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# AK Position Paper

Green Paper on Retail Financial Services in  
the Single Market

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## About Us

**The Federal Chamber of Labour is by law representing the interests of about 3 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.

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 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labor.

Herbert Tumpel  
president

Werner Muhm  
director

## Executive Summary

The Austrian Chamber of Labour (AK) thanks the Commission for its Green Paper and is following the diverse consumer policy initiatives of the European Commission with a great deal of interest. The AK represents the legal interests of around 3 million workers. One of its tasks is consumer protection. This is why strengthening consumer protection in Europe is a matter of particular concern for the AK.

- The cross-border distance marketing of financial services currently means little to consumers. Access security and the possibility to get in touch directly with providers play a large role for consumers. This is why better access to financial services and cheaper products often appear as an argument put forward as a pretext for creating a single market. The single market often serves the providers more than the consumers.
- Efforts to create a single market for financial services for consumers should be viewed sceptically for as long as this is paid for with a greater lack of transparency and uncertainty for consumers.
- The AK advocates simplifying financial services legislation and removing barriers to the mobility of customers such as fees for terminating an account or policy – however, it declares itself vehemently against the fact that possible simplification would lead to a lowering of the consumer protection level. The removal of barriers must also not result in products becoming more expensive or existing protective regulations getting worse.
- The AK holds the view that when it comes to financial services, the information to be given to the consumer must be clear, transparent and unambiguous. Yet this can still lead to an increase in information. Only comprehensive product-specific information results in transparency and with it increased competition on the market.
- The AK fears that the planned initiative in the retail banking business, in particular the introduction of payment and debit cards, will lead to increased consumer debt and declares itself against making things easier for companies in this area.
- The AK does not see a discussion involving consumers that do not know how to handle new technologies (very well) or are not capable of operating these new technologies because of their age. This is why the AK proposes also talking with those consumers that are not capable of using new technologies to purchase cross-border financial service products or open bank accounts.

- The Green Paper should establish the overall objectives; however, it does not include the aim of introducing a (European) right to a current account on a non-borrowing basis – only basic bank accounts that are offered as an option. A right to a current account would be a concrete benefit for consumers. For the expert group on customer mobility in relation to bank accounts is also not expected to take this into account.
- In the AK’s opinion, the directive concerning the distance marketing of financial services was a correct step to take as it has prescribed binding information obligations on the one hand for providers, and on the other a right of withdrawal without sufficient cause was introduced that is the same for all Member States. In the AK’s opinion, a deepening or information obligation for financial service products that are purchased via distance marketing would lead to having to provide the corresponding information also in those areas that used to operate in a “grey zone”, otherwise they are exposed to the right of withdrawal without sufficient cause.

## Better regulations and retail financial services

The AK advocates simplifying financial services legislation and dismantling barriers to the mobility of customers.

The AK welcomes the initiative in so far as it will offer citizens clear and concrete benefits. However, it should not lead to all regulatory measures with regard to financial services always having to be economically sound. For financial service companies in particular argue on occasion that information obligations are regulatory and make products more expensive as protective regulations need to be adhered to. The AK advocates simplifying financial services legislation, dismantling barriers to the mobility of customers such as fees for terminating an account or policy, although it declares itself vehemently against the fact that possible simplification would lead to a lowering of the consumer protection level. The removal of barriers should also not result in products becoming more expensive or existing protective regulations getting worse.

The AK still does not see any advantage to a “28th regime” regulation as it is not clear which legal protection system would be used to clear up disputes arising from a “28th regime”, i.e. which court or alternative dispute settlement court has jurisdiction. The AK believes that it would make more sense to allow a standard, fully harmonised national regulation for all EU Member States.

If it comes to disputes arising from the financial services business with a consumer, primarily the law as well as the national courts or dispute settlement courts of the consumer should have jurisdiction and subsidiarily the law or jurisdiction of the provider. As it would therefore result in the same national rules, the financial services industry would also not have the problem of having to create different products for different countries – they could use these in all countries as they would all have the same high level of consumer protection and the same standards would apply everywhere. However, this would only be possible with full harmonisation, in which case a “28th regime” would not be necessary. Full harmonisation would have the advantage of not needing separate legislation above and beyond national legal provisions and it would not lead to any problems.

