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AK Position Paper

Position on the report of the High Level Group on the development of a Single European Transport Area – “Bayliss Report”

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

The AK position in detail

From the point of view of the BAK, the report mentioned above shall be used by the European Commission to meet its obligation in accordance with Art 17.3 of the EC Regulation 1072/2009, according to which "The Commission shall draw up a report on the state of the Community road transport market by the end of 2013". Furthermore: "The report shall contain an analysis of the market situation, including an evaluation of the effectiveness of controls and the evolution of employment conditions in the profession, as well as an assessment as to whether harmonisation of the rules in the fields, inter alia, of enforcement and road user charges, as well as social and safety legislation, has progressed to such an extent that the further opening of domestic road transport markets, including cabotage, could be envisaged."

Allegedly, the Bayliss Report is based on 88 written submissions, the results of dialogues with 70 organisations, 21 case studies in eight Member States and intensive literature searches. In spite of this, the authors were only able to identify four "key obstacles to the creation of a Single European Transport Area". These are "Driver Shortage", "Enforcement Practices", "Cabotage Practices" and "Lack of Innovations and Applications of Good Practice".

In the opinion of the BAK it is remarkable for a "High Level Group", whose aim it is to develop a single European transport market to identify only four problem fields. In accordance with the BAK's understanding of transport policy, a transport market does not only have to deal with problems of one single mode of transport, i.e. the mode of transport 'road'. The various modes of transport also include the more environmentally friendly modes rail and waterborne transport, onto which according to the White Paper of the European Commission a certain proportion of the goods transported within the EU shall be shifted via a "Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system" (COM(2011) 144 final). With regard to this single transport market, the intermodality of the mode of transport would have to play a primary role, and consideration should not only be given to the removal of somewhat not existing problems of one single mode of transport, i.e. road haulage.

The BAK also notes that the EC Regulations (EC Regulation 1071/2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator, EC Regulation 1072/2009 on common rules for access to the inter-

national road haulage market, EC Regulation 1073/2009 on common rules for access to the international market for coach and bus services) adopted as “Road Transport Package”, have only recently, i.e. on 4 December 2011 come into force, resp. the also required implementation in the Member States will come into force on this day. The date stated on the Bayliss Report is June 2012; hence it is hardly possible that it is based on new developments in the transport market, which would result from the revised version of the EC Regulations named above. How will it be possible to assess the effectiveness of the controls or the development of the employment conditions? How shall the harmonisation of regulations in the areas of enforcement, road tolls (the Eurovignette Directive with the option to impose toll charges came into force in December 2011) as well as social and safety-related legal provisions be analysed, if the new provisions are no more than a few months old?

The BAK outlines its position on the concrete analyses and proposed measures in the Bayliss Report as follows:

On Driver Shortage/Bottleneck

The Bayliss Report points out that “it is expected to become a severe handicap in the future when growth returns and when a proportionately large number of drivers is set to retire”. According to the report the reason would lie in the fact that in the past “driving was seen

as an attractive profession, allowing workers to organise their work independently and to travel internationally”. However, the younger generation had different career requirements; they wanted a balance between private and professional life and the opportunity to return home on a less irregular basis.

From the point of view of a labour representation, the incredibly unscientific analysis of the report alone is completely unacceptable. If the profession had really been so attractive before, why over the past years did the EU attach so much importance to developing a regime on social conditions in road transport, to the introduction of digital recording equipment and to additional training for professional drivers, which goes beyond the requirements of the driving licence? In the opinion of the BAK, working as a driver only became so unattractive because companies are not prepared to pay their drivers adequate wages for the risk and the responsibility they have to take and the job performance they are providing; because they are for example not prepared to take over the training costs for their drivers, or to make sure that these can attend their training courses during working hours; because they continue to try to employ cheaper workers from third countries rather than looking for drivers on the domestic market; because they pass on the pressure, which in parts also comes from loading agents, to their drivers instructing them to ignore social provisions, maximum speeds

and maximum loads and to manipulate technical provisions.

