



June 2013

AK Position Paper

Revision of Directive 96/53/EC laying down the maximum authorised dimensions and weights for certain road vehicles

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.

Rudolf Kaske
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

The AK position in detail

The proposal for a Directive mentioned above primarily provides for the admission of Gigaliners in cross-border transportation between two Member States, the changes of dimensions (lengths and widths) of vehicles used for transporting goods, the increase of the load capacity in respect of the intermodal transport of 40- or 45-foot containers to 44 tonnes as well as the increase of the maximum authorized weight of for buses with two axles by one tonne to 19 tonnes.

Generally it should be stated that the present draft has incorporated individual proposals, which have to be considered positive: for example the improvement of the visibility of vulnerable road users as a requirement for driver's cabs, the declaration of intent in respect of tighter controls, the determination of minimum penalties in case of overload or the promotion of installing weight sensors. It is also positive that the now permitted HGV superstructures to improve vehicles' aerodynamic performances might enhance the protection of the environment. However, the Directive proposal describes almost all these points in a rather vague manner, which should therefore be rated as recitals; there is a definite lack of concrete, mandatory provisions.

The large majority of the other provisions is clearly aimed at further increasing the competitive advantage of road over rail. Here, the most far-reaching is the intention of the European Commission (EC) to legalise for the first time the cross-border use of Gigaliners between neighbouring states. This will trigger a dangerous domino effect, which will force more and more states to allow the use of Gigaliners. It is obviously the

strategy of the Commission to use this approach in order to create facts and, based on this unfair competition, force the hand of other Member States. The Federal Chamber of Labour (AK) would like to point out that this clearly contradicts both the objectives of the EU Transport White Paper from 28.3.2011 ("Roadmap to a Single European Transport Area - Towards a competitive and resource efficient transport system") and the Convention on the Protection of the Alps (Alpine Convention). Apart from that, Austria already had earlier experiences with a similar approach of the Commission, according to which in 2002, due to the pressure of her neighbouring states Germany and Italy, the length of busses had to be increased from 12 m to 15 m in the Austrian Motor Vehicles Act.

The AK is outlining its position on individual provisions of the present Directive proposal as follows:

On Article 1 Paragraph 2 (Article 4 is amended as follows):

Due to the tendentious wording, we would like to begin with addressing the argumentation concerning the Directive proposal, which states as follows: "Some stakeholders raised questions about the interpretation of Article 4 of Directive 96/53/EC. In the light of these questions, Vice-President Kallas sent a letter on 13 June 2012 to the Chairman of the Committee on Transport of the European Parliament. This letter offered guidance on this subject and considered that the cross-border use of longer vehicles is lawful for journeys that only cross one border, if the two Member States concerned already allow it, and

if the conditions for derogations under Article 4(3), (4) or (5) of Directive 96/53/EC are met. This use should not have any significant impact on international competition. To reflect the guidelines given in that letter, this revision includes the provisions regarding Article 4(4) in the text of the Directive”

Hence, the Directive proposal has admitted in no uncertain terms that industry, shippers and hauliers (=“stakeholders”) have demanded a reinterpretation of the EU Directive and that bilateral Gigaliner transport will have an impact on competition. Apart from ignoring the results of scientific studies, the Commission has also failed to prove that this impact will not be „significant”. In doing so, the Commission counteracts its own target, outlined in the Transport White Paper, i.e. to shift 30 % of road freight transport over 300 kilometres onto the rail by 2030. In Austria, the modal split of rail freight transport has been at about 30 % for many years. However, based on the ongoing liberalisation of road freight transport it has to be feared that its share will gradually decrease.

Due to the strong protest in recent years against the Directive, the broad alliance of Gigaliner opponents has been able to achieve some success. Hence, the Commission has not been able to enforce its idea that Gigaliners will be introduced as a general standard in all Member States. However, even though the Directive proposal does not force any Member State to allow Gigaliners, the legislation of bilateral transport makes using Gigaliners more attractive. As a result these could then operate between Sweden and Finland, Sweden and Denmark or Germany and The Netherlands. However, hauliers from other states would have a competitive disadvantage in these countries and would put pressure on their govern-

ments to allow the national admission of Gigaliners. Thus it is merely a matter of time until

- bilateral transport is turned into multilateral transport,
- increasingly more countries will admit Gigaliners,
- possible limits of routes or load capacities will be gradually abolished.

If, for example, goods in Dutch or German ports are loaded onto Gigaliners instead of using rail transport, this has also a negative impact on other countries, such as Austria:

- Increase of HGV transport (e.g. by decoupled Gigaliners) due to shift from rail to road,
- Competitive disadvantage and job losses for local hauliers,
- Gigaliners lower the cost of freight transport and induce additional traffic, which has a negative impact on health and environment,
- Decimation of railway undertakings.

