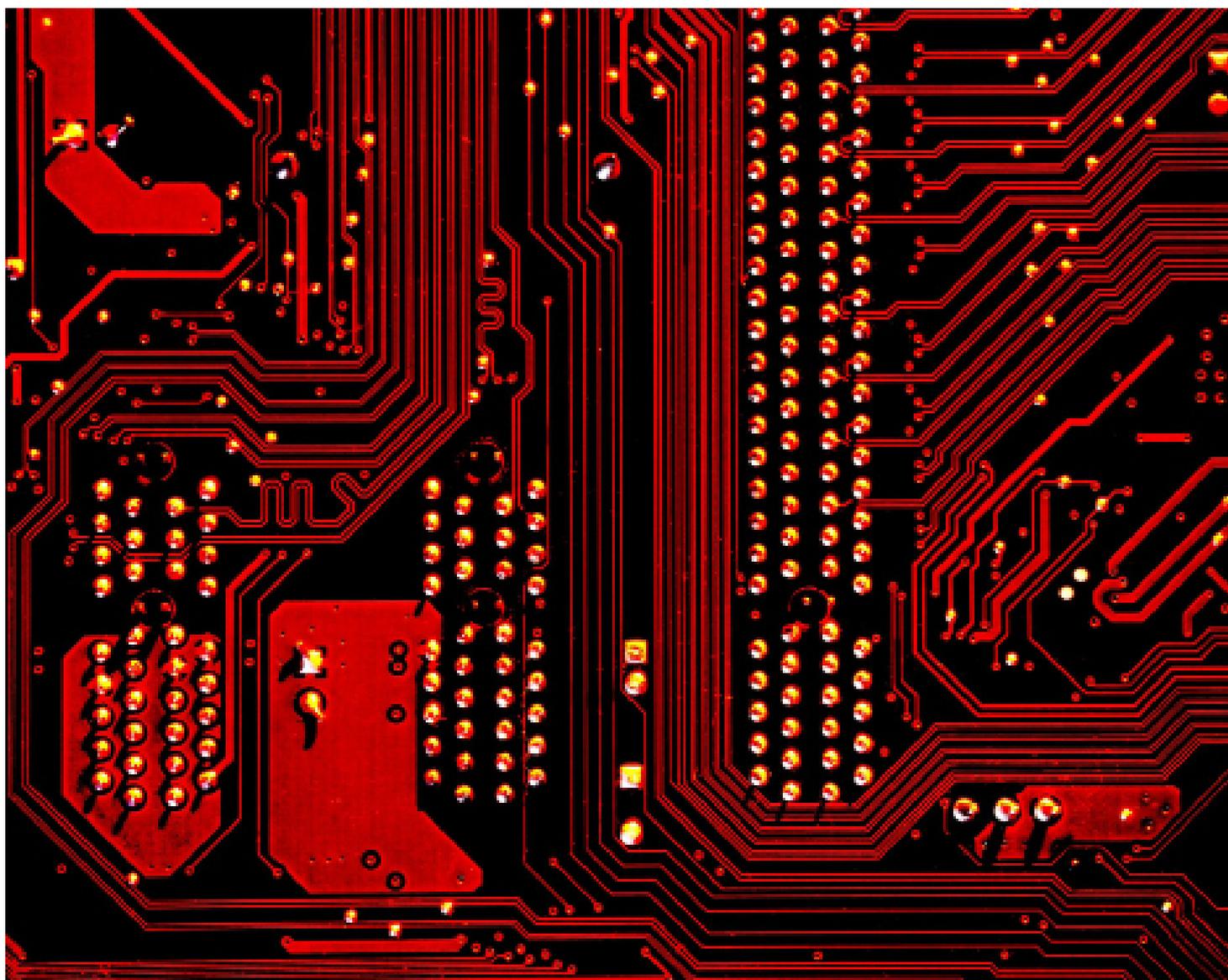




Position Paper
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Digital



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Shaping Europe's digital future

Executive summary

The AK welcomes the Commission Communication on Shaping Europe's Digital Future. The AK makes the following demands regarding the planned work on the EU digital strategy:

