



January 2010
AK Position Paper

Position on the proposal of the European Commission on the amendment of the Prospectus Directive of 24.9.2009

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.

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.

Herbert Tumpel
President

Werner Muhm
Director

Executive Summary

In Austria, thousands of small investors have lost their entire or a large part of their savings because of the financial crisis. These losses were also made possible by the fact that investors were not (or not adequately) informed about the high-risk character of the investments, even though the capital market prospectuses had listed all possible risks.

AK proposes:

- to make capital market prospectuses also available in the language of the Member Country
- to make the issue of capital market prospectus summaries to investors compulsory
- that the contents of the prospectus summary should be presented in a modified and standardised form
- the publication of all prospectuses on a joint central website in all member countries
- more effective liability provisions

The AK position in detail

AK requests that it becomes compulsory to prepare capital market prospectuses and their summary also in the language of the Member State, in which the investment will be offered.

1. The information deficit of the investors – as demonstrated by recent events – is a result of the fact that capital market prospectuses were not prepared in the national language, in the case of Austria not in the German, but only in the English language. Even though English is a language, which is commonly used in international financial circles, as specified in Article 19 Paragraph 2 of the Prospectus Directive, this official version does only accommodate the requirements of the issuers and the institutional investors, but does not address the needs of small investors. Financial advisors too, who often operate legally and organisationally separated from the issuers, offering investment products, are faced with significant language barriers when they have to explain prospectuses, which are not in the national language. The several hundred-page capital market prospectuses in the English language represented an insurmountable information barrier for investors, in particular small investors, resulting in the fact that important information included in the capital market prospectuses, such as references to risks aimed at small investors became almost completely worthless. Even if investors basically have a good grasp of the English language, they are in most cases not familiar with the relevant terminology in a foreign language, for example terms used in capital market prospectuses. Furthermo-

re, a document, which has not been prepared in the official language of the country, complicates the process risk and access to the legal system, as in cases of the legal disputes documents have to be translated first. **AK therefore requests that it becomes compulsory to prepare capital market prospectuses and their summary also in the language of the Member State, in which the investment will be offered, provided that the public offer is not only aimed at institutional investors.**

2. We know from experience that with regard to share issue prospectuses a significant discrepancy exists between the form and information requirements on the prospectus and the actual supply of important investment information to the averagely invested private investor. This means that the prospectuses do not “reach” the investor and that he is even not aware of the fact. Several surveys by AK have shown that the issue prospectuses do not play a part in the consultation practice of banks and other investment service companies (compare AK study on investment advice “How well do investment agents inform about costs, risks and the protection of client money?”, July 2009). In verbal investment advice discussions investment consultants and agents do not refer at all to the issue prospectus. On the other hand is the knowledge of custo-

mers about the existence of issue prospectuses not very widespread, which results in the fact that private investors themselves not or very rarely ask for issue prospectuses. From the point of view of AK it is therefore obvious that the objectives of the proposal of the Commission on the Prospectus Directive from 24.9.2009 – above all the posited improvement of investor protection and the supply of sufficient and adequate information also in view of the needs of small investors – can only be achieved if special attention is paid to the actual availability of the prospectus information.

It is a central request of AK that it should be compulsory to issue private investors with a summary of the share prospectus.

Experience from financial scandals in Austria shows that this cannot be achieved by just referring to the availability of capital market prospectuses. In fact, it would be necessary to make it obligatory that at least the summary of the prospectus - to be prepared in accordance with the Prospectus Directive – would be issued to the investor. Issuing the summary would ensure, that investors had all important information available, enabling them to form, based on this information, a sound opinion on the main points of the investment. Currently, when an investment is acquired, the client is only issued with an advertising prospectus that often only provides a one-sided description of the advertised investment, i.e. it only informs about yield opportunities without adequately referring to the associated risks.

Although the reference to the capital market prospectus is – in accordance with the Prospectus Directive – included in the advertising prospectus, it is

normally placed in such a way that it is not noticed. Even if the provisions on advertising included in the Prospectus Directive are important, they are nevertheless unable to ensure that the advert actually meets the information requirements of investors. Added to this is the fact that any infringement against the provisions on advertising is not sanctioned with prospectus liability for the issuer. Infringements against the advertising provisions remain more or less unsanctioned for issuers, whilst the losses, which investors might suffer because of misleading advertising can be immense, as current examples in Austria have recently shown.

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3. It would be desirable if the **summary of the main points of the investor information would be written in a standardised form** to make this information easily comprehensible and (easy) to analyse. In this context, AK requests a more precise structure of the points of the prospectus summary, than the one provided in the Appendix of the Directive. The legal definition of contents for example is oriented on the prospectus requirements for the simplified prospectus with regard to shares in investment funds (compare Austrian Investment Fund Act IFA Scheme E 1. to 5.). Apart from a short assessment of the risk profile, AK supports in particular the consideration of showing the risk of an investment

product at a glance, preferable in form of “traffic light labelling” (red - yellow - green) or another colour scheme, which is easily and instantly recognisable for the private investor.

4. In the opinion of AK – apart from the obligation to issue the private investor with a summary of the prospectus – a substantial improvement of the access to share prospectuses does already exist if **a homepage provides a central download option of the issue prospectus, which has been well publicised.** AK Vienna presented the public with a number of improvements on investor protection as far back as April 2009; at the same time it was proposed to provide the public in Austria with a download facility for the prospectuses on the website www.wienerzeitung.at (editor: The Republic of Austria).

5. Another central weak point is the fact that the liability in accordance with the Austrian Capital Market Act for incorrect resp. incomplete prospectuses, which can be asserted for a period of 10 years, is not effective and not going anywhere because not even the investment advisors, never mind the institutional investors, are familiar with the capital market prospectus. Hence, an incorrect prospectus is not a causal condition for the acquisition of an investment; therefore any liability in accordance with the Capital Market Act cannot be justified. For that reason, the Directive should provide appropriate and **more effective liability provisions.**

The Directive should provide appropriate and more effective liability provisions.

For further information please contact:

Christian Prantner

(Expert of AK Vienna)
T +43 (0) 1 501 65 2511
christian.prantner@akwien.at

Benedikta Rupprecht

(Expert of AK Vienna)
T +43 (0) 1 501 65 2694
benedikta.rupprecht@akwien.at

as well as

Frank Ey

(in our Brussels Office)
T +32 (0) 2 230 62 54
frank.ey@akeuropa.eu

Austrian Federal Chamber of Labour

Prinz-Eugen-Strasse, 20-22
A-1040 Vienna, Austria
T +43 (0) 1 501 65-0
F +43 (0) 1 501 65-0

AK EUROPA

Permanent Representation to the EU
Avenue de Cortenbergh, 30
B-1040 Brussels, Belgium
T +32 (0) 2 230 62 54
F +32 (0) 2 230 29 73