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AK Position Paper

## Monti Report

# A New Strategy for the Single Market - At the Service of Europe's Economy and Society

## 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.

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.

Herbert Tumpel  
President

Werner Muhm  
Director

## Executive Summary

The analysis of the Report has to be welcomed in many aspects. The AK shares the opinion that a social shift with regard to the European Union's Single Market policy is required - in the words of Mario Monti: "The market is a good servant, but a bad master". Consequently, the Single Market is not a purpose in itself, but a means to achieve social progress and full employment.

It is, however, regrettable that the Report does not always draw the right conclusion from the analysis. Tax competition, for example, is problematised, whilst at the same time no measures are provided for combating it (harmonisation of taxable basis and amount of company taxation). The same applies to the Financial Transaction Tax, which could be an important source of income for financing the shrinking public budgets. The latest decisions of the ECJ on the compatibility of industrial action with market freedoms and the Posting of Workers Directive are also aptly described as the reopening of an old wound (the dismantling of social rights). The proposed "repair", however, does not go far enough and only covers part of the matters affected by the jurisdiction. In addition, it is intended to continue and/or exacerbate the Single Market policy in many areas: for example, if the aim is proclaimed to expand the principle of mutual recognition in the area of market freedoms,

to finance public infrastructure by means of operations on the financial markets or to strengthen the European executive towards the judicative.

# The AK position in detail

Workers are ignored within the scope of the fundamental observation.

## General remarks

The Report does several times show pleasantly clear assessments of the situation, for example if the following is emphasised: **"If the market is regarded as something sacrosanct, which works efficiently and does not require any regulation or strict supervision, one has to expect dangers, as the financial crisis has shown."** The AK has expressed in numerous statements that **markets can only work in a strict framework of carefully chosen rules**. This applies to the goods and services market, to the market for direct investments and in particular to the labour market and the financial markets. **The consequences** of too few and/or not adequate regulations are **all forms of market failure** and negative effects (e.g. information asymmetry, wrong price signals, concentration processes and unilateral market power, dumping in respect of regulation standards and wages, high volatility, economic instability and finally crises). Hence, a further deepening and/or expansion of the Single Market is not the top **priority**. On the contrary, the framework for these **market processes** must be carefully examined **and adapted to the current challenges**. This also concerns the **setting of high standards in the sector of social, labour and consumer protection**.

We welcome that the Report addresses some **concerns of workers**: some important observations are made, even though concrete derivations are missing or inadequate - for example that an area of tension exists between market integration and social objectives.

**Unfortunately, workers are ignored** within the scope of the **fundamental observation**, whilst repeatedly explicit references are made to the concerns of citizens, consumers and companies such as small and medium sized enterprises. Because the Report does not consider workers as a central interest group, it consequently also ignores their most important concern, namely the **fair share in the economic success**, which is only made possible by their work. The positive effect of the Single Market must be reflected in the **wages and salaries of workers and employees** and in the working conditions. Only if the central concerns of the workers with regard to structuring the Single Market are taken into account (and not only under the aspect of "social concern"), it will be possible for the Single Market to enjoy long-term success. Thus, the **impact** of the Single Market on the **distribution of income and wealth** has to be thoroughly examined.

The report resonates somehow that an **increase in trade** would be equivalent to an overall increase of economic growth. This does certainly not apply on a one-to-one basis. The high export rates of some states are reflected in the high import rates of other states, which hinders the growth of the latter and also results in serious distortions from a budgetary point of view. **Hence, the aim cannot be an intensification of the trade as an end in itself, but the safeguarding of sustainable growth and stability.** Apart from foreign trade, the **purchasing power of households** as well as **intelligent investments in the European infrastructure and social services** are definitely playing an important role to achieve this goal. Overall, it is extremely problematic that a comprehensive Report on the Single Market hardly or **not at all** addresses the **trade imbalances** and the **unequal development of the European economies** and their causes and consequences respectively.

It is equally irritating that a report on the Single Market, which refers **to ongoing discussions (De Larosière Report), to a large extent ignores the issue of capital and financial services.** Especially now, **it is important to learn the lessons from the financial and economic crisis** without ideological reservations. It would not be helpful, if Europe now, perhaps by making concessions in certain sections, would remain completely unimpressed and stick to the course of liberalisation and deregulation. It must be analysed to which extent the liberalisation of the markets has been responsible for the

occurrence of the crisis and its dramatic course. In particular, with regard to the freedom of capital movement the problem was that both control and supervision ended at the national borders, whilst financial market players were hardly faced with any borders at all. Apart from that, the close and extremely complex interrelation of the financial sector and individual financial enterprises proved to be fatal as the problems of one company spreads to all other institutions.