- The social partners should be fully involved in all projects relating to Europe's digital future.
- The initiative on the working conditions of platform workers is to be welcomed. Binding rules are needed to prevent precarious employment relationships in online platforms.
- With regard to the White Paper on artificial intelligence (AI), the broad definition of the term "critical systems" is to be welcomed, as it covers all areas of life. The possibility for consumers to demand corrections or checks in automated decision-making processes and the principle of "security and safety by default" are also to be evaluated positively. However, there are no regulations on data protection issues in connection with AI or algorithms, and these must be incorporated.
- Standards are also needed in the European Data Strategy that protect the rights of employees and prevent discrimination in the world of work.
- In addition, there is a need for binding rules on further training against the background of digital change.
- The digital industry must be placed on a level playing field with the traditional economy. Sector-specific ex-ante regulations are urgently needed for internet platforms to complement existing competition law.
- The introduction of the Common Consolidated Corporate Tax Base (CCCTB), combined with a minimum tax rate, must be a central component of a functioning single market. The measures of the OECD must be taken into account.
- With regard to the plans for the electronic identity (eID), the involvement of employee representatives is absolutely essential. The market power of the large internet companies must be regulated by appropriate instruments.
- As the single market deepens, new standards for digital services are needed. Clear rules regarding the obligations of online platforms towards employees are necessary. A level playing field with companies in traditional industry and a high level of consumer protection must be guaranteed.

The AK's position

The Commission's Communication provides an overview of the different strategies and approaches that the European Commission intends to pursue in the coming years with regard to the digital change in the economy and society. Many of the proposals outlined are generally positive. For example, the commitment to a digital transition that is in line with the European social model and that society should benefit from the digital dividend.

At the same time, however, the Communication remains at a very general and not very detailed level. Many of the trade-offs inherent in the issues surrounding digitisation are thus left unmentioned and are not addressed. Although a Commission Communication is not the place for detailed analyses, existing trade-offs could have been addressed more clearly without any problems.

From the AK's point of view, however, one thing is clear in the context of the digital change: there is an urgent need to safeguard and strengthen labour law and welfare state rights with the significant participation of the social partners.

On point A: Technology in the service of people

The Communication rightly points out that the labour market is very likely to face major technological upheavals. The emphasis on digital competences for work and private life is correct, but in many cases the responsibility for acquiring these skills is outsourced to the individual.

Unfortunately, socio-economic development in recent decades has been characterised by increased social inequality, as the OECD in 2015, among others, has noted.¹ The AK therefore calls on the Commission to investigate whether the development, distribution and use of new digital technologies, from whose economic benefits the various social groups profit in a very unequal way, possibly intensifies this development. In the AK's view, the EU digital strategy must focus on measures that concentrate on fairly distributed social prosperity and well-being. A corresponding concept for a socio-ecological

transformation is therefore necessary when dealing with digital technology.

Involvement of the social partners:

Collective solutions are needed and the AK is pleased that the Commission emphasises the crucial role of the social partners. However, the Communication lacks more details on the involvement of the social partners. On the other hand, the advantages that companies can expect from the next steps in digitisation are well described. The AK therefore calls for rapid concretisation of how the involvement of the social partners will look like. In any case, the role of the social partners must not be limited to unilaterally passing on adaptation requirements to dependent employees without explaining what advantages and benefits they can expect from progressive digitisation.

There are many issues in the European Union's plans for further digitisation, such as the expansion of 5G and later 6G networks, the further development of artificial intelligence and the digital plans surrounding the Green Deal, where the strong voice of the social partners is necessary.

The AK therefore demands that works councils and other bodies as well as institutions of employee representation be strengthened or actively involved in the design and use of technology. To this end, the Commission should draw up guidelines and recommendations on how such processes can best be designed.

Working conditions of employees of online platforms:

The AK welcomes the Commission's plans to publish an initiative to improve the working conditions of employees in online platforms in 2021.

From the AK's point of view, however, it would be desirable to move forward the initiative on precarious platform employees to 2020. Especially in times of the corona epidemic, it has been shown that several online platforms profit economically from a shutdown

and at the same time the platform employees - such as delivery staff for food or parcels - have to be regarded as systemically relevant, especially during the quarantine period. While the share prices of many dominant digital platform companies such as Amazon, Delivero Hero or Just Eat Takeaway are at an all-time high, platform workers are still precariously employed.

With regard to improving the working conditions of platform workers, we refer to the European Parliament resolution on the European agenda for the collaborative economy (2018 C 331/18)², in which the European Parliament addresses the impact on the labour market and workers' rights. The European Parliament calls on the Commission to ensure fair working conditions and adequate legal and social protection for all those working in the collaborative economy, regardless of their status, within their respective areas of competence. In addition, the problem of the transferability of ratings and evaluations for the control of platform employees and the great importance of the right of association were also mentioned, which we would also like to emphasise at this point.

