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AK Position Paper

BAK Position Paper on the deepening of Economic and Monetary Union

About us

The Austrian Federal Chamber of Labour is by law representing the interests of about 3.6 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.

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 3.6 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Rudi Kaske
President

Christoph Klein
Director

Executive Summary

- In the opinion of the Austrian Federal Chamber of Labour (BAK), the deepening of Economic and Monetary Union (EMU) can only be supported if it can solve Europe's problems, in particular high unemployment, poverty and growing inequality both within and between Member States. That requires the groundwork to be laid for a better Europe from the point of view of workers (democratisation, a Social Progress Protocol, measures against wage, social and fiscal dumping, a Golden Rule for Public Investment, prosperity-oriented economic policy, wage policy coordination, symmetrical reduction of current account imbalances).
- BAK only agrees with a transformation of the European Stability Mechanism (ESM) into a European Monetary Fund (EMF) and its anchoring in the EU's legal framework if 1) it takes place in compliance with EU law, i.e. democratically by way of amendment of the EU Treaties 2) the European Parliament is granted full co-decision rights on the requirements and conditions that are set, and 3) the European Pillar of Social Rights and all the relevant provisions of the Charter of Fundamental Rights are included as a set of criteria for conditions for providing financial stability support to Member States.
- BAK rejects the integration of the substance of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG) into the EU's legal framework and calls instead for repeal of the TSCG. In our view, the corresponding proposal of the Commission is incompatible with EU law and the TSCG in itself is economically wrong. Instead of a further tightening of the fiscal policy rules, there is a need for greater budgetary room for manoeuvre, especially during economic slowdowns, for example by introducing a Golden Rule for Public Investment. That rule would be a sustainable way to alleviate the obvious inconsistency between public investment needs and EU fiscal rules.
- The establishment of a European Minister of Economy and Finance would reinforce the one-sided institutional power structure of economic governance. What is needed is an overall package that rectifies the democratic shortcomings of economic governance and institutional imbalances. That requires extension of the European Parliament's co-decision rights to all areas of European economic policy and the establishment of a European Employment and Social Minister, who should, inter alia, be responsible for implementation and monitoring of the European Pillar of Social Rights.

- BAK assesses the proposed new budgetary instruments as follows:
 - o In light of the debate on a Convergence and Competitiveness Instrument and on the basis of the Communication in question, BAK rejects the creation of a new reform delivery tool to support Member States' reform commitments.
 - o Given that the euro area candidate countries already receive the largest share of EU structural funds as a proportion of their GDP, there is no need for an additional convergence facility for Member States on their way to joining the euro..
 - o The creation of a common backstop for the Single Resolution Fund is only acceptable if a structural reform of the banking system has first taken place and the costs of the backstop are ultimately borne solely by the banking sector.
 - o In our view, the introduction of a stabilisation function is basically a useful step.

Part I: Groundwork for a better Europe from the point of view of workers

In response to the crisis in the euro area, a large number of reforms and initiatives have been implemented in recent years or are currently being implemented, both within the EU framework (Six-Pack, Two-Pack, Banking Union, Capital Markets Union, European Semester, EFSI etc.) and outside it (TSCG, European Stability Mechanism). At the same time, since 2012 there has been debate on various concepts for a deeper and genuine Economic and Monetary Union, with the two Presidents' Reports (2012,¹ 2015²) being of particular importance. The debate gained momentum due to the Commission's White Paper³ on the Future of Europe and the five Reflection Papers (Social Dimension of Europe, Deepening of the Economic and Monetary Union⁴, Harnessing Globalisation, Future of EU Finances, Future of European Defence) in the first half of 2017. In September 2017, the speeches of Jean-Claude Juncker⁵ (on 13 September 2017) and Emmanuel Macron⁶ (on 26 September 2017) on the future of Europe met with a considerable, though mixed response. In light of presentation of the European Commission's proposals on completing the Economic and Monetary Union on 6 December 2017, the **time for fundamental decisions** now seems to have moved closer.

BAK's position is clear on the deepening of the Economic and Monetary Union. **The deepening of EMU can only be supported if it can solve Europe's problems, in particular high unemployment, poverty and growing in-**

equality both within and between Member States. A key benchmark must be whether the proposals for deepening EMU promote a prosperity-oriented economic policy, overcome democratic shortcomings and lead to genuine social upward convergence.

The Commission too notes that EMU is **"not an end in itself"**, stating that "jobs, growth, social fairness, economic convergence and financial stability should be the main objectives of our Economic and Monetary Union"⁷. Similar wording can be found in the Opinion⁸ of the European Economic and Social Committee (EESC) on the above-mentioned reflection paper: "EMU is not an end in itself. It is a means to optimise the possibilities of achieving: sustainable growth, good jobs, economic and social upward convergence; stability and prosperity for all Member States by operating together; economic responsibility which goes hand in hand with solidarity; and risk-reduction which goes hand in hand with risk-sharing."

The submitted proposals for deepening the EMU must be measured against that benchmark!

