

OPEN SOCIETY JUSTICE INITIATIVE

TELEKOM AUSTRIA'S VIOLATIONS OF THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES IN THE CONTEXT OF 2020 BELARUS INTERNET SHUTDOWNS

AUSTRIA OECD NATIONAL CONTACT POINT

16 March 2022

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OVERVIEW

1. This complaint is brought against Telekom Austria in relation to the activities of its fully owned subsidiaries, A1 Group and A1 Belarus, which were involved in a series of politically-motivated mobile internet shutdowns in Belarus, first for a critical four-day span in the immediate aftermath of the disputed August 2020 Belarusian presidential election and then continuing on a regular basis for several months thereafter. The complainant seeks a finding by the National Contact Point (“NCP”) that A1 Telekom Austria’s (“Telekom Austria”) involvement in the shutdowns constituted a violation of their obligations under the OECD Guidelines for Multinational Enterprises and a facilitated conversation on how these violations can be remedied.
2. The internet shutdowns ordered by the Belarusian government in 2020 were meant to restrict fundamental rights and freedoms, including the rights to free speech, freedom of assembly, political participation, and entrench the power of the existing regime. The shutdown orders were in clear violation of international human rights law.
3. Telekom Austria contributed to adverse human rights impacts, as A1 Belarus used its technological means to substantially contribute to the shutdown. Telekom Austria failed to conduct appropriate due diligence to mitigate or remediate the damage done by the shutdowns, and the company failed to communicate clearly with its stakeholders and the public about the government’s orders and its own due diligence. Telekom Austria further failed to meaningfully engage relevant stakeholders on the opportunities available to them to more stringently uphold their obligations under the OECD Guidelines for Multinational Enterprises (“OECD Guidelines” or “the Guidelines”), including those relating to the promotion of internet freedom.
4. The Complainant hopes that this complaint will 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.

FACTUAL BACKGROUND

5. Telekom Austria is the parent company of A1 Belarus. Around the 2020 presidential elections in Belarus, nation-wide internet shutdowns disrupted protests against alleged election fraud and facilitated a further clampdown on human rights in the country. A1 Belarus substantially contributed to this series of shutdowns in using its technology to facilitate mobile internet shutdowns,¹ in violation of international human rights law.
6. The shutdowns had a negative impact not just on journalists, human rights defenders, NGOs, and bloggers, but also on anyone in Belarus who used the internet to take part in the civic and political life.

The Company Structure

7. Telekom Austria is the parent company of the A1 Group, an international telecommunications company comprised of 51 subsidiaries and three investments in 20 countries. Its core revenue-generating activities are centered on seven countries, including Belarus.² Telekom Austria entered the Belarusian

¹ See: A1 Group, *Management Report*, 2020, available at: https://cdn1.a1.group/final/en/media/pdf/Group%20Management%20Report_2021.pdf, p. 14.

² See A1 Group company structure, available at: https://cdn1.a1.group/final/en/media/pdf/A1_Group_Structure.pdf.

market in 2007 with the acquisition of 70% of the shares of telecoms operator Velcom. It acquired the remaining 30% of Velcom's shares in 2010.³ Telekom Austria's operations in Belarus account for almost 9% of the A1 Group's total revenue in 2020.⁴ As set out further below, A1 Belarus directly contributed to the mobile internet shutdown and the A1 Group and Telekom Austria circulated inconsistent, and at times conflicting, information on the timings and reasons for the shutdown.

Elections and Internet Disruptions in Belarus

8. Following the news that the results of the 9 August 2020 presidential election in Belarus might have been fraudulent, evidence shows that authorities deliberately cut access to the internet in the country.⁵ This internet shutdown was in part facilitated by A1 Belarus, which cut off access to mobile internet for its subscribers.⁶ While fixed internet is controlled by Belarusian state agencies,⁷ mobile internet outages could only occur with the participation of A1 Belarus, which owns and controls its 2G and 3G networks in Belarus.⁸ From a technological perspective, the government of Belarus would have struggled to implement mobile internet shutdowns without actions taken by A1 Belarus.
9. Planned and scheduled mobile internet disruptions, including on the A1 Belarus network, continued until the end of the year, usually coinciding with planned protest action on Sundays.⁹ A complete timeline of relevant political events, internet outages, and statements by Telekom Austria and/or its subsidiaries from 9 August to June 2021 is annexed to this complaint (ANNEX 1). A1 Belarus was actively involved in mobile internet disruptions between 9 August and 29 November 2020.
10. A week before the elections, the Belarusian Secretary of State Security Andrei Raukou announced that the acting authorities would consider a complete shutdown of the internet if they determined there to

³A1 Group, *Telekom Austria Group Finalizes Acquisition of Velcom as Agreed*, 4 October 2010, available at:

<https://www.a1.group/en/newsroom/2010-10-4-telekom-austria-group-finalizes-acquisition-of-velcom-as-agreed>.

⁴A1 Group, *Combined Annual Report 2020*, available at: https://cdn1.a1.group/final/en/media/pdf/A1_TAG_Combined-Annual-Report_2020-EN.pdf, p. 3.

