



April 2009  
AK Position Paper

## Statement on the Commission's consultation on the review of the Prospectus Directive

## 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

## The AK position in detail

The AK suggests improvements with regard to language and terminology used and a mandatory submission of the synopsis of the capital markets brochure to investors.

The AK suggests improving information given to investors. In Austria, thousands of small investors have lost their entire or a major part of their savings because of the financial crisis. Their losses were also caused by the fact that investors had not (or not adequately) been informed about the degree of risk involved in their investments, although the capital markets brochures had listed all sorts of possible risks.

The suggestions include in particular improvements with regard to language and terminology used and a mandatory submission of the synopsis of the capital markets brochure to investors, provided the public offer is not only directed at institutional investors.

The information deficit of the investors is - as shown by current events - caused by the fact that the capital markets brochures were not prepared in German but in English. Even if language is used, which is common and standard in international financial circles, as it is provided for in Article 19 Clause 2 of the Prospectus Directive, this language regulation only meets the requirements of issuers and institutional investors but not the requirements of small investors. For investors, in particular small investors, capital markets brochures, consisting of several hundred pages written in the English language, represented an

insurmountable information barrier, so that important information included in these capital markets brochures, such as references to risks, were worthless for small investors. Even if the investors had basically a good grasp of the English language, they were not familiar with the relevant terminology used in these capital markets brochures. In addition, a document, which has not been drawn up in the official language of a country aggravates the risk of litigation and thereby access to the legal system in so far as in case of a legal dispute the document in question has to be translated first. The AK therefore demands that it becomes mandatory to produce capital markets brochures also in the language of the Member State in which the investment is publically offered, provided the public offer is not only aimed at institutional investors.

In addition it must be ensured that investors do indeed gain knowledge of the most important information provided by the capital markets brochures. Experiences made during the financial scandals in Austria show that this cannot be achieved by merely drawing attention to the generally available capital markets brochures. In fact, it would be necessary that it becomes at least mandatory to hand out the summary, which has to be prepared in accordance with the Prospectus Directive to the investor. Handing over a summary

would ensure that investors would have all important information and that they - on the basis of this information - would be able to form a sound opinion on the key points of the investment. Currently, an investor acquiring an investment is only provided with a promotional brochure, which in many cases only gives a rather one-sided view of the advertised investment; which means that only their earning capacity is described without appropriately referring to the risks involved.

The AK criticises that although the reference to the capital markets brochure is included in the promotional brochure, it is normally placed in such a way that it is not or hardly noticed.

Although in accordance with the Prospectus Directive the reference to the capital markets brochure is included in the promotional brochure, it is normally placed in such a way that it is not or hardly noticed. Even though the provisions regarding advertising contained in the Prospectus Directive are important, they cannot guarantee that advertising does actually meet the information requirements of investors. This is added by the fact that an infringement against the regulations concerning advertising for the issuer is not sanctioned with prospectus liability. Infringements against the regulations with regard to advertising remain more or less without sanctions for the issuer, whilst losses, which misleading advertising can cause to investors, can be tremendous as current examples in Austria show.



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