As we explain in Part II of the position paper, **two key proposals of the Commission** – the establishment of a European Monetary Fund (EMF) anchored within the EU legal framework and the integration of the substance of the TSCG into the EU's legal framework – can be implemented in accordance with **EU**

law only through amendment of the EU Treaties. However, the incompatibility of those proposals with EU law is only one of our criticisms. The TSCG should, in our opinion, be repealed; the EMF can only be supported under certain conditions.

The Commission is afraid to reform the EU treaties, even though it deemed treaty reform necessary in its comprehensive “Blueprint for a Deep and Genuine Economic and Monetary Union”⁹ of 28 November 2012.

Unlike the Commission, we believe that some of the **groundwork needed for a better Europe** can only be laid **through treaty reform**. That includes, in particular:

- **Strengthening the democratic dimension through further enhancement of the European Parliament’s role** (stronger control rights, extension of the co-decision procedure to all areas of European economic policy) and **ex-ante involvement of the social partners** in the economic governance of the euro area.
- **Enshrinement of well-being-oriented economic policy as a new “magic polygon”:** the Union’s commitment to prosperity is enshrined in Article 3 of the Treaty on European Union and is often portrayed as the pivot of European integration. And yet the economic policy of the EU is extremely one-sided. In order to facilitate balanced economic development and the achievement of EU social and environmental objectives, a “magic polygon” of well-being-oriented economic policy should be established in the scope of the European

Semester. The aim is to establish consensus that economic policy should pursue objectives, such as full employment, a high level of fair distribution of wealth, quality of life and environmental sustainability as balanced as possible, while maintaining economic stability. The guiding principles set out in Article 119(3) TFEU should, inter alia, be supplemented for that purpose.

- **Strengthening of the social dimension through a Social Progress Protocol:** a “Social Progress Protocol” at the EU primary law level is necessary to establish the principles that were promised to working people in Europe, in particular by the Treaty of Lisbon. This includes, for example, prioritising **fundamental social rights, including trade union rights, over market freedoms**, strengthening of the principle of **equal pay and equal working conditions** for equal work carried out at the same place, in particular in the context of effectively combating wage and social dumping and protecting the **autonomy of social partners**. A “Social Progress Protocol” should also **detail** the concept of a **“social market economy”** set out in primary law by **clarifying** that it includes workers’ rights at a high level of protection and excludes competition that is detrimental to wages and labour standards. A **“non-regression clause”**, according to which EU action should not lead to a step backwards for the protection of workers under national employment law, should also be part of that protocol.
- The restrictive fiscal rules must be loosened so that public budgets can be orientated in a more anti-

cyclical manner and public investment in research, development, education as well as the social and ecological infrastructure, which creates the potential for intelligent growth, is not incorporated into the calculation of the structural deficit or the deficit in relation to the GDP (“**Golden Rule for Public Investment**”)¹⁰. The Golden Rule could be implemented by means of a “Protocol for Social and Ecological Investments for the Future”. There are already some indications of the Golden Rule for Public Investment at the European level. The EESC¹¹ has also addressed that idea in several of its recent opinions.

Positive deepening measures can also be taken by applying the **simplified revision procedure pursuant to Article 48(7) TEU**.

- Here we welcome Jean-Claude Juncker’s proposal for qualified majority voting on tax policy – by using so-called “passerelle clauses” in the current Treaties – as a positive step towards more democracy. That clause should also be used in the social field in particular. It is well known that, in response to the Treaty of Lisbon, the United Kingdom enacted a national law prohibiting government from supporting that clause at the EU level. Brexit therefore increases the chances of a transition to qualified majority voting in those policy areas, resulting in more efficient decision-making structures to strengthen **social Europe by enhancing minimum social standards and by taking action against social and fiscal dumping**.

In addition, positive deepening measures could also be implemented **quickly through measures that do not require treaty reform**, including above all:

- **strengthening of social partners** at the EU and national level as an essential condition for sustainable solutions in key policy areas, and in particular for wage policies. In the sense of productivity-oriented wage policy, it is necessary to put an end to the increasing under-utilisation of the scope for wage development that arises from medium-term macroeconomic productivity growth and the ECB’s inflation target. In the scope of an EU-wide coordination by the social partners, it is also necessary to take steps to ensure that minimum wage levels at the individual Member State level are universally applicable in all the Member States, and that they reach a level that ensures an appropriate standard of living (as a priority over the development of universally applicable collective agreement systems).
- **symmetrical reduction of macro-economic imbalances** through the introduction of an “Insufficient Fiscal Stimulus Procedure” that obliges countries accumulating large and sustained current account surpluses to increase public investment.

Part II: Commission Roadmap of 6 December 2007 for Deepening Europe's Economic and Monetary Union

On 6 December 2007, the European Commission presented further measures to deepen EMU², namely

- a proposal for the establishment of a European Monetary Fund (EMF), to be adopted by mid-2019,
- a proposal to integrate the substance of the Treaty on Stability, Coordination and Governance into the Union legal framework, also to be adopted by mid-2019,
- a Communication on a European Minister of Economy and Finance, and
- a Communication on new budgetary instruments for a stable euro area.

