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AK Position Paper

Memorandum for a social Europe

Steps towards a successful Austrian EU Council Presidency
in 2018 from worker's point of view

About us

The Austrian Federal Chamber of Labour is by law representing the interests of about 3.7 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 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.

Renate Anderl
President

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 816.000 - amongst others unemployed, persons on maternity (paternity) leave, community and military service - of the 3.7 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Christoph Klein
Director

Introduction

In the second half of 2018, Austria is holding the Presidency of the Council of the European Union ("Presidency") for the third time. There are high expectations of Austria. Ahead of the European Parliament elections it is the last Presidency that can still implement and get projects off the ground for a social Europe. The economy is currently experiencing an upturn, but far from all people in Europe are benefiting. Long-term unemployment, the threat of poverty and social exclusion, the increase in precarious work, and increasing inequality both between and within the Member States of the EU pose major challenges for Austria and the whole of the EU.

According to its government programme, the Austrian government believes the Presidency provides the opportunity to correct a number of negative developments at the EU level. However, it primarily focuses on a Europe of "subsidiarity" and calls for an "end to excessive regulation at the EU level", with the aim of the EU focusing on major questions that require a joint solution and taking a back seat in matters where the Member States or regions can better reach decisions themselves. In contrast to Austria's previous pro-European stance, the Austrian government is advocating policy dismantling at the EU level, while focusing on fields concerning the economy and security.

That focus is confirmed and detailed in the official Programme¹ of the Austrian Presidency. Besides two major challenges – the negotiations on **Brexit**

(the United Kingdom's withdrawal from the EU) and the **multiannual financial framework from 2021** – three priority fields have been identified in which more Europe is needed under the motto of "A Europe that protects".

- Security and the fight against illegal migration,
- Securing prosperity and competitiveness through digitalisation,
- Stability in the European neighbourhood – EU perspective of the Western Balkans/South Eastern Europe.

Those topics are undoubtedly important. Answers are needed at the European level to refugee movements and it is highly important for Europe to address all aspects of digitalisation. We are critical, however, of the focus on enlargement. The most recent enlargements, involving the accession of a total of 13 new Member States, have widened the social gap within the European Union and have accelerated the race to the bottom in terms of standards. The EU therefore urgently needs a concept of capacity for enlargement under which the EU can only accept additional economically and socially weak candidate countries if long-term social progress is ensured and the relevant institutional conditions are in place.

The motto of "**A Europe that protects**" suggests, in particular, that the Austrian government will also make use of the Presidency to strengthen Europe's social dimension and to lay the ground-

work for a social and economic upturn that will benefit everyone. However, the fact that the **European Pillar of Social Rights**, which was proclaimed as recently as November 2017 and – despite some shortcomings – is an important compass for a new convergence towards improved living and working conditions in the EU, is not even mentioned in the official Programme of the Austrian Presidency is a clear indication that the Austrian government accords little importance to reinforcement of the Europe’s social dimension. The Programme of the Austrian Presidency contains few references and initiatives concerning reinforcement of the social profile of the EU. On the contrary: currently there is a risk of labour, social, environmental and consumer standards being dismantled throughout the EU in the name of misconceived “subsidiarity” (as well as on the pretext of eliminating “gold-plating” on the national level). That policy would represent the opposite of social progress and would jeopardise the necessary improvements to living and working conditions in Europe. As a result, it would pose a threat to the attractiveness of European integration overall.

In light of the above, the Austrian Federal Chamber of Labour (BAK) has defined a number of building blocks for a successful 2018 Presidency from the perspective of workers. Those building blocks consist of various measures. What they have in common is the creation or improvement of conditions for a social Europe that protects people. Many of those building blocks have a longer time-scale than the Presidency, but the Presidency offers the unique opportunity to press ahead with or initiate developments that will lead Europe in a social direction.

Table of content

Introduction	3
I. Great Topics of the Presidency	6
1. Stepping up efforts to combat wage dumping and social dumping	6
2. Stronger focus of the EU budget on social objectives	7
3. Shape the digital transformation in a socially innovative way	8
4. Deepening of Economic and Monetary Union (EMU) for greater prosperity, wellbeing and social cohesion	9
5. Workers should not have to shoulder the costs of Brexit	11
6. Fair energy transition and climate policy	12
II. An internal market which protects the interests of employees and customers	13
1. Binding minimum social standards as an agenda for social progress	13
2. Ensuring more fairness in tax policy	15
3. “New Deal for Consumers” - better enforcement of rights	16
4. REFIT: Reducing bureaucracy should not be at the expense of employees and consumers	17
III. A Europe with more and better Jobs	18
1. Support women in the labour market	18
2. Curbing precarious work	19
3. Combatting youth unemployment, investment in training, and integration of young people in the labour market	19
4. General promotion of education and vocational training	20
IV. Working towards a fair globalisation	22
1. Trade and investment policy	22
2. Human rights and business	23
V. More democracy and breaking the dominance of multinationals as the prerequisite for better policies	24
Footnotes	26

I Key topics of the Presidency

1. Stepping up efforts to combat wage dumping and social dumping

The internal market has resulted in competition between Member States to offer the most attractive conditions to businesses (i.e. a race to the bottom). That trend has been exacerbated by the accession of countries with low wage and social benefit levels. Austria is particularly hard hit by wage dumping and social dumping due to the large wage gap between Austria and the new Member States. Since the opening of the labour market to new Member States, the number of cross-border postings and of daily and weekly cross-border commuters has risen sharply. That very often goes hand in hand with undercutting of Austrian minimum wages, false postings of workers, dumping through payment of lower social security contributions, and non-compliance with other protective regulations. Liberalisation of the transport market in Europe is likewise undermining existing wage standards and social standards of workers.