The Report refers to the “blind trust of some Member States in the self-regulating powers of the financial markets” and their failure to create a “suitable regulation and supervision framework. This might be correct, but the ball cannot only land in the corners of “some Member States”, whilst the **Commission itself has been responsible for intensively driving forward the “Perfection of the Single Market” also with regard to the financial market over the past years.** Appropriately, Chapter 2.8. states the following: “The Single Market for capital and the Single Market for financial services closely associated with it are decisive for the efficient allocation of resources – and thereby for growth and employment – and for economic stability.” In view of such assessments almost two years after the financial crisis, one could almost doubt whether the Commission and its advisors themselves have learned the lessons from the crisis. Overall, the commitment to improved regulation and supervision is to be welcomed, even if it is only made under reference to ongoing projects without going into more detail.

The statements on the “European Free Movement Card” do not indicate, whether its exclusive purpose is to achieve formal facilitation, or whether new rights should also be created.

**Ad 2.2. A Single Market, which benefits citizens, consumers and small and medium sized businesses (SMBs)**

**Facilitating the execution of the right to freedom of movement**

The statements on the “**European Free Movement Card**” do not indicate, whether its exclusive purpose is to achieve **formal facilitation, or whether new rights** should also be created. Whilst the former is welcomed, we reject the latter. On the subject of free movement, we would like to make the general statement that the authority to take decisions by the Member States in matters of labour migration must not be touched.

**Creating favourable framework conditions for SMBs**

**SMBs** are vital for the local economy and to a minor extent also beyond. Overall, the economic key figures of SMBs (and in particular microenterprises) are lagging far behind large companies (lower creation of value per employee, lower R&D expenditure per employee, lower wages and salaries than major companies, lower investments, ...). Any **sensible SMB policy must therefore be structured in a differentiated manner**. The aim is to **support such areas**, which suggest special **opportunities for growth** and which are characterised by high value creation, **high wages and salaries, good quality of work** and a dynamic Innovation patterns. The **Small Business Act** does **not indicate** such a **differentiation**, but only very generally uses the catchword SMB.

The **introductory remarks to this paragraph are misleading**. The statement, only 8 % of all SMBs would engage in cross-border activities creates the impression that further deregulating measures are required to realize a Single Market also for SMBs. However, 90 % of SMBs do not employ more than 10 members of staff. It is therefore obvious that these microenterprises see little incentives to engage in cross-border activities, as it is for companies of this size not profitable to develop the necessary organisation for doing international business. The fact that already about 80 % of all SMBs, which are not considered microenterprises, engage in cross-border activities, demonstrates the business-friendly structure of the Single Market regime. The **degree of mobility of SMBs – that are not microenterprises – is therefore the complete opposite of what was depicted in the Report: it is at 80 % and not at 8 %**.

Against this background, the **European Private Society** should **not be used to deregulate corporate law** any further. Business needs rules, as successful economic management requires trust. In particular, the current financial crisis shows what happens if trust in the economy and its framework conditions is lost. European corporate law is called upon to restore the trust of market participants by unified regulations and qualified minimum standards. Hence, the EPS must fulfil the following criteria:

- Determining any **cross-border reference**.
- **Unity of registered office and administrative headquarters**.



- **Unified minimum capital: min. € 10,000 for the EPS**
- From a certain size (e.g. major corporation pursuant to the Accounting Directive), the EPS too is obliged to meet certain minimum standards of Corporate Governance.
- Apart from that, the issue of **worker participation** in the EPS must not be regulated by referring to the national provisions of the registered office. On the contrary, what is needed are **Europe-wide unified rules on co-determination** on the basis of the SE employee involvement Directive. It is not sufficient to clarify the issue of worker participation in supervisory board or Board; it also concerns the issues of information and consultation at Works Council level.

