



To
European Commission
Internal Market and Services DG
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**Response from the Professional Association of Financial Service Provider in Austria
to the Public Consultation
Responsible Lending and Borrowing in the EU**

Dear Ladies and Gentlemen!

The Professional Association of Financial Service Providers represents all 6000 credit intermediaries in Austria. We are thankful for the opportunity given to respond to the Public Consultation on Responsible Lending and Borrowing in the EU.

Q1: Do you have evidence of misleading or unfair advertising or marketing practices with regard to mortgage and consumer credit?

The Professional Association for Financial Service Providers in Austria is frequently contacted by professionals as well as consumers concerning legal aspects as well as Information on financial markets. In Austria there is no evidence of widespread misleading or unfair marketing practices or advertising. Problems that occur are on singular basis only and effectively confronted in court proceedings or through consumer protection institutions.

Q2: What are your views on the development of risk guidelines?

In the context of enabling consumers to make informed decisions and raise awareness concerning possible risk factor, risk guidelines could be a helpful supplement to the counselling of the credit intermediary. Risk guidelines should be part of a general financial education strategy. The development of such guidelines should involve active professionals in the field of credit mediation.

Q3: In your view, are there certain (categories of) credit products that are inherently unsuitable for sale to retail borrowers? Would you welcome a set of standardised or certified products to be offered to consumers?

In our view, credit products themselves are not the problem. Depending on the circumstance, various products could be appropriate for a specific retail borrower. More important would be

defining advice provisions and advice standards that ensure that the retail customer can make a well-informed decision concerning a credit product. In our view, a high level of qualification concerning credit intermediaries as well as banking staff promotes a professional approach in the advisory process.

Standardised products could help in some general cases though there should remain sufficient room for taking into account individual circumstances. Standards do not make products more reliable or suitable for certain customers. On the contrary, a noncritical focus on standardised products could imply a level of safety that is unwarranted for certain specific cases. A compulsory certification process would raise difficult questions concerning liability and should be avoided.

Q4: Do you consider the mortgage lenders and credit intermediaries should always perform creditworthiness and/or suitability assessments before granting consumer and mortgage loans? For mortgage credit, what are your views on the criteria to be used in assessing suitability such as loan-to-income ratios or loan-to-value ratios?

Creditworthiness and/or suitability assessments are in general part of a proper advisory process. The commission should ensure that professional credit intermediaries are provided full legal access to credit history data of their clients at credit ratings agencies. This could prevent cases in which borrowers intentionally or unintentionally misrepresents their personal affairs and prevent over-borrowing.

Defining specific ratios in order to assess suitability presents only a fragmented picture on creditworthiness. More important is an analysis of the total current and future income in relation to current and future liabilities, which can only be assessed on an individual basis. This could be implemented as part of an advice standard.

Q5: How should the lender or credit intermediary demonstrate or document the adequacy of the creditworthiness and suitability assessment?

Documentation should include all information the intermediary receives from the client as well as a short comprehensive reasoning why the financial product is suitable for the specific client.

Q6: Do you think that these advice standards would be appropriate in an EU context? Are there others that should be considered? What would be the most appropriate means to introduce and enforce the application of advice standards? Please explain.

The advice standards put forth within this consultation are with one exception deemed appropriate. We do not agree with disclosure of remuneration paid to the intermediary or bank client-facing staff member.

- 1) The credit institution might influence employees do sell specific products without remuneration. The bank client-facing staff member will have a mayor conflict of interest, but the client may still find his advice more trustworthy because of the missing remuneration.
- 2) It's in the clients' best interest to get the best suitable product in the market. Intermediaries are therefore going to find the best (including cheapest) product on the market. Remuneration of intermediaries is based on many different factors. Having many clients or being good in bargain with the credit institutions might lead to a higher remuneration (without higher cost for the client!). More remuneration is going to look more expansive to the client, even though it is not.

Disclosure as proposed is going to penalize intermediaries with good contracts. We therefore disapprove this single advice standard.

Any EU regulation on advice standards should be defined within the directive and not remain open to amendments or additions within a Lamfalussy-style process. Legal requirements concerning market practices must remain foreseeable and transparent.

Q8: Do you consider that the scope of the definition of Credit Intermediary as set out in the Consumer Credit Directive could also be applied to the mediation of credit not covered by that directive? Would it be appropriate to differentiate between fulltime credit intermediaries and persons who offer credit intermediation on an incidental basis? Please explain why (not)?

The scope of the definition of Credit Intermediary as set out in the Consumer Credit Directive could be applied to all types of credit mediation.

In view of ensuring a level playing field concerning professional credit mediation and in order to guarantee a uniform level of consumer protection the commission should avoid a differentiation between fulltime credit intermediaries and other persons. It would appear inappropriate that some borrowers are guaranteed a professional and comprehensive advisory process whilst others succumb to a lesser standard. Furthermore, lesser obligations concerning credit intermediation would provide unfair competition to professional fulltime credit intermediaries.

Q9: Do you think policymakers should make distinctions between credit intermediaries in terms of the products they sell (mortgage, consumer credit, 'point of sale' credit)? Should credit intermediaries be treated differently in terms of the status of their relationship with lenders (tied versus untied intermediaries)? Please explain your answer.

Untied intermediaries should be regarded as service providers who act in the best interests of retail consumers. Tied intermediaries are in a similar position to credit lender staff. Problems could arise concerning intermediaries tied to several credit providers, since the consumer might regard such service providers as being independent in the sense of an untied intermediary whilst in fact the opposite is the case.

Q10: Could you give examples of cases of misconduct, mis-selling or any other instances of consumer detriment linked to credit intermediaries in your country?

In Austria there is no evidence of widespread cases of misconduct, mis-selling or any other instances of consumer detriment linked to credit intermediaries. Problems that occur are on a singular basis only and effectively confronted in court proceedings or through consumer protection institutions.

Q11: Does the regulatory patchwork for credit intermediaries present a problem, in your view?

Credit provision is a very regional affair. Therefore the regulatory patchwork is less of a problem as might be assumed. Also credit intermediaries conduct business on a local level. Cross border activities are uncommon.

Q12: What would be the most appropriate way to address potential conflicts of interest, particularly with regard to fee/bonus/commission structures? Should any measures in this regard apply to bank client-facing staff as well as intermediaries?

These measures should definitively apply to bank staff as well. If fees/bonuses/commissions are paid, the professional facing the client is irrelevant. A conflict of interest can arise within a bank setting as well as with independent intermediaries. Furthermore, consumers in general understand that intermediaries receive commissions whilst within a bank structure this issue goes unnoticed.

Q13: What are your views on the registration and supervision of credit intermediaries?

In Austria all credit intermediaries are registered at and supervised by the regional administrative authorities. All register data are consolidated within the Central Business register at the Federal Ministry of Economy, Family and Youth. The Federal Ministry is also the superordinate supervisory body.

Q14: What are your views on prudential and professional requirements for credit intermediaries (such as minimum capital, professional indemnity insurance, educational or professional qualifications)?

Minimum capital requirements are inappropriate since most credit intermediaries are natural persons. Professional indemnity insurance as well as a high level of professional qualification should be regarded as prudential.

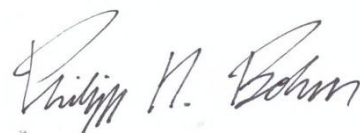
If there are any questions or statements to this response on Responsible Lending and Borrowing in the EU please feel free to contact us.

WITH BEST REGARDS

PROFESSIONAL ASSOCIATION OF FINANCIAL SERVICE PROVIDER IN AUSTRIA



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