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AK Position Paper

Compliance Package, COM(2017) 257

About us

The Austrian Federal Chamber of Labour is by law representing the interests of about 3.6 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 Austrian Federal Chamber of Labour is registered at the EU Transparency Register under the number 23869471911-54.

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.

Rudi 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). 816.000 - amongst others unemployed, persons on maternity (paternity) leave, community and military service - of the 3.6 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Christoph Klein
Director

Executive Summary

The BAK welcomes the draft legislation of the European Commission setting out the conditions and procedure by which the Commission may request that undertakings and associations of undertakings provide information in relation to the internal market and related areas.

It is often not possible for the Commission and Member States to obtain the necessary information on cross-border circumstances needed to determine whether the rules of the European Single Market are complied with in cross-border situations. Therefore, the Commission has put forward the proposal to introduce this instrument to request that undertakings and associations of undertakings provide information. It will only be applied when all other means of obtaining information have proved unsuccessful. Therefore, there are no concerns regarding a conflict of responsibility.

Information will be treated as confidential by the Commission, as is usual in competition law, for example. This will not be an extra burden on undertakings or associations of undertakings, since they will only have to provide the Commission with information they have available. Furthermore, the Commission undertakes not to request information from micro-enterprises.

The regulation can also be applied to ensure compliance with legal rules on employment and consumer protection in the Single Market. However, it is here

that the BAK sees room for improvement and asks the Commission to emphasise explicitly that the regulation will also be applied, for example, to cases of wage and social dumping, e.g. non-compliance with the provisions of the Posted Workers Directive.

The AK's position in detail

The BAK welcomes this legislative proposal, the objective of which is to verify compliance with EU legal rules in the internal market. Furthermore, it aims at increasing transparency in the internal market.

How difficult it is to access the necessary information in undertakings and their associations is illustrated by the problems when requesting information at a national level: In Austria, we have seen repeatedly that individual associations of undertakings are very reluctant to provide information on apprenticeships, for example.

It can be much more complicated to obtain the necessary data at the EU level. Here, we are dealing with cross-border matters where no one Member State can provide information or complete information on companies and their associations.

For example, in the field of consumer protection, this proposed regulation could make it much easier to determine whether there is a case of geoblocking, i.e. different prices according to the place of residence of consumers.

It should also be stressed from the perspective of workers that the possibility of being better able to combat wage and social dumping in cross-border services is of major importance. Special mention must be made of the often problematic situation in the construction sector and in road freight transport.

Regarding individual provisions in the draft regulation

The scope of application defined in Art. 2 of the draft proposal is broad. That is because it should be possible to request information in all areas of the Single Market. In addition to the Single Market defined in Art. 26(2) TFEU, transport, energy and the environment are also part of the Single Market. Therefore, it must be possible to request information in these areas as well.

According to Art. 4, the Commission may request information from undertakings or associations of undertakings where a serious difficulty with the application of Union law risks undermining the attainment of an important Union policy objective. At this point, the BAK would like to draw the Commission's attention to the fact that compliance with the standards of labour and social legislation and consumer protection regulations also belong to the aforesaid important Union policy objectives. This applies to the clauses of the Posted Workers Directive, for example, or to driving times and rest periods in road transport. In the opinion of the BAK, the scope of application of this new instrument should be emphasised more.

In this legislative proposal, the Commission mentions repeatedly that it intends to use the single market information tool as a "last resort" only. This would be the case, for example, if it is not possible to obtain the required information through other measures. Art. 5 of the Regulation defines the conditions which must

be satisfied before the Commission can make a request for information. According to this clause, the Commission must adopt a decision specifically stating its intention to request information. This decision must include a description of the alleged serious difficulty (of a cross-border dimension) of obtaining the information, why the information is necessary and why other means are not sufficient or inadequate for procuring this information. The BAK welcomes the restriction that this instrument may only be used as a last resort.

In the view of the BAK, there are no concerns regarding a conflict of responsibility because the Commission will only take action if the Member States are unable to procure the necessary information.

Furthermore, according to Art. 5(3), undertakings and associations of undertakings are obliged to provide only information that is at their disposal. The Commission shall respect the principle of proportionality in the case of small and medium-size undertakings. Micro-enterprises (comprising nine out of ten small and medium-sized undertakings in Europe) are also exempted from providing information in accordance with Art. 6(1). This means the bureaucratic burden will be kept within very tight limits.

Confidential data that is procured must also be treated as confidential. According to Art. 8, information can only be made public when it is not possible to identify individual undertakings or associations of undertakings, where the respondent has given his prior consent or where such information is necessary to substantiate an infringement of Union law. In Art. 16 and 17, the Commission also underlines the fact that its officials and other servants shall not disclose any

information covered by the obligation of professional secrecy. In addition, the Commission shall respect the data privacy of the individual.

The BAK wishes to point out that the Commission has been able to request information for many years now in relation to competition policy and state aid. The Commission deals with sensitive data in those areas as well. To date, no cases are known where confidential data have been passed on to third parties.

Art. 9 defines the option of applying fines or penalty payments if incorrect, incomplete or misleading information is provided or is not supplied within the prescribed time limit. However, the Commission must adopt a decision before applying fines or penalties. The maximum penalty possible for providing incorrect, incomplete or misleading information either intentionally or through gross negligence is 1% of the total turnover in the preceding business year; this seems moderate in the opinion of the BAK. The same applies to penalty payments of up to 5%; these can be applied if the required information is not supplied within the prescribed time limit.

The BAK considers the proposed regulation to be a welcome initiative, which will play a supporting role in verifying compliance with the rules of the Single Market. This new instrument will only be applied when other means of procuring information have failed. However, in the view of the BAK, the wording of the regulation must state explicitly that such verification will cover all aspects of the Single Market, such as distortion of competition due to wage and social dumping.

Should you have any further questions
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