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AK Position Paper

# European Commission Report on the State of the EU Road Transport Market (European Commissi- on market access report)

## 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.

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.

Rudi Kaske  
President

Werner Muhm  
Director

## The AK position in detail

The European Commission published a "Report on the State of the Union Road Transport Market" on 14 April 2014 to meet its reporting obligations by the end of 2013 under Art. 17 (3) of Regulation (EC) 1072/2009. The EC regulation made the following requirements of this report:

- 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.

The introduction indicates that this report should be based on a wide range of studies, such as those by the European Parliament (EP) on the development of cabotage in EU road transport or on the social and working conditions in road haulage companies. Unfortunately the results of these studies were barely considered in this analysis of the road transport market. In the opinion of the Austrian Chamber of Labour (AK), the analyses, conclusions and recommendations of this report instead rely mainly on the "Report of the High Level Group on the Development of a Single European Transport Area" ("Bayliss report") of June 2012, which pushes the complete liberalisation of the European

road haulage market in a broadly one-sided way, without taking account of the intended opening of the market through the amendment of the crucial EC regulations, and without analysing the problems that have occurred as a result, e.g. in cabotage transportation, in the labour market or in the social conditions of the drivers, or the newly created distortions in the competition between the road haulage companies. They were, indeed, almost negated by the High Level Group. The AK presented the points of criticism on this report in a detailed position paper in November 2012. The report was rejected because it was not in accordance with the objectives, for example, of the European Commission's White Paper on a "Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system" (COM(2011) 144 final) and many assertions – such as the remarks on the driver shortage – were wrong, and still are. At that time, France, in particular, had correctly pointed out in its comment on the Bayliss report that, before a discussion could be held concerning the future development of the EU regulations, the current situation of the legislation used in the member states must be analysed in order to drive forward harmonisation. Only when these preconditions (analysis and harmonisation) have been met should cabotage regulations, for example, be further developed (only those that are associated with international transport). The same applies to social provisions, so that drivers cannot be banished abroad for weeks and thus excluded from their domestic social provisions, which are often more favourable for them.

This European Commission report was then prepared on the basis of this “Bayliss report”, without any substantial changes being made to the analyses and recommendations put forward at that time. Also, some incomprehensible assertions are made (“...EU-15 hauliers still carry out the majority of cabotage”, i.e hauliers from member states that were members of the EU before 1 May 2004; page 4), some assumptions are voiced (“Further market opening could therefore reasonably be expected” to reduce levels of empty running; page 9) and some almost cynical analyses are made regarding employees (there are “indications that the level of differences in wages is reducing...” or “wages of Romanian drivers in international transport appear to be reaching similar levels to those of Spanish hauliers (4-5 EUR/hour”).

In order to be able to assess this European Commission report on the state of the EU road transport market, the following development in the legislative basis for this market must be taken into account:

The legal provisions regarding the opening of the transport market and the creation of new regulations for it were resolved and published in 2009 as the “road transport package”. This includes EC Regulation 1071/2009 on the conditions to be complied with to pursue the occupation of road transport operator, EC Regulation 1072/2009 on access to the international road haulage market and EC Regulation 1073/2009 on access to the international market for coach and bus services. The vast majority (with the exception of the regulations on cabotage) should have come into force on 4 December 2011 – after the required implementation by the member states (in Austria, for example, the necessary

adaptations were only made in 2013 – BGBl I 32/2013 dated 13 February 2013). The Bayliss report came out six months later, dated June 2012, and, due to the short time span, it could scarcely have been able to refer to the new developments in the transport market since 4 December 2011 or to an analysis of the market, as it purports to on the basis of the new version of the above-mentioned EC Regulations. In addition, many of the other studies and statistics quoted in the European Commission report relate to the years prior to 2013. It can be deduced from this that, up to the time the report was prepared as per EC Regulation 1072/2009 by the end of 2013, there was scarcely enough time available to be able to seriously evaluate the actual developments in the road transport market regarding the effectiveness of controls, the development of employment conditions or the harmonisation of provisions in the areas of social legal provisions.

The AK finally refers to the conclusions in the quoted EP study (2013) on the social and working conditions in road haulage companies, in which it was stated (page 69) that the “road freight transport sector is actually facing a growing divergence between these two components” (stronger competition on the one hand and social harmonisation of the employment and working conditions for haulage employees in the EU states on the other) “as evidenced by a general deterioration of social working conditions, made worse by a global downward trend in wage levels”.

The AK therefore firmly rejects this European Commission report as a biased paper that unilaterally only accepts pro-liberalisation arguments and does not take account of the need for social harmonisation. This report constitutes a

statement that unfortunately dismisses rational argumentation, scientific analyses and factual recommendations that could lead to a harmonised road haulage market in all areas.