In addition, the AK refers to a study by labour law professor Martin Risak, who highlights several points of criticism in his work. According to this study, a legal presumption rule is necessary which states that the contractual relationship between platform and employee constitutes an employment contract. Platforms should also be obliged to provide the employee with written information about the employment relationship. The labour law of the place where the work physically takes place should generally apply. If companies are customers of online platforms, it must be ensured that the platform workers are treated in the same way as the company's employees (analogous to the Temporary Employment Directive). Time spent by employees searching for or being on call for work tasks on the platform should be counted as working time if an app requires immediate acceptance. Unfair contract clauses should be prohibited.

From the point of view of the AK, the following considerations must in any case be taken into account with regard to platform workers:

- The rights of people working on platforms must be protected in order to prevent national or collective agreement standards from being undercut.
- While platform workers are employed as dependent workers in one country, it can happen

that they work as self-employed in another country. Platform operators acting as employers or employment agencies should not be allowed to circumvent labour law standards.

- Due to the dynamic development as a result of the digital platform logic - with the platform as a supposed intermediary on the one hand and providers and consumers on the other - a partly unregulated sectoral change is taking place, which is also accompanied by a shift in value chains. Compared to traditional companies in the same business activity, there is a need for equal treatment: platforms that, for example, broker overnight accommodation should be treated as providers of overnight accommodation and not as IT companies.
- A regulation of platform companies and the creation of transparency would also have an indirect positive effect on working conditions: This would enable national governments, authorities and social partners to monitor the sector and any problematic developments on an evidence-based basis and to take action if necessary.

With regard to the functioning of digital platforms, the AK would like to highlight the problem that many platform companies - due to their business model (few employees, low turnover with sometimes high profit margins) - are inherently too small to have to publish annual accounts in the national company register.

It therefore appears necessary that digital platform providers that are active in several European countries, above a certain threshold (based on the number of platform participants or the transaction volume), must also publish their economic and social data (such as annual accounts) at national level, provided that they are active in the respective Member State.

The AK considers this transparency requirement to be indispensable as a basis for the comprehensibility of the phenomenon in terms of commercial and tax policy. Regardless of the formal location, there should be a guarantee of cooperation between digital platform companies and the competent authorities. Finally, the essential adaptation of the disclosure obligations for platform companies is also accompanied by better fiscal control, so that better transparency regulations are an essential basis and data basis for better social security for atypically employed persons.

White Paper on Artificial Intelligence:

The objective of creating an “ecosystem for excellence and trust in the field of artificial intelligence based on European values” is worth supporting. Unfortunately, there is a lack of more concrete information on how this is to be achieved.

It is to be welcomed that the term “critical systems”, to which stricter criteria for the application of artificial intelligence should apply, is broadly defined and thus covers almost all areas of public infrastructure, public services and social life (such as jobs). Another positive aspect is that explicit reference is made to freedom from discrimination, the transparency and explainability of algorithms, and liability issues. It is also to be welcomed that consumers should have the opportunity to demand corrections or checks in automated decision-making processes. In addition, the principle of “security and safety by default” is to be introduced for AI, which is in line with consumer protection.

What is missing from the AK’s point of view, however, are regulations on data protection issues in connection with AI or algorithms. Especially in AI and algorithmic decision processes, large amounts of data are processed, where it is necessary to maintain a high level of data protection.

From a transport policy perspective, the AK emphasises the far-reaching effects that automated driving will have on employment in the transport sector. It should be noted that automation does not only affect passenger cars, but all modes of transport, from the metro to the railways and trucks. Important decisions have already been taken with regard to automated vehicles. Automation needs democratically legitimised framework conditions set by politics and must be subordinated to the premise of creating a more sustainable transport system.

With regard to the power of data in the healthcare sector, the AK believes that strict rules are needed in the use of digital technologies and AI to protect the insured and bring about progress in the healthcare sector.

A central point that is clearly missed out is the employee aspect in particular. The AK emphasises that a high level of protection must apply to employees in particular. After all, the world of work is strongly confronted with digital services. Co-determination at company and inter-company level in the development, introduction and use of artificial intelligence must be guaranteed, but is not mentioned in the communication.

Transparency, verifiability, liability issues and correction possibilities are, however, just as relevant from the employee’s point of view when artificial intelligence and algorithms are used (for example in the selection

processes of job seekers) and must be included in the communication.

On point B: A fair and competitive economy

The Commission makes one key observation, namely that platforms are not only commercially important, but that the importance of these online services goes far beyond this and that they perform the function of gatekeepers. Online platforms manage spaces of public opinion-forming with a significant impact on the conditions under which politics are made. In social media, there is a recurrent spread of “fake news” - i.e. fake content, conspiracy theories and fake facts. The Commission must therefore take urgent action to put an end to such abuse in the social media.