European Monetary Fund (EMF)

BAK's position: BAK only agrees with a transformation of the European Stability Mechanism (ESM) into a European Monetary Fund (EMF) and its anchoring in the EU's legal framework if 1) it takes place in compliance with EU law, i.e. democratically by way of amendment of the EU Treaties 2) the European Parliament is granted full co-decision rights on the requirements and conditions that are set, and 3) the European Pillar of Social Rights and all the relevant provisions of the Charter of Fundamental Rights are included as a set of criteria for conditions for providing financial stability support to Member States.

Introductory remarks

Undoubtedly, questions of the refinancing conditions and options of public budgets are crucial for crisis management in a monetary union. Ahead of establishment of the EMF, it is therefore of particular importance to first recall what can drive countries into severe financial difficulties, rendering them reliant on external financial support. Recital 1 of the proposed Regulation makes reference to the **2007 economic and financial crisis**. While it is right to make mention of the crisis, its **causes** should not be ignored, including the weak regulation of financial markets, the drastically unequal distribution of wealth and the imbalances between Member States. In those particular areas, BAK still sees **significant shortcomings**, which need to be rectified in order to ensure Europe's crisis resilience.

- First, the financial markets have not been restructured in the wake of the crisis in a way that would provide reassurance that the financial sector is financially sustainable today. For example, an ambitious structural reform of the banking system and the sustainable regulation of shadow banking are still needed. The intention, for example, of reviving controversial financial instruments through a Capital Markets Union is unfortunately the entirely wrong approach.

- Second, distribution is still highly unequal. If a country is in severe financial trouble, the relevant question is not only that of how other Member States can step in, but of which social group - whether in the given country or the Union as a whole - is primarily burdened with financing of the stabilisation. BAK firmly rejects placing a further burden on workers and advocates financing, for example, from property-related taxes or a financial transaction tax.
- Third, imbalances between the Member States are still considerable.

Remarks on the Commission's proposal

The Commission proposes to transform the European Stability Mechanism (ESM), which was established in 2012 by a treaty under international law, into a European Monetary Fund (EMF) and to anchor it within the EU's legal framework. It has submitted a proposal for a Council Regulation, including an Annex, for that purpose¹³. The EMF would only be used "where it is indispensable to safeguard the financial stability of the euro area or its Member States". As the legal successor to the ESM, the EMF would essentially retain the financial and institutional structures of the ESM. The form of ESM funding, ranging from loans to the purchase of government bonds to recapitalisation measures for banks, would also stay in place. Like the ESM, the EMF would also raise funds through the issue of capital market instruments and through money market transactions.

The EMF differs from the ESM in four problematic respects. First, the EMF would act as a backstop for the Single Resolution Fund, which was created under the Banking Union (see below). Sec-

ond, faster decision-making would be possible in specific urgent situations – a reinforced qualified majority, in which 85% of the votes are required, is proposed for specific decisions, for example on stability support and deployment of the backstop. Third, the proposal foresees more direct involvement of the EMF, alongside the European Commission, in the negotiation and management of financial assistance programmes. Finally, reference is made to the possibility for the EMF to develop new financial instruments (possibly eurobonds).

The draft Regulations of the Commission are very detailed. Below we address three questions that are of primary importance for the assessment of the Commission's proposal: Is the chosen legal basis compatible with European law? How is the European Parliament involved? What conditions are associated with the financial stability support provided for by the EMF?

1) Incompatibility of the Regulation with European law

Since there was no legal basis for the establishment of the ESM under EU law, it was ultimately concluded through a treaty under international law. The result was a construction under international law by which the European Commission could only act by way of "Organleihe" (lending of an administrative organ to another public authority) and the Parliament was unable to exercise or was deprived of co-decision rights outside the framework of the EU Treaties due to that mechanism.

It was not least for that reason that the European Parliament launched an enquiry. The final report of that enquiry states that *"there was no appropriate legal basis available* for setting up the

Troika on the basis of Union primary law, which led to the establishment of intergovernmental mechanisms in the form of the EFSF, and eventually the ESM." The report further notes that "calls for any future solution shall be based on Union primary law", which "might lead to the need for a Treaty change".¹⁴ In other words, the European Parliament clearly took the position in the report that a **future European Monetary Fund needs to be set up by amending the EU Treaties, as there is no relevant legal basis for the European Monetary Fund in primary law.**

The Commission also unequivocally stated in 2012 that the establishment of a European Monetary Fund would entail "transfer of sovereignty" and, hence, "responsibility" (extension of powers) at the European level.¹⁵ It is precisely that transfer of sovereignty that necessitates a treaty amendment, based on the principle of conferral of powers. Moreover, the Commission noted that this transfer would be to such a degree that it would require not only improved accountability but also "strengthened democratic legitimacy".¹⁶

The Commission ignores its former position, although the Regulation's incompatibility with EU law is obvious, as the following analysis shows:

- Since there is no legal basis for establishment of a European Monetary Fund in the EU Treaties, it was decided to set up the ESM under an international treaty. Otherwise it would have been possible to set it up relatively quickly by way of a Regulation at that time.
- It was only because of that arrangement that the question became relevant of whether some Member States can still set up an instrument

that provides for lending and thereby an assumption of liability after establishment of the Economic and Monetary Union and the no-bailout clause provided for therein.

