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AK Position Paper

Position Paper on the Regulation on Key Information Documents for Investment Products

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

Summary

- The BAK welcomes the intention related to the draft Proposal, to increase investor information and consumer protection.
- The BAK supports a broad scope for savings and investment products. Consumers shall – under the aspect of being motivated to invest in certain products (such as private pension arrangements) - find an identical level of information for the required products from different categories. The BAK is therefore in favour of standardised pre-contractual information (key investor information) for all savings and investment products, which are offered to small investors.
- However, in the opinion of the BAK it is above all important that products are designed in a simple and easy to understand manner. Over the past years, the complexity of savings and investment products has increased to such an extent that it is almost impossible for consumers to keep up with these developments. Therefore, it is not sufficient to improve product-related information, but it would also be appropriate to reduce complexity and to adjust product quality and features for small investors, who in general are quite adverse to risk.
- The BAK requests that pre-contractual information for complex investment products should contain as much standardised information as possible to make product comparison easier.
- The BAK welcomes that investment product manufacturers shall be responsible for drawing up key information documents. However, it has to be ensured that these also include details on remuneration (commissions) to brokers. The BAK proposes that product information and broker-based information will be provided separately in the key information document (for example as two parts).
- The Regulation should ensure that the key information document contains a clear and easy to understand (oriented towards small investors) description of the risk categories, a credible presentation of the past performance of the product, a description of the impact of costs on the yield and the options of terminating (contract termination) investment products.
- From the point of view of the BAK, the text of the Regulation should expressly state and ensure that the key information document will be handed to the investor as soon as an (initial) product consultation is taking place and (at least) one investment product or various investment products – as possible alternatives – are being explained.

The AK position in detail

Article 2:

The BAK supports the idea that the **principles of pre-contractual information** developed in the PRIIPS Initiative are not only applied to packaged products, but **to every savings and investment form**. Apart from that, the definition in Article 2 is ambiguous as the term "investment product" basically covers a wide range of product categories.

Fact is that life insurance products have been significantly differentiated over the past years. In respect of life insurance policies with an investment element, an agreement concerning a special investment strategy between policy holder and insurer has been provided for. Depending on the agreement, the policy holder might also be burdened with the risk of loss. However, with regard to index and unit linked life insurances, agreements on guaranteed benefits (guaranteed contract amount, capital guarantee) are also possible. Hence, it is not easy for policy holders to recognise whether a life insurance contract is directly or indirectly subject to market fluctuations. Austria has a pension plan with subsidised premiums (in accordance with the Income Tax Act), which (mainly) - as special form of a life insurance contract - has been equipped with a government premium (on the payments of the policy holder) and a capital guarantee (on payments of the policy holder and premium subsidy by the government). Strictly speaking, the policy holder is not subjected to a market or price risk of a loss (capital guar-

antee) when the insurance contract expires. Clarity must be provided by the definition of the Regulation proposal that at least all forms of endowment life insurance have to be regarded as investment products within the meaning of this Regulation.

The Austrian Chamber of Labour supports the idea that **bank and investment products themselves are drawn up in a clear, simple and comprehensible manner**. One of the conclusions from the financial crisis was that a number of product constructions including objectively existing risks were too complicated for small investors. That is why the BAK is in favour of offering products to small investors for which the complexity has been reduced.

Article 5:

The BAK welcomes that investment product manufacturers shall be responsible for drawing up key information documents. However, it has to be ensured that these also include details on remuneration (commissions) to brokers. The BAK proposes that product information and broker-based information will be provided separately in the key information document (for example as two parts).

The obligation of the investment product manufacturer to publish the key information document on the internet – independent of the concrete sale of the product – is welcomed from a consumers' point of view.

Article 8:

The BAK supports a highest possible degree of standardisation for key investor information. It is welcomed that individual sections and information has to be provided in the determined order. Providing individual sections with pre-defined titles – also in the proposed form of asking questions – is sensible and makes information easier to read. Introducing a symbol can also contribute to the transparency for small investors, as this makes a differentiation to advertising and other information easier. However, to achieve this possible effect it is necessary that this new symbol will be made known and promoted. The express distinction between key information document and advertising, pointing out that this is not marketing material is sensible.

