



March 2014
AK Position Paper

Coverage of public private partnerships (PPP) and concessions in the TTIP

About us

The Federal Chamber of Labour is by law representing the interests of about 3.4 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 3.4 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

Directly prior to the fourth round of Transatlantic Trade and Investment Partnership (TTIP) negotiations (10-14 March) the European Commission (EC), contrary to previous assurances, addressed the issue of „concessions“ as a matter for the TTIP. Within the scope of our overall response on the preparations for the Agreement in the spring of 2013, we pointed out that any such **extension of the EC’s negotiating powers should be firmly rejected** (Response by the the Federal Chamber of Labour (AK) „Transatlantic Free Trade Agreement (TAFTA) – Free Trade Agreement between the EU and the USA“, 22 April 2013). It is regrettable that the EC has neither drawn the right conclusions from the controversial discussions on the concessions directive in the context of the internal market nor from the public reservations with regard to the TTIP negotiations.

In its proposal on the coverage of public private partnerships (PPP) in the TTIP, the EC sets out its intention to frame the first discussion on concessions. This demands a correspondingly emphatic response **to prevent a negative precedent for a so-called „GPA plus“ standard**: so far, concessions have largely been excluded from such agreements. The creation of a transatlantic market for concessions undermines not least the demands for comprehensive protection of the local and national scope for action on the regulation, financing and provision of essential public services (cf. the AK response „Transatlantic Free Trade Agreement (TAFTA) – Free Trade Agreement between the EU and the USA“, 22 April 2013 and the AK response to the proposal for a Directive relating to the awarding of concessions of 29.5.2012). Due to their long-term

binding effect („lock in“ effect), any liberalisation commitments to this effect in the TTIP would lead to a drastic loss of regulatory flexibility. **Public services – and in particular any concessions to this effect – must in any case be excluded from the scope of application of the Agreement.** Rather than an intensified marketing agenda, the standards of protection already achieved should be used as a starting point for improvement: thus, for example, the so-called „public utilities“ clause of the EU GATS schedules of commitments is suitable as a basis for strengthening the power of local authorities and Member States to flexibly exclude public services from the scope of the chapter on procurement. In order to pursue this aim, an exhaustive listing of individual sectoral exemptions in the potential schedules of commitments would be impractical. According to the „public utilities“ clause, the diversity and dynamic structuring of essential public services would therefore have to be taken into account in the relevant local or national context through a broad exemption clause (cf. the key characteristics of the PU clause, e.g. its horizontal, cross-sectoral scope; emphasis on the decision-making power of the local and national level: *„considered as ... at a national or local level“*; furthermore, a non-exhaustive list allows greater flexibility and a dynamic understanding of the scope of application: *„detailed and exhaustive sector-specific scheduling is not practical“*). In addition, we refer to a recent legal opinion which demonstrates succinctly the risks of the TTIP to public services using the example of water supply and waste water management („Potential impact of the Transatlantic Free Trade Agreement (TTIP) on local freedom of

organisation in the area of water supply and waste water management”, Prof. Markus Krajewski, <http://bayrvt.de/2014/02/11/potentielle-auswirkungen-des-transatlantischen-freihandels-abkommens-ttip-auf-die-kommunale-organisationsfreiheit-im-bereich-wasser-und-abwasserentsorgung/>).

The addressing of concessions in the TTIP within the EC proposals also takes place in conjunction with a second, highly problematic move: if the EC’s objectives are realised, public private partnerships (PPP) will be covered by the TTIP chapter on public procurement announced. This not only ignores the fact that **within the EU significant differences exist in the regulation of PPP**. In addition, it is also linked to the inherent aim of pushing ahead with the use of public private partnerships on a transatlantic scale. AK takes a very critical view of these policy objectives. For example, a current research project by the European Federation of Public Service Unions (EPSU) – based on a large number of studies of PPP in different countries – draws the clear conclusion that **PPPs do not lead to a reduction in public spending, but rather siphon it off**. This file succinctly draws together a number of criticisms of PPPs: for example that (1) in PPPs, the demand risk is often not transferred and therefore remains in the public sector; that (2) cost-benefit analyses on which PPPs are based are incomplete, exclude alternative scenarios and do not normally include „external” implications, such as those affecting employees; that (3) PPPs are much more expensive in the construction of buildings than conventional contracts; that (4) the provisions applying to PPPs are often intransparent and the underlying contracts are kept secret; that (5) PPP procurement procedures are more time-consuming

and more expensive than normal procurement procedures; (6) that – even according to analysis by the IMF – the private sector does not necessarily deliver services more efficiently than the public sector or (7) that the public sector has access to better financing options and terms (cf. the full EPSU file on public private partnerships, http://www.epsu.org/IMG/pdf/factsheetPPPs_EN.pdf).

This makes it even more essential to reject firmly both the existing and any future advances of the EC in this direction in the TTIP negotiations.

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

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