



Better implementation and enforcement of single market rules

COM(2020) 93;
COM(2020) 94 final

Executive summary

The two Commission communications on the status quo and planned projects in the EU single market focus mainly on the obstacles perceived by businesses. The justified concerns of employees were not considered at all in the analysis. Similarly, consumer aspects were only dealt with peripherally.

The weaknesses of the EU's single market philosophy in times of crisis have been confirmed again with COVID 19. In the course of the financial crisis the AK already pointed out that the supply-oriented single market is not crisis-resistant. The AK takes the firm position that employees and consumers as well as small and medium-sized enterprises are the drivers of the single market. The advantages of the single market must be clearly recognisable to employees and consumers. Only through a demand-oriented policy can the goals of a social market economy, as defined in the EU Treaty, the promotion of the well-being of the population and an improvement in living and working conditions be achieved.

The 13 main obstacles identified by the Commission and the 22 actions against barriers in the single market, are business-focused and completely ignore the problems for other participants. Some of these Commission proposals could even intensify existing imbalances.

Within the framework of the actions, the AK makes the following demands in particular:

- Overcoming the obstacles and problems faced by workers in the EU single market must now be the number one priority.
- When setting up a task force to strengthen cooperation in the enforcement of single market rules, provision must be made for the involvement of the social partners and representatives of consumer protection.
- A social progress protocol must be created which is anchored in EU primary law and precedes the supply-oriented "fundamental freedoms".
- Measures must be taken against wage and social dumping, which is a particular problem with cross-border postings.
- Better rules for commuting close to the border must be ensured so that it is possible to travel to the place of work/residence even in times of crisis.
- The shortage of skilled workers must be combated in particular by training in one's own country, instead of relying on ever cheaper labour from ever more distant regions and countries.
- The planned law on digital services must contain regulations that prevent the circumvention of employment, social, consumer protection, tax and duty regulations and end the precarious working conditions of platform workers.
- Gold Plating and One In, One Out principle: Protective regulations for employees, consumers and the environment, which provide for higher standards than those contained in EU law, must not be sacrificed under the pretext of cutting red tape. The same applies to the planned One In, One Out principle. Instead of deleting an existing one for each new piece of legislation, attention must be paid to the quality of the legislation.
- The proposal for a notification directive must be withdrawn. It encroaches on the sovereignty of the Member States and affects the democratic principle. The same applies to the European electronic services card. It too must be withdrawn.
- SOLVIT should be strengthened by a national right of instruction, which would increase efficiency.
- An acceleration of the procedure for single market complaints is to be expressly welcomed.

The AK's position

The European Commission describes its view of the European single market and the obstacles that exist there in two communications:

- The communication "Identifying and addressing barriers to the single market" takes stock of the situation, particularly from the point of view of businesses, and derives key actions that the Commission intends to take in the coming years.
- The communication "A long-term action plan to improve the implementation and enforcement of single market rules" refers to the first communication and presents a series of actions to tackle the identified problems and obstacles to the single market.

Commission ignores central role of workers in the single market

The Commission's communication "Identifying and removing barriers to the single market" focuses on two reports, according to the Commission itself: The first text refers to the obstacles perceived by businesses in the single market. A consultation was carried out with the Chambers of Commerce on this issue. The second is based on a survey on consumer attitudes towards cross-border trade by the EU Consumer Markets Scoreboard.¹

This makes it clear right at the beginning of the communication that the Commission is largely guided by the wishes of businesses regarding the single market. Although the role of consumers is also addressed, the Commission refrains from asking for the assessment of the current single market situation from the perspective of the European consumer protection associations.²

What is particularly negative is that the central role of employees in the EU single market is almost completely negated by the Commission. In contrast to companies, employee representatives were not consulted. Problems which the single market brings

with it for employees and job seekers were neither analysed nor included in the considerations on the obstacles to the single market.

The single market in times of crisis

Already on the occasion of the publication of the EU single market strategy about five years ago, the AK drew attention to the missing concepts of the Commission in the case of crises.³ At that time, the AK demanded that a new path be taken in single market policy - not least under the impression of the consequences of the financial crisis policy of 2008 onwards.

Then as now, high unemployment and rising poverty were a central problem in the European Union. Nevertheless, the European Commission has pursued a supply-oriented, business-driven single market policy. The AK continues to firmly hold the view that employees and consumers as well as small and medium-sized enterprises are the drivers of the single market. Only a demand-oriented policy can therefore achieve the goals defined in the EU Treaty of promoting the well-being of peoples and a social market economy geared towards full employment and social progress.

