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AK Position Paper

Proposal for a regulation establishing
common rules concerning the conditions to
be complied with to pursue the occupation of
road transport operator COM(2007) 263 final

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 basic aim of the Proposal is to harmonise national provisions on access to the occupation. The current Directive 96/26/EC establishes minimum conditions relating to good repute, financial standing and professional competence which companies have to satisfy to be authorised to engage in the occupation of road transport operator.

The AK is of the opinion that repeated minor infringements of national rules also bring with them inadmissible competitive advantages and for this reason calls for Art. 4 lit c) to be amended in such a way that good repute is also lost if an undertaking was convicted of "serious or repeated minor infringements".

The AK believes that the possibility for authorities to request proof from the applicant that there are no arrears in taxes or social security contributions owed from entrepreneurial activities should also be included. In addition, we need to make it clear that all proof (with the exception of annual accounts) should not be older than 3 months.

In connection with this, the AK calls for a further point to be incorporated in the electronic listing of data that should be contained in this register, namely the number of employees in the respective company. This information is very important on the one hand to prevent undeclared work and on the other to ascertain and evaluate the effects of certain measures on employment.

Concerning the conditions to pursue the occupation of road transport operator

The proposed Regulation should introduce the following innovations:

- The concept of the responsibility of the transport manager who lends his or her professional competence certificate to a company to enable it to obtain an authorisation, and stricter rules governing his or her links to the company.
- Criteria to be met to ensure that a company is actually stably established in a Member State and that its conduct can be properly monitored by the national authority which authorised it to pursue the occupation.
- Comparable financial indicators to measure a company's financial standing, compulsory minimum training of 140 hours prior to the examination to test professional competence which all applicants must sit, and the accreditation of training centres and examination centres.
- The obligation for authorities which discover that a transport operator no longer satisfies the good repute, financial standing or professional competence conditions to warn the operator and, if remedial action is not taken within a specified period, to impose administrative sanctions ranging from withdrawing its authorisation to disqualifying its transport manager.
- Mutual recognition between Member States of EC road transport rules. This will result in the totalling-up of serious infringements wherever they are committed which, above a certain threshold, are likely to tarnish a transport operator's good repute and lay it open to the sanctions referred to above.
- Electronic registers interconnected between all Member States so as to reduce the administrative cost of monitoring companies and facilitate the exchange of information between Member States.

The provisions in detail:

Article 4 Transport manager

This article specifies the links that the person with the required professional competence (the so-called "transport manager") must have with the company for which he or she is supposed to run the transport business. The transport manager must be employed and remunerated by the company.

The possibility for owner-operators to use another transport manager should increase their independence in particular with regard to bigger transport operators and thus protect them from the practice of disguised employment.

In the AK's opinion, we need to make it clear that the transport manager does not take on the responsibility of industrial law manager – if there is an industrial law manager, he or she should be aware of the transport manager's plans of action.

In addition, paragraph 1 lit c) specifies that the transport manager shall lose his or her good repute if an undertaking has been convicted of serious infringements of the national rules in force concerning the pay and employment conditions in the profession, road traffic, road safety or professional liability. Article 5 Conditions relating to the requirement as to establishment

Articles 3 and 5 lay down common rules to ensure that only companies that are genuinely and stably established can be authorised to engage in the occupation. Under Article 5, companies are genuinely and stably established if they have an office, registered vehicles and an operating centre located in this Member State.

In connection with this, the AK calls for not only the existence of fixed and current assets, but also personnel registered with an operating centre in relation to the registered vehicles. In addition, the AK believes that the company should ensure that a person responsible in the company with the power to make decisions is able to be reached at the operating centre.

Article 6 Conditions relating to the requirement as to good repute

Article 6 lists the Community rules serious infringements of which may lead to the loss of good repute even if committed in other Member States. It also indicates that repeated minor infringements may be regarded as serious. It grants the Commission implementing powers to draw up a common list of infringements in cooperation with a Regulatory Procedure with Scrutiny Committee. This list should be the precondition for any exchange of information between Member States and the definition of common thresholds for the withdrawal of authorisations.

The AK is critical of this process for drawing up a common list in principle as we fear that the inclusion of a Regulatory Procedure with Scrutiny Committee will lead to a considerable delay in the entry into force of efficient sanction provisions.

In addition, the AK believes that the form of this list that the Commission draws up should be analysed, particularly as the wording chosen in the draft text was "the Commission shall adopt.." and it is not clear which categories, types, frequency of occurrence and degree of seriousness of infringements should actually be evaluated. Clarification would be sensible.