The **Posted Workers Directive** allows Member States to set out certain minimum labour standards and, in particular, a minimum wage for posted cross-border workers. Monitoring compliance with those minimum standards and imposing sanctions if they are violated is, however, very difficult, especially in cross-border cases. In practice, national authorities soon come up against their limits when the cooperation of foreign authorities is required, for example to obtain neces-

sary information, to serve official documents, and to carry out enforcement measures.

Improvements have been achieved through the Enforcement Directive and the Internal Market Information System (IMI). A European body is needed that ensures implementation of the requirements for cross-border cooperation of the authorities. We therefore expressly welcome the concept of establishing a European Labour Authority to ensure that all EU regulations on labour mobility are enforced in a fair, simple and effective manner.

In recent months several cases against various provisions of the Austrian Anti Wage and Social Dumping Act (LSD-BG) have been referred to the CJEU, in particular with respect to collecting a provisional guarantee up to the maximum of the applicable sanction in cases where enforcement is likely to be impossible or particularly difficult. If those provisions are not upheld by the CJEU, it will become even more difficult to enforce administrative penalties against foreign companies.

Our key demands of the Austrian Presidency:

- Establishment of an **effective European Labour Authority with its seat in Austria** to combat wage dumping and social dumping in cross-border cases and enforce the rights of cross-border workers effectively.

- The Austrian government should strongly oppose the **annulment of provisions of the Austrian Anti Wage and Social Dumping Act (LSD-BG)** on protection of fair competition and protection of workers by the CJEU.
- The system for Electronic Exchange of Social Security Information (EESSI) that is currently being developed needs to be promptly implemented across the EU.
- In the case of postings, it should be mandatory for the **reservation wage** to form the basis for the payment of social security contributions.
- To prevent **false postings of workers**, posted workers should only be allowed to remain insured in the home country if they were employed at the site of the posting employer for at least three months before the posting. In addition, "Portable Documents A1" should no longer have binding force.
- Effective measures to combat shell companies and false self-employment, as well as enforcement of cabotage regulations in the transport sector through the mandatory and uniform **requirement to carry forgery-proof freight documents**, including in electronic form.
- The rules of the general Posted Workers Directive for both cross-border transport and cabotage should also be applied without exception **from the very first day** in the road freight transport sector too.
- If the EU is further **enlarged**, the transitional arrangements for the

labour market should only end once approximate convergence of wage levels has been achieved.

2. Stronger focus of the EU budget on social objectives

The European Commission presented its proposal for the EU's financial framework from 2021 at the start of May 2018 and aims to reach agreement between the EU Member States before the European Parliament elections in May 2019. A key phase of deciding on the future EU budget will therefore fall during the Austrian Presidency.

Unemployment, social inequality and poverty remain very high due to political misjudgements at the EU level in the course of tackling the financial and economic crisis. The aim should be for the new EU financial framework to have a strong social focus. The Commission's proposal falls short in that regard. The EU budget should focus on funding that appreciably improves people's living and working conditions and that reduces economic and social inequalities between the Member States. Measures that ensure socially-responsible digitalisation and climate policy are also of great benefit.

Our key demands of the Austrian Presidency:

- In the future, the **European Social Fund (ESF)** should make up **10%** of the total EU budget, and not just 7.9% as proposed by the Commission. The funds should be used to:
 - o combat unemployment, youth unemployment and poverty, with particular emphasis on the inclusion of disadvantaged groups;

- o support young people (continuation and expansion of the EU youth initiative) and the labour force in meeting the requirements of the labour market based on digitalisation and globalisation;
- o integrate refugees and migrants into society and the labour market and take action against discrimination in the labour market.
- The budget of the **European Agricultural Fund for Rural Development (EAFRD)** should be distributed more fairly and more effectively. All people living in rural areas should benefit and not just agricultural businesses. **At least 50%** of the EAFRD funds should be used for **regional policy measures** to counteract migration away from rural areas. Half of that should be used for measures to improve **social services** (such as child care and social care) and to develop digital infrastructure.
- The introduction of a **stabilisation function** may be a useful instrument to supplement the stabilisation tasks of national budgets in the event of large asymmetric shocks. We therefore welcome the Commission's proposal on the European Investment Stabilisation Function. However, we reject workarounds such as private-public partnerships that will lead to higher costs for the public in the long term.
- As a general rule, **compliance with the fundamental values of the EU** should be a condition for the disbursement of EU funding. Countries that engage in fiscal dumping

should not benefit from funding. We firmly reject enforcement of implementation of country-specific recommendations (CSRs) by reducing or cancelling funding. In view of the debate on the "competitiveness pacts" in the past, we are highly doubtful about the proposed instrument to support the reform commitments of Member States since it could be misused to promote **neoliberal structural reforms to the detriment of workers and consumers**.

- Fundamental overhaul of the **revenue side** of the EU budget: under the current financing structure, the taxes paid by employees and consumers account for a substantial share of the financing of the EU budget. In the future, companies must be required to make a greater contribution to the EU budget. Additional funds for the EU budget should come from sources including closure of loopholes in profit taxation (such as minimum corporate tax rates), elimination of tax havens, and more effective taxation of digital corporations.

