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AK Position Paper

# European Financial Supervision

## 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 Labor.

Werner Muhm  
Director

## Executive Summary

The AK is very worried about the developments in the financial markets, which have a tremendous impact on the real economy and as a result on the labour force. The AK is therefore of the opinion that urgent regulatory measures are required, including the ban of certain products at European level, to come to grips with the economic crisis. The AK and the European Commission (EC) both believe that a comprehensive granting of aid can only build trust if the cause of the crisis is analysed and channelled properly. The communication is thereby a first approach, which, however, has to be implemented in combination with other measures (regulation of hedge funds, control of derivative trading, stricter requirements for granting aid).

## The AK position in detail

From the point of view of the AK, the target of the communication of the EC to create committees at European level, which should complement the supervisory authorities in form of a pan-European supervisory body, has to be welcomed.

The analyses of the current economic and financial crisis have shown that, due to a lack of enforcement competences, the national supervisory authorities were not able to introduce effective measures for controlling cross-border risks. They feared, however, at the same time that, as a result of losses suffered by investors, action could be brought against them within the course of official liability proceedings. That is why one could recognize the increasing tendency of national supervisory authorities to withdraw from as many sectors as possible, which in turn was detrimental to the effective product and institutional control.

Added to this were the various implementations and interpretations of European regulations resp. the non-harmonised supervisory provisions, which resulted, for example, in a different assessment and control of investment banks. Apart from that the supervisory authorities have different personnel structures and numbers, resulting in major divergences with regard to enforcing the provisions. This in turn involved serious flaws concern-

ing consumer protection regulations, as these at national level were only to a limited extent suitable to sufficiently protect consumers against cross-border products.

On the two proposed new European supervisory bodies in detail:

### **1.) European Systemic Risk Council (ESRC) - macro-prudential supervision**

The ESCR has been planned to be that part of the EU supervisory structure, whose task it will be to observe and assess the interaction between macroeconomic developments and the financial system from a broad perspective. This, from the viewpoint of the EC has not or not sufficiently been carried out by the national supervisory bodies; that is why the causes of the risks were not recognized, which meant that it had not been possible to take appropriate countermeasures in time.

On the proposals selected in detail:

### ***Item 3.2 - Role and responsibilities of the ESRC***

From our point of view, the EC proposal should rather be regarded as a feature introduced by a macroeconomic observer. In the form suggested, this committee is more or less unsuitable

The AK points out that the causes of the risks were not recognized, which meant that it had not been possible to take appropriate countermeasures in time.

for existing structures, as neither a broader integration of politico-economic players exists nor an extended politico-economic competence would justify the establishment of such a committee.

Open and not dealt with remain the political problems concerning the consequences of a possible risk warning towards a Member State. How should the immediately occurring loss of trust in the relevant financial system be absorbed? From our point of view, the mechanism “complain or explain” does not solve this problem, because the damage caused by a loss of trust cannot be remedied by explanations of the relevant Member State.

Depending on the politico-economic background of the representatives involved with the ESRC, there will be different opinions with regard to ascertaining and ranking macroeconomic risks. There are no concrete ideas what course should be taken with so many different opinions present. If the ESRC is to be given the chance of being operatively active and not only to be reduced to becoming an archive for macroeconomic data, the EC has to prepare detailed proposals.

In any case, it has to be welcomed that both Parliament and Court of Auditors intend to introduce a form of democratic supervision, independent of the fact whether the committee will be made up of relatively independent experts or politicians.

### **Item 3.3 - Composition and operating principle of the ESRC**

In the composition proposed, the ESRC would be equivalent to an extended Council of the ECB; extended by 4 voting members, i.e. a Commission representative and the three chairmen of the still to be created EU financial supervisory bodies. These would be joined by two observers (1 representative of a national supervisory body and the chairman of the Economics and Finance Committee). It is not quite clear from the viewpoint of the AK, to which extent such an adjustment should improve the macro-prudential supervision.

If a supervision of macroeconomic imbalances within the EU is regarded as a sensible option then this can only be carried out within the scope of a comprehensive macroeconomic dialogue.

For this purpose, however, the ESRC would have to be set up under the leadership of the European Parliament and involve the European social partners, the ECB President and representatives of national supervisory authorities. Only then it would be possible to create a broad politico-economic basis for a macroeconomic coordination.

