



June 2013
AK Position Paper

Demands on the Plurilateral Services Agreement (PSA/TISA)

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.

Rudolf 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). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, community and military service - of the 3.2 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Werner Muhm
Director

The AK position in detail

Attempts are currently being made to establish a follow-up agreement to the WTO General Agreement on Trade in Services (GATS). By introducing this new agreement, a “Coalition of the Willing” wants to achieve a breakthrough for a comprehensive liberalisation of the international trade in services. The informal preparations for this new agreement can be traced back to the so-called “Really Good Friends of Services” (RGF). This is a coalition of 21 WTO Member States¹, which, in view of the stalled GATS negotiations have initiated a follow-up agreement. **The so-called “Plurilateral Services Agreement (PSA)” and/or “Trade in Services Agreement (TISA)” is being rushed through on the basis of intransparent and exclusive consultations, a lack of impact assessments and with high time pressure.**

AK rejects this forum shifting to a plurilateral and even more offensive follow-up agreement of the GATS. The PSA/TISA-project severely damages the multilateral trade regime and undermines demands for safeguarding the public interest against an aggressive marketisation agenda. From the point of view of the AK, the European Union and its Member States need to fundamentally change their approach

¹ Apart from the EU (incl. its Member States – the European Commission is in charge of the negotiations), the group includes the USA, Canada, Mexico, Australia, Japan, Chile, Chinese-Taipei, Costa Rica, Hong Kong (China), Island, Israel, Columbia, Republic Korea, New Zealand, Norway, Pakistan, Panama, Peru, Switzerland and Turkey.

to international trade in services negotiations. **Embedding mandatory social standards and the guaranteed adherence to wage and labour regulations is as essential for future negotiations as the removal of public services from the scope of Free Trade Agreements.** In particular also in connection with the PSA/TISA-negotiations, this requires to meet the following demands:

- A **binding carve out of public services** from the negotiations – and thus from the scope of the Agreement – has to be guaranteed. The EU Commission must not open the market for these essential components of the European Welfare and Social Model. The AK is also opposed to demands on other countries to open their markets in this sector. Guarantees have to be given at an early stage to ensure that the European Commission does not make another attempt to retract from already established standards of protection and regulatory scope for public services² (such as the level of protection and the scope of existing horizontal exemptions in the GATS-schedules of the EU: “public utilities”-clause and “subsidy reservation” for public services). The objective in this context is not only to safeguard existing, but also future policy space. Against

² see AK Position Paper “Services of General Interest in Bilateral Free Trade Agreements” – Reflection Paper of the European Commission, March 2011, http://www.akeuropa.eu/en/publication-full.html?doc_id=170&vID=43 (a.o. 21.3.2013)

this background any attempt for an exhaustive listing of local and national public service providers in the agreement, as well as for a restriction of existing horizontal exemptions for public services must be fiercely objected.

- Apart from that, the **envisaged expansion and deepening of “regulatory disciplines” (as part of so-called “rules negotiations”) should be viewed extremely critically.** These negotiations could lead to a fundamental restriction of national and local regulatory autonomy. Here too, it is vital to ensure the scope for laying down high-quality social, consumer protection and environmental policy standards at an early stage, whereby the issue of universal service obligations is particularly sensitive. It is absolutely necessary to protect the regulatory autonomy to lay down relevant standards against an overstated interpretation of the current standard provision “not more burdensome than necessary” and any “necessity tests”.
- Furthermore, **in view of the experiences with the current financial crisis, we are opposed to any further liberalisation in the area of financial services and “stand still”-clauses in the agreement that may obstruct the (re-)regulation of the crisis prone financial sector.** In this regard, we want to point out once again the recommendations of the UN-Commission of Experts on Reforms of the International Monetary and Financial System: „[A]ll trade agreements need to be reviewed to ensure that they are consistent with the need for an inclu-

sive and comprehensive international regulatory framework which is conducive to crisis prevention and management, counter-cyclical and prudential safeguards, development, and inclusive finance. Commitments and existing multilateral agreements (such as GATS) as well as regional trade agreements, which seek greater liberalization of financial flows and services, need to be critically reviewed in terms of their balance of payments effects, their impacts on macroeconomic stability, and the scope they provide for financial regulation³. Restricting the necessary (re)regulation of the crisis prone financial sector by disappropriate liberalisation obligations must be avoided under all circumstances.

- The **binding compliance with national labour, social and collective agreement provisions must be stipulated.** In the context of an international legal vacuum⁴ to pursue violations, any further provisions on mode IV (temporary movement of natural persons) must be subject to the condition that an effective international cooperation

³ Report of the Commission of Experts of the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System (2009), http://www.un.org/ga/president/63/commission/financial_commission.shtml (a.o. 21.3.2013)

⁴ see also the study “GATS and the EU: impacts on labour markets and regulatory capacity” by Gintare Kemekliene and Andrew Watt (2010), <http://www.etui.org/content/download/1969/22255/file/10+Gats+REPORT+116+WEB.pdf> (a.o. 21.5.2013)

of the legal authorities is ensured. In case of non-compliance it should be possible to use the general dispute settlement mechanism and to impose sanctions in the form of substantial fines. At any case it is essential to retain the destination country principle and to insert the so called "Labour Clause" in the agreement. Moreover, the new agreement requires a binding and inclusive chapter on sustainability under the general dispute settlement mechanism. The ratification, implementation and effective application of all ILO-Core labour standards is imperative for any participant of the agreement.

- **Any negotiations have to be held on the basis of a positive list approach (according to the current GATS standard liberalisation obligations have to be stated specifically) and may not be based on adopting far more offensive NAFTA approaches. Transparency, inclusive consultations and democratic accountability of the negotiations are imperative.** However, these demands were already sidelined in the selective preparation and adoption of EU's negotiating mandate for the Plurilateral Services Agreement. We fiercely reject the use of a negative list approach ("list it or lose it") and the incorporation of so-called stand still and ratchet clauses (which automatically lock-in future liberalisation measures and therefore contain an "autonomous built-in dynamic" towards liberalisation) in the agreement. Reference must also be made to the firm demand that applying a negative list approach in the EU-Canada Free Trade Agreement

("CETA") must not be regarded as a precedent for follow-up agreements⁵. Instead, the agreement must leave enough policy space to react on negative liberalisation experiences and to meet democratic demands for (re)regulation (e.g. in case of remunicipalisation). Therefore negotiators should also establish a simplified modification procedure for once made liberalisation commitments and ensure sufficient regulatory flexibility⁶.

5 see also European Parliament resolution of 8 June 2011 on EU-Canada trade relations <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2011-0257&language=DE&ring=B7-2011-0344> (a.o. 21.3.2013)

6 see also the study "Public services in bilateral free trade agreements of the EU" by Markus Krajewski (2011), http://www.epsu.org/IMG/pdf/PublicServicesFTAs_FinalVersion.pdf (a.o. 21.5.2013)

Should you have any further questions
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