- Since there was no relevant case law of the European Court of Justice (CJEU) at that time, Article 136(3) TFEU was inserted by way of a simplified revision procedure. It states that "The Member States whose currency is the euro may establish a stability mechanism [...] if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality."
- Consequently, that provision only states that Member States are entitled to set up a suitable instrument related to EMU. Precisely that was subsequently confirmed in the Pringle case (C 370/12) by the CJEU.
- Contrary to that and the aforementioned statements by the European Parliament, the Commission's proposal for a Regulation now claims that a legal basis does exist for the establishment of a European Monetary Fund.
- Article 352 TFEU is now being proposed as the framework for the EMF "also for efficiency reasons" (page 3). It is stated in that context that "The European Court of Justice has already considered the possibility that Article 352 could be used to establish a [relevant] Union body".¹⁷
- That is simply wrong. In paragraph 67 of the judgment to which the Commission refers, the CJEU merely states that it is not required to answer the hypothetical question of *whether* Article 352 provides suitable powers, since "the Union has not used its powers under that article".

- The Commission also asserts that “it was already clear then [at the time of the decision-making] that this could also be achieved within the framework of the EU Treaties, as indicated, for instance, in the Commission’s Blueprint for a Deep and Genuine Economic and Monetary Union”. Here the Commission contradicts itself. The Commission states in its blueprint with reference to integration of the ESM into the EU legal framework that this would “imply a higher degree of *transfers of sovereignty*, hence responsibility at the European level. This process should be accompanied by steps towards political integration, to ensure *strengthened democratic legitimacy, accountability and scrutiny*.”¹⁸
- Precisely that transfer of powers cannot be achieved under the framework of Article 352 TFEU. It is true that Article 352 TFEU aims to fill gaps in legislation if “action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers” (Article 352 TFEU). However, that possibility of closing such gaps comes up against its limits exactly at the point where the transfer of sovereignty begins: Article 352 TFEU “as a provision on jurisdiction, serves to close gaps left by the principle of conferral *without extending powers* (no competence-competence); it completes (fills the gaps in) such powers at most.”¹⁹

It follows that the establishment of a European Monetary Fund by means of secondary legislation instead of through amendment of the EU Treaties, as originally envisaged, is incompatible with EU law.

2) Withholding of co-decision rights from the European Parliament

The Commission’s proposal for a Regulation on the establishment of the European Monetary Fund does not provide for any co-decision rights of the European Parliament. Article 5 (under the heading “Accountability”) states only that the EMF shall be accountable to the European Parliament and that its Managing Director may be heard by the relevant committees or can be invited for confidential discussions. The European Parliament may also put questions to the EMF.

Experiences of recent years have shown that the national parliaments of Member States that can no longer refinance themselves on the financial markets are in reality forced to agree to any conditions. It would therefore be of particular importance, in the scope of an Economic and Monetary Union that is committed to respect for democracy, for that to be balanced out by public and parliamentary debate and co-decision rights at the European level. The European Parliament must be involved in the negotiation of financial assistance programmes and have the powers to approve or reject a negotiated Memorandum of Understanding setting out conditions for financial support.

3) Policy conditions for providing financial stability support

As part of the crisis policy, a policy of cuts in social and public infrastructure and internal devaluation has been implemented in the programme countries under the various bailout schemes (EFSM, EFSF and ESM).

The conditions set out in the relevant Memoranda of Understanding (MoU)

included some tough cuts in the health sector, leading, among other things, to a sharp increase in the number of illnesses.²⁰ The conditions also provided for the deregulation of labour law and the decentralisation of collective bargaining. All that took place not only largely without democratic control, but in some cases in a manner in breach of fundamental rights.²¹

That arrangement of conditionality was determined by the fact that the programmes were drawn up exclusively by officers of executive bodies (IMF, European Commission and ECB) and were not subject to democratic control by the European Parliament. As a result, there was never a broader public debate about how to shape crisis policy, enabling policy to be set by those executive bodies in the interests of a few.

That would change little in the future. The proposed Regulation states that a social impact assessment should be part of the negotiations on the MoU. That may sound promising, but Article 5 states that “upon request, the Managing Director shall hold confidential oral discussions behind closed doors with the Chair and Vice-Chairs of the competent committees of the European Parliament concerning its tasks, **including the social impact assessment [...]**”, demonstrating once again, that a democratic and transparent debate on social consequences is not desired.

Article 12 of the proposed EMF Regulation (Annex) refers to Article 152 TFEU, which defines the recognition and promotion of the role of the social partners, as well as Article 28 of the Charter of Fundamental Rights. The aim is to ensure that the Regulation does not affect the right to collective bargaining and collective action if stability support is

provided. Those additions are far from sufficient for the necessary rethinking of crisis policy, which has involved massive cuts in social and public infrastructure and a reduction in wage levels.