European Data Strategy:

The AK calls for a legal framework to ensure that the use of digital technologies in the world of work protects workers’ rights and does not lead to an infringement of their privacy or dignity. In particular, it must also be avoided that the use of digital technologies leads to increased discrimination in the world of work - for example through software in human resources management, which leads to discriminatory personnel decision-making processes.

Anchoring the right to further training and qualification:

In view of the great need for further training in the sense of lifelong learning against the background of the digital change in the world of work, a general legal claim to further training and vocational qualification measures - also for job seekers - should be established. In addition, a legally established legal entitlement for employees to a minimum amount of further training within the framework of working time - e.g. to the extent of the normal weekly working hours per year - and a legal entitlement to paid educational leave or exemption should be established.

Ensure fair competition in the digital industry:

The same competitive conditions must apply to companies in the digital industry as to companies in the traditional economy. This applies to labour law provisions, consumer protection, tax regulations, but also to all other socio-politically relevant norms that could otherwise lead to a distortion of competition between the online and offline industries.

In the AK’s view, sector-specific ex-ante regulations are urgently needed for market-dominant internet platforms to complement existing competition law.

This is to ensure that the “rules of the game” are proactively set in two way- or multilateral markets in order to meet the requirements of digitisation.

At the same time, the AK calls for the creation of regulatory authorities at the European and national levels to exercise ex-ante supervision over internet platforms. This is the only way to achieve essential goals such as an open democratic and sustainable society, a fair and competitive economy, as well as ensuring that technology is at the service of people. These objectives should also be explicitly anchored in the Digital Services Act. Ex-ante regulations are also required in the context of the development of Digital Innovation Centres and AI with regard to data access for third parties and monitoring compliance with data protection regulations, as well as the establishment of dispute resolution mechanisms. A European directive on the ex-ante regulation of market-dominant internet platforms analogously to the regulation of classic infrastructures is called for.

Corporate taxation in the 21st century:

The Commission is right to point out that outdated corporate tax rules often result in profits not being taxed, or not being taxed where they arise, thereby distorting competition. A communication on company taxation in the 21st century is to be published, taking into account the work of the OECD.

The announcements must, however, be followed up by real action, because the effects of outdated company taxation rules have been well known for a long time. Large multinational groups have an average of 30% lower profit tax burden than companies that operate exclusively at national level. The corporate tax burden on companies in the digital economy is only half that of the traditional economy. This leads to distortions of competition within the single market that cannot be justified. In recent years, the European Union has been the economic area with the strongest tax competition in the world - keyword “race-to-the-bottom”. This has shifted the tax burden to the detriment of the less mobile factors of work and consumption, which is problematic both from the point of view of growth, employment and distribution, and permanently jeopardises the tax revenues of the Member States.

The long overdue introduction of the Common Consolidated Corporate Tax Base (CCCTB) - the proposals for directives on this have been on the table since October 2016 - combined with a minimum tax rate must be a central component of a functioning single market. The measures of the OECD must be taken into account. The OECD has announced measures as part of the BEPS project to meet the challenges of the digital

economy. On the one hand, taxation rights are to be redistributed between states (Pillar 1) and, on the other, a worldwide minimum tax rate (Pillar 2) is to be introduced. Despite the initially ambitious goals, the impression is now emerging that a satisfactory solution by the end of 2020 is becoming increasingly unlikely. The AK therefore demands that the Commission and especially the individual member states increase the pressure at OECD level so that appropriate measures are actually presented by the end of 2020.

On point C: An open democratic and sustainable society

With regard to the plans for the electronic identity (eID), the AK absolutely demands the involvement of the employee representatives. The market power of the large internet and tech companies must be regulated by appropriate measures and instruments.

The AK welcomes the fact that the opportunities and risks of digitisation in terms of climate protection, sustainability and recycling are being addressed directly. The concrete form of these initiatives can, of course, only be assessed once they are available. With regard to the projects for sustainable data centres, it is striking that no timetable has been given for the time being.

Deepening the single market - law on digital services:

As the Commission indicates, new rules are needed to deepen the single market for digital services. As described above, the AK calls for clear rules regarding the obligations towards employees of online platforms, a level playing field vis-à-vis companies in traditional industries and a high level of consumer protection in order to ensure consumer confidence in the digital economy. The core demands of the AK can also be read in a letter to the EU Parliament.

Footnotes

- 01** See OECD (2015), *In It Together: Why Less Inequality Benefits All*, Paris: OECD Publishing 3.
- 02** See European Parliament resolution of 15 June 2017 on a European agenda for the collaborative economy (2017/2003(INI)), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017IP0271>
- 03** See own-initiative report of the European Parliament on the Digital Services Act, 15 May 2020, <https://www.akeuropa.eu/initiative-report-european-parliament-digital-services-act>



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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.