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AK Position Paper

AK-position on the Proposal for a Regulation of the
Guidelines for the development of the trans-European
transport network

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

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General assessment

The present proposal on the TEN Guidelines is an important legislative proposal on implementing the targets, which were introduced in the Transport White Paper¹ this year. In it, the EC describes transport as overall positive and calls it the elixir of life of the internal market and guarantor of the quality of life for EU citizens. Matters such as traffic avoidance and the protection of residents as well as issues concerning the protection of workers were kept short. The objective of this regulation is the coordinated establishment and development of a core network in the EU by 2030 and based on it a comprehensive network by 2050. The aim is to create a resource efficient transport network, which consists of various modes of transport, and which is interlinked. The establishment and development of the transport network is depicted as economically necessary and exclusively positive throughout the entire draft. However, the negative effects of transport, in particular of road transport, are completely ignored. Road transport causes external costs, which so far have not been passed on to the causers - such as the Eurovignette Directive, which does not provide for the mandatory internalisation of external costs, and which is capped at a far too low level. Instead of correctly evaluating the transport factor based on the internalisation of external costs and to enable all modes of transport, whose negative ecological effects are lower, to

engage in fair competition, the result is an increased volume of traffic and as a reaction to it once again the call for further developing infrastructures. This is obviously the reason why the draft does not provide any evaluation of completed construction projects, which critically assesses individual projects also in view of its negative ecological effects.

In the opinion of the Austrian Federal Chamber of Labour (AK), the provision of additional infrastructures has to orientate itself on the criteria of usefulness, economy, and economic efficiency from the point of view of the creator and operator, of legitimacy and a high job creation effect. However, it is necessary to examine alternatives across all transport modes in advance. These aspects are missing from the targets of the trans-European transport network formulated in Art 4. The AK regards in particular the job creation effect as a core aspect of such cost-intensive construction projects. However, this refers to a lesser degree to the creation of the infrastructure itself as the construction industry is no longer part of personnel-intensive industries. Instead, it is necessary to include the creation of sustainable employment in the definition of European added-value of infrastructure projects and not simply to promote new competitive situations between distant areas and cheaper production locations by creating new transport routes. With regard to evaluating the project, the AK has already pointed out in its position² on the Transport White

¹ COM(2011) 144: White Paper: Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system

² <http://akeuropa.eu/en/transport/transport-publications.html>

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Paper that financial evaluation criteria must not be given priority. The Directorate-General for Internal Policies also demands as a result of its analysis of EU subsidies for polluting and unsustainable practices³: *“The ex ante, mid-term and ex post evaluations should make use of the Sustainable Development Indicators (SDIs). The current indicators used primarily focus on management and financial control. Evaluation should introduce indicators for measuring the environmental impacts.”* However, the social dimension of the TEN-T network must also be considered as a Sustainable Development Indicator.

In contrast to the TEN-T guidelines, which were adopted as a Decision (Decision 661/2010) last year, the present draft has been proposed by the EC as a Regulation text and is to replace it. It has to be noted that the present EC Proposal only conforms to the first part of the Decision to be replaced; this Regulation does not specify concrete projects. They as well as their funding shall be regulated together with the Energy and Telecommunication Network in a separate Regulation, yet to be adopted (according to the Connecting Europe Facility proposal COM 2011/665). With regard to funding and new financing instruments, the EC has also submitted some Communications and Proposals, which are relevant in respect of their influence on TEN-T policy. These include proposals on amending the Regulation (EU) No 680/2007 laying down general rules for the granting of Community financial aid in the field of the trans-Euro-

pean transport and energy networks [COM(2011) 659], a Communication on A pilot for the Europe 2020 Project Bond Initiative [COM(2011) 660] and the Communication on A framework for the next generation of innovative financial instruments - the EU equity and debt platforms [COM(2011) 662].

In concrete terms, the split into two Regulations means that the Member States commit themselves in the Regulation for the TEN-T guidelines to be evaluated to complete the core network by 2030 and the comprehensive network by 2050, without having any knowledge which infrastructures will be included in the second, yet to be adopted, Regulation. For example, the Regulation proposal for the Connecting Europe Facility lists the Brenner Base Tunnel in the core network under “Transport” as a Corridor 5 project. Regarding the measures for Corridor 1, the route Vienna - Graz - Klagenfurt - Udine - Venice - Ravenna is only described as such that modernisation and related works have not yet been completed and that a (further) development of multimodal platforms is planned; the Koralm and Semmering Base Tunnel are not mentioned.