⁵See e.g. Reuters, *Internet Blackout in Belarus leaves protestors in the dark*, 11 August 2020, available at:

<https://www.reuters.com/article/us-belarus-election-internet-idUSKCN2571Q4>

⁶See A1 Group, *Management Report, 2020*,

https://cdn1.a1.group/final/en/media/pdf/Group%20Management%20Report_2021.pdf, pp. 13-14.

⁷With regards fixed internet, Belarusian state agencies RUE Beltelecom ('Beltelecom') and the National Traffic Exchange Centre ('NTEC') control Belarus's sole internet exchange point (called BY-IX, through which traffic flows to and from Belarus). Details of the BY-IX are available at PeeringDB: <https://www.peeringdb.com/ix/275> (accessed 12 Sept 2021). A succinct description of internet exchange points can be found at Internet Society, *Explainer: What is an Internet Exchange Point (IXP)?*, 22 June 2021, available at: <https://www.internetsociety.org/resources/doc/2020/explainer-what-is-an-internet-exchange-point-ixp/>.

⁸In response to the internet outages in Belarus, Michael Höfler, director of communications for the A1 Group, was quoted in Wiener Zeitung, an Austrian newspaper, as saying: "A1 controls its own networks, we have a 2G and 3G network that belongs to us [...] 4G and the international data and voice gateway must be purchased by all operators from government agencies". Wiener Zeitung, *A1 Belarus: Daten für den Autokraten*, 13 August 2020, available at:

<https://www.wienerzeitung.at/nachrichten/politik/europa/2071454-A1-Belarus-Daten-fuer-den-Autokraten.html>.

⁹See e.g. Deutsche Welle, *Belarus Protesters Face Crackdown, As Protest Draws Tens of Thousands*, 1 November 2020,

available at: <https://www.dw.com/en/belarus-protesters-face-crackdown-as-protest-draws-tens-of-thousands/a-55467124>; see

also The Monash IP Observatory, *Belarus Internet Shutdowns in 2020: A Data Driven Dissection*, 2 December 2020, available at: <https://medium.com/insights-monash-university-ip-observatory/belarus-internet-shutdowns-in-2020-a-data-driven-dissection-d5d4d659b161>; See A1 Group, *Management Report, 2020*,

https://cdn1.a1.group/final/en/media/pdf/Group%20Management%20Report_2021.pdf, p. 14.

be a threat to national security.¹⁰ International NGOs also warned of the possibility of an internet shutdown in Belarus used to stifle dissent around the elections.¹¹

Internet Shutdowns as a Tool of Repression

11. These disruptions, ordered by the Belarusian government and implemented by A1 Belarus, constitute a so-called “internet shutdown”. According to the digital rights organization Access Now, an internet shutdown or disruption can be defined as an “intentional disruption of internet or electronic communications, rendering them inaccessible or effectively unusable, for a specific population or within a location, often to exert control over the flow of information. They include blocks of social media platforms, and are also referred to as ‘blackouts,’ ‘kill switches’, or ‘network disruptions’”.¹² Governments frequently use internet shutdowns to silence dissenting or oppositional voices, control information and curb freedom of expression, for example in critical political periods such as protests or elections.¹³
12. Due to the government’s tight control over traditional media in Belarus, the online space has also become central to disseminating independent news and information.¹⁴ Belarusian- and Russian-language Facebook, Instagram, and Twitter appear to tilt significantly toward pro-opposition outlets and accounts in Belarus.¹⁵ The fact that the free exchange of information and the space for free expressions are secured only in the online space makes very clear how any type of internet disruption is violating the freedoms of expression and information.
13. Without the ability to call emergency services or loved ones, or to document or access information during internet shutdowns, individuals are put at risk of physical, psychological, and emotional harm. In the case of Belarus, after the first four-day internet blackout, which lasted from 9-12 of August, “thousands of images and videos of unprecedented police brutality popped up on digital screens across the country.”¹⁶
14. During those four days, 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; a time in which torture (including rape),¹⁷ arbitrary arrests and killings during

¹⁰ See: НастоящееВремя, ВластиБеларусизаявили, чтомогутотключить в странеинтернетпри “угрозебезопасности” – кандидат в президенты (“Belarusian Authorities Say They Can Turn Off the Internet in the Country in Case of a “Security Threat” - Presidential Candidate), 30 July 2020, available at: <https://www.currenttime.tv/a/belarus-otkluchit-internet/30756737.html>.

¹² Access Now, *The State of Internet Shutdowns around the World - The 2018 #KeepItOn Report*, June 2019, available at: <https://www.accessnow.org/cms/assets/uploads/2019/07/KeepItOn-2018-Report.pdf>, p. 2.

¹² Access Now, *The State of Internet Shutdowns around the World - The 2018 #KeepItOn Report*, June 2019, available at: <https://www.accessnow.org/cms/assets/uploads/2019/07/KeepItOn-2018-Report.pdf>, p. 2.