BAK by law representing the interests of about 3.6 million employees and consumers in Austria consistently advocates a Europe of working people and is committed to ensuring that employees in Austria are not the target of misguided neoliberal conditionality in the context of a financial crisis. BAK is therefore calling for the European Parliament to be involved in drafting and adopting the financial assistance programmes through the Memorandum of Understanding and for the European Pillar of Social Rights and for all relevant provisions of the Charter of Fundamental Rights to be enshrined in the Regulation on the establishment of the EMF as a set of criteria for conditions related to lending.

Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG)

BAK's position: BAK rejects the integration of the substance of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG) into the EU's legal framework and calls instead for repeal of the TSCG. In our view, the corresponding proposal of the Commission is incompatible with EU law and the TSCG in itself is economically wrong. Instead of a further tightening of the fiscal policy rules, there is a need for greater room for budgetary manoeuvre, especially during economic slowdowns, for example by introducing a Golden Rule for Public Investment. That rule would be a sustainable way to alleviate the obvious inconsistency between public investment needs and EU fiscal rules.

BAK rejects the proposed integration into the EU legal framework for the reasons set out below:

The proposed integration into the EU legal framework is incompatible with EU law

Like the establishment of a European Monetary Fund, the transfer of the substance of the TSCG into the EU legal framework requires amendment of the EU Treaties. Transfer by way of secondary law is manifestly incompatible with EU law.

The proposed Directive lays down an obligation for Member States to set up “a framework of binding and permanent numerical fiscal rules” (Article 3(1)-(3)). In addition, it obliges Member States to designate independent bodies for monitoring compliance with that set of rules (Article 3(4)-(7)), which, among other things, would be required to be provided with adequate resources. Since those are obligations that have largely been in place since the entry into force of the TSCG, the Republic of Austria has already complied with them.

That does not change the fact that such rules, if they are now to be prescribed by an EU Directive, must also have a legal basis in the EU Treaties. The Commission maintains that the legal basis is Article 126(14)(2) TFEU, without even a single sentence to justify that assertion. Cryptically, it merely states that this is “the only available legal basis in the Treaty”. It should be noted that Article 126(14) refers *solely* to the “Protocol on the excessive deficit procedure annexed to the Treaties”. The second subparagraph of that article states that the Council, acting unanimously after consulting the European Parliament and the European Central Bank shall “adopt the

appropriate provisions which shall then replace the said Protocol”. According to prevailing opinion on European law, that provision also allows a partial replacement of the Protocol and does not stand in the way of future modifications and additions.²² *However*, the “provisions of the Treaty, in particular Article 126, act as a substantive limit to such amendments too.”²³

Article 126 is clearly structured and sets out a clear distribution of tasks. Member States shall avoid excessive public deficits (paragraph 1) and shall submit reports and information to facilitate relevant examination (paragraph 9 *inter alia*). How and by means of what *procedures and institutions* they do that, however, is entirely at their discretion pursuant to Article 126, which can be explained not least by democratic sensitivity to parliamentary budgetary law.

Pursuant to Article 126, the Commission is subject to monitoring, examining and reporting obligations (paragraphs 2, 3 and 5). The Council has the right to address recommendations or sanctions to the Member State and may impose sanctions on the Member State (paragraphs 7 and 11). **However, neither the Commission nor the Council have any powers to oblige Member States to adopt national budgetary rules or establish institutions.**

That limit to their powers, which is clear overall from Article 126 TFEU and the EU Treaties, means that *it is at the discretion of Member States to decide* how to implement and comply with the EU requirements. **The proposed Directive is therefore clearly incompatible with EU law**, as the legal basis cited therein is manifestly unsuitable and does not provide any basis for the measures envisaged.

The Treaty is economically wrong

The TSCG, which came into force on 1 January 2013, provides in particular for restrictive national debt brakes (which should also preferably be set out in the constitution) and an automatically activated correction mechanism if the fiscal rules are violated. Debt brakes are problematic because

- first, in downturns, they lead to economically harmful pro-cyclical budget cuts, resulting in the prolongation and deepening of economic crises, and
- second, they prevent an economy from making the most of its potential for prosperity if key economic policy objectives – such as reducing unemployment, the need for public investment or an increase in disposable income – are secondary to budgetary objectives. However, well-being-oriented policy requires a balanced approach to all economic policy objectives.
- debt brakes also burden future generations by neglecting of public assets and generally lesser future prospects, which arise because of our failure to act now (education, integration, public transport, housing in growing cities, climate change etc.).

Golden Rule for Public Investment instead of the TSCG

Austerity policy in the euro area has already led to a large public investment gap. The existing set of fiscal rules, combined with a lack of European economic compensatory mechanisms, has contributed significantly to that. The European Commission, in particular, seems to be increasingly aware of that issue, as demonstrated by its attempts to break

new ground within the existing restrictive fiscal framework of EMU.