This approach has to be criticised as it does not contribute to simplifying TEN-T policy; on the contrary, reference to two Regulations is made frequently, whereas before everything could be regulated or dealt with in one single document. For example, Art 50 “List of Corridors” of the TEN-T guidelines says as follows: “The list of core network corridors is included in Annex I of the Regulation (EU) No XXX/2012 from ... [Connecting

³ Directorate-General for Internal Policies: EU Subsidies for polluting and unsustainable practices, 2011

Europe Facility I.” Apart from and due to the requirement of having to adopt transport, telecommunication and energy networks in the Regulation on the Connecting Europe Facility together, one has to expect delays, i.e. following the current approach of the Commission, the TEN-T guidelines would be available in their adopted form; however, there would not be any decision as to which projects come under the TEN-T networks and how they are to be financed.

Art 49 states that core network corridors cover at least three transport modes. It is questionable whether this is really needed under normal circumstances

On the individual points

The separation into two inter-related regulation proposals makes evaluating the contents of the Regulation proposal on the TEN-T guidelines more complicated than necessary. For example, both documents several times vaguely mention the target of achieving a more ecological transport system; however, the evaluation of socio-economic consequences, as they have been formulated in the still valid TEN-T Decision 661/2010 under Art 27, are not included in any of the two documents. From the point of view of the EC - as it has been stated in the new Guidelines - special transport corridors have to be built, which are optimised with regard to energy consumption and emissions and which affect the environment as little as possible, but which, based on their reliability, the fact that they are rarely overloaded and their fairly minor operating and administration costs are nevertheless an attractive option. The throughout positive assessment of transport, as it had been worded in the White Paper, is definitely reflected. In other words, the Commission aims at always expanding infrastructures in accordance with unbridled demand and in doing so pursues a transport policy, which has proven to be an illusion since the 1980s at the latest. It cannot be the only solution within the meaning of a transport policy, which is committed to sustainability targets, to constantly expand infrastructures to be able to cope with continuously increasing traffic volumes and simply to maintain that this approach will gradually reduce environmental pollution.

Comprehensive network, core network, common provisions

Art 49 states that core network corridors cover at least three transport modes. It is questionable whether this is really needed under normal circumstances.

It must also be questioned whether the formulation in Art 50 does not exaggerate by stating that each Member State is obliged to participate in at least one core network corridor.

With regard to climate resistance and reliability of the infrastructures, Art 41 refers to the responsibility of the Member States and other lead partners. From the BAK's point of view, it is an important question whether resp. how the operation of existing structures can be guaranteed in times of crisis. However, scenarios do not only include economic factors, but also the availability of raw materials and in particular of fuels, which have to be imported by the EU, thereby leading to dependencies. The AK points out that rail transport already makes the European transport market more independent of fluctuating fuel prices, if, as in Austria, railways are mainly operated with electricity from renewable energy sources. One should also consider which mechanisms have to be activated in case of failure by (private) operators. The common practice, that the state and thereby the general public have to act as a lifeline when private companies fail, has to be put into question.

The internalisation of external costs needs to be extended due to the ambitious environment and energy efficiency targets

External costs/Environment

The present draft Regulation is a reflection of the economic, in reality long outdated dogmas prevailing in Europe, according to which liberalisation and the free movement of goods and services is ranking in first place, whilst far too little attention is paid to the effects of transport in respect of environmental and health issues as well as the outsourcing of production and jobs.. The public sector has to provide the framework for the free market in form of infrastructures, or guarantees if private investors are involved, costing billions and has to constantly improve and expand the infrastructures, while the polluter pays principle is still excluded. In the present draft, the position of the external costs (see Art 39 e) is programmatically underdeveloped. In view of the ambitious environment and energy efficiency targets of the EU and of the important role of transport, the internalisation of external costs must generally be developed. It is therefore to be criticised that this aspect has not been mentioned in the targets included in Art 4. Internalised prices should already be assumed in the planning phase of developing the network as described in Art 5 (resource efficient network). The corridor approach in respect of external costs in Art 53 (3) is interesting, but should be described in more detail with regard to implementation procedures and decision-making competence. In any case, against the background of the climate change proven infrastructure and disaster resilience mentioned in Art 41, the impact of the respective transport modes on climate change should be monetarily assessed and internalized.

