



March 2010  
AK Position Paper

Yes to binding sustainability chapter!

New codecision competence of the European Parliament for Trade Policy should be actively used for social and environmental standards!

## 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

The coming into force of the Lisbon Treaty does significantly upgrade the role of the European Parliament (EP) in Trade Policy. This concerns both the information rights of the EP and its codecision competence. Hence, the Parliament will in future play a significant role in international relationships, provided these have a trade policy component. Thus, the political groups of the EP are getting the opportunity of raising their profile and to demand that labour and environmental minimum standards become the touchstone in the planned chapters on Sustainable Development for concluding trade agreements.

Among other things, AK asks for:

- Compliance with all eight ILO Core Labour Standards (the abolition of child labour, the elimination of forced labour, the right to organize and to negotiate collective agreements, the ban of discrimination).
  - Dispute settlement procedures must also apply to the Sustainability Chapter.
  - The exchange of information between governments and social partners must be enabled as well as reactions of governments to complaints of social partners ensured.
- Independent experts of ILO shall assess complaints.
  - The continuous breach of minimum labour standards must be avoided by imposing monetary fines.

## The AK position in detail

In future, the Parliament must “be immediately and comprehensively informed in all phases of the procedure” (Art 218 Paragraph 10 AEUV). The Commission is obliged to regular report to the EP on the state of the negotiations. Thereby it has to treat Parliament and the Special Committee on Trade Policy equally with regard to extent and regularity of the reports (formerly. 133 Committee) (Art 207 Paragraph 3 Subparagraph 3).

The consequence of the Treaty of Lisbon is that with the exception of agreements, which exclusively concern the Common Foreign and Security Policy, the Council may conclude the agreement after approval of the European Parliament. This provision is legally effective since the Treaty of Lisbon has come into effect. Therefore, the approval of the Parliament has to be obtained for all agreements, which are not yet fully concluded.

Against this background, the political groups may use their new rights and competences of the Parliament to define minimum criteria for the conclusion of Association and Trade Agreements. This definitely should apply to the inclusion of legally binding core standards with legal protection that are subject to the Environmental and Labour Law. This also arises from the principles of the Union, which are based on human dignity, freedom, democracy, equality, rule of law and

the preservation of human rights (Art 2 and 6 VEU). The Union must also apply these to its Foreign and Trade Policy.

Hereinafter, the Austrian Federal Chamber of Labour (AK) has prepared an overview of the main elements for a Sustainability Chapter for Bilateral Free Trade Agreements (FTA) of the EU with third countries.

### **The central elements of a Sustainability Chapter in Bilateral Free Trade Agreements demanded by the Austrian Federal Chamber of Labour concern:**

#### **Compliance with all eight Core Labour Standards of the International Labour Organisation (ILO)**

The contracting parties must ratify, implement as national law and effectively apply the agreements, which are determined by the ILO declaration on fundamental principles and rights at work (Core Labour Standards, see Annex). 183 states, which are ILO members, are already obliged to do so in any case. The Core Labour Standards concern the freedom of association and the right to negotiate collective agreements, the elimination of forced labour, the abolition of child labour and the ban of discrimination in employment or occupation. We also demand a ban of export processing zones, as these zones normally do not even comply with the most fundamen-

tal national labour rights. Apart from that, the current official version of the ILO Declaration “Social Justice Declaration for a Fair Globalisation” from 2008 has to be adopted, according to which it has been explicitly clarified that a breach of Core Labour Standards may not legitimate comparative advantages.

#### **Additional ILO Conventions**

Depending on the partner states’ level of development, the EU should also demand the implantation of ILO Convention 155 on Occupational Health and Safety and the Working Environment, the so-called “ILO Priority Conventions” (Convention 122 on Employment Policy, Conventions 81 and 129 on Labour Inspections and Convention 144 on the Consultation of the Social Partners) respectively the Conventions on Decent Work Agenda<sup>1</sup>.

#### **Reporting commitment on the implementation status of the labour standards**

The governments of both contracting parties should regularly report on the progress of the implementation of all obligations assumed in the Agreement. Apart from the obligations, which are contained in the ILO Declaration on fundamental principles and

<sup>1</sup> The concept decent work (Decent Work Agenda) includes four main elements: 1. Fundamental principles and rights at work (ILO-Core Labour Standards); 2. Productive, freely chosen employment; 3. Social protection and security as well as 4. Social dialogue. This also includes taking the gender dimension in these four elements into account. International standards of IAO and UNO do already exist for each of these areas.

rights at work, these include, other agreements mentioned above.

#### **Non-Lowering of Standards clause (Upholding levels of protection clause)**

The objective of this provision is to guarantee that existing social and environmental standards will not be lowered to attract foreign investors. Apart from that, this obligation should bear reference to the fact that it applies to all regions of the country to prevent the Agreement resulting in an increase of production in export processing zones.

#### **Sustainability impact assessments: content, participation of the social partners and follow up**

Provisions on sustainability impact assessments should be included as well as measures, which are taken due to the result of these assessments. Sustainability impact assessments should consider all relevant aspects of the agreements’ social and economic impact. These include access opportunities to high quality public services and the use of different strategies, including trade-related strategies to achieve industrial progress. Labour and employers’ representatives as well as non-governmental organisations must be involved in the evaluation of the sustainability impact assessment on the effects of the Agreement. A follow up process has to be determined following the sustainability impact assessment.