### Ad 2.3. Creating the European digital Single Market

#### **Unified regulatory space for telecommunication services and infrastructures**

Monti proposes the “review of the sector with regard to developing proposals to create a seamless regulatory space for electronic communication, to strengthen both at EU level regulatory supervision as well as frequency assignment and management”. One should mention, however, that the new **Telecom package** - by creating BEREC (Body of European Regulators for Electronic Communication) - **has already put steps in place for stronger coordination and harmonisation of**

#### **the approach of national regulators.**

In addition, based on the consultation mechanism in case of regulatory decisions, the European Commission is also playing an important role. From today’s point of view, any further **concentration of regulatory decisions** at European level is not to be recommended as the existing differences and peculiarities of the Telecom market in individual countries might not be sufficiently considered. Although coordinating the frequency policy is required, the allocation and assignment of frequencies should remain at national level.

Rather it would be necessary to review existing **regulations** with regard to which extent they accelerate or hinder **investments in infrastructures**. Investments in communication infrastructures are essential for the development of the communication market and the future supply of high quality and affordable communication services for the creation and preservation of jobs.

From the **point of view of consumers**, we would like to point out that the adjustments of the 3rd Telecoms Reform Package remained far behind consumer expectations (e.g. protection of communication privacy against softening by measures to protect intellectual property; excessively long minimum terms of Telecom contracts). The **Data Retention Directive weakens the basic rights of consumers** to speedy deletion of their communication data by unfound retention of their data for potential law enforcement purposes and should be subjected to a revision that corresponds with data protection.

Harmonising the regulations would certainly lead to more transparency. This, however, must never take place at the expense of consumer rights.

### Electronic trade: a pan-European online retail market

Without a doubt, consumers, who purchase online, are often confronted with the problem, that different countries have different regulations and provisions, which may result in the fact that cross-border online trade is used less frequently.

**Harmonising the regulations** would certainly lead to **more transparency**. This, however, must never take place **at the expense of consumer rights** and should therefore be subjected to a detailed review in individual cases.

Three quarter of complaints received by the Internet Ombudsman in 2008 and 2009 ([www.ombudsmann.at](http://www.ombudsmann.at)), refer to internet offers, which pretended to be free, but subsequently resulted in subscriptions or persistent requests for payment. The common factor of all cases is that the providers operate across border, whereby they are highly mobile (continuously changing their branches - mainly post box addresses), continuously redesign their website contents and systematically ignore any rules for eCommerce and distance selling. Some providers do not only behave dishonest under civil law, but they also act with the intention to deceive and defraud, which is liable to criminal prosecution. Against this background, it becomes clear that many objectives of the Directive do not work in practice and that any success in enforcing the law must inevitably fail to materialise because of the cross-border mobility and the difficulty in investigating the providers. The list

of the **recommended measures for improving consumer organisations** is long. In order to bring a **consumer-friendly digital Single Market** closer, we would like to emphasize two concerns:

- It should be mandatory at EU level that all Member States set up generally accessible **company registers**, which can be used by everybody within the EU free of charge and whose up-to-datedness is a responsibility of the Member States.
- Function and efficiency of the liaison agencies in accordance with the Electronic Commerce Directive and the cooperation of the authorities in accordance with the Regulation on Consumer Protection Cooperation must be revised. In doing so, it must be ensured that **infringements against the Directives by providers of digital services are eliminated speedily**. Until now, the cooperation has been too slow and too resource-intensive. Apart from that, not all Member States apply the necessary seriousness to complying with their duties.

### Single Market for digital online contents & fundamental rights such as freedom of opinion and information and data protection respectively

This section of the report completely **ignores consumer protection regulations (free rights to exploit work) with regard to copyrights**. This is all the more serious as the current legal status of the European Union no longer



meets the requirements of consumers when using electronic contents (e.g. insufficient interoperability of proprietary systems, unreasonable terms of use, exclusion of freer rights to exploit work).

At the end of 2009, the EU Commission carried out a **consultation** on a common legal framework with regard to the **fundamental right to data protection**, ascertaining in particular, which particularities of the internet require adjustments of the data protection law. Nevertheless, there is no indication for any concrete measures by the Commission in this area. In order to realise a digital Single Market, **there is an urgent need for action in the following areas:**

- Clarification of the applicable law in case of data breaches on internet pages: the law of the country of residence of the consumer, who uses a website should apply.
- Privacy requirements for social networks, for example "right to be forgotten" for self-generated forum contributions
- Obligatory prior data protection audits (PIA - Privacy Impact Assessment) for invasion-intensive data processing.
- Clarification of the area of tension between freedom and information & data protection on the internet, in other words between online media law & personal rights.