In Austria, three relevant studies on this subject have been prepared on behalf of the Federal Ministry for Transport, Innovation and Technology (BMVIT): these studies have illustrated in detail the dramatic impact admitting Gigaliners in Austria would have on road safety, infrastructure (retrofitting costs for the motorway and dual carriage network of 5.4 billion Euro!) and combined rail transport (minus 70 percent). They also depict the clear shift from rail to road. This in turn contradicts Article 2 of the Convention on the Protection of the Alps (Alpine Convention), according to which the contracting Parties commit to ensure “...a comprehensive policy of protection and preservation of the Alps, taking into account in an equitable way the interests of all Alpine States and

their Alpine regions, as well as those of the European Economic Community in using resources wisely and exploiting them in a sustainable way...". The contracting Parties shall take appropriate measures in the area of "Transportation" - "with a view toward reducing the hazards and harms caused by inter-Alpine and trans-Alpine transport to a level tolerable for humans, flora and fauna, as well as their habitats and environment, notably, through a transfer of an increasing amount of traffic, particularly of goods, to rail...".

The AK would also like to point out that the Eurovignette Directive does not provide for separate - higher - toll rates for Giga liners. However, even a relevant amendment of the toll system would not end unfair competition, as industry, shippers and hauliers are campaigning for Giga liners so that freight rates can be reduced and profits increased. The proposal to increase tolls for mega trucks would eliminate/diminish this advantage and reduce their use to absurdity; hence, realistically toll charges will never reach such a level that it would equalize the cost advantage. Apart from that, there would be no international harmony as it is left to the discretion of the Member States whether they want to collect an HGV toll and how it would be constructed. In addition, the motor vehicle tax for HGVs in Austria (based on load capacities is capped).

Apart from that, the AK would like to point out that the admission of Giga liners would burden professional drivers with an additional degree of responsibility and strain without being accompanied by relevant training or remuneration. Hence, special training and adequate remuneration for drivers of currently already admitted Giga liners is long overdue. This also applies to safety measures, such as back view cameras,

directional stability control devices, obligatory weight sensors, automatic distance measuring devices etc.

In view of road safety, the wear and dimensioning of the existing road infrastructure and the inevitable increasing environmental pollution due to the shift from rail to road resulting from this, the AK firmly rejects the proposed amendments in Article 4, i.e. the larger dimensions (lengths and widths) in cross-border transportation in general resp. the unrestricted larger dimensions and unlimited weights in cross-border transportation between two Member States.

On Article 1 Paragraph 6 (revised version of Article 8):

The introduction of aerodynamic improvements is generally to be welcomed: certain devices enable exceedances of length by maximal two metres; others (e.g. Article 8 only applies to streamlined flaps, which have been installed at the back of the vehicle) shall not even have any impact on the length.

Here, the AK criticizes the reasoning of this Regulation on the one hand and the vast number of uncertain legal terms on the other: hence the reasons for the amendments to the Directive are not comprehensible, according to which "adding flaps of 1 m to 2 m in length at the rear of the vehicle would allow savings of between 5 and 10 % in fuel consumption at an average speed of 80 to 90 km/h [on motorways]". The AK would like to point out that only 9 of 27 Member States permit a maximum speed of more than 80 km/h for HGVs on motorways. According to a study commissioned by AK Vienna "HGV Speed limits and emissions: impact of complying with HGV speed limits on motorways on emissions and noise" from 2011, these values could be

achieved far easier, if the legal provisions on maximum speeds of HGVs on motorways would actually be complied with. Expressed in absolute values this means a saving of about 110,000 t CO₂ p.a. resp. ca. 0.75 % of the entire CO₂ emissions of road traffic in Austria.

With regard to uncertain legal terms, the most important requirement on aerodynamic devices is a "significant improvement in the aerodynamic performance of the vehicles". Apart from that, the proposal leaves all Member States free to decide on the scope of aerodynamic devices. Only after the Directive has come into force "the Commission shall be empowered to adopt delegated acts [...] These shall take the form of technical characteristics, minimum levels of performance, design constraints, and procedures for the establishment of the test certificate." From the point of view of the AK, this encourages an uncontrolled growth of widely differing aerodynamic devices on the one hand, whilst preventing the European Parliament from having a say in the matter on the other.

Apart from that, there is no guarantee that HGVs fitted with such devices are actually still compatible with the rail (for combined transport).

Based on all these reasons, the AK demands to determine unambiguous definitions, clear provisions on technical characteristics and uniform minimum levels of performance in the text of the Directive before any decisions are taken.