The AK believes that the company should ensure that a person responsible in the company with the power to make decisions is able to be reached at the operating centre.

In addition, the conditions relating to the requirement as to good repute should not only exist in one Member State, but in all Member States at any time as the conditions relating to the requirement as to establishment in a Member State also enables the occupation and the activity to be pursued in other Member States. The managers could infringe the good repute provisions of the Member State in one country, and nevertheless meet the national criteria on good repute in another Member State. This problem could be solved by mutual access to the national electronic registers cited in Article 15.

Article 7 Conditions relating to the requirement as to financial standing

Article 7 introduces indicators to measure a company's financial standing. Companies or Member States can choose from two options: either the current assets and the "quick ratio" (according to the terminology of the fourth accounting directive) established on the basis of the company's annual accounts have to comply with certain thresholds or the company has to provide proof of its financial standing by means of a bank guarantee.

The financial indicators proposed are those used to assess a company's ability to meet its short-term debts.

The AK establishes that this new regulation would make the conditions relating to the requirement as to financial

standing worse, which could even allow long-term debts to be accumulated without restrictions as emphasis will only be on the short-term ability to pay in future.

The national regulations on admission to the occupation regarding regular traffic and occasional traffic (BZP-VO) as well as road haulage (BZGü-VO) pay particular attention to averting overindebtedness. This tried and tested parameter should also be used in future, besides the newly incorporated guarantee of financial standing, as an indicator of financial standing and should therefore also be included in the new EU rules.

Article 11 Checks

This article provides for checks which Member States can carry out in addition to systematic checks more frequently than the existing five-year checks.

The AK welcomes the inclusion of these additional possibilities to make supplementary checks in connection with Directive 2006/22/EC on minimum conditions governing the implementation of Regulations (EEC) No 3820/85 and (EEC) No 3821/85 on social welfare rules for activities in road haulage.

The use of targeted checks is an effective way to establish infringements, although it should not only apply to companies classed as being at risk, but should also be able to be carried out if there is any suspicion or if an application is made.

Article 15 National electronic registers

Article 15 calls for the introduction in each Member State of an electronic register of companies which should be interconnected throughout the Community by the end of 2010. Such registers already exist in many Member States, and have proved to be effective in monitoring companies.

Annex I

This annex lists the knowledge to be taken into consideration for the official recognition of professional competence by the Member States. The knowledge must cover at least the subjects road haulage and road passenger transport respectively. In relation to these subjects, applicant road haulage and road passenger transport operators must have the levels of knowledge and practical aptitude necessary for the management of a transport undertaking.

Lit A. Civil law, sub-paragraph 5) Road passenger transport

The applicant must be able to consider a claim by the principal regarding compensation for injury to passengers or damage to their baggage caused by an accident during transportation, or regarding compensation for delays, and to understand how such a claim affects his contractual liability.

From the AK's point of view, whilst the analysis should be seen as a first step,

each applicant must also know and be able to use knowledge about consumer protection law and any liability for damages.

In addition, besides the above-mentioned law of damages, the BAK believes that knowledge in the legal area of worker liability should also be included in the list.

Lit C. Social law

From the BAK's point of view, we really must also include in the knowledge already listed the fact that the applicant has to attain and provide proof of knowledge of social law, worker protection law and social security law.

Lit F. Access to the market, sub-paragraph 2)

The applicant must in particular be familiar with the rules for setting up a road transport undertaking.

In accordance with sub-paragraph 6 and 7 regarding road haulage, we really must include the fact that the applicant has to provide proof or acquire knowledge of the rules on regular traffic and occasional traffic.

Lit H Road safety, sub-paragraph 2

The applicant must be able to take the necessary steps to ensure that drivers comply with the traffic rules, prohibitions and restrictions in force in different Member States (speed limits, priorities, waiting and parking restrictions, use of lights, road signs etc.)

The AK calls for the term “comply with” to be replaced by the term “know” as drivers must have first got to know the rules, i.e. proof that they have been conveyed to them and then they can comply with them.

In addition, we fail to understand why “elementary knowledge of the layout of the road network” (sub-paragraph 6) should be needed only for admission to road passenger transport and not also for road haulage. The AK declares itself in favour of corresponding knowledge and proof of it as a prerequisite for professional competence in road haulage as well as road passenger transport.

**For any further questions please
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