

Open Society Justice Initiative and Telekom Austria AG

Final Statement by the
Austrian National Contact Point for Responsible Business Conduct

As noted in the Procedural Guidance to the OECD Guidelines for Multinational Enterprises, following conclusion of a specific instance and after consultation with the parties involved, the NCP will conclude this procedure with a Final Statement. This statement describes the issues raised, the procedures initiated by the NCP to assist the parties and when the agreement was reached. Information on the outcomes of the good offices has not been included upon agreement of both parties. As specific instances are not legal cases and NCPs are not judicial bodies, NCPs cannot directly order compensation nor compel parties to participate in a conciliation or mediation process.

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OECD Guidelines for Multinational Enterprises on Responsible Business Conduct

The OECD Guidelines for Multinational Enterprises are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards. The Guidelines are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting.

National Contact Points

Adhering countries set up National Contact Points to further the effectiveness of the Guidelines by undertaking promotional activities, handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances. National Contact Points operate in accordance with the Procedural Guidance of the OECD Guidelines, including its core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence.

The National Contact Points contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines.¹ For this purpose, the National Contact Point makes an initial assessment of whether the issues raised merit further examination and if so, offers good offices to the parties involved.²

Overview of the submission and the enterprise's response

On 16 March 2022, the Open Society Justice Initiative (OSJI, hereafter “the complainant”) filed a complaint to the Austrian National Contact Point (NCP), alleging breaches of the OECD Guidelines by Telekom Austria AG (hereafter “the company”) and its subsidiary A1 Belarus. The complainant alleges that Telekom Austria AG through its 100% subsidiary A1 Belarus was involved in a series of politically motivated mobile internet shutdowns in Belarus during 9 August 2020 and 29 November 2020.

¹ See OECD (2011), OECD-Guidelines, Procedural Guidance Lit C.

² See OECD (2011), OECD-Guidelines, Procedural Guidance Lit C.

The complainant states that the internet shutdowns were ordered by the Belarusian government in 2020 and were meant to restrict fundamental rights and freedoms, including the rights to free speech, freedom of assembly, political participation and therefore in violation of international human rights.

The complainant alleges that following the news according to which the results of the 9 August 2020 presidential election in Belarus might have been fraudulent, the Belarusian authorities have deliberately cut access to the internet in the country. The complainant alleges that the internet shutdown was in part facilitated by A1 Belarus due to its control over its own 2G and 3G network. The complainant further states that the mobile internet disruptions have continued until the end of 2020 and have coincided with planned protest action on Sunday.

The complainant states that internet shutdowns are used to “silence dissenting or oppositional voices, control information and curb freedom of expression, for example in critical political periods such as protests or elections”. It further states that any type of internet disruption would violate the freedoms of expression and information. The complainant continues that during the internet outages, “journalists, human rights defenders, protesters, and citizen-journalists were limited in their capacity to internationally share the excessive use of force that was being deployed in response to the protests”. It further states that in Belarus the “shutdowns appear to have been used as a tool to actively disrupt free protest activities”.

The complainant alleges that Telekom Austria’s activities in Belarus

- did not respect internationally recognised human rights (Chapter II.A.2 and IV.1 of the OECD Guidelines), e.g. the right to freedom of expression, freedom of assembly and association, economic rights, including the right to work/livelihood; right to health; equality;
- conducted inadequate due diligence through not considering the human rights situation in Belarus and the ways in which their business in the country might contribute to further abuses (Chapter II.A.10, IV.5);
- failed to avoid contributing to adverse impacts and to prevent or mitigate them (Chapter II.A.11, IV.2);
- failed to effectively engage with relevant stakeholders (Chapter II.A.14), e.g. by not providing meaningful opportunities for stakeholders’ views to be taken into consideration;
- failed to remediate adverse impacts (Chapter IV.6);
- were improperly involved in local political activities (Chapter II.A.15);
- have insufficient disclosure policies (Chapter III.2.f, III.3.b, III.3.c);
- failed to promote internet freedom (Chapter II.B.1).

