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AK Position Paper

Statement on the continuation of negotiations with Columbia on an Association Agreement and on the state of negotiation concerning sustainable development (DS 1001/10)

## 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

The AK demands the suspension of the negotiations and a comprehensive review of the human rights situation.

The European Commission (EC) has continued the negotiations on an Association Agreement with Peru and Columbia – in spite of the withdrawal of Bolivia and Ecuador. This contradicts the original intention, to conclude an agreement only with the entire Andean Community and puts the regional integration process at risk. Especially in Columbia the situation of human rights – in particular those concerning fundamental labour and trade union rights – continues to be extremely problematic. In our view, the conclusion of an agreement would not contribute to improving the situation, but legitimise the current situation of fundamental rights and their systematic disregard by the government. The AK therefore demands the suspension of the negotiations and a comprehensive review of the human rights situation. Should the negotiations nevertheless be continued, we regard it as an absolute minimum standard that the present Sustainability Chapter is subjected to a legally binding dispute settlement mechanism. Apart from that, it is essential that labour law and environmental standards, which form part of already concluded free trade agreements (for example with South Korea), will not be undermined. However, this is exactly what is happening in the present agreement text on a Sustainability Chapter: the civil society in general and

the organisations of the labour representation in particular are deprived of even those non-binding instruments to enforce fundamental rights, which they have been granted in other free trade agreements.

# The AK position in detail

## Overview

The EC has been negotiating with countries of the Andean Community (Bolivia, Ecuador, Peru and Columbia) about the conclusion of an Association Agreement since 2007. At the centre of these negotiations is the liberalisation of trade. WTO+ regulations are aimed at in many areas. This concerns measures, which go beyond the standard achieved by the WTO. Not least the offensive demands of the EC – in particular in respect of protecting intellectual property rights, of branch offices and investments, as well as of provisions for public procurement – have caused Bolivia and Ecuador to retreat from the negotiations.

## Unilateral continuation of negotiations as obstacle for regional integration

At the start of the negotiations, the EC announced its intention to conclude the Association Agreement **with the entire Andean Community** to support the regional integration process. Contrary to this announcement, however, the **EC did continue to negotiate** after the withdrawal of Bolivia and Ecuador **at a “bilateral” level with Columbia and Peru**. This has continued to intensify the existing tensions within the Andean Community and threatens to frustrate the regional integration process, which could make an important

contribution to strengthening the sustainable development in the interest of workers. For that reason, the AK has already criticised the unilateral continuation of negotiations.

Apart from that, the AK has repeatedly drawn attention to the serious violations of human in particular employment rights in its statements on the current negotiations with the Andean States.

## The situation of human and trade union in Columbia argues against concluding an Association Agreement

As recent reports and studies confirm, the human rights situation, in particular in Columbia, must be regarded as being dramatic. Although, **as far back as 2004, the United Nations called Columbia the “worst humanitarian disaster of the western hemisphere”**, the situation has been further exacerbated.

With regard to trade union work, **Columbia is the most dangerous country in the world**. The number of **trade unionist murdered** each year **has risen by 25 %**: almost every week, someone has to die because of his or her commitment to employment rights. The number of trade unionists’ families suffering repressions, is also on the increase. **More than 90 % of these**

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**crimes remain unpunished.** This demonstrates the fact that the situation is at least tolerated by the government.

According to the International Labour Organisation (ILO), **legal provisions and measures of the executive infringe against the right to freedom of association for trade unions, the right to collective bargaining and the right to strike.**

We are therefore concerned about reports that it is precisely the negotiations with Columbia, which are to be concluded in the coming months. Whilst the USA, Canada and Norway have put the ratification of respective agreements on hold because of the current human rights situation in Columbia, the EC is forging ahead. **This is in sharp contrast to the principles of the Union,** which are based on human dignity, freedom, democracy, equality, rule of law and the preservation of human rights (Art 2 TEU; Art 6 TEU).

In the view of the AK, an Association Agreement with Columbia would not contribute to improving the situation but legitimise the current situation of human rights and their systematic disregard by the government.

In our view, an **Association Agreement** with Columbia would not contribute to improving the situation but legitimise the **current situation of human rights and their systematic disregard by the government.** We are therefore in favour of the Federal Ministry of Economy, Family and Youth supporting the motion to **suspend the current negotiations with Columbia** and to initiate a comprehensive **investigation** of the human and employment rights situation – as intended within the scope of GSP+.

Should the negotiations be continued, in spite of the negative impact on the regional integration process and contrary to the massive problems in the area of human rights – in particular with regard to Columbia – it seems to be of **particularly urgency** to enshrine **a comprehensive and binding Sustainability Chapter** in the agreements, which goes beyond relevant provisions in free trade agreements.