That the shortage of workers is a problem cannot be said for Austria: according to statistics of the Public Employment Services (AMS), on average 2,776 persons per month were registered as unemployed drivers in October 2012. 70 % of these wanted to work as road transport drivers again - i.e. from the current annual average of 2,776 unemployed drivers per month, 1,918 wanted to work in their old job. In addition, on average 830 persons per month who came from other professions, wanted to work as road transport driver. On the other hand, by October 2012, companies had notified the AMS of 546 vacancies per month on annual average, which means each vacancy can on average be filled by more than three (3.51) unemployed drivers, who would like to work in their old job or five (5.03) unemployed who would like to work in this job.

From the point of view of the BAK, none of the three recommendations of the High Level Group in this chapter can be fully supported. Raising the image of the profession is the only relatively positive proposed measure; however, as already commented above, the problem does not lie in the attractiveness of the job, but in the hard facts concerning the remuneration and the social conditions in the industry. The BAK is strictly opposed to lowering the access conditions in professional training or the assumption of the costs for the training

of road transport drivers by the public. As already mentioned, these proposals are in contrast to the targets of many EC Regulations and EC Directives, which have been adopted over the past five years to improve the social conditions of professional drivers.

On Enforcement/Control

The BAK shares the opinion that many right steps have been taken towards harmonisation; unfortunately, there is no uniform interpretation of provisions, no uniform implementation, no uniform controls and no uniform sanctions in the Member States. In so far it is indeed possible to agree with the present Report. However, there are only general statements, which seem to be unsuitable to be regarded as proposals for improvement. The few concrete analyses and suggestions in this chapter concern cabotage, which is dealt with in an extra section, the differentiation of infringements in "very serious" to "light", which is currently the subject of a draft by the European Commission and the risk rating system via an electronic register is also currently in the process of being developed in the Member States.

At the end of this section, the division of responsibility between transport undertakings and drivers has been praised as exemplary. However, based on the practice adopted by authorities in Austria with regard to administrative fines it becomes apparent that in spite of relevant legal provisions, it is normally the drivers who are fined and not the

undertakings. The same applies to the provision on the responsibility chain from EC Regulation 561/2006 on the harmonisation of certain social legislation relating to road transport (Art 10.4), according to which „Undertakings, consignors, freight forwarders, tour operators, principal contractors, subcontractors and driver employment agencies shall ensure that contractually agreed transport time schedules respect this Regulation“ is hardly worth the paper it is written on; there are no known cases in Austria, where they would have been applied in administrative penal procedures.

On Cabotage

In respect of achieving a Single European Transport Area, the High Level Group regards the current regulations on cabotage as an obstacle. Hence, the Bayliss Report proposes to separate the provisions and that a distinction is made between “linked cabotage” and “non-linked cabotage”.

“Linked cabotage” shall be regarded as international transport and, in order to have sufficient flexibility, an unrestricted number of operations may be conducted on four days after crossing the border (current law: following an international operation, maximal three cabotage operations may be conducted within seven days). Apart from that, the Posted Workers’ Directive (Directive 96/71/EC) shall be amended according to this recommendation, and it shall be ensured that drivers, who are deployed

in such operations, are not subject to the provisions of the Directive.

“Non-linked cabotage” shall be allowed to take place independent of cross-border movement or of “linked cabotage”. By using Euro V vehicles, the number of cabotage operations shall be “restricted” (sic!) to 50 (in words: fifty!) days per driver per year; in case of vehicles below the Euro V Standard to 30 days. The suggestion is that for this type of cabotage the provisions of the Posted Workers’ Directive shall apply. Later, “non-linked cabotage” shall become the sole recognized type of cabotage.