The complainant states that it hopes that the “complaint would lead to an exchange with the company that can bring Telekom Austria’s conduct into line with the OECD Guidelines, remediate harms done, and improve company policy as it relates to the respect for human rights and the prevention, mitigation, and remediation of internet shutdowns and their adverse impacts.”

The company transmitted a statement of response on 12 May 2022. The company underlines its commitment to respect and foster human rights, which is laid down in the A1 Group Code of Conduct. The company states that it is currently developing a Human Rights Policy, which will not solely concentrate on its employees’ human rights but also on society and the whole supply chain. It will reference the UN Global Compact, the ILO Declaration on Fundamental Principles and Rights at work, the UN Universal Declaration of Human Rights and the International Bill of Human rights. The company notified the Austrian NCP of the publication of a group-wide Human Rights Policy and provided a link under which the most recent version is published.³

The company states that it operates in Belarus through the unitary enterprise A1 Belarus, which is a 100% subsidiary of Telekom Austria AG since 1999 and serves more than 4.9 million people. It further states that the exclusive interconnection with internet providers outside of Belarus is held by a state-owned provider. International internet access is only possible through fully state-controlled operators.

The company states that between August 9 and August 11, 2020, the access to the global internet was interrupted and according to the state-owned provider, this was due to massive DDoS attacks and the Belarusian Chamber of Commerce confirmed these outages as force majeure. The company further states that it is not in the position to confirm such DDoS attacks and can only refer to the information of the state-owned provider and the certificate of the Belarusian Chamber of Commerce.

The company states that between August 23 and November 29, 2020, A1 Belarus was ordered by state authorities to reduce the speed of access to the internet for customers of A1 Belarus using mobile phones in certain areas of Minsk. According to the company, such orders must have been fulfilled within minutes and non-compliance would have had severe consequences. The company states that during these times, internet via Wi-Fi and fix net internet access, phone calls, SMS, were possible.

With regards to the alleged violations of the OECD Guidelines, the company states that, wherever possible, it upholds human rights and in cases where national legislation does not allow this, it takes all steps to mitigate negative effects on human rights.

³ See <https://a1.group/esg/downloads/>

The company further says that it is aware of the political circumstances in Belarus and that A1 Belarus however must comply with the regulatory framework of Belarus. The company refers to the government orders to mobile network operators to curb data traffic and states that A1 Belarus was the first provider in Belarus to have declared publicly and transparently the restrictions on internet access. The company further states that A1 Belarus has financially compensated its customers voluntarily for the loss of internet in 2020 in cash and/or data packages. The company further states that, having to obey local legal and regulatory requirements, A1 Belarus tried to comply with international human rights principles to the greatest extent possible. Referring to the OECD Guidelines the company states that where domestic law and regulations conflict with human rights, it seeks ways to honour them to the fullest extent, which does not place them in violation with domestic law.

The company states that it monitors possible human rights risks throughout the entire Group through a steering committee consisting of the A1 Group Management Board, the national Management Boards, and the Public Affairs Officers of A1 and the companies in the respective country. The steering committee convenes to assess the national situation in order to evaluate the situation from the perspective of employees, customers, and civil society and make corresponding decisions on business policy. The company notes that in some countries, national laws can make it difficult to ensure that human rights are absolutely respected.

The company further states that human rights complaints can be submitted throughout the group on the compliance whistleblowing platform "tell.me". The company states that it was and is in contact with various NGOs in the human rights and data security branch and that it was always reachable for any NGO inquiries.

The company further states that with regards to the allegedly improper involvement in local political activities, the compliance with the order of the authorised state bodies could not be regarded as "involvement" as non-compliance with these orders would have resulted in severe negative consequences not only for A1 Belarus as a company but also for its employees and customers.

With regards to its allegedly insufficient disclosure policies, it states that all reports are in line with relevant reporting standards and further refers to its non-financial reporting for 2021.