## Low prices and more choice for consumers

### **More competition leads to price cuts**

The AK advocates simplifying financial services legislation, dismantling barriers to the mobility of customers such as fees for terminating an account or policy – however, it declares itself vehemently against the fact that possible simplification could lead to a lowering of the consumer protection level. The removal of barriers must also not result in products becoming more expensive or existing protective regulations getting worse.

However, the AK feels it is important that payment cards are not burdened with unnecessary fees. This is why we welcome the Commission initiative to investigate the practices of payment card companies. However, the AK fears that the planned initiative in the retail banking business, particularly the introduction of more payment and debit card providers, will lead to increased consumer debt and declares itself against making it any easier to set up such companies. The payment card companies should not allow consumers to have lots of payment cards due to increased competition; the Commission should fix the fees of these companies to protect competition so that the companies that accept payment cards do not pass on the handling fee to consumers and the goods purchased are not made more expensive.

The AK feels it is important to implement a (European) right to a current account on a non-borrowing basis. This is not

covered by the ongoing and planned initiatives. The Green Paper is based only on basic bank accounts that are to be offered as an option. A right to a current account would be a concrete benefit for consumers. For the expert group on customer mobility in relation to bank accounts is also not expected to take this into account.

It should be stressed that there is a growing number of consumers who are denied market access to basic financial services. More and more people are turning to the AK that do not receive a current account from a bank. This exclusion from giro system services and payment services can have far-reaching consequences for those affected and result in serious economic disadvantages: taking up employment presupposes that an account is maintained as a rule. Access that is denied to current accounts is a hindrance in particular for unemployed persons trying to gain access to the labour market: if a consumer cannot produce an account, an employer will in many cases declare itself against hiring a worker. The administrative costs of paying a wage in “cash” will seem too high or inadequate for many companies. A legal drive towards a right to a current account should therefore be viewed as a contribution to labour market policy.

A possible simplification of the existing rules on information requirements seems sensible to the AK if a high level of consumer protection is introduced.

A long-term demand by the AK for a legal right to operate a current account on a non-borrowing basis with standard current account fees should therefore be realised. Another possibility would be to assign such persons to individual credit institutions along the same lines as the provisions for liability insurance.

The AK therefore calls for an EU-wide right to an account on a non-borrowing basis.

#### **Increasing choice, quality and innovation**

The removal of barriers will only lead to an improvement in quality in the long term for retail customers. The AK estimates from previous experience that financial service providers from other EU Member States may not have much interest in offering their financial services in Austria as the market is not very big and there are still considerable language barriers. It is mostly insurance companies that offer their products from abroad in Austria. Unfortunately, financial service products from abroad have on occasion been classified as rather shady.

#### **Protecting consumers' interests**

A possible simplification of the existing rules on information requirements seems sensible to the AK if a high level of consumer protection is introduced. Only a high level of consumer protection provides the consumer with the possibility to request cross-border

financial services or accept cross-border products if there is a guarantee that the existing information is sufficient, informative and grants corresponding legal protection.

#### **Ensuring access to adequate redress**

Important for the acceptance of financial service products and also financial intermediaries will also be effective enforcement in the event of disputes over financial service products. Whilst there is the arbitration body for the banking industry in Austria, it is however not responsible for national disputes and the EU Commission initiative in connection with FIN-NET makes it easier for the consumer only to access out of court complaints procedures in the event of cross-border disputes. The AK therefore welcomes the Commission's endeavours to promote alternative forms of dispute settlement (Alternative Dispute Resolutions) so as not to increase the strain on courts and have swifter, above all economical procedures for disputes. However, the problem in Austria is that arbitration systems established on a voluntary basis are rare and the AK believes that the economy in particular rejects voluntary dispute resolution systems or those founded on a voluntary basis. This is why it will be necessary to introduce binding rules for dispute resolution systems and facilitate economical out of court conflict solutions.

A right of withdrawal without sufficient cause of at least 14 days is essential for consumer protection and to stimulate the single market in financial service products. We particularly welcome the right of withdrawal. The AK has no problem with some Member States stipulating longer periods. The negotiations on the consumer credit directive should also be concluded soon.

It is also strictly necessary to implement binding professional indemnity insurance – and liability in the case of slight negligence for a wrong service or bad advice.