3. Shape the digital transformation in a socially innovative way

Digitalisation is making further inroads into all areas of life and business and it is increasingly difficult to make a clear distinction between digital and "conventional" areas. Technical progress offers great potential and opportunities, which need to be harnessed in a way that benefits people. Technology should not be used as a pretext for new and precarious working conditions and digitalisation should not serve as a buzzword for labour and social deregulation and tax evasion. Ensuring prosperity in the era

of digitalisation is also one of the central tasks of the Austrian Presidency. In our view, social innovations are needed to ensure that technology is used in a way that contributes to improved working and living conditions. Training and professional development are key to ensuring the fair participation of workers in the digital transformation.

Our demands of the Austrian Presidency:

- Digitalisation is set to change the **skills and training** that are required on the labour market considerably. A training allowance that provides everyone with the opportunity for retraining or further studies/training – irrespective of their first studies/training – would be a worthwhile approach that can also be supported at the EU level (see also the relevant focus of the EU budget under Section 2 above)
- The European Union should – for example, in the scope of the European Semester – work to ensure that **efficiency gains** from forced digitalisation are passed onto **workers and consumers** via wages and prices. That would also lend necessary impetus to the labour market.
- The tax system needs to be adapted to reflect the changes brought about by digitalisation. The EU can play a significant part in that by extending the term “permanent establishment” to include **digital permanent establishments** and by introducing a common, consolidated corporate tax basis for uniform taxation of company groups in a way that reflects digitalisation, together with a minimum tax rate (see also under Section II.2 “Make tax policy fairer”).

- To prevent a **race to the bottom among Member States**, a suitable EU legal framework needs to be established in further fields, for example to regulate platform economies and data protection.
- The restructuring of employment, which is already in progress, needs to be arranged in such a way that there are **fair conditions** for new forms of working, such as crowd-working. The EU can assist in that by taking legislative action.
- Active **co-determination of works councils** in practice is critical to the successful use of new technologies at companies. The increasing volume of employee data that are collected must be accompanied by an extended right of works council members to have a say on all forms of data generation and data storage, including at the EU level.

4. Deepening of Economic and Monetary Union (EMU) for greater prosperity, wellbeing and social cohesion

The upcoming deepening of Economic and Monetary Union will likewise be an important topic during the Austrian Presidency. It provides the opportunity to increase the attractiveness and stability of the EU as a whole by promoting a wellbeing-oriented economic policy, creating more leeway for public investments, eliminating democratic deficits, and reinforcing social cohesion in and between the Member States. However, we believe that some of the valuable and necessary groundwork for deepening EMU can only be achieved through treaty reform.

There is also need for action with respect to the “European Semester” as an important framework for coordinating wellbeing-oriented policy.

Our key demands of the Austrian Presidency:

- To enable balanced economic development in the interest of attaining the EU’s social and environmental objectives, the overriding principle of inflexible state finances and competitiveness should be consistently replaced by the principle of **well-being-oriented economic policy**. That involves reaching consensus that economic policy should pursue objectives such as full employment and decent jobs, a high level of fairly distributed material wealth, quality of life and ecological sustainability – while maintaining economic stability – in a way that is as balanced as possible. The guiding principles set out in Article 119(3) TFEU should, inter alia, be supplemented for that purpose. As a key steering instrument of the European Semester, the annual growth survey should be developed into an **annual wellbeing survey**².
- **Ending neoliberal structural reforms:** The Commission in particular – in the context of the European Semester – is repeatedly seeking to force the Member States to implement reforms that are entirely counter-productive in social policy terms and which come under the sole responsibility of the Member States. In Austria that is clearly manifested in the push to raise the statutory pension age. From the perspective of workers, that approach is also a prime example of a breach of the principle of subsidiarity through overreach of EU powers.
- Even without the financial crisis the euro area would have likely faced an existential crisis due to the growing **current account imbalances** between countries running deficits and countries running surpluses. There has not yet been a correction in the countries running surpluses through stronger growth in demand. That is directly related to the question of wages, distribution policy, and public investments.
- **The Golden Rule:** The EU’s economic policy is highly one-sided, with the emphasis on restrictive fiscal rules. EMU urgently needs **a rule that supports public investments** by increasing the budgetary leeway of the Member States. Public investments in fields such as health, subsidised housing, transport, schools and kindergartens, energy grids, broadband networks and research and development boost productivity and employment, ensure a high quality of life, make locations attractive, and improve the sustainability of public finances in the long term. They are also essential for business activities in the private sector. The Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (“Fiscal Stability Treaty”) should be abolished.
- The **European Monetary Fund (EMF)** has the potential to be a valuable instrument for deeper EMU if it is established democratically in accordance with European law through amendment of the EU treaties, and the European Parliament is granted a full co-determination right on definition of the relevant conditions. The European Pillar of Social Rights and all the relevant provisions of the Charter of Funda-

mental Rights should serve as a set of criteria for the conditions under which loans are granted.

- A **structural banking reform** that involves separation of the risk of investment banking from the risk of the commercial banking system is necessary for the establishment of a backstop in the framework of the second pillar of the banking union. It should also be ensured that the costs of the orderly resolution of failing banks are borne solely by the banking sector.

5. Workers should not have to shoulder the costs of Brexit

The United Kingdom is currently scheduled to leave the EU on 30 March 2019. The final stage of negotiations on the Withdrawal Agreement, which will govern the immediate consequences of Brexit, is expected to fall during the Austrian Presidency. Future relations between the EU and the United Kingdom are a matter of great uncertainty. There is a risk that the United Kingdom will pursue an agenda of deregulation in key areas such as labour law, social protection and environmental protection, and will engage in fiscal dumping. Such a development would not only be unacceptable for British workers but would also amount to unfair competition against EU Member States to the detriment of workers. Jobs in the EU could be put at risk and the rights of workers could come under increasing pressure. Such a development needs to be prevented in our view. Workers in the EU and in the United Kingdom should not have to shoulder the costs of Brexit.

