



March 2011
AK Position Paper

“Services of General Interest in Bilateral Free Trade Agreements” - Reflection Paper of the European Commission

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

Against this background AK rejects any attempts to limit the scope of already established exemptions from liberalisation obligations and emphasises the lack of legal bases for the proposed division of the public services sector

The European Commission has presented a Reflections Paper on Services of General Interest in Bilateral Free Trade Agreements. The latter aims to reframe the understanding and treatment of public services in future trade negotiations. In this context, two proposals are particularly problematic: on the one hand, the current understanding of public services is regarded as being too extensive (which simultaneously forms the basis for existing exemptions from liberalisation obligations for public services) and the scope of more general exemptions for public services shall be streamlined. On the other hand, the Commission fosters a new approach in regard to the classification of public services, which shall facilitate future liberalisation.

Thereby, in particular the telecommunication, postal and energy sectors are associated with offensive commercial interests - as are transport, water supply as well as wastewater and waste disposal (as part of environmental services). Against this background AK rejects any attempts to limit the scope of already established exemptions from liberalisation obligations and emphasises the lack of legal bases for the proposed division of the public services sector.

The AK position in detail

The Federal Chamber of Labour (AK) takes the current forays of the European Commission (EC) on dealing with “Services of General Interest in Bilateral Free Trade Agreements” as an opportunity to reiterate the importance of an offensive European position on the protection of public services. In this context, it has been pointed out on several occasions that the bilateral trade policy strategy of the EU must by no means be oriented towards undermining the existing minimum standard of protective regulations and the scope of existing liberalisation reservations. Otherwise, the bilateral trade strategy of the EU entails the risk of undermining the foundations of the European Welfare and Social Model (see in particular AK Position Paper from February 2007 “The new bilateral trade agenda of the European Union”).

Against this background, a negative response towards the recently distributed EC Reflections Paper on “Services of General Interest in Bilateral Free Trade Agreements” does not only gain in importance in view of setting the long-term course of the EU trade strategy. Apart from that, the EC positions it as a direct reference point for dealing with public services within the scope of the current negotiations for a Comprehensive Economic and Trade Agreement with Canada (CETA). This all the more requires an offensive European position on the comprehensive protection of public services to avoid setting a negative precedent for subsequent negotiations (see Position Paper of AK from January 2010 on the Comprehensive Economic and Trade Agreement EU-Canada).

AK is opposed to any attempt to undermine the protection of public services in Free Trade Agreements. The Commission argues in its Reflections Paper that the current GATS exemption for “public utilities” (English language version) resp. “services public” (French language version) is no longer defensible and difficult to maintain as the scope of this exemption is “unclear” and no “commonly accepted definition” exists. Furthermore, the Commission emphasizes “important offensive interests in certain privatised public utilities/services, notably in telecommunications, postal, and energy”. Taken together, the thrust of these “Reflections” becomes clear at an early stage: the broader horizontal reservation for “public utilities” of the EU in the context of the list of GATS obligations should therefore be abandoned in the current bilateral Free Trade Agreement negotiations. The departure from the so-called GATS Public Utility exemption is thereby based on a completely misguided problem construction - it would be more important to ensure that the exemption of public services or activities of general interest (public monopolies, exclusive rights for private operators) is guaranteed through an extensive definition of public services. Plus: the horizontal reservation concerning subsidies from the GATS list is no longer mentioned in the Reflections Paper - hence, the great significance assigned to ensuring political room for manoeuvre to support and finance public services, has already been ignored a priori.

AK voices massive criticism at the “tripartite division” of services of general interest by the Commission

Overall, the proposed approach for future negotiations is far from guaranteeing a binding removal of public services from the scope of Free Trade Agreements (see in particular AK Position Paper from February 2007 “The new bilateral trade agenda of the European Union”). Apart from that, the strong emphasis on offensive “endogenous” European trade policy interests does generally increase the liberalisation pressure on these sensible sectors. However, the EU can only then credibly argue that services of general interest are an integral part of the European Welfare and Social Model, when it does not at the same time pressure to liberalise these services.

AK strictly objects to the new definition of services of general interest in a “Reflections Paper” by the Commission. The Commission correctly points out that to-date there is no legal definition for services of general interest (SGIs) at European level. It is therefore unacceptable that the Commission “redefines” the SGIs in a Reflections Paper. A discussion on SGIs can only take place on the basis of a broad public debate and in compliance with the common legislative procedure including the European Parliament and the Council. AK has been suggesting the introduction of a framework law for services of general interest for years, in which the main policies and conditions for providing these services of general interest for the benefit of the citizens of the Union could be established. Provided this is suitable at all, one could try to find a common European concept within this framework.

AK voices massive criticism at the “tripartite division” of services of general interest by the Commission. As regards contents AK cannot accept such a classification of SGIs. According to European primary law, a classification into “network industries” (large network infrastructures: telecommunication, energy, transport, postal and environment), in which the Commission places “offensive commercial interest” and other economic services of general interest, is not provided for. In doing so, the Commission also leaves its own definition paths: in its Communication “Services of general interest, including social services of general interest: a new European commitment, COM (2007) 725”, the Commission expressly refers to two categories of SGIs, which can be derived from primary law. Based on its own trade policy interests, the Commission now introduces a third subcategory of “network industries”, which should be discussed in future negotiations. That the Commission just “defines” as it seems to be politically practicable from its point of view is best demonstrated on the example of water. In 2007, the Commission “defined” in the Communication mentioned above under large network infrastructures the sectors “energy, telecommunications, transport, audiovisual broadcasting and postal services”. The present Reflections Paper now transports water supply and disposal and waste disposal (incl. all environmental services) to the category of “network industries”, where “offensive commercial interest” is addressed. The shifting boundaries are suited to favour one-sided com-

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mercial interests, as well, they are contradictory to the requirement of guaranteeing the comprehensive protection of public services.

Finally, with regard to the third pillar of the planned classification it is a fact that the so-called non-economic services of general interest - based on the European primary law - are exempt from single market and competition law provisions. Protocol 26 to the Lisbon Treaty again clarifies that European primary law "does not affect in any way the competence of Member States to provide, commission and organise non-economic services of general interest". Therefore, the Commission has no trade policy competencies in this sector right from the outset.

AK requests to ensure the comprehensive protection of the special nature and the high collective value of all services of general interest and not to undertake any classifications, which do neither find a basis in primary law nor in the current inter-institutional agreement! In addition, in view of the current CETA negotiations with Canada, we reiterate our concerns in respect of the so-called negative list approach and of increased liberalisation pressure on the public service sector.

It seems to be all the more important to support an improvement - and by now means a reduction - of respective protective regulations. The standard of the existing GATS ex-emptions must not be lowered. The proposal of the Commission is contrary to this request and must be rejected as a discussion basis on the "Reflection" of the role and significance of public services in bilateral Free Trade Agreements.

Should you have any further questions
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