



October 2007
AK Position Paper

Proposal for a regulation on common rules
for access to the international road haulage
market

COM (2007) 265 final/2

About Us

The Federal Chamber of Labour is by law representing the interests of about 3 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 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labor.

Herbert Tumpel
president

Werner Muhm
director

Executive Summary

The Federal Chamber of Labour (AK) does not object to the above-mentioned regulation proposals in principle and would like state its position on individual provisions:

The European Commission established that the lack of clarity and incompleteness of the current provisions give rise to inconsistencies, enforcement difficulties and unnecessary administrative burdens that should be resolved by the current proposal for a regulation.

The AK would like to emphasise in particular that shifting competence towards the EU for bilateral agreements between Austria and non EU Member States is out of the question for passenger transport and the carriage of goods by road. The AK has always endeavoured to specify certain social, technical and environmental standards in these above-mentioned agreement. In addition, a reconciliation of interests in such an agreement that is positive for Austria scarcely seems possible due to the different transport policy concerns of EU bordering states and transit countries.

Regarding this, that is why the AK is calling for action by Austria analogous to its opinion regarding the further liberalisation of European aviation in the proposal for a regulation of the European Parliament and of the Council on common rules for the operation of air transfer services in the Community. As regards this subject matter, the AK also declared itself firmly against transferring competence exclusively to the Commission for the conclusion of air transport agreements with third countries.

In addition, the AK proposes checking whether the previous protective clause for market disturbances should be maintained in order to be able to take suitable measures against market disturbances.

Common rules for access to the international road haulage market (recast)

The principles of the internal market in road transport are currently found in Directive 96/26/EC on admission to the occupation of road haulage operator and road passenger transport operator, in Regulations (EEC) No 881/92, No 3118/93 and No 684/92 as well as in Regulation (EC) No 12/98 on access to the internal market in road transport. Regulation (EEC) No 881/92 establishes the freedom of international carriage of goods by road for hire or reward for the undertakings which hold a Community licence. Regulation (EEC) No 3118/93 allows undertakings which hold a Community licence granted by a Member State to provide road haulage services within other Member States under the condition that this service is provided on a temporary basis (cabotage). Community licences can be delivered only to undertakings established in a Member State which satisfy minimum requirements in terms of good repute, financial standing and professional competence in accordance with Directive 96/26/EC.

With the current proposal, the European Commission intends to carry out the following changes:

- A simple, clear and enforceable definition of “cabotage” allowing for up to three transport operations consecutive to an international journey and within seven days and the obligation for the holder to keep in the vehicles documents like the consignment letters which show the

date and place of the arrivals and departure;

- A simplified and standardized format for the Community licence, certified copies and the driver attestation in order to reduce the administrative burden and delays especially at road side checks;
- Enhancing of the current legal provisions by obliging a Member States to act, when requested to do so by another Member State, when a haulier to whom it delivered a Community licence commits an infringement in the Member State of establishment or in another Member State.

The AK finds fault in principle with the fact that the proposal for a regulation is limited to harmonising and simplifying the existing legislation. Unfortunately, the possibilities of the “higher quality standards” option with the associated increase in the level of professional qualification and improvement in financial standing of the sector was not chosen.

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The provisions in detail:

Article 1 Scope

This article stresses that the regulation shall apply to all international carriage within the territory of the Community, i.e. also from and to third countries, as well as to national carriage of goods by road undertaken on a temporary basis by a non-resident haulier (cabotage). As regards carriage from and to third countries, Article 1 states that it shall not apply to that part of any journey carried out within the territory of the Member State of loading and unloading as long as the agreement between the Community and the third country concerned has not been concluded. However, the regulation applies within the Member States crossed in transit. As regards the discussion in the last Council working group meeting on taking up the term “endeavour” again in paragraph 3, the AK ascertains that one of the basic principles of EC regulations is the principle of non-discrimination. Preference should therefore be given to a stricter formulation of the original Commission proposal, whereby “the Member States” should be obliged to adapt “the agreements referred to in point a)” “to ensure compliance with the principle of non-discrimination between Community hauliers.”