Our key demands of the Austrian Presidency:

The EU and the United Kingdom are planning to accompany the Withdrawal Agreement by a political declaration on the framework for the future relationship. With respect to future relations between the EU and the United Kingdom, we call upon the Austrian government in particular to

- ensure **binding clauses** on the protection of workers, consumers and the environment;
- ensure a **level playing field** for the EU and the United Kingdom in exchange for allowing British companies access to the European market. The United Kingdom must be required to continue to apply EU legal standards in certain fields so that it does not have any **unfair competitive advantages** due to tax, social, environmental or regulatory measures and practices.
- advocate the establishment of an effective legal enforcement mechanism; (we firmly reject privileges for investors and investor-state arbitration tribunals);
- advocate requiring the United Kingdom to remain a signatory state to the **European Convention on Human Rights** and the **European Social Charter**;
- put pressure on the United Kingdom to end tax exemption in the British Overseas Territories and refrain from all forms of fiscal dumping, and to advocate future cooperation between the EU and the United Kingdom in the field of taxation.

6. Fair energy transition and climate policy

Under the climate and energy policy of the EU, greenhouse gas emissions of the Member States are to be reduced by 40% compared with 1990 levels by 2030. In view of the 2015 Paris climate agreement, the EU has set itself the political target of reducing greenhouse gas emissions by 80 to 95 per cent by 2050. The decarbonisation target essentially means withdrawing from the use of fossil energy sources, which currently account for around 70 per cent of Austria's energy supply. That withdrawal will transform the economy. The effects on key sectors such as energy supply, mobility, heating and industry (including the export industry) must be suitably evaluated for improved understanding, since the necessary changes will have far-reaching consequences for workers and consumers.

The EU Winter Package titled "Clean Energy for All Europeans" is due to be adopted during the Austrian Presidency. After the agreement on the Energy Efficiency Directive and the Renewable Energy Directive in June 2018, the focus is on the adoption of the Electricity Market Design Directive and Regulation. Mandatory measures against energy poverty that have not been set out in legal instruments to date are also important.

In addition, in several fields the Council will address proposals of the European Commission that concern energy union and climate policy, for example with respect to emissions of commercial vehicles, infrastructure for alternative fuels, and gas pipelines.

Our key demands of the Austrian Presidency:

- Ensure that the Electricity Market Design Directive reflects the interests of consumers:
 - o state interventions in the pricing of electricity (such as social tariffs) should remain possible;
 - o customers should have the right to flat-rate energy tariffs;
 - o aggregators should be required to comply with similar obligations towards consumers as those that energy suppliers are subject to;
 - o the operation of private energy grids by local energy communities (LECs) should be banned;
 - o the unbundling provisions for transmission system operators should be made in a transparent way.
 - o mandatory measures against energy poverty should be introduced.

II An internal market which protects the interests of employees and customers

The expectation that the European internal market would boost prosperity and encourage Europe to grow closer together has been fulfilled only in part. Actual developments are increasingly characterised by Member States undercutting each other, especially in terms of social aspects, taxation and wages. This trend is aided and abetted by the current debates on **“subsidiarity” and “gold plating”**, which mostly call protective legislation – whether at the European or national level – into question when it imposes obligations on companies.

However, in order for the internal market to act as an instrument to improve living and working conditions in Europe, minimum European standards are needed in many areas which must be reviewed and further developed periodically in the spirit of social progress. And wherever we have harmonised our legal provisions at a high level (e.g. through minimum tax rates on company profits), harmful undercutting practices are precluded in the competition to attract business. Therefore, under no circumstances must we allow protective standards to be eroded under the **pre-text of subsidiarity and gold plating** by relegating important regulatory areas to the national level or by essentially calling into question the maintenance of higher protective standards in individual Member States.

The aim of internal market policy must be the creation of an internal space free of discrimination and based on high standards in the social and environmental spheres. The opinion of the Court of Justice of the European Union that market freedoms in principle take precedence over social rights, such as the exercise of fundamental trade union rights, must be countered resolutely. This imbalance must be corrected in the course of the next amendment of the European treaties (see deepening of the Economic and Monetary Union). **It must be made unequivocally clear – for example, in the form of a social progress protocol – that fundamental social, democratic and trade union rights take precedence over market freedoms and the rules on competition in the internal market.**

Apart from that, the BAK is calling for the following demands in the light of Austria’s EU Presidency.

1. Binding minimum social standards as an agenda for social progress

Important objectives were achieved in the past through binding minimum social standards – also for employees in Austria. This agenda, which has been pushed into the background in recent years, needs to be resurrected substantially as part of a **new social action programme**. The expansion of binding

minimum social standards including a high level of protection can be a major contribution to strengthening workers' rights and social security in Austria and in the EU as a whole and hence make an actual contribution to social progress and to upward social convergence. At the same time the principle of non-regression, which prohibits the lowering of existing national protection levels, must be enshrined as a mandatory clause in EU primary law as well as in the following legal acts.