What the euro area desperately needs is a rule that supports public investment.

Public investment in areas such as infrastructure, health, social housing, transport, schools and kindergartens, energy grids, broadband networks and research and development etc. increase productivity and employment, ensure a high quality of life, make locations attractive, and improve the sustainability of public finances over the long term. Last but not least, it is also a key prerequisite for business activities in the private sector.

BAK is therefore calling for the introduction of a **Golden Rule for Public Investment**²⁴ that excludes public net investments from the relevant deficit ratios of the Stability and Growth Pact (SGP). That rule would largely alleviate the obvious inconsistency between investment needs and fiscal rules and should be an essential part of deepening EMU.

European Minister of Economy and Finance

BAK's position: The establishment of a European Minister of Economy and Finance would reinforce the one-sided institutional power structure of economic governance. What is needed is an overall package that rectifies the democratic shortcomings of economic governance and institutional imbalances. That requires extension of the European Parliament's co-decision rights to all areas of European economic policy and the establishment of a European Employment and Social Minister, who should, inter alia, be responsible for implementation and monitoring of the European Pillar of Social Rights.

According to the Commission, the European Minister of Economy and Finance, as a key person for economic, fiscal and finance policy, would strengthen economic policy coordination, support the formulation and implementation of adequate fiscal policies for the euro area as a whole and coordinate relevant EU budgetary instruments. The European Minister of Economy and Finance would also hold the office of Vice-President of the Commission, would preside over the Eurogroup and thus preside over the Board of Governors of the European Monetary Fund and would thus have a very important position within the institutional framework.

Establishment of such an office is worth considering, as it would oblige a key body in the context of economic governance, namely the Eurogroup, to be more transparent. The Eurogroup is an informal body that, in the scope of crisis policy, has become a central hub for the development of bailout programmes. It also plays a key role in monitoring the budgetary policies of the euro area countries. The members of the Eurogroup are accountable as finance ministers of the Member States to their respective national parliaments, but there is **no real accountability of the Eurogroup to the European Parliament**. As a result, former Eurogroup Chief Jeroen Dijsselbloem repeatedly rejected the European Parliament's invitation to a debate on the support programme for Greece. The accountability of a European Minister of Economy and Finance, who is also president of the Eurogroup, would finally bring transparency into the decision-making processes of the Eurogroup.

However, in our view, that office must be established as **part of an overall package that addresses the demo-**

cratic shortcomings of economic governance and institutional imbalances.

That requires the following measures in particular:

- In order to reinforce political oversight over the Commission (accountability), the European Parliament should also have the possibility to adopt a motion of no confidence against the Commission by simple majority instead of the current requirement for a two-thirds majority. It should also be possible to adopt a **motion of no confidence** against individual commissioners.
- The European Minister of Economy and Finance must have the strong counterweight of a **European Employment and Social Minister**²⁵, who should, inter alia, be responsible for implementation and monitoring of the European Pillar of Social Rights. The European Employment and Social Minister would also hold the office of Vice-President of the Commission and participate in meetings of the Eurogroup.
- The **European Parliament** must be given a **key role** in economic governance in the future. All areas of European economic policy (including the individual stages of the European Semester process) should be co-decided by the European Parliament.
- The economic governance of the euro area should also place particular importance on the **ex-ante involvement of social partners**. A form of macroeconomic dialogue for the euro area, as we have repeatedly suggested, and the general strengthening of the social dialogue are therefore needed. Agreements of the social partners at the EU level must be respected by the EU institutions and the Member States.

New budgetary instruments for a stable euro area

BAK assesses the proposed new budgetary instruments as follows:

- *In light of the debate on a Convergence and Competitiveness Instrument and on the basis of the Communication in question, BAK rejects the creation of a new reform delivery tool to support Member States' reform commitments.*
- *Given that the euro area candidate countries already receive the largest share of EU structural funds as a proportion of their GDP, there is no need for an additional convergence facility for Member States on their way to joining the euro*
- *The creation of a common backstop for the Single Resolution Fund is only acceptable if a structural reform of the banking system has first taken place and the costs of the backstop are ultimately borne solely by the banking sector.*
- *In our view, the introduction of a stabilisation function is basically a useful step.*

In its Communication²⁶, the Commission proposes four specific budgetary functions for a stable euro area. However, for the time being, those have only been roughly outlined, with the exception of the backstop in the scope of the Banking Union. In particular, most of the proposals lack concrete figures. Detailed proposals for those functions will be presented by the Commission in May 2018 as part of its proposal for the post-2020 Multiannual Financial Framework.

On the basis of the Communication, BAK's position on the various functions is as follows:

Support for structural reforms

BAK has **grave concerns** about the Commission's proposal to propose a new reform delivery tool for the post-2020 **Multiannual Financial Framework to support Member States' reform commitments**.

The tool would be made available to Member States in the framework of the European Semester that commit "to reforms discussed in dialogue with the Commission and agreed in reform commitments". These reforms would be proposed by the Member States themselves and made binding where possible, for example through a detailed set of measures and the formulation of milestones and reports in the context of the European Semester. In doing so, the Commission would perform a control function, provide support and, above all, assess the basis for financial support through the objectives too.