The AK makes the following comments on the specific analyses and recommended measures in this report:

## **2. "Development of the road haulage market"**

### **2.1. "Road haulage activity"**

The AK questions the validity as assertions of some statistical data. For example, in the quoted report on the "development and implementation of cabotage in EU road transport" it is stated for Austria that the abolition of cabotage control sheets has made controls more difficult, that the provisions of the Posting of Workers Directive have not been complied with (and controlled) or that Austria became a "net importer of cabotage transport" in 2011 due to the sharp increase in the proportion of foreign hauliers; because that applies not just to Austria, but (with a few exceptions, such as Denmark and Finland) to all member states, one can infer from this that, in reality, there is a lack of meaningful data concerning cabotage due to the unclear legal situation and poor control. It is therefore incomprehensible that the proportion of cabotage is only "slightly more than 1% of total transport activity" in the EU if many of the practices, some of which are illegal, cannot be determined at all.

As already stated above, in view of the results of the EP study already mentioned on the social and working conditions in road haulage companies, the AK also rejects the claim that "in seven of the ten top host Member States for cabotage" (including Austria, according

to Figure 4), "the majority of cabotage is carried out by vehicles registered in an EU-15 country". Given the differences in wage levels and in social conditions, this transportation has actually been mainly redeployed to the fleets of Eastern European haulage companies ("EU-12").

At the end of the chapter, it says: "While it has been suggested that Eurostat data underestimates actual levels of cabotage, enforcement reports by Member States do not show high levels of undetected cabotage." On this subject, the AK would suggest that one should actually read the analyses and recommendations of the EP study on the social and working conditions in road haulage companies, which, in contrast to the assertion in question, refers at various points to the poor control and implementation mechanisms in EC Regulations 1071/2009 and 1072/2009.

### **2.2. "Company structure and employment"**

The statements on the requirement for financial viability under trade law appear to the AK to be questionable. It is stated, on the one hand, that "many transport companies" must be "considered vulnerable from the point of view of their financial standing" and, on the other, that "however, the relatively low barriers to starting a transport company" mean "that companies which exit the market regularly re-enter it or are replaced by new undertakings." This supposedly illustrates the "resilient nature of the sector"!

In the opinion of the AK, this illustrates instead the toothlessness of the provisions regarding the conditions for market access and the failure to check them. These statements therefore make it easier to explain why companies which have their licence to trade withdrawn,

due to non-compliance with the statutory provisions, then become active in the market again, without any significant consequences, and can continue with their illegal practices.

The last paragraph on employment is really just a defamation of the statements of the ETF (European Transport Workers' Federation) without providing any evidence to the contrary. The ETF had stated that the performance of cabotage services by companies from countries with a lower cost base has led to a loss of jobs.

The report now finds that: "This claim is not supported by the available data regarding employment in the sector. (...) Hence, no objective evidence indicates that cabotage operations (...) have had a noteworthy impact on jobs of truck drivers." Because there are no data? The problems listed in the EP study on the social and working conditions in road haulage transport companies between pages 44 and 58 regarding "employment schemes and income levels" and "problems in the application and enforcement of European legislation", including the numerous examples in practice expounded there, apparently have no place in the European Commission's deliberations. Nor is the question discussed as to whether jobs in the countries with higher wage levels or better social conditions might have been filled by cheaper labour from the eastern EU member states or even from third party countries, and therefore domestic labour has been displaced (see, for example, Study by the European Parliament on the Social and Working Conditions of Road Transport Hauliers, Employment page 37 - "Employment of low-cost non-EU drivers: the case of Filipino drivers").

### 2.3. "Developments in productivity"

Sub-point 2.3.2. reflects on vehicle productivity. The analysis consists of a number of assertions by the authors for which the evidence mainly stems from 2010 or is missing, and then questionable assertions are derived from these. So, for example, the large proportion of empty cabotage journeys in the specialised vehicle sector (e.g. refrigerated vehicles) is "most likely not due to the difficulty in finding return loads". "Transport operators therefore seem limited by the restrictions applicable to cabotage operations." Likewise: "(EC) Regulation No 1072/2009, however, does not seem to have had a positive impact on overall levels of empty running in cabotage situations." Or: "Although other developments such as the economic crisis must be taken into account, this" (the European Commission means that the new provisions of EC Regulation 1072/2009 have been too restrictive in regulating cabotage) "could suggest that the current restrictions for cabotage operations are limiting hauliers in further increasing their efficiency." The report finally draws the conclusion from these assertions that: "Further market opening could therefore reasonably be expected to reduce levels of empty running in domestic transport." So is anyone who thinks otherwise "not reasonable"?