Furthermore, a provision, that it is up to the autonomous decision of the ESRC to keep any analyses secret, is an illusion if one looks at a committee of this size; in particular, however, it is not reconcilable with the principle of

**From the AK's point of view the ESRC would have to be set up under the leadership of the European Parliament and involve the European social partners.**

The AK emphasises that harmonisation on the basis of minimum standards is not the right way; In fact, appropriate democratic control is required.

full accountability towards the European population who in the end are the ones to deal with the consequences of successful and also failed stabilisation attempts.

An explicit obligation to cooperate with the IMF and the Financial Stability Board (FSB) only seems to make sense when the European states decide to concentrate their policies in these institutions.

In addition, the ECB, as well as the EU Commission and the national supervisory authorities have to be committed to make relevant analyses and expertise available to the ESRC.

## **2.) European System of Financial Supervision (ESFS) - micro-prudential supervision**

A European financial supervisory system must be able to cope with the complexity of the European financial market. One should thereby proceed from the idea of integrated supervision. That is why it should be made clear that not only the major banks with their cross-border activities but also financial service providers will be subject to European supervision.

Another important European task from our point of view is the suggested harmonisation of the implementation of European Directives and the system of sanctions which would apply to the non-adherence of these Directives, as this must be regarded as another reason for the variety of procedures adopted by national supervisory au-

thorities. The relevant principles included in the Communication, should therefore be supplemented in such a way that it becomes clear that harmonisation on the basis of minimum standards is definitively not the right way.

The ESFS has been designed as a committee, which should be, to a large extent, independent of institutional and political interests of the Member States and financial centres. That is why from our point of view appropriate democratic control is required. This should be ensured by the European Parliament and the European Court of Auditors.

On the proposals in detail:

### ***Item 2 - ESFS***

The, from our point of view important, principle has been mentioned that the supervisory authorities of the receiving Member States should be given the opportunity of "having their say" concerning the determination of strategies in the areas of financial market stability and consumer protection. Unfortunately, this principle is then not sufficiently substantiated, i.e. there is a lack of operational approaches as to how a national supervisory body should proceed against products or marketing strategies, which were admitted by another Member State, if these infringe against European Community Law. In any case, quick temporary legal protection provided by the national authority of the receiving Member State should be possible. This would enable the European Supervisory body

to adjudge the legality of the measure as it is provided for obvious violations of the European Community Law.

**Item 4.2 (2) Obvious violation of the European Community Law**

Concerning the faster harmonisation of the implementation of European provisions, it is in the opinion of the AK target-aimed, to provide for concrete competences with regard to obvious violation of the European Community Law in accordance with the Communication proposal. Thereby, among others, the proposal of the EC, in case of urgent measures also to enact directly applicable decisions (in addition to infringement proceedings against the Member State) should also be supported.

**Item 4.2 (4) Full supervisory powers for certain institutions**

From the viewpoint of the AK, the position of the EC should be strengthened because of the weakness of the national supervisory authorities, at least for the supervision of Europe-wide active institutions - in particular rating agencies, but also financial service providers. The right to make enquires, to conduct inspections on site and supervisory decisions should also be bestowed on the new authority. These, however, should in the same way as with the European merger control - to observe the rule of law - only be carried out in cooperation with the national authorities.

**Item 4.3 - Composition and operational structure of the ESFS**

In the opinion of the AK, the "network approach" of the EC, which among others provides for a monitoring position of the European supervisory body in all supervisory authorities of all Member States, has to be welcomed.

Within the course of the relevant new regulation, there should also be a minimum of personnel and financial means made available to the national supervisory authorities. Harmonised supervisory regulations are only then effective if they can be executed in a certain quality by all Member States. Special and detailed importance should be attached to the envisaged "structured" linkage of the ESFA with consumer associations. This should be carried out within an institutionalised framework with clearly determined competences, as due to the legal action taken by association, consumer organisations are often sooner aware of "bad" financial market products than the supervisory authorities.

This supervisory body has to be financed by financial market taxation, either on the basis of total assets or transactions. Yet another burden on public finances to safeguard the stability of the financial markets is not acceptable.

With regard to the independence of the authority as an institution, measures have to be taken in particular to safeguard the independence of finan-

The AK underlines that special and detailed importance should be attached to the envisaged "structured" linkage of the ESFA with consumer associations.



cial market players as persons. For that purposes, appropriate incompatibility regulations, cooling-off periods and similar should be provided for.

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