



**A new partnership with the United Kingdom**  
**Commission proposal**  
**COM(2020) 35 final Annex**

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# Executive summary

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- The United Kingdom left the EU on 31 January 2020. Now the future relationship is to be negotiated within ten months and shall come into force at the beginning of 2021. According to the EU draft mandate, a **comprehensive economic and security partnership** with an overarching governance framework will be strived for. **The AK welcomes the publication of the EU draft mandate and the commitment to transparent negotiations.**
- **The AK is in favour of close future cooperation between the EU and the United Kingdom.** Both the EU and the United Kingdom aim for duty- and quota-free trade and close cooperation in many other areas. There are differences around fair competition, however.
- **The AK warns of a destructive race to the bottom.** If the United Kingdom lowers important EU legal standards of protection, the rights of workers in the EU could also come under pressure. This would lead to unfair competition, which must be prevented. Brexit must not be at the expense of employees.
- **The AK demands fair competition on a level playing field** with regard to the new partnership. The EU draft mandate provides for the United Kingdom to **maintain EU standards** in the areas of state aid, taxation, labour and social protection, environment and the fight against climate change. The AK welcomes this approach. Workers on both sides of the Channel would benefit from such an agreement. In order to ensure that future improvements in the level of protection under Union law can be taken into account **the AK also calls for dynamic alignment.**
- **The AK calls for a mechanism for the effective enforcement of the level playing field provisions.** Violations must not remain without consequences. The AK emphasises that conflicts should be resolved by mutual agreement inasmuch as possible, but there must also be the possibility of imposing **trade sanctions**. In the view of AK, **all level playing field provisions** must be subject to the **general dispute settlement mechanism**, otherwise they are toothless. The EU draft mandate explicitly provides for this for state aid law, but unfortunately not for other areas.

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# The AK's position

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## Trade in goods

The EU is aiming for a free trade area with the United Kingdom, with **duty-free and quota-free trade in goods for all sectors**. The AK welcomes the fact that, in the draft mandate **fair competition on a level playing field** is explicitly stated to be a prerequisite for a comprehensive agreement (para. 16).

## Services and investments

For **services and investments** (both in services and non-services sectors), an ambitious, comprehensive and balanced agreement (para. 32) is sought for in as many sectors as possible (para. 33).

The AK welcomes the exceptions to trade in services for activities carried out in the exercise of governmental authority provided for in the draft mandate as well as the reference to the EU's liberalisation reservations with regard to public services (para. 33). The AK demands an explicit clarification that **exceptions** are provided for **in the area of public services** and proposes the following wording: *"The envisaged partnership should provide for exceptions and limitations as appropriate, including the exclusion of activities carried out in the exercise of governmental authority and the exclusion of public services"*.

With regard to **financial services**, the EU will regulate interactions in this area, in addition to the market access to be agreed bilaterally with the UK, through unilateral **equivalence decisions** that can be revoked at any time. The AK welcomes the commitment to financial market stability, consumer protection and fair competition (para. 42).

## Investment protection

The AK welcomes that no provisions on investment protection, in particular **no special rights for investors (ISDS)**, are included in the draft mandate. Special rights for investors are privileges for corporations that cannot be justified. The judicial systems in the EU and the United Kingdom provide legal certainty

for investment. The United Kingdom currently has bilateral investment treaties with eleven EU Member States. Following the decision of the European Court of Justice in the "Achmea" case, EU Member States have committed themselves to terminating these agreements. In the AK's view, the United Kingdom should stick to the termination, even though it is now a third country.

## Regulatory aspects

The AK welcomes that the draft mandate explicitly mentions the **precautionary principle** for the areas of food safety, animal and plant health (SPS), occupational health and safety and environmental protection (paras. 29, 96, 98). This principle, enshrined in Union law, allows policy makers to take regulatory action when there is scientific uncertainty about the extent of possible harms, for example when a product is authorised.