#### **Ad 2.4. Single Market and environmentally friendly growth: energy, climate change, environment**

Securing a reliable, environmentally compatible and economic energy supply is one of the central challenges of the coming years. The objectives of climate policy - in particular fighting **global warming** - require a reduction of the CO2 emissions and the share of fossil fuels in energy consumption. In order to achieve these ambitious goals, it is primarily necessary to **sustainably reduce energy consumption and to improve energy efficiency**. Secondly, renewable energy sources have to be developed, whereby this development has to take place under the aspects of resource conservation, cost efficiency and the realisation of the innovation potential; hence the speedy bringing up to market maturity. Particular attention has to be paid to the fact that the **energy system is structured in a sociably compatible manner**, so that all consumers are able to afford energy efficiency measures as well as the supply of energy - in particular of renewable energies.

Prior to introducing a new **technology for measuring consumption** (Smart Metering) - it is necessary to adequately depict the benefit for the various stakeholders - grid operators, suppliers and consumers. It is particularly important to evaluate data protection problems and find a suitable solution. Furthermore, it has to be ensured that any cost advantages enjoyed by grid operators and suppliers are passed on to end consumers.

Only uniform standards in the Single Market enable the full exploitation of the "Economies of Scale".

Functioning **EU energy infrastructures** - in particular transnational grids - significantly contribute to increasing the security of supply and form the basis for economic growth and the economical use of energy. EU infrastructure projects should be realised in an energy political overall concept between the EU Member States and relevant third countries, whereby this overall concept must meet both economical and social requirements.

#### **Ad 2.5. Fully exploiting the advantages of the Single Market for goods**

This paragraph suggests among others that the **principle of mutual recognition** of diverging product regulations should be expanded. This idea contradicts a common Single Market: only **uniform standards enable** the full exploitation of the "**Economies of Scale**" - not a fragmented market with diverging regulation standards. High standards in the area of consumer, environmental and social law, which must be strictly observed, drive forward innovation and productivity, and not unfair competition, where the Member States undercut each other.

#### **Reform of the standardisation process**

Here, the Report suggests improved access of the **private sector to the standardisation process**. This must be rejected. In particular, the financial crisis has shown that competing enterprises are not able to regulate themselves.

#### **Ad 2.6. The Single Market for services: motor of the European economy**

##### **Removing obstacles to cross-border health care**

Under this heading, the Commission is required to **consider the implementation** of any measures, **which are not included in the Services Directive**. This request in the context of the Single Market and the free movement of services **must be rejected**. The **exceptions from the Directive are not coincidental**, but include in particular **those areas**, which due to the **general interest** associated with it **should follow other rules than those of the Single Market** (health services, social services,...).

The Report also requests that a **detailed performance comparison** of the health systems within the EU should be initiated to improve the **market integration in the health sector**. A reason for these measures, which will entail extremely high **administrative costs and effort** has not been supplied. This suggests the preparation of further commercialization and privatisation of the health system, which is rejected by the AK.

#### **Ad 2.7. Employees in the Single Market: old problems and new challenges**

The Report addresses the possibility in connection with **cross-border mobility** that the migration of workers might keep wages down, lead to crowding out effects in the labour market and put pressure on social security sys-

tems. What is difficult to comprehend is the fact that no measures are listed to prevent these effects. On the contrary, the issues are played down, even though there is still a great need for action.

The statements on **mobility of highly qualified employees** ("new dynamic types of mobility"; "Forms of circular mobility within the EU, which offset the exodus of intellectual potential by gaining new potentials") are quite **ambiguous** and make it difficult to assess them any further.

The idea to establish a "**28th Regime**" for **additional pension rights** exclusively on the bases of EU regulations to secure acquired occupational pension rights in case of cross-border labour mobility, **raises a number of questions** (relation to national labour law, rights of co-determination, impact of tax law) and should be specified in more detail to enable any evaluation of the contents.

#### **Faster and simpler recognition of professional qualifications**

The Report does not specify which professions should be subject to a simpler system of recognition. Any simplified recognition of job qualifications must **be avoided in those areas**, where high qualification standards **should protect rights** and the health of consumers.

#### **Ad 2.8. The Single Market for capital and financial services – Promotion of the Single Market and the financial integration by issuing EU Bonds:**

The **issue of EU Bonds to be transferred to the Member States is basically the right idea** and could serve as a means to facilitate financing - less important in this context seems to be the aspect of the Single Market. Different requirements/details would have to be clarified and conditions be met, of which the important ones appear rather unrealistic.