On Article 1 Paragraph 7 (revised version of Article 9):

The AK expressly welcomes the new regulations on requirements on cabs: they shall among other improve the visibility of vulnerable road users to

drivers by reducing the blind spot under the front windscreen and increase comfort and safety of drivers.

As already mentioned earlier, this Article too is lacking concrete definitions; here too, details shall only be determined after the Directive has come into force; the Commission shall then be empowered to adopt delegated acts. Analogue to the statement of the previous point, AK demands to determine unambiguous definitions, clear provisions on technical characteristics and uniform minimum levels of performance in the text of the Directive before any decisions are taken.

On Article 1 Paragraph 10 (revised version of Article 11):

First, in this provision and in Annex I Number 2.2.2 lit c, the term "combined transport" has been replaced by "intermodal transport". According to the "Terminology on Combined Transport prepared by the UN/ECE, the European Conference of Ministers of Transport (ECMT) and the European Commission (EC)", published by the United Nations, 2001, "combined transport" has been interpreted as follows: "Intermodal transport where the major part of the European journey is by rail, inland waterways or sea and any initial and/or final legs carried out by road are as short as possible." In respect of "intermodal transport" it is only important that at least two transport carriers are participating in the transportation; however, in this case the longer distance may also be carried out by road.

Furthermore, in accordance with the proposal, the initial and terminal road journeys for 45-foot containers shall be limited to 300; there will be no limit of the initial and terminal road journey if an operation is using intra-European

short sea shipping. So far, the 45-foot container was only not permitted to be used in road transportation; however, if an exemption had been granted it could be transported on a short initial and terminal road journey within the scope of combined transportation.

The AK strictly rejects this new provision: replacing the term “combined transport” with “intermodal transport” is counterproductive from a transport policy point of view and means the one-sided preference of road transport. The general admission of the 45-foot container does neither make sense nor is it necessary. Austria has currently no problems with initial and terminal road journeys (granting exemptions). A short initial and terminal road journey limit of 300 km resp. no limit at all, if the container had at one time been transported by sea (e.g. between Finland and Poland), would enable pure road transit through Austria by 45-foot containers (e.g. from Poland to Italy) with 44 t. This would have serious negative effects for the population and the environment, whilst at the same time representing a measure, which would lead to shifting freight transportation away from environmentally friendly transport carriers onto the road.

On Article 1 Paragraph 11 (revised version of Article 12):

The AK welcomes the new provisions on establishing a system for pre-selecting and targeting checks on vehicles, on promoting the installation of weight sensors and on the minimum scope for penalties in case of infringements (they reach from road checks to operating controls).

However, in addition, the AK demands that the installation of weight sensors

will be made obligatory and is here too - as in the statement on the new Articles 8 and 9 - opposed to determining details only after the Directive has come into force, when the Commission shall be empowered to adopt delegated acts.

On Article 1 Paragraph 12 (revised version of Article 13):

The AK regards the division of infringements in case of overloading according to their severity and the relevant determination of minimum financial penalties (up to loss of good repute) as positive. However, the individual penalty categories appear to be very moderate and should be tightened.

However, the division of infringements in case of exceeding the maximum dimensions according to their severity and the relevant determination of minimum financial penalties appear to be rather vague. In contrast to overload, these infringements are mainly concerned with exceeding the construction characteristics of the vehicles and not (apart from one case) with infringements against administrative regulations. Here, the AK demands an unambiguous clarification in the Directive text that at least in case of infringements against dimensions drivers may under no circumstances be held accountable. Apart from that it is difficult to understand, why only deviation of 20 % is considered a “very serious infringement”.

On Article 1 Paragraph 13 (revised version of Article 14):

The AK welcomes that the “the shipper shall incur liability in the same way as the haulier if the vehicle is overloaded”; however, this should not only apply to containers.

On Article 1 Paragraph 16 (amendment of Appendix I of the current Directive):

As already commented on the new Article 11, the AK requests that in Number 2.2.2 lit c the term “combined transport” (instead of the proposed “intermodal transport”) will be retained.

The AK concludes that the negative effects of the amendments clearly outweigh the positive approaches in the present Directive proposal; hence, the present Directive proposal has to be rejected in its entirety.

Finally, the AK would like once again to point out the clear grounds for a decision in Austria: on the one hand, there is the motion for a resolution of the governing parties from 11.3.2009, in which the Federal Minister for Transport, Innovation and Technology, Doris Bures, was asked to permanently and decisively promote the rejection of an amendment of the EU Directive 96/53; on the other hand, the EU Committee of the Federal Council decided unanimously on 7.5.2013 to reject the Directive proposal on the introduction of the cross-border use of mega trucks.

Should you have any further questions
please do not hesitate to contact

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