Intelligent Transport Systems

An inclusion of Intelligent Transport Systems (ITS) in the present draft Regulation has to be generally welcomed in the sense of an "intelligent infrastructure policy". However, one should, in connection with the development of ITS, at least programmatically, but also in the recitals, include data protection, in particular the "privacy by design" principle.

Modal shift

Of central importance is the question of prioritising for those parts of the transport network, where road and rail exist resp. are planned alongside. For example, the route Kufstein-Innsbruck-Brenner is included both in the existing road network as well as in the still to be expanded rail network. Art 10 lit i states that in case of bypassing urban areas, rail has to be given preference. However, this prioritisation must not be restricted to bypassing towns and cities, but has to be applied in general. Apart from that, recital 23 of this Regulation talks about a trans-European transport network with efficient multi-modal transport operation " in order to allow better modal choices". One could even draw the conclusion from this formulation that the aim was a double infrastructure to strengthen competition. However, from the point of view of the AK, this must be clearly rejected for the above mentioned reasons.

There is a lack of central measures to accomplish a shift of goods traffic to the rail

In accordance to the published Annex of the Directive, the motorway between Kufstein and Brenner already belongs to the existing motorway network and the Lower Inn Valley Railway and the Brenner Base Tunnel (BBT) to the yet to be completed rail network. It has to be mentioned that the construction works at the BBT are making progress; in spite of the not yet completed environmental impact assessment and that therefore parallel structures do exist or will exist in future. From our point of view there is a lack of central measures to accomplish both a shift of goods traffic to the rail and to achieve an actually fair and just competition between the individual transport modes in order to ensure that goods are transported on the shortest and not the cheapest route and to reduce transport to the economically needed extent, instead of generating an additional transport volume by subsidies.

Rail

The EC targets (Art 10) also propose bypassing rural areas by rail freight transport. However, concrete proposals for the promotion of such connections are lacking, in particular when these rail routes do not (yet) comply with the provisions of Art 13 Z 3 (Transport infrastructure requirements). Art 12 names "associated equipment" as components of the rail transport infrastructure; however, this seems to be rather vague and needs to be specified.

The formulation of the first sentence in Art 13 "Operators of freight terminals

shall ensure that any freight terminal is open to all operators", is confusing. Operators can only ensure that all terminals are open to all transport companies. The AK rejects any mandatory tenders of operating a terminal, as it might be interpreted.

Inland waterways transport

The ports of Vienna, Enns and Linz appear as main ports in Art 15; however, only Enns and Vienna have been specified as priority ports. From our point of view this is difficult to understand; after all Linz is the largest Danube port in Austria. This even applies if one does not take the private Voest port into account. According to Austrian statistics, 45 % of Austrian cargo of the Danube ports are handled by the Voestalpine port; the Linz AG accounts for 14 %, the port of Vienna for 13 % and the port of Enns for 8 %. The Article has to be adjusted accordingly and Linz has to be included or both ports have to be considered.

Art 16 names "associated equipment" as components of the inland waterways transport infrastructure; this appears to be too vague and needs to be specified.

The provision, formulated in Art 17 that Member States had to ensure that their inland waterways had to be developed in accordance with Class IV, is generally problematic. This could undermine other legal instruments (such as environmental impact assessments, the Fauna, Flora and Habitats Directive

The consideration of parking areas as infrastructure component enables a compliance with driving time and rest periods

etc.). The provision, according to which continuous bridge clearance has to be ensured, cannot be enforced. In this context we refer to the dynamics of a river, in particular to the quickly and strongly changing water levels of rivers. Hence, the provision could under circumstances only be fulfilled by intensive interventions in the riverscape, which would create a problem similar to ensure the inland waterways classification. Art 17 (3) b) has to be grammatically corrected.