Therefore, the AK would like to make the following **statement** – in spite of its basic concerns – **on the current state of the negotiations with Columbia and Peru concerning sustainable development** (DS 1001/10).

**Sustainability Chapter must be subject to the dispute settlement mechanism**

It has to be welcomed that the presumptive contracting parties declare that employment rights and environmental standards form a necessary and indispensable part of sustainable trade and development policy and therefore refer to international agreements and contracts in the area of labour and trade union rights, environmental and climate standards and the protection of biodiversity (see Art 1, 3, 4, 6, 7, 8 and 10 of the Sustainability Chapter). Nevertheless, **the present Sustainability Chapter does not provide for any appropriate legal protection** but refers the parties in case of respective violations **exclusively to non-binding proceedings:** if consultation procedures between the parties (Art

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18) remain fruitless, the only remaining option will be to call a committee of experts (Art 19f). This, however, does not have any arbitrary function with binding effect: it can **only** prepare a **final report** on any violations against provisions of the Sustainability Chapters. The AK therefore demands, not least in view of the tense human rights situation in Peru and Columbia, **that the entire Sustainability Chapter will be subjected to the general dispute settlement mechanism of the agreement**. As experiences at national level show, only legally binding provisions, underpinned by appropriate sanctions with appropriate legal protection, can guarantee the compliance with labour and environmental law. The specific human rights situation in Peru, in particular, however, in Columbia, makes the legal obligation and the **legal protection of the Sustainability Chapter associated with it an absolute minimum standard for the conclusion of an agreement by the European Union**.

#### **Statement on the individual provisions of the Sustainability Chapter**

##### **Art 1 Paragraph 3 (Context and Objectives)**

Paragraph 3 of Art 1 of the Sustainability Chapter includes a general restriction of the **obligations** from this Chapter. It says for example that the contracting parties **only** have **to fulfil** their obligations from this Chapter **under consideration of their technical and financial means**. The Sustainability Chapter refers to basic labour

and environmental standards, which have to be widely qualified as human rights. The fulfilment of fundamental human rights, however, should not be made dependent on the availability of financial means. Therefore, Paragraph 3 of Art 1 should be **deleted without replacement**.

##### **Art 3 Paragraph 3.1 (Multilateral Labour Standards and Agreements)**

The current Paragraph 3.1 falls partly back from the relevant text of the free trade agreements with South Korea<sup>1</sup>. Therefore, this paragraph – parallel to the agreement with South Korea – should explicitly refer to the “ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (adopted by the International Labour Conference at its 86th Session in 1998)”.

##### **Art 3 Paragraph 4. (Multilateral Labour Standards and Agreements)**

The text in this paragraph should be adjusted to the current official version of the 2008 ILO Declaration (changed language in respect of comparative advantages in combination with the violation of core labour standards). The present sentences should therefore be changed to read as follows: „[...] the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes”.

<sup>1</sup> The English version of this agreement is available under <http://trade.ec.europa.eu/doclib/press/index.cfm?id=443&serie=273&langId=en>



Environmental and employment rights must be enforced by independent and constitutional courts.

#### **Art 4 Multilateral Environmental Standards and Agreements**

The AK supports the integration of the Rotterdam Convention (Hazardous Chemicals and Pesticides) in Art 4 as proposed by the EC.

#### **Art 5 Paragraph 4 (Trade favouring Sustainable Development)**

The proposed contract text in this paragraph refers to “flexible, voluntary and incentive driven mechanisms” to create coherence between trade and the objectives of Sustainable Development and asks the parties to develop and implement such mechanisms. Such a statement is not only with regard to a country, where the degree of impunity for crimes against humanity is 90 %, totally unsuitable for the implementation of a Sustainability Chapter. **Environmental and employment rights must be enforced by independent and constitutional courts** and effectively implemented by an executive, which complies with fundamental rights. Therefore, the AK rejects the mentioning of “flexible, voluntary and incentive driven mechanisms” in this context.

#### **Art 11. (Upholding levels of Protection)**

In the opinion of the AK, an enshrinement of a **“Non-Lowering Standards Clause”** has to be welcomed. Its purpose is to prevent the lowering of existing national social and environmental standards to attract foreign investments.

The AK prefers the wording proposed by the EC for Paragraph 1:

“A Party shall not fail to effectively enforce its environmental and labour laws, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties.”

The currently considered Paragraph 3 has to be deleted without replacement as it represents a restriction of the **“Non-Lowering Standards Clause”**. Such a provision is also not provided for in the free trade agreement with South Korea. It would therefore represent a step back with regard to the so far achieved quality standards.

