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AK Position Paper

Proposal for a Directive on Insurance Mediation

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

General information

- BAK welcomes the intention in the proposal to strengthen consumer protection and to extend the scope of application to insurance undertakings.
- From the standpoint of consumers, there is a need to improve the (cost) transparency of insurance products and to prevent conflicts of interest in insurance business procedures.
- One cannot yet assess whether the proposed directive can effectively achieve the declared goals because the delegated legal acts have not yet been adopted.

Shortcomings and consumer policy demands

- The distinction made between insurance investment products and classic life insurance products is not objective.
- A mandatory standardised product information sheet needs to be introduced for all insurance parties to increase the general transparency of insurance products.

interest) need only be disclosed to a client prior to entry into the contract if the client requests it. For endowment life insurance policies, BAK demands that an effective annual interest rate (effective guaranteed interest rate) be required to be indicated in the calculations in the offer (offers) and in insurance policies to depict the net profit and to take reasonable account of the substantial costs of a life insurance policy (particularly closing costs, administrative costs, risk premium). Precontract information (offers) from insurance undertakings currently indicates at most only the guaranteed interest rate (maximum interest rate pursuant to the FMA Maximum Interest Rate Regulation). This interest rate indication of the guaranteed interest rate can cause prospective insured parties to arrive at the misleading assumption that the guaranteed interest rate that is awarded could be the actual interest rate (return) realised. In actuality, real interest (net profit, return) is substantially below the guaranteed interest rate because of the costs incurred.

- Greater clarity regarding types of intermediaries is important for consumers. Double authorisations (as broker and agent) should be prohibited—just as they used to be in Austrian trade regulations.

In Austria, the savings portion of the premium (or the effective guaranteed

The AK position in detail

Article 1 Scope

Item 2 lit e

BAK welcomes the restriction made with regard to insurance mediation conducted as a secondary professional activity.

Item 2 lit f

However, BAK feels it is counterproductive to increase the annual premium from EUR 500 to EUR 600 for exemption from application and feels it is too broadly defined from a consumer's standpoint. Even "token insurance policies" require regulation. Many insurance policies for electric appliances for typical consumer equipment do not fall under this directive for this reason.

In a study on insurance for electric appliances (TVs, notebooks, mobile phones), the Vienna Chamber of Labour determined shortcomings in transparency and sales:

- Electric equipment insurance is extremely expensive relative to the purchase price—also because an excess almost always has to be paid in connection with a claim.
- The terms of business for electric equipment insurance exclude a number of types of payments/benefits. This often leads to problems or disputes in the handling of claims.

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- Consumers are often taken by surprise when they buy an electric device—the initial business contact or entry into an insurance policy for electric equipment almost always coincides with the purchase of the device, in other words, the consumer is usually not prepared for it.
- The quality of advice in electric appliance stores on electric equipment insurance leaves something to be desired.

BAK therefore calls for minimum standards to be instituted for advice and product information for this sales channel as well.

Article 2 Definitions

Item 3

BAK welcomes the fact that the scope of insurance mediation is extended to include direct sale of insurance by insurance undertakings.

Article 8

BAK approves the fact that the proposed directive seeks to increase the professional requirements for staff members of insurance undertakings and insurance intermediaries.

Article 13 Out-of-court redress

BAK generally welcomes the introduction of a concrete provision in this regard. In reason (28) for this proposed directive, these procedures are restricted to disputes concerning “rights and obligations established under this Directive”. This falls short of what is needed. What should be done is to include all disputes connected with insurance contracts affecting consumers. Participation in the redress procedure is mandatory for undertakings provided the decision is not binding. This arrangement is unsatisfactory from the standpoint of consumers. There should at least be an option for member states to provide for participation also if rulings are binding.

In addition, intermediaries and insurance undertakings should be required to disclose, even before the contract is signed whether they will take part in a procedure for out-of-court redress.

One should name or if need be also divulge the out-of-court dispute resolution entity if participation in dispute resolution is not mandatory.

Article 16 General information provided by the insurance intermediary or insurance undertaking

Clear information about the status of the insurance intermediary at a noticeable place in the documents is essential

for consumers and BAK welcomes the new approach to this in the directive. Consumers are usually not familiar with the roles of the parties and the legal distinctions between them. This is one of the reasons why unsuitable products are ultimately purchased. BAK advocates a provision be made to disclose the status information in each case at the beginning of the information for customers.