The AK criticises that, according to the draft mandate, **"unnecessary barriers to trade"** (para. 27) and **"unnecessary regulatory requirements"** (para. 36) should be avoided in the area of trade in services. The AK demands the **deletion of these provisions**. The need for regulatory measures cannot be derived solely from trade policy considerations or cost considerations, but only by taking into account public interests. The AK therefore rejects a necessity test. For the same reasons, the AK demands the **deletion of the provisions** according to which cross-cutting disciplines for "cost-effective regulations" are to be developed for goods (para. 31) and services (para. 40).

The draft mandate provides for market access for the **provision of services by natural persons** (para 35). For these cases of temporary labour migration national laws regarding entry and stay should apply "provided that, (...) they do not nullify or impair the benefits accruing from the envisaged partnership". Furthermore, "the laws, regulations and requirements existing in the Union regarding working conditions and workers' rights should continue to apply" according to the draft mandate. The AK refers to the principle of **"equal pay for equal work in the same place"** and

proposes the following addition: *“The sole fact of requiring on a non-discriminatory basis that a service supplier complies with all laws, regulations and collective agreements concerning wages, working and employment conditions and social security must not be regarded as nullifying or impairing benefits accruing from the envisaged partnership.”*

### Regulatory cooperation

The draft mandate provides for future regulatory cooperation between the EU and the United Kingdom in the areas of trade in goods (para. 30), food safety, veterinary and phytosanitary matters (para. 29), and services and investment (para 39). The future agreement should establish a framework for this purpose; further details are not given in the draft mandate.

The AK points out that **regulation is a matter for the established democratic legislative and decision-making processes** at the European and Member State levels. This jurisdiction must not be undermined by the planned regulatory cooperation. The relevant parliaments must be fully involved. The AK rejects early advance information on regulatory projects or planned changes in legislation in the regulatory cooperation bodies.

The issues to be addressed in the context of regulatory cooperation must be carefully defined and delimited. It must be ensured that existing **levels of protection are not lowered**, in particular in the area of level playing field provisions and the areas of health, safety, consumer protection, data protection, labour, environment, chemical and pharmaceutical products and food safety. In particular, the **precautionary principle** must not **be undermined** by regulatory cooperation.

In particular, the AK calls for explicit clarification that the aspiration to **continuously improve the levels of protection** (para. 90) envisaged for the “level playing field” is not counteracted by the planned regulatory cooperation.

The AK demands that regulatory cooperation takes place in a transparent manner and that **trade unions and civil society** are involved in issues of particular relevance to employees, consumers, and environmental and climate protection. Bodies that do not meet these conditions will be rejected by the AK.

### Transport

The draft mandate provides for market access for road freight transport (para. 67), with the exception of cabotage (para. 69, road freight transport operations within the territory of one Union Member State) and large cabotage (para. 69, road freight transport operations from one Union Member State to another). In the view of the AK, **road freight transport** should **not be included in the EU negotiating mandate**, but should be negotiated bilaterally by the Member States individually with the United Kingdom.

According to the draft mandate, a **comprehensive aviation agreement** with the United Kingdom is sought (para. 57). The AK demands that the future aviation agreement include the social standards, environmental regulations, consumer rights, safety regulations and conditions of competition under EU law and prevent circumvention of these regulations. Union ownership and control provisions should continue to apply to airlines majority-owned and controlled by British nationals, from the AK’s point of view.

EU citizens enjoy a high level of **consumer protection** based, among other things, on the **Air Passenger Rights Regulation 261/2004**. The AK requires that passengers travelling to and from or via the United Kingdom continue to enjoy this level of protection.

The AK calls for the future aviation agreement to meet the aspiration for more sustainability in aviation, as proposed by the Commission in the European Green Deal, and to reduce carbon emissions. In order to create a comparable situation between airlines in the UK and the EU, participation in the EU ETS could be striven for.

### Fair competition on a level playing field

The AK welcomes the provisions contained in the draft mandate to **ensure fair competition on a level playing field**. The provisions go far beyond the level of protection usually enshrined in the sustainability chapters of EU trade agreements. The United Kingdom is the EU’s third largest partner in trade in goods. To take account of the trade intensity, geographical proximity and close economic integration, the new partnership must be based on robust level playing field provisions. The AK expressly rejects an agreement à la CETA.