#### **Review, Monitoring, Consultation, Dialogue with Civil Society and Report of the “Panel of Experts” (Art 15-21)**

In this paragraph, the present document falls most seriously short of those standards, which have been achieved in free trade agreements with South Korea. What is noticeable is the fact that in particular the integration of civil society (amongst other the trade unions) has been given a very low priority. Apart from that, international organisations – in particular the ILO – have been far less included in questions of sustainability. **This even deprives the trade unions of the option to make use of non-binding mechanisms to draw attention to the human rights situation and the violation against core labour standards.** Particular problematic gaps are addressed hereinafter. This is followed by criticism concerning the wording of individual provisions.

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It appears to be **particularly problematic** that no **so-called “Domestic Advisory Groups** on sustainable development (environment and labour)”, see Art 13 Paragraph 12 Z 4-5 Free trade agreements EU South Korea, **have been set up at all**. According to FTA EU South Korea, the Domestic Advisory Groups (DAG) must consist of civil society organisations. It has to be guaranteed, however, that this includes **a balanced mixture of representatives from the sectors work, environment and economy** (Art 13 Paragraph 12 Z 5 FTA EU South Korea). According to the agreement with South Korea, the respective DAGs meet regularly within the scope of a **Civil Society Forum** to discuss the sustainability of trade relations. They then forward the results of these discussions to the contracting parties (13 Paragraph 13 Z 1-3 FTA EU South Korea). Apart from that, the reports of the DAGs must become subject of the formal consultation mechanism, provided for in the FTA, between the governments of the contracting parties (13 Paragraph 14 Z 1 FTA EU-South Korea). Each contracting party is also able to seek the advice of the DAGs (13 Paragraph 14 Z 4 FTA EU South Korea). **All these procedurally secured integrations of civil society in general and employee representations in particular are missing from the present Sustainability Chapter**. The option of setting up Domestic Advisory Groups has been entirely ignored.

Against the **background of the human rights situation**, which has been massively criticised by **independent**

**civil society organisations** in Peru – but in particular in Columbia –, it is **noticeable and particular problematic** that the present Sustainability Chapters are supposed **to do without** this **instrument of independent analysis**, information and horizontal international networking. Only Art 16 of the present chapter refers rather hazily to the consideration that the parties **should** consult respective representatives.

#### **Art 14 (Review of Sustainability Impacts)**

The **Sustainability Impact Assessment** too and the monitoring process associated with it, the review and the impact assessment of the agreement with the participation of the social partner institutions in a participative process is significantly weaker worded in the present Sustainability Chapter than those in the free trade agreements with South Korea (see Chapter 13, Art 13.10 EU South Korea). The AK therefore proposes the following wording:

“The Parties commit to reviewing, monitoring and assessing the impact of the implementation of this Agreement on sustainable development, including the promotion of decent work, through their respective participative processes and institutions, as well as those set up under this Agreement, for instance through trade-related sustainability impact assessments.”

In our opinion, a **Follow Up-Process**, which takes the knowledge gained from the Sustainability Impact Assess-



Furthermore, a Follow Up-Process, which takes the knowledge gained from the Sustainability Impact Assessment into account, should also be provided.

ment into account, should also be provided if this instrument should make an impact.

#### **Art 18 Paragraph 1 (Government Consultations)**

This paragraph does not contain a **deadline** for replying resp. submitting a statement by the Committee on Trade and Sustainable Development. A two-month deadline from receiving a case until a reaction by the government would be target-aimed.

#### **Art 18 Paragraph 2 (Government Consultations)**

In contrast to the agreement with South Korea (see Art 13 Paragraph 14 Z 2), the parties are not obliged to ensure that their approaches to solve disputes from the Sustainability Chapter, reflect the positions and the activities of ILO and/or other relevant environmental organisations. The parties are only asked to obtain "Information of organisations, including international organisations", which could contribute to a solution. This provision is largely meaningless. The AK therefore demands the inclusion of the following text:

"The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter. The Parties shall ensure that the resolution **reflects the activities of the ILO** or relevant multilateral environmental organisations or bodies so as to promote **greater cooperation and coherence between the work of the Parties and these organisations**. Where relevant, subject to the agreement of the Parties, they can

seek advice of these organisations or bodies."

#### **Art 19 Paragraph 3 (Panel of Experts)**

At least one independent expert of the panel should be a **representative of ILO**. See also ILO Declaration from 2008: [...] that the ILO to effectively assist its Members should "upon request, provide assistance to Members who wish to promote the strategic objectives jointly within the framework of bilateral or multilateral agreements, subject to their compatibility with ILO obligations." (Section II, A, (iv)).

#### **Art 20 Paragraph 3 (Report of the Panel of Experts)**

Here too the text falls short of the standard so far reached in FTAs as it is left to the parties to select "suitable measures" to implement the report. The AK therefore requests to delete this passage and to use solely the following wording

"The Parties shall make their best efforts to accommodate advice or recommendations of the Panel of Experts on the implementation of this Chapter. The implementation of the recommendations of the Panel of Experts shall be monitored by the Committee on Trade and Sustainable Development."



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