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AK Position Paper

Mobility package II „Delivering on low-emission mobility“

Regulation on the access to the international market by coach
and bus services

COM (2017) 647 – 1073/2009

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.

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.

Rudi Kaske
President

Christoph Klein
Director

Executive Summary

The purpose of the draft Regulation at hand is to achieve a substantial further step in the liberalization of the market for the international carriage of passengers.

The Federal Chamber of Labour (BAK) fails to understand the European Commission's euphoria regarding the presumed positive effects of further liberalizing international road passenger transport services.

Neither do the reasons presented to explain the necessity of additional liberalization exist, nor can the desired aims – fighting against climate change, making European industry stronger and more competitive, and improving the mobility of citizens – be achieved through the proposed amendments to the Regulation.

BAK is committed to the decarbonized rail transport and sees inter-urban coach and bus services merely as an additional offer on routes that cannot be reached by rail. It should, however, be noted that BAK acknowledges that incentives for lower-emission engines are urgently required in this connection.

BAK strongly rejects the extension of provisions for cabotage operations, stopping points being served by coaches and trains in nearly the same manner, a comprehensive right to use and access terminals without bearing the pro rata costs for maintenance and construction, as well as the massive promotion of inter-urban coach and bus services.

The AK's position in detail

1. The scope of the Regulation is to be extended by the Proposal at hand so that it applies to all inter-urban carriage by regular services, and so that all operators of regular coach and bus services are to be granted access rights to EU terminals. Non-resident carriers are to be able to operate national regular services under the same conditions as resident carriers.
2. A single independent and impartial regulatory body should be set up in each Member State to ensure the proper functioning of the road passenger transport market. This body must be legally distinct and independent from any other public or private entity and independent from any competent authority involved in the award of a public service contract.
3. Regular services will remain subject to authorization, but the authorizing procedure is to be adjusted. According to the Proposal, authorizations for national and international regular services will be subject to the same authorizing procedure. However, the Proposal provides for two different authorizing procedures for the international carriage of passengers depending on whether passengers are carried over a distance of less than 100 kilometres as the crow flies, or over a distance of 100 kilometres or more as the crow flies. Authorization may now be refused if the economic equilibrium of an existing public service contract is compromised only in cases involving a distance of less than 100 kilometres as the crow flies.
4. The current exception of "transport services meeting the needs of an urban centre or conurbation, or transport needs between it and the surrounding areas" from authorized cabotage operations will be deleted without substitution. In the future, cabotage operations are to be authorized for this area as well.

According to the Commission, an amendment is necessary for the following reasons: the failure of the inter-urban coach and bus sector to grow at a rate comparable to that of other transport modes, the decrease in the modal share of coaches and buses, obstacles in national markets hindering the development of inter-urban coach and bus services, less appealing service offerings to users, as well as excessive administrative costs. In addition, the lack of provisions granting carriers access rights to terminals on non-discriminatory and transparent terms in the original Regulation is pointed out.

Fighting against climate change, making European industry stronger and more competitive and improving the mobility of citizens are highlighted as priority objectives.

Regarding the reasons for the planned amendment

A study¹ performed for the German market shows that the market for inter-urban coach and bus services has already substantially increased its share in total transport services. In 2014, it already accounted for 0.5% of total transport services, and this trend is growing strongly.

According to the study, the total costs of inter-urban coach and bus services per passenger kilometre (pkm) amounted to “just around one quarter to one third of the total costs of local rail passenger transport. The main difference between the aforementioned shares in total costs is that, on average, rail operators have to pay for 40% of the total costs of stations and infrastructure and have hardly any to no influence on these investments, while inter-urban coach and bus operators have to contribute less than 3% for the same purpose. In local rail passenger transport, the charges for the use of infrastructure and stations per pkm alone are already 35% higher than the total costs per pkm of inter-urban coach and bus transport.”

As a result of this blatant competitive disadvantage to rail transport, the inter-urban coach and bus market is already growing at a much faster rate than all other modes of transport, even without further liberalization.

According to the study, road passenger transport services are also particularly attractive for former rail customers on routes that are served both by inter-urban coaches and buses and trains where the difference in travel times is small, the buses run relatively frequently and the bus fare is lower than the train fare.

Offering more attractive ticket prices than railway undertakings is not hard to do for the operators of road passenger transport services, as their costs are much lower anyway. The massive growth of the inter-urban coach and bus market at a national and international level puts pressure on rail transport, where high safety, labour and social standards have to be met. There is the risk that this will lead to a levelling down of standards.