Our demands of the Austrian Presidency:

- **Improving health and safety in the workplace:** The proposals of the Commission to update the Carcinogens and Mutagens Directive (2nd and 3rd tranche) require significant improvement: The thresholds proposed by the Commission are far too high in many cases and therefore do not offer sufficient protection against the risks posed by carcinogenic substances. Furthermore, this Agenda must be speeded up considerably: the aim of the ETUC, which was adopted by the Commission, is to determine threshold values for 50 carcinogens by 2020. The proposals of the Commission to date, of which one has already been adopted, include only 26 thresholds.
- Negotiations on the proposal for an **Anti-Discrimination Directive** (outside the labour market) regarding sexual orientation, age, religion or belief and disability must be advanced.
- Introducing **minimum standards for national unemployment insurance systems:** An EU directive should stipulate binding minimum standards for the net replacement rate, duration of entitlement and the coverage rate of unemployment benefit. Continuous efforts must be made to reach the target values within a predefined period.
- Generally speaking, **workers' rights must be strengthened in many other areas in the form of minimum standards applicable across the EU:** to protect workers against contractual clauses that are unfair and impede mobility; for continued remuneration in the case of illness, when caring for family members, or other important reasons which prevent someone from working; to impose effective penalties against discrimination in the workplace or in relation to requirements for employers to employ persons with disabilities.
- **Enshrining the right to further training and vocational qualifications in law:** Given the major importance of further training in terms of lifelong learning – in the context of continuing changes in the world of work – a general right to further training and vocational qualification schemes, including also jobseekers, must be codified. Furthermore, a legal entitlement of workers to a minimum period of training within working hours, e.g. at least equivalent to one week's normal working hours per year, and a legal entitlement to paid leave for education or training must be stipulated.
- **Social protection floor in order to protect against poverty and social exclusion:** An EU framework directive should stipulate common principles, definitions and minimum

standards for social minimum income schemes that can combat poverty and social exclusion effectively and are oriented to the level of income in the relevant Member State.

2. Ensuring more fairness in tax policy

Through the tax avoidance strategies of multinationals, tax evasion and tax fraud, Member States of the European Union lose fiscal revenue to the tune of billions each year. Progressing digitalisation and the development of the sharing economy also pose new challenges for Member States. This subject is now part of the political agenda and some measures have been implemented to combat aggressive tax planning and tax evasion (Anti-Tax Avoidance Directive, expansion of the Mutual Assistance Directive for the automatic exchange of financial information, etc.).

Fortunately, the programme of the Austrian EU Presidency contains a clear commitment to improving the efficiency and fairness of taxation by protecting public budgets from damaging tax competition, tax fraud and tax evasion. In this connection it must be emphasised that Austria will campaign for urgently needed solutions regarding taxation of the digital economy, both at EU and at OECD level, and will work on the proposal for a common corporate tax base. Furthermore, progress is required to modernise VAT, strengthen the internal market, and ensure efficient anti-fraud measures and close cooperation between fiscal authorities.

The fact that the financial transaction tax apparently is no longer a part of Austria's plans and is not even mentioned is less encouraging. Despite the commitment to stem damaging tax compe-

tion, apparently only activities on the common corporate tax base are to be driven forward. But that is only one of various modernisations urgently needed. In order to achieve real success the proposals for consolidation must be advanced alongside a minimum tax rate, in addition to the common corporate tax base.

Ultimately, at the end of 2018 we will see how far the announcements of the Austrian Government to champion more efficiency and fairness in taxation will have been followed by actual action, which is urgently needed in the field of taxation.

Our demands of the Austrian Presidency:

- **Introduction of the common consolidated corporate tax base:** Both directives (Common Corporate Tax Base and Consolidation) should be implemented at the same time. Amendments should be made to individual sections of the draft directives: super-deduction for research and development, Allowance for Growth and Investment, expansion of the scope of application. A **minimum rate for corporate tax** must be set as an accompanying measure.
- **Digitalisation** must be taken into consideration by expanding the definition of the taxable permanent establishment to include a digital permanent establishment and the introduction of stricter obligations to participate for platform operators in the field of e-commerce/the sharing economy.
- We must press on with the measures introduced at EU level to **com-**

bat tax fraud and tax evasion and to close tax loopholes and tax havens. At the same time the EU must take a committed stand to support corresponding efforts at an international level (OECD BEPS project).

- Serious efforts must be made to progress negotiations to **introduce a European financial transaction tax** and bring them swiftly to a substantive result.
- The continued requirement for unanimity of EU decisions on taxation must be removed, in particular for aspects of international corporate taxation.

3. “New Deal for Consumers” - better enforcement of rights

In its evaluation of consumer-related directives (as part of REFIT) the European Commission has assessed existing legal acts as essentially efficient and sensible; however, shortcomings were found in the field of the **enforcement of rights**. This matches the assessment of European consumer associations whose main criticism is of shortcomings in the enforcement of rights, in particular regarding damages suffered by large numbers of consumers in their Member States. In April 2018 the Commission presented a package, the “New Deal for Consumers”, the main thrust of which is a proposal for collective legal instruments (representative action).

A further proposal provides for more severe penalties for the violation by entrepreneurs of certain consumer-related directives. Their calculation will take account, inter alia, of the severity and length of the violation, any previous violations, degree of liability, and the number of consumers affected. In

the case of “widespread infringements” of those with a pan-EU dimension the penalty will be a minimum of 4% of annual turnover.

There will also be more transparency in online platforms. Information requirements regarding ranking criteria, the character of consumer or entrepreneur of the contractual partner, and the applicability of EU consumer legislation, are planned. Furthermore, platforms are to be required to inform users who is required to comply with this legislation.