### **Promoting sound and safe retail financial instruments**

In the AK's opinion, this would also lead to a reduction or decrease in the "grey market" of multi-level marketing, i.e. sales channels that work on a commission basis and whose aim is to reach the top of the commission pyramid. However, it is also important within the framework of solvency rules to have high standards for the equity of these institutions. The AK therefore also expressly welcomes the review of deposit guarantee schemes in order to grant consumers corresponding protection for their deposits. This is why the AK did not understand why financial institutions were introduced that are no longer subject to any supervision by way of the Payments Services Directive – and also do not belong to any deposit guarantee group.

## Empowering consumers

The AK does not see consumers that are not quite up to new technologies being addressed or those that are incapable of using these technologies because of their age. This is why the European Commission must and should also talk with those consumers that are not capable of using new technologies to purchase cross-border financial service products or open bank accounts.

### **Developing consumers' financial literacy**

It is important for the AK from a consumer policy viewpoint that this will drive forward the development of financial literacy as it is becoming increasingly important to not only obtain information but also to understand it.

However, the AK does not see a discussion involving consumers that do not know how to handle new technologies (very well) or are not capable of operating these new technologies because of their age. This is why the AK proposes talking with those consumers that are not capable of using new technologies to purchase cross-border financial service products or open bank accounts.

### **Providing the right information at the right time**

It is important for the AK from a consumer policy viewpoint that this pre-contractual condensed information is presented to the customer during

initial contact between consumer and lender or intermediary. As the AK sees it, it ought to be possible to implement this for all Member States despite the different traditions and legislation. This also means that the information should be granted not only by lenders, but also by all those that are involved in lending. Brokers and credit intermediaries also come into contact with the consumer and should therefore be subject to the same obligations.

### **Credit intermediaries – insurance intermediaries**

The AK welcomes a review of financial intermediaries as this industry in particular operates across borders the most.

The AK believes that it is necessary to review these standards and as a result possibly create a standard directive on the intermediation of financial service products and also introduce corresponding codes of conduct, and have rules on sales advice and advertising. After all, financial service products are very special products that are often unfathomable and where there are problems in initiation especially when it comes to financial intermediation. For this reason, the AK believes it is important for this study to also look at the corresponding training of the intermediary. For it would be necessary to prescribe an EU-wide regulation on this training as not all Member States have the same training requirements.

This leads to an imbalance in intermediary training and to distortions of competition.

### Commission conclusions

(1) We agree with the objective of only pursuing initiatives where there is evidence of clear and concrete benefits for citizens. However, it raises the question of whether all the measures proposed by the Commission comply with this basic objective and whether many of these measures in fact serve the financial service providers.

(2) The Commission's attention should be drawn above all to a right to a current account on a non-borrowing basis for consumers.

(3) Consumer protectors often do not have the resources to carry through their ideas and proposals. This is why the EU Commission should encourage this more and provide more resources.

(4) We cannot see any restrictions on the providers and channels at present.

(5) We welcome the binding implementation of ADR schemes.

(6) We take a very critical view of extending the possibility of credit to non-credit institutions. Payment services are now not under the supervision of the native country and can be set up without supervision.

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7) Standard guidelines on the intermediation of financial service products are needed as well as corresponding codes of conduct and rules on sales advice and advertising.

(8) An important contribution to the Commission in connection with long-term savings, retirement and pension schemes would be to take the hysteria out of this discussion.

(9) We very much welcome the proposal that banks offer simplified standardised products.

(10) Improving and encouraging consumers' financial literacy is urgently needed. All measures are to be welcomed.

(11) Adequate consumer information on products is strictly necessary. The situation is unsatisfactory at present.

(12) The AK believes that it is only permissible if credit data are available for queries across borders, with the lenders obliged to inform the consumer whenever this occurs. The information should include the fact that a query was made and the status of the query. Under no circumstances should, as stipulated in the consumer credit directive, information only be provided if the consumer has asked for it explicitly. Notifying the consumer of the outcome only at his or her request is problematic as the consumer frequently does not know what data have been queried.

This would not be the case if an obligation were introduced for the lender to provide information on the outcome of the query.

(13) No details.

(14) The lack of transparency and fee arrangements of banks hinder customer mobility at present. Previous reviews on customer mobility in the area of current accounts reveal that such fees have a prohibitive effect and reduce customer mobility. For example, the fees for switching from one securities portfolio to another are extremely high.

Finally, the AK would like to thank you for giving it the opportunity to state its position on the Green Paper and hopes that more consumer policy decisions are taken in future. The AK will follow the varied initiatives of the European Commission on consumer policy matters with great interest.

For any further questions please contact

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