For these reasons, BAK takes a highly critical view of the developments that have taken place in the inter-urban coach and bus market in recent years, in particular regarding the unfair competitive advantages of inter-urban coach and bus services over inter-urban rail passenger transport. These fundamental differences in framework conditions – as compared to rail transport – must also be questioned from a social and political but in particular from an environmental point of view.

In order to be able to keep up with the competition, inter-urban coach and bus operators quite frequently also outbid each other with cut-price offers that do not match the actual costs. As these cheap offers need to be financed, it has become a quite frequent practice to pay low salaries and flout safety, labour and social standards. Violations of driving times and rest periods as well as other social legislation have therefore also been observed in international road passenger transport. There is an increasing trend to use non-Austrian drivers, who accept lower wages and less favourable conditions – a practice that puts at risk existing jobs and, as working conditions deteriorate, is to the detriment of the staff.

But even reputable Austrian service providers that comply with the applicable provisions suffer from this competitive disadvantage. According to the aforementioned study, smaller German operators such as German National Express branch City2City or publicexpress have already gone out of business. In Austria, the inter-urban coach undertaking “Hellö” was sold to German competitor Flixbus in 2017. According to media reports, “Hellö” had suffered major losses.

Regarding the objectives of the planned amendment

Fighting against climate change

A further liberalization of the road passenger transport market does not even seem to be compatible with the objective of fighting against climate change as stated by the Commission. A further expansion of inter-urban coach and bus services would have an impact on climate change due to the engine systems used in this sector, and, moreover, would aggravate Europe’s well-known problem with transport and transit traffic.

Contrary to what is stated in the reasoning of the Regulation, a strengthening of inter-urban coach and bus services would not lead to an automatic reduction of individual car transport. In Germany, for instance, more than one third of inter-urban coach and bus passengers (34%) are former rail customers.

Therefore, the strengthening of inter-urban coach and bus services has an increasingly negative effect on rail transport, which, to a great extent, is operated electrically. That means that passengers change from an efficient and environmentally friendly mode

of transport to one that worsens climate-related problems. Therefore, the changeover from rail to road transport is by no means in line with a sustainable strategy to fight climate change.

In recent years, Austria has invested billions in the rail sector in order to expand and further improve the quality of environmentally friendly local and inter-urban transport services with the aim of making public transport even more attractive. The growing passenger numbers show that this money was invested well and that the needs of the citizens were met.

Nevertheless, for many years now, licenses have been issued for inter-urban coach and bus services on routes running parallel to railway routes, even though inter-urban trains operate on such routes at regular intervals. Due to the competitive advantage of road passenger transport in terms of infrastructure costs, these operators are able to offer cheaper tickets even though rail operations are more sustainable and therefore more environmentally friendly.

Moreover, according to current analyses, around 20% of the inter-urban coach and bus passengers are the result of the generation of new demand so that these services do not result in the desired reduction of traffic but rather in increased traffic volumes.

Making European industry stronger and more competitive

Further liberalization of the inter-urban coach and bus market is by no means conducive to making European industry stronger and more competitive. It is incomprehensible why such liberalization should be a more suitable instrument for strengthening European industry

than, for instance, the further expansion of rail services or other alternative modes of transport.

Improving the mobility of citizens

The same holds true for the improvements of the citizens' mobility that the Commission expects to result from the expansion of the road passenger transport market. Growing rail passenger numbers prove that the environmentally friendly rail services are well received by the citizens and that continuously expanded rail services are regarded as an attractive offer. There is not one EU country that has more rail passengers than Austria. On average, passengers travel 1,427 km by rail each year.

Mobility could be improved by aligning the unfair distribution of infrastructure costs for rail and road transport services and better coordinating rail services and coach and bus services in the inter-urban market. In the field of local transport, the transport associations already try to ensure that the rail and coach and bus services offered complement each other in a manner that is of advantage to passengers.

Trains are an attractive way of travelling because of the comfort they offer and the fact that other activities like working, reading, standing up and walking around while the train is in motion or having snacks at the restaurant are possible. Moreover, rail passengers are not affected by road-related problems (traffic jams, accidents, etc.). On top of that, rail services help alleviate the current European transport and transit problem.

For all of the above reasons, inter-urban coach and bus services may only be considered expedient and resource-

efficient if they are provided as shuttle buses, powered by environmentally compatible engines, to transport passengers to already existing railway services or if no rail services are available.