The draft mandate provides for a **non-regression clause** in the areas of **state aid** (para.s 91 and 92), **taxation** (para.s 94 and 95), **labour and social protection** (para.s 96 and 97), **environment** (para.s 98

and 99) and the **fight against climate change** (para.s 100 to 103). According to this, the United Kingdom is to continue to maintain the standards of Union law in force at the end of the transition period (expected to be the end of 2020). The AK welcomes this approach. Workers on both sides of the Channel would benefit from such an agreement. In order to ensure that future improvements in the level of protection under Union law can be taken into account, **the AK also calls for dynamic alignment.**

With regard to **labour and social protection (paras. 96 and 97)**, the AK calls for a non-regression clause for **all relevant provisions under Union law**. The draft mandate only provides for a non-regression clause for “at least” the following areas: Protection of fundamental rights at work, health and safety at work including the precautionary principle, fair labour and employment standards, participation in the workplace and co-determination in restructuring. Furthermore, the United Kingdom should protect and promote social dialogue between employers and employees and their associations.

According to the draft mandate, **civil society** should have a role in monitoring and implementing the provisions in the level playing field (para.s 107 and 108). The AK demands an explicit mention of **trade union participation** and effective means of enforcement of the Agreement, e.g. the opportunity to submit complaints. Existing domestic advisory groups for monitoring EU trade agreements do not meet these requirements and are therefore hardly effective in the AK’s view.

### Shared values

In addition to a reference to the importance of data protection, the initial provisions of the draft mandate state that the future partnership should be based on certain shared values, with five binding political clauses (para. 11). Three of these five clauses are referred to as “**essential elements**”: **Human rights, democracy and the rule of law; non-proliferation of weapons of mass destruction** and **combating climate change**. The AK welcomes these values as the basis for the new partnership with the UK.

### Dispute resolution

The draft mandate provides for a three-step dispute settlement mechanism: the Parties to the Agreement first attempt to resolve conflicts through discussion and consultation.(para. 153). If this is not successful, the dispute is referred to an arbitration panel, which makes a binding decision (para 154). If the Party does not comply with the arbitration panel resolution, the

other Party may either seek financial compensation or take unilateral measures up to and including (partial) suspension of the Agreement (para. 156). If a dispute involves questions of interpretation of Union law, the arbitration panel shall refer the question to the European Court of Justice, whose interpretation shall be binding on the arbitration panel (para 155).

The AK demands that **all level playing field provisions** be made subject to the **general dispute settlement mechanism**, otherwise they are “toothless”. The EU draft mandate explicitly provides for this for State aid law (para. 92), but unfortunately not for other areas. In the opinion of the AK, the areas of **taxation** (paras. 94 and 95), **labour and social protection** (paras. 96 and 97), **environment** (paras. 98 and 99) and the **fight against climate change** (paras. 100 to 103) must also be subject to the dispute settlement mechanism. Violations in these areas must not remain without consequences. The AK emphasises that conflicts should be resolved by mutual agreement inasmuch as possible, but the possibility of a decision by an arbitration panel and the imposition of **trade sanctions** must also be provided for.

The AK welcomes the fact that the draft mandate provides for unilateral measures to be taken to enforce the “**essential elements**” defined in the introductory provisions, in contrast to what is usually regulated in the toothless sustainability chapters of the EU’s trade agreements. In the event of violations of **human rights, democracy and the rule of law; against the imperative of non-proliferation of weapons of mass destruction**, as well as against the **Paris Climate Agreement**, the other Party can react with unilateral measures up to the (partial) suspension of the Agreement (para 145).



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## About us

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The Austrian Federal Chamber of Labour (AK) is by law representing the interests of about 3.8 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 main objectives of the 1991 established AK EUROPA Office in Brussels are the representation of AK vis-à-vis the European Institutions and interest groups, the monitoring of EU policies and to transfer relevant information from Brussels to Austria, as well as to lobby the in Austria developed expertise and positions of the Austrian Federal Chamber of Labour in Brussels.