The company states that it supports and promotes unhindered access to the internet, supporting relevant initiatives as a Member of ETNO and GSMA.

The company concludes that it appreciates the active and critical role of NGOs take in order to protect human rights across the world. It renews its commitment to fostering human rights to greatest extend possible and is fully committed to the OECD Guidelines. It believes that some allegations made by the complainant were based on incomplete or incorrect information

regarding the situation. The company states that it did not support the internet outages, which took place between August and November 2020. According to the company, the internet outages were ordered by the state and A1 Belarus was required by national law to implement them.

Initial Assessment by the Austrian NCP

The Austrian NCP released an initial assessment accepting the specific instance for further examination on August 2nd 2023. The initial assessment is available under the following link: https://www.bmaw.gv.at/dam/jcr:90714528-9f67-42ab-896e-3891b3112e2f/Beilage_1_Austrian_NCP_Initial_Assessment_Open_Society_Justice_Initiative_and_Telekom_Austria_AG_bf.pdf.

The proceedings of the Austrian NCP

Date	Action that occurred
16.03.2022	Submission of OSJI was received
17.03.2022	NCP confirmed the receipt of the submission and notified the Telekom Austria AG about the submission
08.04.2022	NCP asked OSJI to provide additional clarifications on the submission, which were sent to the NCP on 11.04.2022
11.05.2022	Meeting (Video Call) with OSJI to explain NCP process
12.05.2022	Telekom Austria AG responded to the submission
21.06.2022	Meeting with Telekom Austria AG to explain the NCP process
12.09.2022	Meeting (Video Call) with OSJI to give an update on the proceeding
08.11.2022	Phone call with Telekom Austria AG to give an update on the proceeding
28.02.2023	Meeting (Video Call) with OSJI to give an update on the proceeding
17.03.2023	Phone call with Telekom Austria AG to give an update on the proceeding
28.03.2023	Initial Assessment was shared with the parties for comments
02.08.2023	Initial Assessment was published
16.10.2023	First Meeting (Video Call) between the parties
26.02.2024	Second Meeting (in person) between the parties
21.05.2024	Third Meeting (in person) between the parties

The indicative timelines were not met due to the challenging facts of the case and the difficult situation on the grounds, which also happens to be a non-adhering country.

Outcome of the good offices

During the good offices period, three meetings were organised:

In the first meeting, which was held online, the parties discussed the terms of reference for the good offices. The terms of reference were finalised in writing and signed by the parties and the NCP during the first in person meeting in Vienna.

The second meeting was held in Vienna. The parties reached a common understanding of the matter and were able to reach a basic outline of an agreement.

During the third meeting in Vienna, the parties finalised a memorandum of understanding. The content of the memorandum of understanding, which seeks to further the implementation of the OECD Guidelines, is kept confidential as agreed by the parties.

The good offices were forward-looking and the outcome is a good example of how the OECD Guidelines may be applied in situations where governments order corporations to limit or violate rights protected under the Guidelines, especially in the telecommunication sector.

On the one hand, the guidelines clearly state in chapter IV para 1 that companies should respect internationally recognised human rights. On the other hand, the Guidelines are not meant to substitute or even override national law and regulation or to put companies in situations where it faces conflicting requirements (Chapter I para 2). In such cases, the guidelines state that companies should seek ways to honour the principles and standards of the guidelines to the fullest extent, which does not place them in violation of domestic law. The implementation of these provisions can be challenging. However, the platform NCPs offer through their specific instance mechanisms has proven to be helpful for such implementation.

The NCP thanks the parties for their participation in this process and welcomes that a memorandum of understanding has been reached. All meetings between the parties were held in a constructive and trustworthy atmosphere. Both parties were always cooperative, respectful and interested in solving the issues raised.

Follow-Up

As agreed with the parties, the NCP will follow-up on this specific instance in eighteen months after the publication of this statement. With this Final Statement, the NCP closes the specific instance.