Regarding the individual amendments: Article 1(4)

Currently Article 1(4) includes national road passenger services for hire or reward operated on a temporary basis by a non-resident carrier within the scope of the Regulation. It is proposed to amend this provision to include within the scope of the Regulation all national services for hire and reward.

As already explained in the general part hereof, this substantial provision of access for road passenger transport is neither necessary nor expedient, and is therefore rejected by BAK.

Article 2 point 2

The clarification that express services are to be considered as regular services, as well as the newly added definitions 9, 10 and 11 of terminal, terminal operator and viable alternative are welcomed.

Article 2 point 7

BAK categorically rejects the change in the definition of cabotage operations, according to which these operations will lose their temporary character, and the deletion without substitution of the second part of the definition. An expansion of the provisions on cabotage operations is not required in order to achieve the objectives pursued by the amendment of the Regulation.

Article 3a

National regulatory body instead of competence of the BMVIT

According to the present proposal, a single independent and impartial regulatory body should be set up in each Member State to ensure the proper functioning of the road passenger transport market.

In Austria, the proper functioning of the road passenger transport market is ensured in the best possible way by the Federal Ministry for Transport, Innovation and Technology (BMVIT). Therefore, setting up an additional regulatory body, as proposed, is neither useful nor expedient and would involve unnecessary costs. Moreover, decisions taken by authorities are already subject to judicial review.

The proposed additional change regarding the effect of decisions, according to which review may have suspensive effect only when the decision appealed against causes irretrievable or manifestly excessive damage is not in the interest of BAK. There is no reason why the existing practice should be changed. It is acceptable for the party concerned to wait for the final decision. In Austria, as a rule, decisions only may not have suspensive effect if the immediate effect of the decision is urgently required in the interest of a party or in the public interest due to imminent danger. In this case, however, there is no such danger and the costs of reversing the implementation of the decision bear no proportion to the benefits arising for the appellant from suspending the suspensive effect.

Article 4

To date, cabotage in international operations has only been possible under certain circumstances. Pursuant to the proposed legislation, possession of a Community licence issued by the competent authorities of the Member State of establishment will be sufficient to carry out cabotage operations. BAK strongly objects to this amendment.

Not only would this result in the creation of two regimes – one for undertakings resident in the Member State, which would be subject to national requirements, and one for non-resident undertakings, for whom access would be made substantially easier – the individual Member State would be deprived of any possibility to regulate cabotage operations within its territory. This envisaged amendment of the Regulation would result in undue discrimination against residents and protection against competition could no longer be guaranteed for other modes of transport (e.g. rail). Such protection is, however, necessary – as already explained above – for instance in order to promote more environmentally friendly and sustainable modes of transport and/or to ensure that they are not put at a major competitive disadvantage.

Given the differences in geographical and other circumstances, it is crucial that measures suitable for reaching climate goals can be defined at the national level. The EU cannot take these powers from the national states without consideration of their different needs.

Article 5(3) subparagraph 5

The obligation to communicate the names of carriers and their connection points en route to the competent authorities of the respective Member States will be deleted without substitution.

Deleting the obligation to provide such information is not in the interest of BAK. Continuing to report the respective information to the competent authorities is certainly a reasonable request. Member States do have the right to know which carriers are using which routes within their territories. Without doubt, the carriers' administrative burden of communicating this information to the competent authorities is reasonable in light of the legitimate interest of the authority. Therefore, the existing provision should remain in force.

Article 5a new in conjunction with Article 5b new

Access to terminals

Paragraph 2 of Article 5a reads as follows: "Terminal operators shall endeavour to accommodate all requests for access in order to ensure optimum use of terminals".

Requests for access may be refused only on the grounds of lack of capacity and the terminal operator is obliged to indicate any viable alternatives. In addition, the terminal operator has to initiate consultations with all interested carriers. Applicants may lodge an appeal against decisions by terminal operators with the regulatory body. The decision of the regulatory body on the appeal is binding. The regulatory body has to enforce it by means of penalties which are effective, proportionate and dissuasive.

If henceforth terminal operators may refuse requests for access only on the grounds of lack of capacity, it is of utmost importance to know which criteria are applied to assess capacity utilization. If the final decision lies with the regulatory authority, it is to be feared that these decisions will be made in the interest of the liberalization of market access rather than taking into account public interests of the Member State such as traffic reduction, mitigation of air pollution, etc.