Art 18 should also include the objectives of the NAIADES Programme of the EU, as the future main problem of navigation will not be the infrastructure, but the lack of trained personnel.

A provision concerning the mandatory creation of port reception facilities similar to sea transport (compare Art 26) also appears to make sense for inland ports.

Road

The fact that the Commission is considering parking areas as infrastructure component in the draft Regulation (Art 20) deserves praise from the point of view of workers, as it enables compliance with driving time and rest periods and subsequently an improvement of road safety. Providing secure parking areas within the scope of the priority infrastructure development (Art 22) is particularly welcome. However, it is required that Art 21 includes the provision of secure and (in relation to the volume of traffic) sufficient parking areas.

The definition and specification of this infrastructure component in the draft regulation is inconsistent ("Parking areas" in Art 20 and 22, "Equipment associated with roads for secure parking areas for commercial vehicles" in Art 20.4) and in parts unfortunately worded ("the development of rest areas approximately 50 kilometres on motorways" in Art 45.3). The AK regards it as essential that larger rest areas providing space both for passenger vehicles and heavy goods vehicles and busses, infrastructure and also affordable services facilities for professional drivers are made available at least every 50 kilometres on TEN motorways. In addition, parking areas (or "rest areas") for fine-tuning in respect of the demand for heavy goods and bus transport but also for passenger car transport should be provided.

Financing – Project evaluation

The White Paper already indicated that the EC sees the solution for financing bottlenecks, triggered by the difficult budgets of the Member States, in the increased inclusion of private investors. However, the now strong orientation of the proposed TEN-T guidelines towards private investors must be criticised. The argumentation, why the Proposal has been submitted as a Regulation and not as a Decision, as it was previously the case (Chapter 3.5. Choice of Instrument) explains that although the Member States are traditionally the main players in respect of developing and managing transport infrastructures, the current development does show that this is gradually changing as increasingly also local

Public Private Partnerships result in the privatisation of profits and in shifting inadequate infrastructures to the public sector

and regional authorities, infrastructure operators, transport companies and other public and private entities are becoming important players in respect of developing the infrastructure. According to the EC, this is the reason why the TEN-T guidelines – binding for everyone – have been formulated in form of a Regulation. However, with regard to delays in completing the infrastructure and any consequences resulting from this, responsibility is exclusively attached to the Member States, which is expressed in Art 59: “In the event of a significant delay in starting or completing work on the core network, the Commission shall request the Member States concerned to provide the reasons for the delay within three months.” It continues: “The Commission may, as part of its active monitoring of the implementation of the core network and having due regard to the principle of proportionality and subsidiarity, decide to take appropriate measures.” The players mentioned above, are no longer included. In this context, the AK points out that the EC states in the documents accompanying the Transport White Paper⁴ with regard to including private financing models (PPP Public Private Partnership) that not all infrastructure projects are suited to these mechanisms. From our point of view, the current experiences indicate that such models can only be applied to a very small number of projects. Experiences in Austria show that PPP models do not have any particular benefits compared to traditional financing models, but that the transferred risks might become disadvantageous for the public sector.⁵

The statement made by the EC in the above mentioned document that in many cases private investors will not be able to provide infrastructure at a level,

which is regarded as optimal from a social point of view, also gives cause for concern. The EC cites “basic infrastructure”, as an example, which has a lifespan and an amortisation period, which exceeds the time frame of private investors. Infrastructures, where the costs cannot be adequately covered by user pricing are also named by the Commission as an example of those which are not suited for private investors. This argumentation amounts to the admission by the EC that in the end PPP efforts result in the privatisation of profits and in shifting inadequate infrastructures to the public sector. The BAK vehemently rejects this kind of infrastructure policy.

From the point of view of the Member States, questions of project evaluation and consequences in case completion is delayed are particularly precarious. More concrete measures regarding these issues have been specified in the Guidelines under Art 59 general procedures and in Art 12 of the Proposal on the Connecting Europe Facility. The latter states that the Commission may demand the financial aid granted to be repaid if two years after the completion date, which is named in the conditions for granting the financial aid, the project, for which the financial aid had been granted, has not yet been completed. Here too, all other players are not specifically included in the responsibility.

