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Universal Periodic Review Written Comment on Management Responsibility and the Respect for Human Rights according to § 1, 17 und 28 AEMR

Vienna, March 21, 2015

The undersigned, being developmental and socio-political organizations we understand ourselves as advocates of the effective protection of Human Rights within the business practices of Austrian enterprises on the international market. We welcome the opportunity to submit this petition in the framework of the UPR process and kindly ask to consider the following observations as well as our assessment of the situation.

The difficulties that occur when trying to implement human rights standards, in particular, within regions of fragile state, have become part of our day-to-day routine. Over again, our work shows the gap between legal standards and business practices in Europe and, then the less than convincing activities in countries of the so-called global South. However, voluntary socio-responsible measures can encourage enterprises to implement Human Rights exceeding the minimum binding standards. The great number of documented violations of Human Rights in and out of court caused by economic interventions outside Europe show that it is high time for a precise positioning and the development of binding instruments.

In 2011, the United Nations via the UN Human Rights Council unanimously accepted the UN guiding principles for Business and Human Rights and thereby, confirmed that the states are

obliged to comply with the Human Rights also when dealing with their economic affairs, that the enterprises must respect these and that those affected by Human Rights violations must be provided access to legal remedies. Nonetheless, Austria is in default in the implementation of the UNGPs, recommended until the end of 2012 (see Action 12, p. 14, CSR Strategy (COM(2011) 681 Final): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:en:PDF>).

In June 2014, the UN Human Rights Council adopted a majority resolution on the establishment of a panel with the mandate to prepare an international and legally binding instrument for transnational enterprises.

In the final remarks on Austria of November 29, 2013 the UN Committee for economic, social and cultural rights stated its concern over the lack of control of Austrian enterprises, engaged in business activities abroad. It requests Austria to grant full respect of all economic, social and cultural rights and proper protection of the representatives of these rights within the framework of entrepreneurial activities. This should also include appropriate laws and legal restrictions as well as the issuance of control, investigative and liability mechanisms that determine the codes of conduct for enterprises and the possibility of their execution. The evaluation of the legal status quo of Human Rights violations by Austrian enterprises in countries of the global South (and North) (see Human Rights. Economy – Legal Opinions on the Protection of Human Rights in the Connection with Foreign Activities of Austrian Enterprises: http://www.netzwerksozialeverantwortung.at/media/Studie_Menschen_Rechte_Wirtschaft_Web.pdf) by the signing organisations has shown that typical cases of violations of Human Rights by Austrian enterprises abroad are, unfortunately, neither sufficiently regulated nor sanctioned. Insofar, we recommend to thoroughly inform about the possibilities to protect Human Rights by way of legal measures and reforms, by

- giving priority to Human Rights over all other rights (especially, over commercial law and investment law)
- providing accountability mechanisms and legal remedies in order to enforce the execution of (extra)territorial obligations of states (e.g. monitoring, claims, reporting)
- introducing clear duty of observance of Human Rights by enterprises into criminal law and private law (with the legislator clearly stating that e.g. in private law the duty of care according to §§ 1299 ABGB (Austrian Civil Code) and 347 UGB (Austrian Commercial Code) also implies the respect of Human Rights);
- evaluating the Austrian constitutional, civil and criminal law with regard to the prevalence of Human Rights;
- defining and introducing clear duty of care for Human Rights into criminal and civil law;
- participating in the work group on the development of a binding Human Rights instrument for the regulation of transnational activities at UN level and by supporting the adoption of an internationally suitable instrument
- making any state subsidy, in particular, an export subsidy, a development or export credit as well as an ADA economic partnership conditional on the strict observance of Human Rights a. o. by the presentation of a Human Rights consequence estimation and thereby transparent.

We thank you for the opportunity to deliver our opinion and hope for our recommendations to be taken into consideration.

Yours sincerely,



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