An increase in shuttle buses in the vicinity of terminals and transfer hubs is also likely to increase the traffic load substantially. Moreover, higher transport volumes in these areas, most of which are strained anyway, is not compatible with the Regulation's climate protection objective. Even without additional transport modes, traffic is heavy and the environmental burden substantial.

If nearly all applications for access filed by providers of coach and bus services are to be accepted, it will also be necessary to guarantee that these undertakings pay their share of the infrastructure costs. It is not acceptable that terminals that are built or subsidised by the public sector are made available to profit-oriented inter-urban coach and bus undertakings without them having to make an adequate contribution to the construction and maintenance costs.

Moreover, it is absolutely incomprehensible why terminal operators should be obliged to indicate viable alternatives. What if there are no viable alternatives? Would these terminal operators then also have to build additional terminals – contrary to public interest? The obligation to provide alternatives once capacities are exhausted must not be imposed on the terminal operators. Lib-

eralization efforts would result in additional terminals being built without any regard for public and environmental interests. This deprivation of power of the national states is not at all proportional to the interests of the European Union. A transport undertaking wanting to use a certain route can be reasonably expected to find alternatives on its own should a terminal's capacities be exhausted.

Articles 8, 8a, 8b, 8c and 8d

Regular services will remain subject to authorization, but the authorizing procedure is to be adjusted. According to the Proposal, authorizations for national and international regular services will be subject to the same authorizing procedure. However, the Proposal provides for two different authorizing procedures for the international carriage of passengers depending on whether passengers are carried over a distance of less than 100 kilometres as the crow flies, or over a distance of 100 kilometres or more as the crow flies. Authorization may now be refused if the economic equilibrium of an existing public service contract is compromised only in cases involving a distance of less than 100 kilometres as the crow flies.

BAK strongly opposes these changes to the authorizing procedure. Even though the intended purpose of this amendment is to achieve standardization, it would result in the differentiation and expansion of the right of access, which, from the point of view of BAK, would not be conducive to meeting the climate objectives and improving the competitiveness of public transport. The option to restrict the right of access if the economic equilibrium of an existing public service contract is compromised needs to be maintained in the future as well,

irrespective of whether the distances are less than or more than 100 kilometres as the crow flies. Competition with public service contracts that are paid from public funds should be firmly rejected. Moreover, such contracts have to meet public requirements such as affordability, general accessibility, etc., thereby facilitating the desired mobility of EU citizens. If competition on profitable routes increased, it would no longer be possible to co-finance less attractive routes.

In this respect as well, the BMVIT is – as already explained above – the suitable authorizing authority. There is no need to set up a regulatory body in Austria as a well-functioning authorizing procedure is already in place.

Article 15

BAK makes it perfectly clear that it disapproves of the deletion of the second partial sentence of Article 15 paragraph c.

Currently, cabotage operations are authorized for regular services, with the exception of “transport services meeting the needs of an urban centre or conurbation, or transport needs between it and the surrounding areas”.

By deleting this exception and authorizing cabotage operations in urban centres, it would become possible for coach and bus operators from other EU Member States to provide public transport in urban centres. Well-functioning urban public transport is a service in the general interest and therefore of great importance, in particular for commuters, pensioners and students.

Almost all of the current operators of urban transport services are owned by municipalities and provide their services

to the full satisfaction of the population. Authorizing cabotage operations in urban centres would create an unnecessary competitive situation at the communal level, which BAK most definitely does not regard as expedient. Previous experience has shown that, on the one hand, such service providers only pick out the most profitable routes in a third-party market. And, on the other hand, it results in high costs for the communal service providers, who are left with unprofitable routes that are, however, necessary for infrastructure reasons.

Apart from that, it has to be stated that the wording of points (a) and (b) is rather unprecise, leaving too much room for interpretation.

BAK therefore does not see the need to amend Regulation (EC) 1073/2009 for the international market for coach and bus services in the proposed manner. The amendments presented in the Proposal are inappropriate tools to fight against climate change. There are definitely also other measures available to strengthen European industry and improve its competitiveness. The mobility of European citizens could be improved in a more sustainable manner through environmentally friendly alternatives, such as the strengthening of rail transport.

¹ „Marktreport SPNV 2015/16“ (<https://bag-spnv.de/presse/details/marktreport-im-spnv>)

Should you have any further questions
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