A more detailed description of what features such reforms that are "worthy of support" should have is lacking. The phrase "the focus should be on those reforms that can contribute most to the resilience of domestic economies and have positive spill-over effects on other Member States" leaves plenty of room for interpretation. Considering the political focus at EU level in the wake of the crisis, it is to be feared that measures aimed at erosion of social security systems or "increased flexibility" in the sphere of employment (such as attacks on established collective bargaining systems) will be considered "worthy of support". If, for example, excessive macroeconomic imbalances are identified as a result of wage levels that are "too high" (compared to those of other Member States), that may result in pressure to make negative adjustments. The

phrase “development of capital markets” also seems to imply that further liberalisation and deregulation steps are intended.

It is to be feared that the proposal is nothing short of a revival of the Commission’s failed attempt to introduce a convergence and competitiveness instrument²⁷ (“competitiveness pacts”). It is obviously still a thorn in the side of Brussels that there are a number of Member States that slip through the Commission’s net because they are neither subject to an excessive deficit procedure, nor are they receiving EU financial support or breaching thresholds in the context of macroeconomic imbalances. While there are country-specific recommendations in the context of the European Semester, these are not yet mandatory. It is precisely that gap which is now to be filled with contractual agreements between the Commission and the Member States, which set out binding structural reforms in areas such as wage development, the labour market, the pension system and efficiency of the public sector. That new step toward deepening of the EMU is to be made “palatable” to the Member States through a financial incentive system, which has not yet been fleshed out.

In light of the debate concerning the competitiveness pacts and on the basis of the Communication in question, BAK firmly rejects this budgetary function. It is unacceptable that the EU budget, which is ultimately overwhelmingly funded by European workers, should be used to support reforms that could lead to a reduction of protection standards for workers. There are numerous studies on the labour market in particular which refute the claim that deregulation would bring more employment and reduce unemployment.

For example, a study published in May 2017 by²⁸ the European Trade Union Institute (ETUI) was unable to find “any empirical evidence” that “deregulation has increased employment or lowered unemployment for certain groups”. On the contrary, reforms were “accompanied by an increase in precarious employment, particularly in countries which have deregulated particularly energetically”. At the same time, contrary to the concept of flexicurity, this has not led to an expansion of safety nets in EU countries, but in their dismantling. In most EU Member States, the length and amount of unemployment benefit was shortened and penalties increased.

Our negative position would only change if the democratic shortcomings of economic governance have been rectified and a new approach to reforms has been established at the EU level in the interest of European workers.

Convergence facility for Member States joining the euro area

While we welcome Jean-Claude Juncker’s statement that the euro should be the single currency of all EU Member States in the long term, we see little need for specific additional euro accession assistance. With the exception of Sweden, which has not had a stable majority for the introduction of the euro for years, and the United Kingdom and Denmark, which are not required to join the euro, the euro area candidate countries are those countries which receive the largest share of the EU Structural Funds as a proportion of their GDP.

Creating conditions for upward convergence through investment in sustainable social and environmental infrastructure, the introduction or development of minimum social standards, effective

combating of tax fraud, tax evasion and tax havens and, in particular, stronger wage growth in Europe would massively increase the attractiveness of the euro area, while accelerating the euro accession of euro area candidate countries. Ultimately, that could also prompt Sweden and Denmark to join the euro area.

Backstop for the Banking Union

The Commission proposes that the ESM or the EMF should serve as the planned common backstop for the Single Resolution Fund (SRF). The combined amount of outstanding commitments for backstopping the SRF would be subject to a ceiling of EUR 60 billion, but that ceiling could be increased.

The SRF is financed by bank contributions. It is to be increased between 2016 and 2023, so that by 2023 it has a volume of one percent of the covered deposits of all credit institutions of the Member States of the Banking Union. In July 2017, the SRF had a volume of EUR 17 billion. Liabilities of the general government (not including contingent liabilities) to stabilise the financial sector in Austria alone reached a peak of EUR 37.3 billion in 2015 and of EUR 575.8 billion in the euro area in 2012.²⁹ As a result, should another systemic banking crisis occur in the euro area in the future, chances are that the problems of banks are passed onto the public sector again, just being transferred from the national level to an EU level.

Overall, that new function is highly problematic. The ESM already includes instruments of indirect and direct capitalisation of financial institutions. If the EMF is now to serve as a backstop for the SRF, it will **shift even further away from being a stabilisation facility for Member States to being a stabilisa-**

tion facility for the financial sector. The Member States and the financial sector strongly depend on each other in terms of financial stability, but that is precisely the kind of vicious circle or systemic weakness that must be alleviated before (!) establishment of the EMF.

A backstop in the scope of the ESM or EMF in case the resources available in the Resolution Fund are insufficient is only acceptable if, finally, a comprehensive structural reform of the banking system takes place first whereby the risk of investment banking is separated from the risk of commercial banking. It must also be ensured that the associated costs are ultimately solely borne by the banking sector.