BAK further advocates that the information for consumers be required to be disclosed in a standardised and defined form (similar to KID or the European standard information for credits according to the Consumer Credit Act).

That would ensure that the essential information could be found in a prominent place. The graphic design of consumer information is often inferior. There is much to be said for a provision to put the intermediary status in a larger font or to highlight it for example.

In a random-sample study done in 2011 (of 13 Internet sites), the Chamber of Labour showed that on the homepages of freelance insurance intermediaries, information on their trait as entrepreneurs under commercial law was only to be found “hidden away” in the homepage notice/disclaimer; one homepage did not provide this information at all. For many prospective customers and casual website visitors, it is not clear in advance which type of insurance

intermediary is involved. We therefore advocate that a mandatory notice be included on Internet front pages about advisor status.

Article 17 Conflicts of interest and transparency

Items 1 and 2

BAK expressly welcomes requiring intermediaries to declare the type of remuneration and disclose its amount.

Item 3

It has been shown time and again in recent years that variable remuneration in the selling of financial products can promote conflicts of interest. Small-time investors were often sold unsuitable products because of the big remuneration to be earned on them. BAK basically supports greater transparency in this respect and advocates the increased use and the structural promotion of remuneration that is not based on performance and sales figures in order to avoid conflicts of interest.

Item 4

The provision is unclear because it does not indicate which payments made by the customer after the conclusion of the insurance contract are meant.

Article 18 Advice and standards for sales where no advice is given

Item 1

BAK welcomes the fact that the identifi-

cation of needs and the duty to explain are extended to contractually tied intermediaries and insurance undertakings.

Item 4

BAK rejects the vague formulation of information content ("...the relevant information about the insurance product...").

BAK advocates the mandatory handing out of a product information sheet (modelled on the one in Germany) for all insurance products.

Article 20 Information conditions

Item 1 lit c and Item 3

BAK welcomes the clarification in lit c that the information shall be provided free of charge. It should be obligatory to tell the customer that he has a right (Item 3) to receive a paper copy free of charge if the information is provided using a durable data medium or a website.

Items 5 and 6

BAK favours an approach whereby the only time the required information can be provided on a durable data medium other than paper or via a website or by e-mail is if the consumer gives his express agreement to this approach in a separate declaration.

BAK does not consider "the provision by the customer of an e-mail address for the purposes of that business" to constitute evidence that the customer

has regular access to the Internet. The customer may, for example, have used the medium of e-mail only to set up the appointment with the insurance intermediary.

Chapter VII Additional customer protection requirements in relation to insurance investment products

BAK rejects the distinction made in life insurance policies between PRIIPS and classic life insurance policies. It would be sounder and friendlier to consumers if the same good conduct rules and information duties applied to all types of life insurance.

Article 24 General principles and information to customers

Item 3 lit a

The proposed provision has gaps because customers also need to be informed as to whether the on-going assessment of the suitability of a product is conducted in a binding and contractually ensured manner. An on-going assessment of this kind was often only made orally in Austria in the past but the client ultimately had no legal claim to it. Many small-time investors relied on the oral promise. There should therefore be an explicit duty to provide information if no on-going assessment of the suitability of the insurance product is offered.

Item 5

The mere announcement that insurance advice is provided on an independent

basis expresses the insufficient nature of the regulatory approach because the provision concerning commissions is made dependent on information given to the customer. It would be better to shift the focus and make a concrete offer of independent advice.

Item 5 lit b

BAK welcomes the fact that the directive prohibits the insurance intermediary or insurance undertaking that is providing independent advice from receiving any monetary benefits from a third party.

Article 5 Item 2

The formulation regarding the obtaining of customer information for the assessment of the suitability of the insurance service of product should be modelled on Item (1) because this assessment also requires information of a certain quality.

BAK views the term “ask” to be too unbinding and not suitable in this context. Here too the advisor should get or obtain the information (=formulation MiFID).

Item 3

BAK favours the mandatory handing out to the customers of any records created on them. In the past, it often happened that many consumers did not receive any record of their advisory meeting and product recommendation. If there were an obligatory rule to give this record to the customer, it would be much easier to provide evidence if disputes arose.

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

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