In addition, it is stated in Footnote 13 that: "Loading factors are also limited by external factors such as maximum vehicle masses and dimensions." The AK firmly rejects the European Commission's intention to also use this report, once again, as the basis for the discussion on the introduction of megatrucks.

### **3. “Evaluation of cost structures in the road haulage sector”**

#### **3.1. “Cost drivers: an overview”**

The AK does not understand how the European Commission has arrived at its assertions at the start of the second paragraph. It states that: “Cost structures are becoming increasingly similar throughout the haulage sector. The relative importance of the two main cost drivers (labour and fuel costs) has now reached comparable levels throughout the EU.” There is no evidence to support this; studies that prove exactly the opposite should be taken into account, such as the EP study on the social and working conditions of road transport hauliers - which, furthermore, comes to the conclusion (page 44) that “the convergence process between the EU-12 and the EU-15 member states instead has negative consequences because it does not lead to an increase in income and wages in the EU-12 states to the level of the EU-15. Quite the contrary, the interest groups note that the above-mentioned inequalities between these two groups of member states therefore provide the main motivation for hiring less expensive drivers from Eastern European states and that the background of unfair competition and social dumping are not always being suitably monitored and controlled.”

#### **3.2. “Developments in labour costs”**

Almost completely without comment, the report here states that: “...the most common” (forms of remuneration include) “daily allowances (per diems) and distance-based bonuses.” However, in a footnote it is clear that this practice is theoretically prohibited, but is kept quiet. The AK believes that an amendment to EC Regulation 561/2006

is overdue, which has been prevented for around 15 years by those representing business interests in the EP and transport ministers in the EU Council. It requires a clear legal prohibition of flat-fee remuneration; these are only prohibited by law “if they are likely to affect the safety of road transport”. Proving this is almost impossible.

As already mentioned above, the statements on the wage level differences appear almost ludicrous when it is cited, as proof of their reduction, that “wages of Romanian drivers in international transport appear to be reaching similar levels to those of Spanish hauliers (4-5 EUR/hour)”. Not only do these statements contradict the results of the EP study on the social and working conditions of road transport hauliers: they also support the analyses included therein (pages 44 and 71) that the income of the drivers from the EU-15 states is coming under pressure from the EU-12 countries and there has been a downwards levelling. In the opinion of the AK, it is exactly this development that the European Commission should firmly oppose before consideration is given to further liberalisation of the road haulage market.

### **4. “Enforcement of provisions on access to the road haulage market”**

#### **4.1. “Enforcement of EC Regulation No 1071/2009”**

Contrary to the results of the EP study on the social and working conditions of road transport hauliers, the problem of “letterbox companies” has been somewhat played down in this report. It does not deny their existence, but states that “Such practices (...) remain difficult to quantify due to their illegal nature”.

Therefore it only “seems” necessary to the European Commission to ensure a stricter enforcement of the provisions, but this problem is not mentioned once in the European Commission’s conclusions and recommendations for “the next steps”.

#### **4.2. “(EC) Regulation No 1072/2009 - implementation issues and national developments”**

This section of the European Commission report is solely concerned with the provisions in Chapter III of the EC Regulation (Arts 8 to 10) on cabotage. There is the clear analysis that “differences remain in the implementation of certain provisions” among the member states. The European Commission comes to the conclusion that “the operators are faced with a costly and confusing patchwork ...”

Furthermore, examples from Finland and Denmark are cited as proof of the negative effects of these inconsistent implementations, though both these countries have actually tried to ensure clarity in the implementation of cabotage provisions in their national law. In the opinion of the AK, the incorporation of the regulations from Finland or the obligatory proof through a bill of lading in the EU cabotage regulations could have contributed to better enforceability.

The example of how member states are restricting market access conditions via regulatory means and implementation practices should be scrutinised further. The European Commission explains in this regard: “Examples include discrimination by enforcement authorities of vehicles belonging to subsidiaries of local companies established in another Member State or the application of restrictive provisions to types of goods mainly transported by non-resident

hauliers.” Is the criticism here that flagged companies are being restricted in cabotage transportation?

The AK firmly rejects the statements on the relevance of illegal cabotage transportation. The European Commission does not see this relevance as given, “in view of the low level of documented infringements to cabotage provisions”. There are no statements at all as to whether and to what extent controls are being carried out in the member states, and whether the applicable provisions can actually be controlled. Denying the relevance and demanding that the cabotage provisions are further relaxed falls short and will lead to a further deterioration in the wage and social conditions of the drivers.