Stabilisation function

BAK considers the introduction of a stabilisation function basically useful. Among the options proposed by the Commission, a “European Investment Protection Scheme” and the “Rainy Day Fund” are worth discussing. Like the Commission, we would prefer the former. We reject the idea outlined by the Commission of introducing a European Unemployment Reinsurance Scheme because that would hardly have any stabilising effects.³⁰ Moreover, there is a risk these could lead to comprehensive harmonisation and Europeanisation of the hitherto national social systems. We reject that approach.

Furthermore, in our view, it would be counter-productive to make access to the stabilisation function conditional upon compliance with certain criteria. According to the Commission’s proposal, only those Member States should be eligible for access “that comply with the EU surveillance framework during the period preceding the large asym-

metric shock". This contradicts the basic idea of establishing a mechanism to cushion severe macroeconomic shocks in a euro area country. First and foremost, it should be about quickly making EU funds available for investments. At most, as also envisaged in the Five Presidents' Report, it would be conceivable to identify a pool of investment projects in advance, which should be given priority in the event of a macroeconomic shock.

However, clear conditions are needed as to the point at which the stabilisation function will be activated automatically. The Commission advocates pre-defined parameters, for example based on "a large temporary negative deviation from their unemployment or investment trend", which we expressly welcome.

Footnotes

¹ <http://www.faz.net/aktuell/wirtschaft/strategiepapier-zur-waehrungsunion-van-rompuy-stellt-plaene-fuer-die-neue-eu-vor-11984207.html>

² https://ec.europa.eu/commission/sites/beta-political/files/5-presidents-report_en.pdf

³ https://ec.europa.eu/commission/white-paper-future-europe/white-paper-future-europe-way-ahead_en

⁴ https://ec.europa.eu/commission/publications/reflection-paper-deepening-economic-and-monetary-union_en

⁵ https://ec.europa.eu/commission/sites/beta-political/files/state-union-2017-brochure_en.pdf

⁶ <https://www.robert-schuman.eu/en/doc/questions-d-europe/qe-445-en.pdf>

⁷ See footnote 4.

⁸ <http://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/deepening-emu-2025>, 19.10.2017

⁹ The Commission's Blueprint for a Deep and Genuine Economic and Monetary Union, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0777:FIN:EN:PDF>

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¹¹ See footnote 8.

¹² https://ec.europa.eu/commission/publications/completing-europes-economic-and-monetary-union-factsheets_en, 6.12.2017

¹³ https://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-827_de, 6.12.2017.

¹⁴ Report of 28 February 2014 on the enquiry on the role and operations of the Troika (ECB, Commission and IMF) with regard to the euro area programme countries, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2014-0149+0+DOC+XML+V0//DE#title1>

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¹⁶ See footnote 14.

¹⁷ See footnote 18 in the explanatory notes to the Regulation.

¹⁸ The Commission's Blueprint for a Deep and Genuine Economic and Monetary Union, <http://eur-lex.europa.eu/Lex-UriServ/LexUriServ.do?uri=COM:2012:0777:FIN:EN:PDF>

¹⁹ Streinz, Art 352 AEUV [Article 352 TFEU], in Streinz (ed.), EUV/AEUV-Kommentar [Commentary on TEU/TFEU] (2012).

²⁰ Alexander Kentikelenis, Marina Karanikolos, Aaron Reeves, Martin McKee, David Stuckler, Greece's health crisis: from austerity to denialism (2014) <http://www.thelancet.com/pdfs/journals/lancet/PIIS0140673613622916.pdf>

²¹ Andreas Fischer-Lescano, Austerity Policy and Human Rights (2013); https://wien.arbeiterkammer.at/service/studien/eu/Austeritaetspolitik_und_Menschenrechte.html

²² Häde, Art 126 AEUV [Article 126 TFEU], in Callies/Ruffert (ed.) Kommentar EUV/AEUV [Commentary on TEU/TFEU] (2011) paragraph 92

²³ Ibid; Kempen, Art 126 AUEV [Article 126 TFEU], in Streinz (ed.) Kommentar EUV/AEUV [Commentary on TEU/TFEU] (2012) paragraph 50

²⁴ See footnote 10.

²⁵ See <https://www.awblog.at/europaesischer-arbeitsminister>, 13.2.2018

²⁶ See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017DC0822>, 6.12.2017

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²⁸ <https://www.etui.org/Publications2/Books/Myths-of-employment-deregulation-how-it-neither-creates-jobs-nor-reduces-labour-market-segmentation>, 2017

²⁹ <http://ec.europa.eu/eurostat/web/government-finance-statistics/excessive-deficit/supplementary-tables-financial-crisis>

³⁰ A&W blog post dated 28 December 2017, Europa sozialer machen: Mindeststandards für die Arbeitslosenversicherung [Making Europe more social: Minimum standards for unemployment insurance], <https://www.awblog.at/europa-sozialer-machen-mindeststandards-fuer-die-arbeitslosenversicherung/>

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