The COVID 19 pandemic has once again highlighted the weaknesses of the current EU single market philosophy. The joint action of all EU Member States at the level of the European Union has been pushed into the background in comparison to the measures on national level. Previously unquestioned fundamental freedoms of the single market were completely overturned from one day to the next by measures of member states.

The fragility of the EU single market system is particularly evident with regard to the free movement of workers. In the wake of the coronavirus crisis, the abuse of the freedom of movement of workers by "importing" ever cheaper workers, especially in the tourism, agricultural, health and care sectors,

has suddenly led to a shortage of workers in these important sectors. Unemployed returnees are also facing the problem that they cannot expect any social security benefits in their home country while the state of employment does not consider itself responsible. Border closures make it very difficult or impossible for workers to resume employment. The sectors that are almost exclusively supported by these “cheap labour” from other EU states are facing considerable recruitment problems, also in view of the often difficult working conditions. The fact that in the past too little training was provided by the companies themselves also intensifies these problems.

The just-in-time economic model based on the division of labour, which has shifted stocks to the street, must also be questioned - a situation that was not even thought of at the time the basic freedoms were introduced. This is associated with a high volume of traffic. Individual regions are particularly burdened by transit traffic - with negative effects on the environment and health, among other things.

The EU single market is not crisis-resistant. In the course of the restoration of the single market, the Commission must urgently consider how dogmas of the single market that were previously considered sacrosanct can be reconsidered. Many of the developments of the past that were misguided from the point of view of the people, the workers, the consumers and the environment must be reassessed and changed or even reversed.

Challenges in the EU single market

In its Communication “Identifying and Removing Barriers to the Single Market”, the Commission identifies the 13 main obstacles to cross-border activities in the single market for businesses and, in part, consumers. The Communication on the “Long-term action plan to improve the implementation and enforcement of single market rules” lists 22 actions to remove the obstacles identified.

Problems and obstacles that exist for other participants in the single market are completely ignored by the Commission. However, in the context of the biggest crisis ever faced by the European Union, triggered by COVID 19, it has become very clear that the concerns of workers must finally be the central focus of further development. The AK demands that the problems on the EU labour markets must be dealt with and solved as a very first measure.

Strengthening the role of employees in the EU single market

As part of the main priority for workers in the EU single market, the issues listed below in particular must be taken up and addressed by the Commission:

Anchoring a social progress protocol:

A social progress protocol should not only place fundamental social rights on an equal footing with the (supply- or company-oriented) “fundamental freedoms”, but also put them ahead of them. The autonomy of the social partners and the principle of equal pay for equal work in the same place must be included in it and thus strengthened. The social progress protocol must be anchored in EU primary law in order to safeguard fundamental social rights.

Take effective action against wage and social dumping:

Austria is particularly affected by wage and social dumping because of the large wage gap towards the new Member States. The number of cross-border postings and of daily and weekly commuters to Austria has been rising sharply for years. At the same time, this is associated with sham postings, dumping through the payment of lower social security contributions, failure to comply with protective regulations and falling below the minimum wage laid down in collective agreements.

The following measures are urgently needed in order to successfully combat wage and social dumping:

- The European Labour Authority must contribute quickly and effectively to the effective combat of wage and social dumping in cross-border situations and to the effective enforcement of the rights of cross-border workers.
- The electronic system for the exchange of information concerning social security (ESSI), which is only just being set up, must be implemented rapidly throughout the EU.
- In the case of postings, the basis for the payment of social security contributions should be the entitlement wage.
- In order to avoid sham postings, the posted employee should only be able to continue to be insured in his/her home country if he/she was employed with the same employer for at least three months before the posting. Furthermore, the

binding effect of the so-called “A-1 certificates” is to be eliminated. Stronger controls and closer cooperation between the national authorities are also urgently needed.

- Effective measures are needed to combat letterbox companies and bogus self-employment, as well as the enforcement of the cabotage regulations in road transport through the mandatory and uniform carrying of forgery-proof freight documents, also in electronic form.
- In road freight transport, too, the rules of the Posting of Workers Directive must apply without exception to both international transport and cabotage from day one.
- In future enlargements of the EU, the transitional provisions for the labour market must not end until wage levels have been brought more or less into line.

Better rules for cross-border commuting:

With regard to the free movement of workers, the focus should be more on cross-border commuting. Many regions are growing closer together near the border, which makes Europe a small-scale experience. In view of the border closures in the wake of the Corona crisis, the European Commission is called upon to propose regulations that make commuting between regions possible even in times of crisis.