Article 5 Driver attestation

The provisions on driver attestation will be taken over in principle from the existing regulations.

The AK expressly welcomes these regulations, although more extensive security features should be provided for besides the engraved stamp in order to prevent forgery. The BAK also declares itself in favour of implementing the electronic register provided for in paragraph 5, which will at any rate result in an improvement in the possibilities for checks. With regard to this, reference is made to tried and tested provisions like those that exist e.g. in the area of digital recording equipment for registering recording equipment cards.

Article 6 Verification of conditions

According to the Commission proposal, whenever an application for a Community licence is lodged, not more than five years after issue and subsequently at least every five years one should verify whether the haulier still satisfies the conditions for the Community licence.

The AK believes that we need to make it clear that verification of the conditions is carried out not only every five years, but also if there is any suspicion or if an application is made.

Article 8 Cabotage/Principle

The AK welcomes the new clearer provisions of the proposal for cabotage. However, it seems necessary to carry out further regulation as there are still no rules for example on how often cabotage journeys are allowed over a year; the designated limit of three journeys within seven days seems too high and it is also difficult to check (e.g. whether three journeys have already been made).

Article 9 Rules applicable to cabotage operations

In paragraph 1, the Commission stresses that the performance of cabotage operations shall be subject to the laws, regulations and administrative provisions in force in the host Member State. The following list cites, besides the transport conditions, the dimensions and weights of road vehicles, requirements relating to the carriage of certain categories of goods and value added tax (VAT) on transport services, also the "working time, driving time and rest periods" in lit d).

In the AK's opinion, this list is far too limiting. The AK therefore calls for the more comprehensive terms "social, road safety and remuneration provisions" to be added, as was the intention also in the explanatory impact analysis of the present proposal for a regulation.

Otherwise every transport operator not established in Austria yet performing cabotage operations in Austria would

have competitive advantages over Austrian undertakings.

We support deletion of the term "rates" in lit a), whereby a cabotage operator must only adhere to the conditions governing the transport contract as price fixing infringes EU competition law in principle.

In accordance with paragraph 2, only the "laws, regulations and administrative provisions" (Verwaltungsvorschriften) referred to in paragraph 1 should be applied on a non-discriminatory basis. The AK believes that this is in no way sufficient as paragraph 1 contains not only laws, regulations and administrative provisions ((Verwaltungsvorschriften). Either the general term "provisions" (Vorschriften) that has been removed should be used or "laws, regulations and administrative provisions" (Rechts-und Verwaltungsvorschriften) as in paragraph 1.

Article 11 and 12 Sanctioning of infringements and

Article 13 Entry in national register

The AK welcomes the clearer proposals on sanctions in principle. However, the AK also shares the view that sanctioning infringements, particularly those that are committed in a Member State, should be made stiffer (binding).

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A central database should be set up for the sanctioning of infringements that combines the infringements in the Member States as well as their sanctions.

In addition, it should be stressed that Article 11 paragraph 1, by way of derogation from the definitions in Article 2 sub-paragraph 7, talks about “a serious infringement or of repeated minor infringements”. The same goes for Article 11 paragraph 2: here it talks about “a serious infringement or of repeated minor infringements”. We suggest using the same wording in the regulation text.

In accordance with Article 12 paragraph 2, the host Member State shall be empowered to impose sanctions on a non-resident haulier who has committed infringements of this Regulation or of national or Community road transport legislation in their territory during a cabotage operation.

In the AK’s opinion, this wording is in no way sufficient: since – as detailed above – very different rules for performing cabotage journeys are cited in Article 9, it is not enough to provide sanctions only in the event of infringements of “road transport legislation”. Sanctions also need to be able to be imposed here in particular for infringements of social law provisions.

**For any further questions please
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