### **Forum for the exchange of information between governments and social partners**

A forum for trade and sustainable development should be set up, which enables the exchange of information on the implementation of the Agreement between government representatives of the partner states on the one hand, and labour and employers' organisations and NGOs on the other. A clearly defined balance between these three member groups should be present in this forum. The forum should meet at least twice a year and provide its members with the opportunity of publicly discussing social issues and problems.

### **Ensure reaction of governments to complaints of social partners**

It is important to commit governments to react to officially submitted complaints of the social partners. This should become a mandatory mechanism, which provides recognised labour and employers' organisations as well as NGOs on both sides of an FTA with the opportunity of submitting such requests for action. Such complaints should be processed within a determined period (e.g. two months). They should also be part of a permanent follow up and revision processes to make sure that governments do effectively deal with complaints.

### **Independent experts shall assess complaints and prepare recommendations**

If the other party does not satisfactorily answer complaints by a government, the social partners or NGOs, inde-

pendent and qualified experts should assess these. Appropriate recommendations must be part of a determined speedy process, so that these assessments are not only used for reports and recommendations, but result in provisions on follow up and reviews. The intention is to maintain the pressure on governments to prevent any breaches of labour rights in their territories. At least one independent expert should be an ILO representative.

### **The dispute settlement procedures must also apply to the Sustainability Chapter**

It should be made clear that the same implementation rules applied to the Sustainability Chapter as for all other provisions of the Agreement. The agreements of this Chapter are therefore in particular subject to the same dispute resolution treatment as all other elements of the Agreement.

### **Avoiding the continuous breach of minimum labour standards by imposing monetary fines**

In case that the consultation proceedings between governments and social partners as well as NGOs and even the recommendations of the independent experts do not produce any positive changes with regard to labour obligations within an reasonable period of time, monetary fines must be provided at the end of the dispute resolution procedures. These should be high enough to have a deterrent effect. These means should be used to improve social standards and working conditions in those sectors and areas, which show relevant problems. In this

connection, technical and administrative support in cooperation with international organisations, in particular the ILO, should be provided for the elimination of injustices.

### **Guaranteeing compliance with environmental agreements**

In order to do justice to the name of this Sustainability Chapter, it is necessary to implement strong clauses for the compliance with multilateral environmental agreements, including the Kyoto Protocol. In accordance with the Generalized System of Preferences of the EU (APS+) all environmental agreements included in it have to be ratified and implemented. These concern the following agreements: Montreal Protocol (ozone depletion), Basel Convention (hazardous waste), Stockholm Agreement (persistent organic pollutants), Convention on International Trade in Endangered Species of Wild Fauna and Flora, Convention on Biological Diversity and Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides.

A Sustainability Chapter with relevant agreement on the protection of human rights (in particular joining the International Covenant on Economic, Social and Cultural Rights of UNO) should be tied to other agreements.

## **Annex 1: ILO-Core Labour Standards**

The ILO “Declaration on Fundamental Principles and Rights at Work” refer to the eight conventions that are also called Labour Standards:

### **Right to Organize and Collective Bargaining**

No. 87: Freedom of Association and Protection of the Right to Organize (1948)

No. 98: Right to Organize and Collective Bargaining (1949)

### **Abolition of Forced Labour**

No. 29: Forced Labour Convention (1930)

No. 105: Abolition of Forced Labour Convention (1957)

### **Equal Remuneration and Non-Discrimination in Employment and Occupation**

No. 100: Equal Remuneration Convention (1951)

No. 111: Discrimination (Employment and Occupation) Convention (1958)

### **Ban on Child Labour**

No. 138: Minimum Age Convention (1973)

Nr. 182: Worst Forms of Child Labour Convention (1999)

The “Declaration on Fundamental Principles and Rights at Work” of June 1998 is a consequence of the World Summit for Social Development, Copenhagen 1995, where the international community of states demanded universal social rights in a globalized world. A regular follow up mechanism reviews the progress made by the Member States with respect to fulfilling their duties.

For further information please contact:

**Éva Dessewffy**

(Expert AK Vienna)

T +43 (0) 1 501 65 2711

eva.dessewffy@akwien.at

**Lukas Oberndorfer**

(Expert AK Vienna)

T +43 (0) 1 501 65 2368

lukas.oberndorfer@akwien.at

**as well as**

**Frank Ey**

(in our Brussels Office)

T +32 (0) 2 230 62 54

frank.ey@akeuropa.eu

**Bundesarbeitskammer Österreich**

Prinz-Eugen-Strasse, 20-22

A-1040 Vienna, Austria

T +43 (0) 1 501 65-0

F +43 (0) 1 501 65-0

**AK EUROPA**

Permanent Representation of Austria  
to the EU

Avenue de Cortenbergh, 30

B-1040 Brussels, Belgium

T +32 (0) 2 230 62 54

F +32 (0) 2 230 29 73