On the measures in the action plan

The AK welcomes the introductory remarks on the enforcement of the single market rules, according to which the rules on the single market are to be correctly applied and infringements punished by every European authority. According to the Commission, economic actors must be monitored, inspected and, if necessary, sanctioned. Cooperation at all levels of government and administration in the EU should be improved. Against the background of the problems described above regarding the posting of workers, such measures would be an important step towards fairer competition in the EU single market.

The Commission intends to set up a task force to strengthen cooperation in the enforcement of single market rules. This task force should be composed of representatives from the Member States and the Commission. The AK calls for this group to be supplemented in any case by representatives of the social partners as well as of consumer protectors in

order to be able to obtain a balanced picture when assessing compliance with single market rules and possible obstacles.

The AK comments on some of the proposed actions as follows:

Ad action 1 - Services Directive, skills shortages:

The Commission mentions that it intends to update the handbook on the implementation of the Services Directive in the light of the emergence of new business models and new ways of providing services and recent case law. However, the AK expects a revision of the Services Directive in order to be able to solve the problems that have arisen, inter alia, in the notification of services, not least as a result of the ECJ rulings C-360/15 and C-31/16 of 30 January 2018 in the case of land use plans. In addition, online platforms are abusing the shortcomings of the Services Directive to their advantage, resulting in unfair competition compared to traditional business models.

On the reform recommendation for the regulation of professional services: The AK states that a shortage of skilled workers can best be addressed by targeted training in one's own EU country. In view of high unemployment figures, it would be the order of the day to reintegrate job seekers into the labour market by qualifying them as skilled workers. This action must be accompanied by the creation of attractive working conditions. The search for skilled personnel in other EU countries and third countries, on the other hand, only shifts the problem and leads to a “brain drain” in the countries from which the skilled workers are recruited, i.e. a shortage of skilled workers elsewhere.

Ad Action 3 - Online platforms and the Digital Services Act:

A new Digital Services Act is welcome. However, the planned new legislation must not be limited to the conformity of products sold on online platforms. Particularly in the case of platforms in the digital industry, precarious working conditions are often observed among the workers employed in this sector.⁴ The current legal framework (in particular the Services Directive and the E-Commerce Directive) favours the circumvention of employment, social, consumer protection, tax and duty regulations. This also leads to unfair competition with traditional companies in the offline sector. Binding rules to prevent this circumvention are therefore urgently needed and must be considered and implemented in the course of the Digital Services Act plans.

Ad Action 4 - Training for judges and legal practitioners:

From the point of view of the AK, it is very important to train judges, authorities and members of the legal profession in European law. Ultimately, this will also benefit employees in enforcing their rights.

Ad action 5 - Capacity building for national authorities:

The AK welcomes capacity building for national authorities such as an increase in the number of inspectors and controls. However, it should be possible to apply for funding for capacity building independently of the “recommendations” in the framework of the European Semester. The AK has already taken a critical position on the EU single market programme in 2018.⁵

Ad Action 6 - Further training of civil servants in the award of public contracts:

The AK, like Action 4, is also in favour of expanding the capacities of skilled public service employees for the award of public contracts according to environmentally friendly and socially responsible criteria.

Ad Action 7 - “unjustified overregulation” or gold plating by Member States:

With regard to the question of “unjustified overregulation”, the question must be asked whom it benefits and whom it harms. In this respect, the AK refers to the study by Univ Prof Franz Leidenmühler⁶ of the JKU Linz, who already in 2018 addressed the question of who benefits from the discussion on “de-bureaucratisation”. There is no doubt that many regulations are associated with costs for companies. At the same time, however, many of these standards have positive effects for broad sections of society: consumer protection laws bring legal certainty for consumers, workers protection laws and labour law are essential elements that regulate the relationship between employers and employees and bring security to latter. Environmental protection laws set limits for the actors in their economic activities and thus ensure a high level of an environment worth living in. Last but not least, rules help entrepreneurship itself, since norms in the various trades ensure minimum quality standards and offer protection against dubious and unqualified or insufficiently qualified entrepreneurs, thus also preventing unfair competition with dumping prices. The AK therefore calls for an appropriately prudent approach to this issue.

The benefits of the One-In, One-Out principle, according to which one EU regulation is to be deleted for every new one, are not comprehensible. What sense does it make, for example, if a necessary regulation in the area of workers protection has to be deleted when minimum standards in workers protection are to be increased by a new standard? This principle could lead to a standstill in labour, consumer and environmental policy objectives. It is even questionable whether the One-In, One-Out principle is not in contradiction to Art 3(3) TEU, which defines, among other things, social progress and the improvement of the quality of the environment. The AK therefore rejects the introduction of the One-In, One-Out principle. The new regulation runs the risk of having a negative impact on broad sectors of society, including the employment sector and consumer protection.

