



May 2010
AK Position Paper

Demands of AK with regard to investments and investment protection in general

About us

The Federal Chamber of Labour is by law representing the interests of about 3.2 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

Herbert Tumpel
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). 560.000 – amongst others unemployed, persons on maternity (paternity) leave, community- and military service – of the 3.2 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Werner Muhm
Director

Executive Summary

Based on the Treaty of Lisbon, foreign direct investments are now also coming under Common Commercial Policy. This means that the EU develops common principles for European direct investments in third countries. AK therefore calls for addressing aspects to support sustainable development of foreign direct investments in the substance of Free Trade Agreements (FTA) and to transfer corporate accountability for the compliance with universal fundamental rights (human rights as well as core labour standards) to foreign investors.

The AK generally requests that the following socio-political core elements apply to European Investment Agreements and to foreign direct investments respectively.

The AK generally requests that the following socio-political core elements apply to European Investment Agreements and to foreign direct investments respectively. Thereby it also supports the contents of the Position Paper of the European Trade Union Confederation (ETUC) submitted by Trade Commissioner Karel de Gucht on 7th May 2010:

- There has to be a strong and clear obligation by both contracting parties of FTA with regard to foreign investors to recognise core labour standards and to effectively implement the IAO concept "decent work".
- Apart from that, there must be a strong and clear obligation by both contracting parties of FTA to effectively implement human rights within the meaning of "duty to protect". In connection with the state due diligence to comply with human rights, the contracting parties in their capacity as sending country of foreign direct investments have to urge multinational companies to always observe their due diligence and to comply with human rights at all times and everywhere in due form ("duty to respect").
- The OECD Guidelines for Multinational Enterprises have to be integrated into FTAs as a reference document for corporate responsibility.
- The contracting parties have to commit themselves not to undermine social and environmental standards in order to attract foreign investments. Such a commitment must apply to the entire national territory to avoid special economic zones.
- A comprehensive review and consultation process must guarantee a broad discourse on foreign direct investments and their economic effects: regular sustainability reports must analyse the effects of foreign direct investments in the host country and discuss these in a transparent manner against the

background of economic developments for the interested public. The social partners must also be included in these consultations. The social partners as well as non-governmental organisations (NGO) shall also be given access to a complaints procedure to be established to enable them to lodge complaints with regard to social or environmental problems.

- The investor-state dispute settling proceedings in the Bilateral Investment Treaties (BITs) have to be replaced by state-state dispute settling mechanisms within the scope of the WTO.
- A comprehensive “right to regulate” clause must clearly give priority to measures and regulations in the public interest over economic interests, in particular of foreign direct investments.

The AK position in detail

AK requests resp. additions to the “Sustainability Chapter”:

To begin with, the provisions of the Sustainability Chapter must clearly state the fact that these apply to all trade and investment relations, i.e. goods and services trade as well as foreign direct investment activities, as far as they are included in the agreement.

Explanation:

Only **sustainable investments** should benefit from market access rights. In order to guarantee this, the **Sustainability Chapter** (“Sustainable Development”), which regulates fundamental labour and environmental concerns in Free Trade Agreements, has to **fully apply also to European direct investments** in third states - in this case in Canada. All provisions that relate trade to sustainable development, must also apply to foreign direct investments!

AK requests within the meaning of **policy coherence** that the Sustainability Chapter **refers to the OECD Guidelines for Multinational Enterprises**:

An additional Article should read as follows: “Each Party should encourage enterprises operating within its territory or subject to its jurisdictions to incorporate internationally recognized standards of corporate responsibility

to respect laws and standards such as the OECD Guidelines for Multinational Enterprises and the ILO Declaration in their practices and international policies. The Parties remind those enterprises of the importance of incorporating such standards in their practices and international policies.”

Explanation:

The OECD Guidelines for Multinational Enterprises are a codex of good conduct for enterprises that are active at a multinational level, which also includes transnational trade in connection with value added chains. The EU Member States (and Canada) are OECD members that are committed to support and promote Guidelines. The OECD Guidelines go beyond minimum standards such as the ILO Core labour standards in Chapter “Labour relations”, address important labour-law issues, such as social dialogue, collective bargaining agreements, continuing training measures and measures in connection with restructurings. Apart from that, global issues such as human rights and the fight against corruption have also been incorporated. Out-of-court complaints procedures exist with National Contact Points.

In order to support and promote corporate responsibility, the contracting parties of FTAs have to refer to the OECD Guidelines for Multinational

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Enterprises, which they adopted, as **international standard**.

Apart from that, the G8 2007 has committed itself to promote internationally recognized standards: "We commit ourselves to promote actively internationally agreed corporate social responsibility and labour standards, such as the OECD Guidelines for Multinational Enterprises and the ILO Declaration), high environmental standards and better governance through the OECD Guidelines National Contact Points." (Paragraph 24 of G8 Summit Declaration Heiligendamm, Germany, 7th June 2007).

Investment protection

AK welcomes a unification of BITs at European level, as this process may lead to a new generation of Investment Protection Agreements for EU Members. The increasing number of investment arbitration proceedings as well as the arbitration awards of the tribunals clearly demonstrate that the bilateral Investment Protection Agreements massively restricts national sovereignty – not only for developing countries. There is a great need for action to generally exclude economic measures (e.g. social and environmental policy) from the area of application of BITs. Apart from that, the investor-state dispute settling mechanism should be scrutinized as a matter of principle.

What is needed, is a comprehensive discussion, which includes all stakeholders, on a European Investment Protection Agreement with the target

to prepare a balanced negotiation text at high levels, which does not in any way jeopardize a further development of central politics such as social security, labour relations and environment. The basic criticism of BITs – as again recently voiced by the Special Representative of the UN Secretary-General on business & human rights John Ruggie¹ (9. April 2010) – must be fully considered and initiate broad consultation. AK reserves the right to submit a separate Position Paper.

¹ Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, 9 April 2010 (A/HRC/14/27) Paragraph 20 and 21: Paragraph 20, 21: "There is a saying that the first thing to do when you are stuck in a deep hole is to stop digging. Yet countries unwittingly get stuck in metaphorical holes that may constrain their ability to adopt legitimate policy reforms, including for human rights. The prime examples the Special Representative has studied in depth, because their effects can be so far-reaching, are bilateral investment treaties (BITs)...". "A policy review examined why the Government had agreed to such BIT provisions in the first place. It explains that, among other reasons, the Executive had not been fully apprised of all the possible consequences of BITs."

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