The whole thing **only makes sense, if all, also the financially strong countries participate**. Whether Community Bonds would generate less interest than German or Austrian Government Bonds, seems rather doubtful, which also calls into question whether Austria would have a direct advantage. It would also be necessary to find a **suitable decision procedure**, which is as difficult as the current financial support of some individual weak countries by stronger ones. It would also have to be clarified, what has to be done in normal times, when individual countries have not engaged in fresh borrowing.

Although the Monti Report addresses the problem of the "moral hazard", it does not provide a satisfactory solution. Why and how the Member States will tighten the control of risk candidates within the scope of a common bond emission, given the fact that they and the Commission have so far not been able to do so, is not addressed

All, also the financially strong countries have to participate.

in the Report. This, however, is the central issue with regard to establishing such a financing instrument.

The exact circumstances and terms of this form of financing must be **developed, whereby all interest groups have to be integrated**, in particular if it concerns organisation, management structure, liability, the ability to withstand a crisis and the distributional effect etc. Here too, it must be discussed what kind of advantages and disadvantages any further financial Integration might have.

#### **Ad 2.9. The infrastructure of the Single Markets – tackling the investment problem**

We **agree** with the analysis of the Report that Europe **urgently needs to tackle the renewal and expansion of its infrastructure** (e.g. the transport, electricity, ICT and water networks), if it wants to accomplish the change for achieving a social sustainable region. Only, the **ideas of the Report to implement these measures seem to be neither suitable nor new**. For example according to the report, **long-term investors** (explicitly mentioned are financial institutes and pension funds) are to be gained **to finance** these projects. The possibilities of “combining public and private financing”, **“innovative sources of financing” and “user charges”** will be sounded out. Thus, the Report lists exactly **those forms of financing**, which significantly **contributed** to the creation and the development of the **financial crisis**. With the result, that many communities and states no longer command the infrastructure, which they financed,

as it is now used for collateral security. The financial crisis has shown: **public infrastructure must be financed by public funds**.

The “reduced budgets”, which the Report refers to in order to justify the proposed measures, would not be in this situation if European tax policy would take more courageous measures (please see “Ad 3.5. Taxes in the Single Market: cooperation to retain fiscal sovereignty”).

#### **Ad 3.1. A Single Market for a “highly competitive social Market economy”**

##### **Greater clarity with regard to implementing the Posting of Workers Directive**

The statements of the Report on the Posting of Workers Directive are to be welcomed. There is, however, a **significant need for amendments**. With regard to strengthening the cooperation between the administrations, one should point out that the **Member States and social partners** must be allowed **to use efficient review and implementation mechanisms**, for example to establish whether the posted workers do normally have a permanent job in their country of origin and whether they have the intention to return on the completion of their assignment.

There is also a significant **need to revise the material provisions** of the Posting of Workers Directive:

- The **objectives** of the Posting of Workers Directive, i.e. guaranteeing **fair competition** and comply-

The Member States should be enabled to demand the compliance with wages and working conditions in accordance with local collective agreements.

ing with **workers' rights**, which are currently only mentioned in the preamble, must be given a more prominent place in the **main text of the Directive**. In particular, a mention of the objectives of the social policy of contracts with clear reference to the aim of "Improving the living and working conditions of workers" would help to achieve a more coherent interpretation of the Directive.

- The **free movement of labour must be strictly separated from the free movement of services**. This difference is not sufficiently emphasised in the Posting of Workers Directive. This means among others that the original target of the Posting of Workers Directive, only to cover unambiguous situations of **limited postings**, where the employee of a service provider goes abroad within the scope of a short-term service, but has his main residence and employment in the country of origin, to which he returns on completing his assignment, must be **more clearly determined and defined** within the scope the Directive. It is also very important to determine far more precisely what a "**cross-border service**" is and what it is not to prevent that **businesses bypass** the current **laws** and standards by setting up letterbox companies.
- The **minimal character of the Posting of Workers Directive must be restored**, i.e. the opinion, that that the Directive provides "minimum protection" (standards, which have to be applied), which

means that legally or standards set out in collective agreements **with regard to better working conditions** for the workers affected (standards, which can be applied) **are not excluded** as long as equal treatment and the non-discrimination of domestic and foreign companies is guaranteed.