It is generally to be welcomed when a key information document provides information as to whether a provider of an investment product acts in accordance with sustainable criteria (environmental, social, good corporate governance). To prevent these references from degenerating into pure marketing etiquette, uniform standards (via definitions, targets, rating and assessment criteria, certification, monitoring and reporting on compliance) should be developed, which ensure an accurate and not misleading identification (as sustainable, social and environmentally responsible) of the investment product.

It is to be welcomed when each pre-contractual key information document details the contract term but it must be explained at the same time how the modalities of contract termination have been regulated (terminability, dates

and periods of notice). Article 8.2(b) v. should be supplemented: “the term **and the terminability** of the investment product, if known;”

The clear and concise presentation of risks is essential in particular for small investors. It has to be ensured that any verbal presentation of risks that may not be fully reflected in the summary indicator is made in consumer-friendly language. For example, some customer information documents for investment funds, which are provided by capital investment firms sometimes refer to “**operational**” risk” and somewhere else to “**operating** risk”. Apart from the lack of terminological clarity when naming this risk category, it is doubtful that small investors actually would use this information and know what it means that this risk category **is not reflected in the summary indicator**. In any case, risks should be described in a clear and comprehensible manner. Article 8.2(e) should be supplemented as follows: “*What are the risks and what might I get back?*” the risk profile of the investment product, followed by the risk and reward profile of the investment product, including a summary indicator of this profile and warnings in relation to any specific risks that may not be fully reflected in the summary indicator; **risks should be described in a comprehensive and clear manner.**”

The past performance of a product is always of key interest to investors. It makes sense to display any practical experiences concerning the understandability for small investors with regard to the presentation of the performance in form of bar charts from Regulation 583/2010 (key investor information and conditions to be met when providing

key investor information), to evaluate these and to let them flow into presentation principles.

The BAK points out that investors confronted with the range of investment fund shares not only have key information documents (KIDs) available to them but also fact sheets or other information material (advertising folders), where their performance is depicted as **line chart**, which – based on its optical impression alone – could result in completely different perceptions by small investors, concerning the (possible) earnings power of an investment fund or investment product. Hence, it must be ensured in future that key information documents and other information material (with performance depictions) handed to small investors do not contradict each other. When depicting the performance of investment products in key information documents in accordance with this Regulation, one could add a small notice, which underlines the special value, trustworthiness and quality of the yield depiction in the key information document.

The obligation to present scenarios on the performance of the product has to be expressly welcomed.

The impact of cost on the yield is a key information for the investor as he is interested to know how much yield remains after (all) costs have been deducted (net yield). In view of the vast range of possible costs, which might be incurred once on concluding the contract and continuously during its term, it is to be welcomed if costs are not only itemized but if their impact on the yield is depicted.

Article 8.2.(f) should be supplemented as follows: *“What are the costs?”, the costs associated with an investment in the investment product, comprising both direct and indirect costs to be borne by the investor, including summary indicators of these costs, and **what impact these costs have on the yield**”;*

Article 12:

The formulation that the investor has to be provided with the key information document in good time leaves too much scope for the provider of the investment product. Practical experiences, in particular with regard to providing pre-contractual information relating to consumer credit agreements show that the obligation to provide information in good time is interpreted by banks in such a way that pre-contractual information documents (for example the “Standard European Consumer Credit Information”) only have to be issued to the consumer on concluding the contract or one the purchase decision has been made. From the point of view of the BAK the Regulation text should expressly state and ensure that the key information document **is issued to the investor as soon as an (initial) product consultation is taking place** and (at least) one investment product or various investment products – as possible alternatives – are being explained.

12.2 determines exemptions for issuing of key information documents if the transaction takes place using a means of distance communication. This is basically to be rejected, and in particular in view of the increasingly more significant number online sales it is difficult to understand that a contract is concluded

without reading the investor information, on which the decision by the investor is based. It is to be feared that small investors are formally pushed into distance selling transactions to bypass information provisions and obligations.

In Section 4, the listed conditions are connected with the word “and”, which underlines the binding existence of both requirements. This formulation should also be adopted in Section 5 to make it clear that all requirements have to be fulfilled to convey the key information document via a website.

In Articles 12 and 13 the term “provide” should be replaced by convey resp. “issue” or “hand over”.

The BAK strictly rejects that the provision by the retail investor of an e-mail address for the purposes of that business shall be regarded as such evidence. The consumer might only have provided his e-mail address to make an appointment with the financial advisor. Hence it should be a requirement that the consumer gives his express agreement to this form of communication in a separate declaration.

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

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