However, one proposal is not very consumer-friendly - the right to withdrawal is to be restricted for online purchases. For example, the trader does not have to reimburse the purchase price until he receives the goods and if he is of the opinion that no excessive use was made of the goods. This opens the floodgates for abuse and legal disputes are inevitable.

Furthermore, effective proposals at EU level for longer product life cycles and to ensure products are easier to repair are essential. There is a proposal to extend the reversal of the burden of proof from six months to one year; this is a step in the right direction but is still too little.

In order to protect airline passengers a pan-EU obligation for airlines to take out bankruptcy insurance would be required, as is already the case for travel organisers. The bankruptcy of Air Berlin in particular has shown that a large number of consumers are affected by the bankruptcy of an airline.

Our demands of the Austrian Presidency:

- The proposals for the “New Deal”, in particular regarding **collective le-**

gal instruments, must be pursued with force and without relieving the pressure.

- We cannot accept the proposals to amend the **right to withdraw**; they should be removed.
- The European Commission should present binding regulations for **longer product life cycles and to ensure products are easier to repair**. The extension of the reversal of the burden of proof and longer warranty periods would be efficient measures to extend product life cycles;
- Introduction of mandatory **bankruptcy insurance** for airlines.

4. REFIT: Reducing bureaucracy should not be at the expense of employees and consumers

REFIT, the programme to reduce bureaucracy, is to ensure more efficiency and effective law-making - at first glance this appears a welcome initiative. However, a series of REFIT proposals reveal that negative effects must be feared for employees, consumers and society.

One example of the direction being followed by dossiers being negotiated at the EU level as part of the REFIT programme is the **European Services e-Card**. Its introduction would encourage false self-employment and the establishment of shell companies, as well as wage and social dumping.

Our demands of the Austrian Presidency:

- In connection with REFIT the **level of protection must be maintained** for standards relating to employees,

consumers and the environment or their expansion ensured in accordance with Article 3(3) TEU.

- In view of the unequivocal rejection by all relevant Committees of the European Parliament, the Commission is called on to withdraw **the proposal for the European Services e-Card of its own accord**. Should this not be case, we call on the Austrian EU Presidency to persuade the Commission to take this step.

III A Europe with more and better Jobs

The economic recovery beginning in Europe is creating more jobs, but there is still much room for action. Digitalisation will bring new challenges and a major change in the qualifications demanded in the labour market. In order to create more and better jobs, the Austrian Government must start initiatives in various fields during its EU Presidency.

1. Support women in the labour market

The Presidency Programme refers to equality of treatment policy in only very general terms. Despite various initiatives at the EU level (e.g. the EU Action Plan 2017-2019 to tackle the gender pay gap) women continue to be discriminated against in the labour market. The pay gap between men and women across the EU is a constant 16.3%. A reversal of the trend requires measures to be introduced in many areas, in particular with regard to pay transparency and vertical segregation, as well as improving the work/life balance.

Our demands of the Austrian Presidency:

- The following **measures** must be made binding at the EU level in order to create **income transparency** and to strengthen **the principle of equal pay for men and women** through transparency, such as the Action Plan on the gender pay gap proposes:

- o entitlement of employees to request information about pay levels;
- o regular reporting by employers of wages;
- o clarification of the notion of work of equal value.

- Initially, in the view of the BAK, the declaration of a band of possible remuneration should become mandatory in job advertisements.
- In order to further expand the efforts of Austria to bring about a more balanced **representation of men and women on boards of directors**, the Austrian Government should work towards a decision on the corresponding proposal for the directive, whereby the mandatory introduction of a legal quota of at least 40% for the underrepresented gender should be set when filling seats on boards of directors and effective penalties applied in the case of non-compliance.
- The **Directive on Work-Life Balance** is to include a legal right for fathers to paid parental leave of at least one month. At the same time, a non-regression clause must be included in the EU Directive in order to ensure that current regulations governing maternity or paternity leave in Austria are not changed for the worse with the implementation of the Directive.

2. Curbing precarious work

The widespread occurrence of atypical employment has long been a significant characteristic of labour markets in the European Union. Various approaches are taken to measure atypical employment. According to the European Commission and based on Eurostat data, in 2016 normal working relationships – i.e. permanent full-time contracts – accounted for only 60% of all forms of employment. Around 40% were temporary work contracts and/or part-time contracts as well as “self-employed” persons. In addition, according to the European Commission, almost 20% of the types of jobs created since 2014 are so-called “new forms of employment”. The latter include casual workers (such as people with “on-demand” contracts), which already include between four to six million people in the EU. According to the European Commission, low job and income security, insufficient welfare cover, scarcely any access to further training and often monotonous work are the result of these forms of employment. It is essential to reverse this trend and ramp up the efforts already undertaken at EU level to extend protection in terms of labour and social legislation for those in atypical employment during Austria’s EU Presidency. All forms of atypical employment must be covered by labour and social legislation.

Our demands of the Austrian Presidency:

- We welcome the fact that the **proposal for a directive on transparent and predictable working conditions** stipulates more extensive information obligations for employers regarding the essential aspects of an employment relationship, an extended personal scope of appli-

cation and improved possibilities for the enforcement of rights. However, the proposed minimum requirements on working conditions are by far not ambitious enough in relation to the level of protection for workers. They must be strengthened in favour of workers and supplemented with additional minimum standards (e.g. legal entitlement of workers to a minimum period of further training during working hours and paid leave for education or training). Furthermore, we need a more robust non-regression clause in order to prevent the lowering of existing levels of protection for workers.