- The Directive should **consider the different models of labour relations** in the Member States **more clearly** and recognise collective bargaining as a flexible and dynamic process, which - in the interest of both sides, the industry and the society as a whole - can and should not simple be regarded as another (governmental) form of regulation.
- In their capacity as public authorities, which grant public contracts (public procurement), the **Member States** should be **enabled**, with the help of social clauses, **to demand the compliance with wages and working conditions in accordance with local collective agreements** by local and foreign companies that submit offers.
- With regard to the Member States as a legislator, very restrictive interpretations of **public policy provisions** should be revised to integrate **social targets and the protection of workers**.

#### Protecting Workers' rights, rejecting protectionism

On Page 83 (Paragraph 1), the Report emphasises the fact that the ECJ rulings on industrial action and the Post-

ing of Workers Directive were passed prior to the enforcement of the **Treaty of Lisbon**. The new Treaty would not only include the objective of “social market economy” but also a Charter of Fundamental Rights. Thus, **the Treaty would not only form a new legal context**, which had to be reassessed on the basis of the **issues decided by the ECJ**. At this point, the Monti Report makes **an important statement**, which the Commission in its Communication and **all other bodies in the EU should take into account**: the Treaty of Lisbon has provided the Single Market with a new normative basis. The objective is to achieve a social market economy, which aims at full employment. The Single Market is a means to this end - the **market freedoms** that characterize it, find **their limits** in the fundamental rights of the Charter, which also includes **social rights**.

Even if it should be clear on the basis of this new normative basis that fundamental social rights can only be restricted by urgent social requirements, but not by market freedoms, it seems nevertheless to be of central importance to exclude **all doubts regarding the inclusion of a “Social Progress Clause”**. The opinion of the Report that the amendment of the Treaty associated with it, would be “unrealistic”, is unfounded. In particular, recent developments have shown that the dynamics of European integration can quickly lead to the necessity to amend the Treaty.

The **“third strategy”**, suggested by the Report is an **important but not a sufficient measure to correct the effects of the Viking, Laval, Ruffert and Luxembourg rulings**. On the one hand, this “third strategy” does not explicitly declare that fundamental social rights take priority over market freedoms. The inclusion of a Social Progress Clause is therefore essential. On the other hand, the **Report exclusively suggests to adopt Art 2 of the Council Regulation (EC) No 2679/98**, which excludes any impairment of the fundamental rights (including the right to strike) by the free movement of goods, **in case of a posting of workers**. Other cases of the free movement of services, the freedom of establishment (key word: ECJ decision Viking) and the remaining market freedoms, however, would not be covered by this proposal. Instead of dealing with the case of posting individually and to introduce further regulations for other market freedoms, it would seem to be most efficient to **extent the existing Regulation (EC) 2679/98 to all market freedoms**.

We **completely reject the introduction of a separate system for the informal settling of disputes** concerning the application of the Posting of Workers Directive. On the one hand, the Member States have procedures for legal protection, on the other hand, there are significant differences in the cultures of industrial relations. It is no coincidence that that Union has no competence for their standardization.



### **Ad 3.4 Using public procurement for Europe's political targets**

We would like to explicitly mention the following recommendation as a **welcome point** of this paragraph: **"Using public procurement for the promotion of innovation, "green" growth and social integration** by determining concrete binding requirements". Equally, to the text, the recommendations **should** also list **the promotion of employment** and not least **gender equality**. More clarity with regard to structuring the relevant options has been long overdue.

### **Ad 3.5. Taxes in the Single Market: cooperation to preserve fiscal sovereignty**

The **Monti Report very clearly** names the **problems** that were caused by the current situation. However, the proposed **measures do not go far enough**.

Although the negative consequences of the tax competition in the corporate tax sector, which entailed a shift of the tax burden away from the mobile factor capital to the fixed factor labour, have been recognised, the conclusions, however, are only partly comprehensible. It is correct that corporate tax is only one of many location factors and therefore not the only decisive factor when it comes to choosing a location. What is not mentioned, however, is the fact that meanwhile **concerns that engage in cross-border activities have no problems**, thanks to appropriate **structuring possibilities** (involv-

ing financing institutions or institutions that hold immaterial assets such as licenses, patents in low tax countries), to **declare their profits in those countries**, where the **tax burden is lowest** - this to a large extent independent of production sites or markets. This leads to a significant **loss of tax revenue in the corporation tax sector** in individual Member States. This problem can only be solved by **introducing common rules on company taxation** (uniform consolidated assessment basis, minimum tax rate). It is therefore incomprehensible that the Monti Report does not address this target at all. Originally, the Commission intended to submit a relevant draft Directive for a Common Consolidated Corporate Tax Base ("CCCTB") by the end of 2008. This failed because of the resistance of some Member States.