#### **5. “Social dimension of the road haulage sector”**

In the opinion of the AK, this chapter of the report has been written very superficially and also contains contradictory statements. It deals with the provisions of EC Regulation 561/2006 on driving and rest periods, EC Regulation 3821/85 on recording equipment, EC Directive 2002/15 on the working time of drivers and on EC Directive 2006/22 on compliance with the stated EC Regulations.

The European Commission mentions that there are continual attempts in this area to improve the implementation of these provisions on an ongoing basis. As an example it mentions guidelines, though - to the European Commission’s regret - these are not binding. In the AK’s opinion, it can only be said that the non-binding nature of the guidelines is expressly to be welcomed. Firstly, the guidelines are seeking not just to interpret strict statutory provisions but to dilute them and create tolerance. Secondly, it must be noted in the case of

Guideline 7 that it contradicts the clear provisions of EC Regulation 561/2006 on the daily rest period (the EC Regulation permits a shortening of the daily rest period from 11 hours to a minimum of 9 hours; Guideline 7 introduces a further tolerance with 7 hours).

### 5.1. "Working conditions"

At the end of the first paragraph, it reports that "compliance with provisions on driving times and rest periods is improving". Three paragraphs later there is the sentence: "Driving times and rest periods remain an area of concern." In the AK's opinion, this contradiction should be clarified.

As regards the enforcement level of social and labour legislation, the European Commission believes that this is "not shown" to be worse in member states with a lower cost base than in other member states. From this, the European Commission draws the conclusion that: "There is therefore no evidence that non-respect of labour legislation would lend them a competitive advantage." The European Commission does not give an answer as to whether and to what extent controls are being implemented.

### 5.2. "Anticipating Change"

These statements stem from the above-mentioned Bayliss report and were already rejected by the AK as false at that time. It is not the case in Austria that the bottleneck of staff presents a problem - according to statistics of the Public Employment Service Austria (AMS), an average of 2,776 HGV drivers per month were registered as unemployed in 2012 as of October that year. 70% of these wanted to work again as HGV

drivers - in other words, of the monthly average (up until that point in the year) of 2,776 unemployed HGV drivers, 1,918 were looking for a job as an HGV driver. In addition, on average a further 830 people per month from other employment sectors wanted to work as HGV drivers. On the other hand, hauliers reported to the AMS an average of 546 job vacancies per month for the year up until October 2012, i.e. there were on average more than three (3.51) unemployed HGV drivers per job vacancy who wished to work in this role again, or five (5.03) unemployed people who stated they wished to work in this occupation.

This trend continued in January 2014: there were 177 job vacancies, 4,463 unemployed drivers wanting to work as an "HGV driver", and 6,172 unemployed people wanting to work as an "HGV driver". The median for the last 6 years shows that there were 10 unemployed people wanting to work as an "HGV driver" for each job vacancy, and around 8 unemployed drivers for each job vacancy. So a shortage of labour cannot be identified!

## 7. "Conclusions"

### 7.1. "Market situation"

Apart from the false statements on the lack of HGV drivers, the European Commission refers to the shortage of drivers with specialist training. In this respect, the AK states that both the Commission and the companies affected appear to have forgotten about the EC Directive on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers dated 2003 (EC Directive 2003/59). For more than 10 years it has

been known that additional training was required alongside a driving licence, and since 2008 or 2009 it has been possible to provide sufficient numbers of trained drivers. The transport industry has always speculated that the predetermined deadlines will be extended anyway. As a result of the expiry of the transitional period, we are now apparently faced with the problem of a shortage of labour.

## **7.2. “Convergence of market indicators”**

The report here lists examples of differences between the cost structures in the member states. One of these is: “Hauliers involved in international transport are exposed to costs such as road charging and fuel costs, which are applied to users regardless of the Member State of registration.” In the AK’s opinion, the motivation for this sentence is completely incomprehensible; however, it is detailed in the relevant legal standards that, for example, road charges are collected in a non-discriminatory way.

The sentence “The gradual convergence of cost levels compels hauliers to compete on efficiency and quality of services” might be the case in some industries, but is certainly not true for professional drivers in terms of wages and working conditions.

The need for “a gradual review of certain archaic restrictions that still exist to market access”, or the statement that “the conditions to the operation of cabotage restrict the markets accessible to EU hauliers”, are subjective judgements or assertions by the European Commission and, in the AK’s opinion, cannot be justified by the facts in this report.

In this sense, we also reject the political quotation from President Barroso at the

end of the report: “We have to remove the obstacles that hold back dynamic companies and people.”

Finally, the AK would like to point out again that this European Commission report, just like the Bayliss report of 2012, is not in line with the aims of shifting haulage and sustainability, as described in the EC white paper on a “Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system” (COM(2011) 144 final). In any event, the analyses and aims of the white paper should be considered in a discussion on the development of a uniform European transport market.

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

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