- **Combatting precarious employment, increasing the quality of work:** On-demand work (in particular zero-hour contracts) must be prohibited in the EU. The discussion on possible supplements to remuneration for precarious workers and the obligation of the employer to offer a standard employment contract, if available, to atypically employed workers within the company should be set on the EU agenda.

3. Combatting youth unemployment, investment in training, and integration of young people in the labour market

Youth unemployment has dropped in recent years, but with an average unemployment rate across the EU in 2017 of almost 17% it is still alarmingly high. Every sixth young person in the EU remains out of work or training. In 2013 the EU created the training guarantee which is supported financially by the Youth Employment Initiative. This has had some effect, but the results do not yet give cause for satisfaction. The bud-

get of 8.8 billion euros for the period 2014-2020 was not enough and the system was too complex to operate.

Our demands of the Austrian Presidency:

- In negotiations for a new proposal for an **EU Youth Guarantee**, training and qualifications must be defined as goals, as well as adequate protection in terms of labour and social security laws during training.
- Financial support is needed to achieve the objectives of the **Youth Guarantee**; that is why the Youth Employment Initiative must be continued after 2020 and a sound financial basis created for the next multi-year finance period.
- The integration of the planned new ESF+ must not lead to a lowering of resources.
- This also applies to **conditions for access**, which must be formulated so that EU funding can be accessed when the youth unemployment rate reaches at least 10%. Another criterion, such as the NEETs rate in the draft ESF Regulation, must not limit conditions for access.
- Application and processing procedures must be simplified considerably.

4. General promotion of education and vocational training

European education policy already contains approaches suitable for a step-by-step implementation of the provisions of Article 1 of the "European Pillar of Social Rights" which states: "Everyone has the right to quality and inclusive education,

training and life-long learning in order to maintain and acquire skills that enable them to participate fully in society and manage successfully transitions in the labour market."

In view of continuing high unemployment rates and a lack of basic skills on the one hand, and the lack of professional skills on the other, further efforts are required of Europe on the road to more and better jobs.

Our demands of the Austrian Presidency:

- Education and training must remain on the **list of priorities of European policies** after 2020 in terms of urgency and funding.
- In the new programme period a satisfactory continuation of Erasmus+ must be found.
- **Digital change** requires digital training. A special focus must be placed on supporting socially disadvantaged youth and on those with low formal qualifications in the area of further training. Only in this manner can we prevent a "digital divide" of society.
- Learning in the workplace as initial vocational training must be permitted as **"dual vocational training"** with the participation of social partners. The globally respected system of dual vocational training must be promoted as a pan-EU benchmark, as happened in recent years.
- A **legal entitlement** to various forms of **paid further training** or further training during working hours is needed to ensure quality life-long learning.

- In order to improve the permeability of education and training systems, the flexibility of routes in education and training, and the mobility of the learners (ist das nicht erlaubt?), the European instruments and policies created for this purpose such as EQR, ECVET, ECTS and the validation of informal and non-formal skills must be applied and developed further.
- **Improving language competences** is a special focal point; this comprises both fostering the relevant national language (language of schooling) as well as the mother tongue (vernacular) and foreign languages (at least two according to the EU's objective).

IV Working towards a fair globalisation

One of the main challenges of our time lies in the fact that advancing **globalisation** should not only be perceived as an agenda of (large) companies but should equally benefit employees and consumers. The BAK supports the Austrian EU Presidency's programme insofar as it aims to organise negotiation processes at a national and European level ensuring that the interests of EU citizens are respected.

Ultimately, progress at different levels is necessary in order to achieve equitable globalisation. With respect to the Austrian EU Presidency, trade and investment policy, as well as the conflict between human rights and business, are of special importance.

1. Trade and investment policy

The BAK essentially welcomes trade relations if they are conducted according to fair conditions. However, in the opinion of the BAK, existing EU trade and investment agreements and those currently being negotiated do not satisfy this requirement. Rules on investment protection pose a particular danger since they confer privileges on international investors. Furthermore, the aim of current EU trade agreements is to remove existing and future regulatory differences without exception as part of so-called **regulatory cooperation** between the EU and its trade partners. EU trade agreements do not contain any effectively enforceable obligations to comply with **social and environmental**

standards. Given the EU's objective of extensive service liberalisation, the lack of comprehensive exclusion of **public services** from the full scope of application and the inclusion of standstill and ratchet clauses which limit public policy space are highly questionable. Therefore, there is a need for rethinking trade policy placing the interests of citizens, employees, consumers and the environment at the forefront.

Our demands on the Austrian Presidency:

- The EU's negotiations with trade partners should not include privileges for international investors.. On the contrary, **investment protection** shall be reduced to the original intention of protecting investors against discriminatory treatment by foreign authorities. The principle of non-discrimination must be set out in these agreements so that foreign investors - that enjoy the right of establishment - enjoy the same property rights as domestic companies. Instead of investor-state dispute settlement, the usual state-state dispute settlement shall be used in trade agreements as the standard settlement mechanism. .
- **Regulatory cooperation:** Decisions taken on regulatory cooperation require sufficient democratic consultation through the various Parliaments. The protection of sensitive interests in the fields of

health, safety, consumers (in particular data privacy), labour and environmental standards in sectors (chemicals, pharmaceuticals, food-stuffs) and on certain subjects (e.g. genetically modified organisms (GMO), hormones, antibiotics) is to be excluded from regulatory cooperation. The European precautionary principle must be enshrined in trade agreements.