⁴ SEC(2011) 391: Commission staff working document accompanying the white paper - roadmap to a single European transport area towards a competitive and resource efficient transport system

⁵ Court of Auditors report Series Bund 2010/2: Implementation of the PPP concession model Eastern region Package 1

Powers of the European Commission

In the draft Regulation, the EC, based on a wealth of new formulations, has given itself far more powers than it had been the case in the Decision. In order to be relevant to the TEN, certain volume thresholds – as in Decision 661/2010 – were defined for ports, freight terminals, airports etc. New is, that the EC states in Art 54 that it may readjust these Annexes (maps and lists of projects) and in doing so will include all logistic platforms, freight terminals, inland ports, sea ports and airports in the comprehensive network, whose latest two-year average of the traffic volume verifiably exceeds the respective volume thresholds and that the Commission excludes all logistic platforms, freight terminals, inland ports, sea ports and airports from the comprehensive network, whose latest six-year average of the transport volume verifiably falls short of the respective volume thresholds. This means on the one hand that such nodes may no longer be included in TEN-T regulations and financing; however, vice versa it is possible for the EC to include infrastructures at relative short notice in the TEN-T, including all duties, which have been defined in the Guidelines. The Commission also only names corridor coordinators following consultation with the Member States; until recently this had to be done in agreement with the Member States. Apart from that, the EC states in Art 53 that it, in order to support the implementation of the core network corridors, may adopt implementing decisions for core network corridors. These decisions may contain the investment planning, the related costs and implementation time-

line. The AK shares the opinion of the EC that cross-border transport projects in Europe require coordination. Nevertheless, transport policy, in particular time frame and financing, is the responsibility of the Member States, which must be based on uniform principles and not on individual interventions of the European Commission. Hence, the formulation that the Commission may take “appropriate measures” in case the completion of the core network is delayed, must also be seen with some scepticism.

Corridors – Coordinators

In Art 48, the EC names among other the objective to facilitate the coordinated implementation of the core network with the aim to achieve resource efficient multimodal transport as a general purpose of the core network corridors. Apart from that, multimodal infrastructures – wherever needed – should be built and coordinated in a way that optimises the use of each transport mode and their cooperation. In this context, the AK is missing the clear formulation of climate protection targets, i.e. a targeted shift to the sustainable transport modes rail and shipping.

In the course of referring to corridor development plans, Art 53 (1) e mentions a deployment plan relating to interoperable traffic management systems on multimodal freight corridors. It is assumed that each corridor requires multimodal transport. From our point of view, this does not apply and should

The AK requests a review of the Regulation on the Guidelines to develop the trans-European transport network

therefore be deleted. The powers of coordinators concerning plans to remove “operational” obstacles, as formulated in this Article, are also very far-reaching.

Art 52 states that the Member States concerned shall establish a corridor platform responsible for defining the general objectives of the core network corridor and for preparing and supervising the measures referred to in Art 53(1). According to the European Commission, participating in these corridor platforms are representatives of the Member States concerned and maybe other public and private entities. The AK demands the due consideration of relevant stakeholders (e.g. labour representatives) and the inclusion of employees in the transport sector in corridor-related social dialogues.

Finally, from the point of view of the AK it has to be stated that Europe never had so many transport modes, transport constructions and transport options as it has now. That is why we are concerned that billions are invested in infrastructure constructions but at the same time evaluations and the critical dialogue concerning these construction projects are still missing. The EU citizens are becoming more and more sensitive in respect of such major investments with all their advantages and disadvantages; that is why the decision-makers are urged to openly address these concerns in order not to give the impression of only meeting the interests of the industry.

Hence, the AK requests a review of the Regulation on the Guidelines to

develop the trans-European transport network. It is necessary, to embed a resource efficient transport network in the legal files of European transport policy and to implement those measures. This does not only mean the clear prioritisation of the polluter pays principle to produce “fair and efficient prices in transport” (compare the Green Paper of EU Commissioner Neil Kinnock back in 1995), but also the financing of each infrastructure on the basis of the criteria of the Courts of Auditors mentioned (legitimacy, economy, economic efficiency, usefulness) as well as a high job creation effect and a critical dialogue and evaluation of each individual project with regard to its social and ecological impact.

Should you have any further questions
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