However, the obligation of the Member States to provide the Commission, after the adoption of national legislation, with a precise explanation of which national provisions transpose the corresponding obligations under directives, itself carries the risk of over-bureaucratisation for the authorities of the Member States and is therefore rejected by the AK.

Ad Action 9 - Ex-ante verification of new national legislation:

The AK considers the requirement of ex-ante checks before the introduction of potentially restrictive national regulations to be critical in terms of democratic policy. In addition, such a procedure would be ineffective, especially in the case of those national actions which severely restrict fundamental freedoms and which are usually issued in haste and at extremely short notice in the wake of crises such as the prevailing one. After all, in such situations there is usually hardly any time for ex ante checks, which is why these would probably be ignored by the Member States.

Ad Action 11 - Notification of services:

As already mentioned for Action 1, the AK is in favour of a revision of the Services Directive, among other things in order to reduce the proliferation of notification obligations to the Commission and the excessive bureaucracy associated with them. The AK is opposed to the present proposal for a notification directive because it encroaches on the sovereignty of the Member States and would also affect the democratic principle. Furthermore, indirect effects on labour law provisions are possible.⁷ The Commission’s proposal for the introduction of a European electronic service card should also be withdrawn immediately.

Ad Action 12 - Notification procedure for the directive on electronic commerce:

The AK advocates fair competition conditions in the single market. This means that the same rules must apply to online and offline businesses. With regard to the law on digital services, the AK refers to our findings on action 3.

Ad Action 18 - SOLVIT:

The idea of strengthening SOLVIT is to be welcomed in principle. SOLVIT suffers, as does the European Employment Authority, from not having the right to take action against national authorities. The AK has already demanded this (unfortunately in vain) when the European Labour Authority was being designed. Without such a right of intervention - which would be even easier to implement in the case of SOLVIT, since the national SOLVIT centres are national authorities, usually ministries - SOLVIT's problem-solving competence would be at an end. European law could be used here to establish a national right of the national SOLVIT centre to issue instructions to the authority in the same country which would make SOLVIT much more efficient.

Ad Action 20 - Timely consideration of single market complaints:

The -AK expressly welcomes actions to speed up and streamline procedures in the context of single market complaints at the Commission, particularly on the basis of its own experience with such complaints. Such actions could be implemented easily and promptly within the Commission.

Footnotes

- 01** European Commission, Identifying and Addressing Barriers to the Single Market, COM(2020) 93 final, 10.3.2020, p 3.
- 02** European Consumer Centers Network, BEUC, national consumer protection organisations such as the Austrian Chamber of Labour, the Association for Consumer Information, Stiftung Warentest, etc.
- 03** AK EUROPA, Position Paper on The New Single Market Strategy of the European Union COM(2015) 550 final, January 2016, www.akeuropa.eu.
- 04** CEO, Uber-influential? How the gig economy's lobbyists undermine social and workers rights, September 2019, https://emedien.arbeiterkammer.at/viewer/image/AC15470263/1/LOG_0000/.
- 05** AK EUROPA, Position Paper on Multiannual Financial Framework 2021 - 2027 - EU Internal Market Programme, COM(2018) 441 final, August 2018, [https://akeuropa.eu/sites/default/files/2018-10/EU Internal Market Programme.pdf](https://akeuropa.eu/sites/default/files/2018-10/EU%20Internal%20Market%20Programme.pdf).
- 06** Franz Leidenmühler, Entbürokratisierung und Deregulierung im unionsrechtlichen Kontext - wer hat den Nutzen?, 24 September 2018, https://www.arbeiterkammer.at/service/studien/eu/Entbuerokratisierung_und_Deregulierung_2018.pdf.
- 07** AK EUROPA, Position Paper on the Proposal for a Services Notification Procedure, COM(2016) 821, March 2017, <https://www.akeuropa.eu/proposal-services-notification-procedure-com2016-821>.



Contact us!

In Vienna:

Frank Ey

T +43 (0) 1 501 651 2768
frank.ey@akwien.at

Bundesarbeitskammer Österreich

Prinz-Eugen-Straße 20-22
1040 Vienna, Austria
T +43 (0) 1 501 65-0

www.arbeiterkammer.at

In Brussels:

Alice Wagner

T +32 (0) 2 230 62 54
alice.wagner@akeuropa.eu

AK EUROPA

Permanent Representation of Austria to the EU
Avenue de Cortenbergh 30
1040 Brussels, Belgium
T +32 (0) 2 230 62 54

www.akeuropa.eu

About us

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.