- The precondition for the provisional or final entry into force of trade agreements is the ratification, implementation and application of all eight ILO core labour standards by all contracting parties. Every **chapter on sustainable development** must, after the planned measures have been exhausted, include a sanction mechanism which provides effective punishment for violations of employees' rights and environmental standards. Fines are to be used to rectify the alleged shortcomings.
- Comprehensive and unambiguous exclusion of public services from the full scope of application.
- **Public policy space** has to also be maintained with respect to obligations regarding the free movement of capital (in particular the European Commission's draft regulation on investment screening) as to impose restrictions on foreign direct investments in the public interest. The framework for screening direct investments from third countries must not narrow the scope of application exclusively to aspects of order and safety. Instead, public services, potential adverse effects on macro-economic stability, as well as social, economic and territorial cohesion must also be considered.

2. Human rights and business

While multinationals have succeeded in pushing through the investment protection system, in the reverse case - when companies become wrongdoers or accessories to violations of human and labour rights - we only have recommendations and voluntary commitments. This astounding unequal treatment of interests is not acceptable and must be corrected: human, labour and environmental rights must be given priority over private economic interests. Based on the UN Guiding Principles on Business and Human Rights, which have been signed by all countries, the "TNC Treaty" working group is working on a legally binding treaty to penalise violations of human rights by businesses. Countries will be required to establish uniform provisions in national legislation which facilitate or make the prosecution of transnational companies possible.

Our demands of the Austrian Presidency:

- The creation of effective **legal remedies against violations of human rights by businesses**, also and in particular in the value-added chain.
- During its EU Presidency, Austria must campaign for **all EU Member States to participate in the negotiations of the "TNC Treaty" working group and to make constructive contributions** so that the UN Guiding Principles can be implemented effectively as legally binding instruments. This agenda takes on special importance with regard to Austria's candidacy for a seat on the UN Human Rights Council.

V More democracy and breaking the dominance of multinationals as the prerequisite for better policies

The crisis revealed that there is a major imbalance between the deep-seated economic integration of the Union and its political and democratic integration. While the Union has taken on central state functions within the Economic and Monetary Union, **democratic control and the ability to shape policies** have not kept pace. However, the dominance of business has increased at the EU level. There are more than 32,000 registered lobbyists in Brussels, where large corporations, business associations and professional lobbyists active on their behalf call the tune. Employees are greatly underrepresented, accounting for only 1-2% of all interests represented in Brussels. The ratio of trade unions and business is now 1:65! That is why business is often able to push through its interests in the European legislative process by means of targeted lobbying, while employees draw the short straw. This trend must be corrected.

Our demands of the Austrian Presidency:

- Greater involvement of social partners at European and national level is an important prerequisite for successful policies aimed at creating prosperity. Therefore, economic governance must concentrate in future on **ex ante inclusion of social**

partners. A form of macroeconomic dialogue for the euro area and the general **strengthening of social dialogue** are therefore needed. Agreements of social partners at the EU level must be respected by the EU institutions and the Member States.

- **Greater transparency in lobbying:** Lobbying plays an important part in the EU legislative process; the dominance of representatives of business is blatant. After some scandals of recent years small steps have been taken to improve transparency. In September 2016 the European Commission presented a proposal to reform the transparency register for lobbyists. The register is to be binding for the European Commission, the European Parliament and Council. Under Austria's EU Presidency a political agreement is to be found by the end of the year at the latest and signed by the three EU institutions. This agreement should contain the following specific points:
 - o the Council must also commit to the transparency register and reveal its lobby contacts.

- o Lobbyists who are active vis-à-vis the European Commission, the European Parliament and the Council must be required to enter themselves in the register.
- o Only if they are entered in the transparency register will they be given an appointment with European decision-makers.
- o The disclosure requirements for contacts with lobbyists must be expanded to include all staff of the European Commission and of EU agencies, the Council (incl. Permanent Missions), the European Council, MEPs including their employees, and employees of the European Parliament.
- o Entries in the transparency register must be checked systematically and regularly. Infringements of the rules must be penalised with forceful sanctions.
- o The introduction of the **legislative footprint** is intended to reveal which lobbyists meet rapporteurs of the European Parliament and which written proposals are presented by whom for a legislative proposal.
- Only when the staffing of **task forces** of the Commission reflects **balanced** interests can the equal representation of employees, environmental interests and civil society be ensured. The necessary rules must be established in accordance with the demands of the European Ombudsman.
- Particularly with a view to future amendments to treaties and with the upcoming EP elections, the Austrian EU Presidency should advocate an expansion of democratic instruments in the EU, in particular **strengthening the European Parliament**. The following measures would prove beneficial:
 - o The European Parliament needs a **genuine right of initiative**. The right to elaborate legislative proposals and bring them into the legislative process is a key democratic and parliamentary right which continues to be denied to the European Parliament.
 - o **Political control** (accountability) of the European Parliament vis-à-vis the Commission should be extended to include a stronger vote of no-confidence.
 - o The European Parliament must be given a key role in **economic governance** in the future. The European Parliament must have the right to co-decide areas of European economic policy (including the individual stages of the European Semester).
 - o Obstructive **requirements for unanimity**, in particular in the field of taxation, must be removed through application of the passerelle clause of the Treaty of Lisbon.

Footnotes

¹ <https://www.eu2018.at/de/>, accessed on 7 June 2018.

² See the 2018 Report on Prosperity by the Chamber of Labour: <https://emedien.arbeiterkammer.at/resolver?urn=urn:nbn:at:at-akw:g-2251600>

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