurance policies be improved for all participants involved in the selling of insurance products, taking into account the need for a level playing field?

B.5. Do you agree that all insurance intermediaries should have the right to be treated equally in terms of the structure of their remuneration, e.g. that mediators should be allowed to receive commissions from insurance undertakings as insurance agents?

B.6. What conditions should apply to disclosure of information on remuneration?

B.7. What types/kinds of remuneration need to be included in the information on remuneration?

B4 – B7: Apart from outlining the commission amount, the AK is in favour of reviewing the commissions themselves. As a decision of the Highest Court of Justice - OGH, 7 Ob 13/10b

showed, the present case concerned a commission fee of about 8 % of the total premium amount of the life insurance. This means that the commission fee amounts to several thousand Euro, whereby in an extreme case of complaint, which was taken to the AK, a commission of Euro 22,548 had been charged.

In view of this possible excess concerning commission fees, we regard - analogue to the provisions of estate agents and loan mediators - the introduction of a maximum commission for insurance brokers resp. an upper limit for the commission fee, definitely for life insurances, as necessary.

Based on the high sums insured, the AK suggests the introduction of a staggered upper limit for the commission resp. for the commission fee in respect of life insurances. However, it should not be possible to include possible value adjustments in the calculation of the total premium amount.

C 1. In order to guarantee a real level playing field between all participants involved in the selling of insurance products, to what extent should the current IMD requirements also be applicable to direct writers and their employees? Please, specify which particular requirements should apply and

reflect on the particularities of direct sales with examples (how, where, under what circumstances, etc.)

See Question A1.

C 4. Should a website or a person who just gives information about insurance fall under the scope of the IMD? How could the boundaries be more clearly defined in respect to insurance intermediation?

If a natural person or an organisation, which is not an insurance company, provides general information or general advice, then this organisation should not be included in the scope of the Directive. This concerns in particular comparative product testing or the distribution of consumer information by consumer organisations and consumer protection organisations.

5. Do you have examples of activities which, in the majority of Member States, fall under the IMD but which you believe should not be covered, such as sales of certain insurance products by car rental companies? Or conversely, do you have examples of activities which currently do not fall under the IMD but which should be covered?

The quality of advice in electrical stores in respect of insurances for electrical appliances leaves a lot to be desired

In our opinion, the exemption for insurance mediation, which is carried out as a part-time activity, which exists in Art 1 IMD, has been too broadly defined. So-called "bagatelle insurances", for example as a side product/service of a purchase also require certain regulation. This kind of sale must also be subject to minimum standards with regard to advice and product information. A study of the Chamber of Labour Vienna on insurances for electrical appliances (TV, notebook, mobile phone) in 2008 did find shortcomings with regard to transparency and in the sales sector:

- In relation to their purchase price, insurances for electrical appliances are very expensive - also because of the fact that in the case of loss or damage the policy holder has to pay excess.
- The General Terms and Conditions of insurances for electrical appliances exclude many benefits. This often results in problems resp. disputes with regards to claims settlements.
- Most consumers are taken by surprise when they purchase an electrical appliance or device - as insurance for electrical appliances is always concluded parallel to buying the electrical appliance or device; i.e. in most cases the consumer is not prepared.

- The quality of advice in electrical stores in respect of insurances for electrical appliances leaves a lot to be desired.

E 1. What high level requirements on the knowledge and ability of all participants involved in the selling of insurance products would be appropriate in view of the existing differences in the applicable qualification systems in Member States?

The professional requirements, which have been specified in Art 4 IMD shall be redefined with the help of more concrete minimum standards. The current term of "appropriate knowledge and skills" appears to be too general and far too broadly defined. A certain minimum standard of training requirements should be defined, for example the duration of the training and the technical content of the qualifications. The trend that increasingly more sheer sales training replaces product and technical knowledge - in view of the lessons, which should be learned from the financial crisis - should also be reduced with legislative measures.

The AK urges to severely restrict resp. cancel the option provided in the IMD, namely that the Member States are not able to apply the requirements of Art 4 Paragraph 1 to all natural persons, who work as insurance mediators.

The AK believe that all persons, who are involved in insurance mediation, should have the relevant knowledge and skills

We believe that all persons, who are involved in insurance mediation, should have the relevant knowledge and skills. In our opinion, internal training for employees working in insurance mediation, which has been provided in the Austrian Trade Regulation (in implementing the IMD), cannot guarantee uniform high-quality education and advice services, i.e. a high level of quality.

1. What practical challenges do you think should be addressed when drafting new legislation on the distribution of insurance PRIPs?

The AK regards the differentiation insurance PRIP and non-insurance PRIP as inadequate. The AK is in favour of introducing a mandatory product information sheet for all insurance products - based on the German model. It should also be mandatory that the pre-contractual product information sheet discloses the total costs of the insurance contract. This information should be provided as a % value and also as an absolute Euro amount.

Should you have any further questions
please do not hesitate to contact

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