In the opinion of the BAK, this analysis and the proposal on cabotage set out by the report are from a transport policy point of view extremely contradictory and completely unacceptable:

1. Social and remuneration conditions are not harmonised in the EU and differ significantly. (As already mentioned above, only some social provisions relating to road transport have been harmonised on paper; however, here is no uniform implementation and application in practice.) Due to these very different social standards, entrepreneurs from countries with strict worker protection regulations and high minimum wages try to replace their workforce by workers from countries with a lower level of social standards in order to reduce their personnel costs, which amount to a significant proportion

of the transport costs – the result is social dumping, a downward spiral of deteriorating social conditions and wages. In order to prevent this, the EU took counter measures, such as the introduction of a driver attestation for drivers from non-EU countries or the Posted Workers' Directive, which in case of providing services in one Member State with high wages by workers from other Member States with lower wage level, at least guarantees these workers the wage paid in the Member State where the service is provided.

Against this effort to prevent social dumping, the report does now propose to exempt cabotage operations ("linked cabotage") from the Posted Workers' Directive and to treat it like transit or bilateral transport. From the point of view of the BAK this proposal must be strictly rejected. Transport services, which are exclusively provided within a Member State in competition to domestic undertakings by hauliers from another Member State, must - based on the non-harmonised social and remuneration conditions in Europe - continue to be subject to the Posted Workers' Directive; any relevant amendment of the Directive is out of the question.

2. The new regulations on cabotage laid down in EC Regulation 1072/2009 (on common rules for access to the international road

haulage market) were introduced with the objective to reduce the number of empty runs in the transport market. Whilst this objective is still recognised by the authors of the report in their recommendation on "linked cabotage", it shall no longer play any role with regard to "non-linked cabotage". A transport undertaking shall be completely free (without any transport contract) to enter a Member State with his empty vehicle, and to provide transport services of up to 50 days per driver (!) in the domestic market of that state.

If the current regulation of cabotage, in particular with regard to controls, causes enough problems, the current recommendation (exemption of linked cabotage from the Posted Workers' Directive, complete liberalisation of "non-linked cabotage") are suited to cause severe disruptions of the market (serious distortion of competition resulting from the inadequate implementation of harmonisation efforts in the Member States would be the consequence) and the inability to control cabotage provisions. The BAK therefore strictly rejects all amendment proposals in this chapter and demands an independent market analysis of the current new cabotage regulations, when experiences can be gathered from practice.

3. According to Art 19 of EC Regulation 1072/2009, the provisions on cabotage have come into force on 14 May 2010. Hence, they have not been in force for long enough to enable well-informed statements concerning their impact on the road haulage market. This applies in particular against the background of Recital 5 of the EC Regulation, according to which transitional regime laid down in the Regulation on cabotage shall apply "as long as harmonisation of the road haulage market has not yet been completed". In order to achieve this, comprehensive provisions have been laid down in the EC Regulation, which – as already mentioned at the beginning – have only come into force on 4 December 2011. A diligent assessment of the progress made with regard to harmonisation is hardly possible as early as June 2012.
4. According to Recitals 13 and 15 of EC Regulation 1072/2009, the determination of the cabotage provisions exclusively pursued the objective that these concern transport services, which were provided should "be permitted to carry out national transport services within a Member State on a temporary basis in conformity with this Regulation". However, the recommendations made in this section in the "Bayliss Report" are equivalent to a

complete liberalisation of cabotage and are therefore rejected by the BAK.

Finally, the BAK would like to emphasise again that the present "Bayliss Report" is not in accordance with the objectives towards shifting the transport of goods and sustainability, as described in the White Paper of the European Commission via a "Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system" (KOM(2011) 144 final). A discussion on the development of a Single European Transport Area should definitely also consider the analyses and objectives of the White Paper.

The BAK has received the excellent statement of France on the present report, which should also be supported by Austria. The statement suggests that prior to a discussion on the future development of EU Regulations the topicality of the legal provisions applied in the Member States has to be analysed first to drive harmonisation forward. Only when these conditions (analysis and harmonisation) have been fulfilled, should the cabotage provisions (only those in connection with international transport) be further developed; the same applies to social provisions to ensure that drivers are not forced to work abroad for weeks, which as a result excludes them from their domestic social provisions, which in many cases are more favourable to them.

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

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