The measures stated in the Monti Report to combat tax competition are definitely not sufficient and might just ease the problems slightly.

The Monti Report also assumes that a shift from (direct) income taxation to **indirect taxation** (Value Added Tax, other consumption taxes, environmental taxes) is basically positive. It is therefore incomprehensible that the **distribution problems**, which such a shift causes and which are also hampering growth, are not addressed.

Basically positive are the proposals for revising the **Tax Directive** to close tax loopholes, as well as the request for introducing an **automatic exchange of information** between the Member

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States in the tax sector to combat tax fraud more effectively. Any other measures to fight tax fraud, which is caused by tax oases outside the European Union, which are equally important, are missing.

What is also **disappointing** is the fact that the subject of **Financial Transaction Tax is not mentioned at all**. The introduction of a Financial Transaction Tax at European level would result in **substantial tax revenue** and also significantly contribute to the imminent budget consolidations in most Member States. In addition, it would provide the Member States with sufficient scope to be able to **reduce the high tax burden to the factor Labour**. At the same time, a Financial Transaction Tax would also significantly **reduce speculations**, which shared significantly in the responsibility for the outbreak of the financial and economic crisis.

In summary, one could say that the measures proposed will be able to contribute to easing the problem in the short term. The urgently required change of direction of European tax policy, which also shares in the responsibility for the current financial and economic crisis, however cannot be detected.

Such a correction has to include far-reaching structural changes, which ensure that the **capital too makes an adequate contribution to financing the budgets** of the individual **Member States**. At the same time, pressure must be lifted from the factor Labour in order to restrict growth and employ-

ment as little as possible and to ensure distributional justice.

In order to achieve a balanced development of this subject, it is necessary to involve workers' representatives into the planned **"Working Group on Tax Policy"**.

### **Ad 3.7. Single Market and industrial policy**

**Industrial policy** is more than establishing global framework conditions and the promotion of entrepreneurship. Industrial policy concerns the targeted implementation of strategic and structural political ideas to increase social benefit, employment, income and the competitiveness of the European industry. In particular, in view of the current economic crisis and the comprehensive structural changes over the next years, the Report should make recommendations as to how this structural change could be designed and influenced in an acceptable form.

### **Ad 3.8. Open, but not defenceless: the external dimension of the Single Market**

The **pressure to open the market** to various trading partners, which has been pushed forward by the EU Commission, has been met with criticism for years. In the view of the AK, the requirements of an acceptance are above all that the provisions for implementing and complying with the **ILO Core Labour Standards will be integrated in future bilateral trade**

**agreements.** Under no circumstances, should products from countries, who infringe against minimum labour standards be granted access to the European Market. At the same time, we **completely reject** any further **liberalisation of the trade in the sector of public services** (e.g. supply and disposal of water, health and social services, education, audiovisual and cultural services, public transport). With regard to the tariff reductions aimed at, one has to consider the state of development of the trading partners.

We welcome the initiatives in the sector of **subsidies**. The AK requests more transparency with regard to subsidies of our trading partners as well as to the mentioned dialogue forums to exchange information on subventions. One should basically assume reciprocity.

The AK is critical of a greater **opening of the procurement markets** - in particular in free trade agreements with the BRIC States. Existing **social and ecological standards have to be adhered to** (see above on ILO Core Labour Standards). **Public services must be excluded** from the scope of various agreements on public procurement.

#### **Ad 4.2. Strengthening of law enforcement**

The proposal to **adapt the powers of the Commission with regard to infringement proceedings** to its powers in the sector of **competition policy is rejected**. The implementation of this

measure would lead to an extremely problematic shift in the European separation of powers: the executive would be strengthened at the expense of the independent European judicative. **The ECJ alone guarantees compliance with the law with regard to interpreting and applying the agreements.** To grant the Commission a quasi-judicial position in first instance, would not only represent a violation of current agreements but also deeply interfere in European and national constitutional law.

The proposal to adapt the powers of the Commission with regard to infringement proceedings to its powers in the sector of competition policy is rejected.



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