¹³ See Access Now, *Shattered Dreams and Lost Opportunities: A Year in the Fight to #KeepItOn*, March 2021, available at: https://www.accessnow.org/cms/assets/uploads/2021/03/KeepItOn-report-on-the-2020-data_Mar-2021_3.pdf, p. 4.

¹⁴ Freedom House, *Freedom of the Net 2021, Belarus country report*, available at: https://freedomhouse.org/country/belarus/freedom-net/2021#footnote1_dtmo8ru.

¹⁵ Daniel Bush, *No Modest Voices: Social Media and the Protests in Belarus*, Stanford, 20 August 2020, available at: <https://fsi.stanford.edu/news/no-modest-voices-social-media-and-protests-belarus>.

¹⁶ International Strategic Action Network for Security, *Belarus Protests: Information Control and Technological Censorship*, NATO Strategic Communications Centre of Excellence, 2021, available at: https://stratcomcoe.org/pdfs/?file=/publications/download/belarus_protests_web_nato_stratcom_coe.pdf?zoom=page-fit, p. 6.

¹⁷ In certain circumstances, rape as a tool of repression or state power is considered torture under international law. See e.g. *Aydin v Turkey*, 57/1996/676/866, Council of Europe: European Court of Human Rights, 25 September 1997, available at: <https://www.refworld.org/cases,ECHR,3ae6b7228.html> (holding that the rape of a 17-year old detainee constitutes a violation of Articles 3 and 16 of the European Convention of Human Rights).

detention happened.¹⁸ It is further notable that the shutdowns appear to have been used as a tool to actively disrupt free protest activities against the presidential incumbent Alexander Lukashenko. For instance, it was reported that on “Friday, 14 August 2020, a localized, hour-long internet disruption was registered in central Minsk, corroborating reports of a cellular outage amid protests at Independence Square. On Monday, 17 August 2020 following a nation-scale internet disruption of approximately 15 minutes was observed, coinciding with a pro-Lukashenko rally where factory workers appeared to drown out the incumbent leader’s speech On the evening of Sunday 23 August 2020, cellular network MTS and A1 fell offline in Minsk as protesters approached the presidential palace.”¹⁹

15. As established by a NATO report, the shutdowns in Belarus were aimed at: “1. [l]imiting coordination and exchange of information among the protesters; 2. [p]reventing journalists from sending footage of the extensive and disproportionate violence; and 3. [p]reventing the protesters from sharing their photo and video materials of violent clashes with law enforcement”²⁰
16. The case of Belarus is not unique. Government-ordered internet shutdowns often take place during public demonstrations and political events. They add to an environment of instability that states often seek to exploit. Once the disruption takes hold, a cover of darkness impedes the flow of information in and out of the targeted country or region, allowing police to intensify repression. The use of internet shutdowns in this manner has become more frequent in recent years. Some examples include Myanmar in 2007,²¹ Iran in 2009, Egypt in 2011,²² Sudan in 2013,²³ and Ethiopia in 2016.²⁴

CRITERIA FOR MAKING AN INITIAL ASSESSMENT

17. The OECD Procedural Guidance in respect of the OECD Guidelines for Multinational Enterprises (“the Guidelines”) provides that, in order to determine whether the issues presented are 1) “bona fide”, in other words real or authentic, and 2) relevant to the implementation of the Guidelines, in other words within the scope of coverage of the Guidelines. the NCP will “[m]ake an initial assessment of whether the issues raised merit further examination and respond to the parties involved.”²⁵ It provides that “[i]n making an initial assessment of whether the issue raised merits

¹⁸ See e.g. Amnesty International, *Belarus: Mounting Evidence of a Campaign of Widespread Torture of Peaceful Protesters*, 13 August 2020, available at: <https://www.amnesty.org/en/latest/news/2020/08/belarus-mountingevidence-of-a-campaign-of-widespread-torture-of-peaceful-protesters/>; Anthonio, Felicia, and Peter Micek, *Belarusian Election Tainted by Internet Shutdown and State-sponsored Violence*, 13 August 2020, available at: <https://www.accessnow.org/belarusian-election-tainted-by-internet-shutdown-and-state-sponsored-violence/>; Human Rights Watch, *Belarus: Unprecedented Crackdown*, 13 January 2021, available at: <https://www.hrw.org/news/2021/01/13/belarus-unprecedented-crackdown>; Melnichuk, Tatsiana, 13 August 2020, *Belarus Elections: Shocked by Violence, People Lose Their Fear*, BBC, available at: <https://www.bbc.com/news/world-europe-53762995>.

¹⁹ NetBlocks, *Internet Disruption Hits Belarus on Election Day*, August 2020, available at: <https://netblocks.org/reports/internet-disruption-hits-belarus-on-election-day-YAE2jKB3>

²⁰ International Strategic Action Network for Security, *Belarus Protests: Information Control and Technological Censorship*, NATO Strategic Communications Centre of Excellence, 2021, available at: https://stratcomcoe.org/pdfs/?file=/publications/download/belarus_protests_web_nato_stratcom_coe.pdf?zoom=page-fit, p. 7.

²¹ See, for example: The Guardian, *Internet Access Cut Off in Burma*, 28 September 2007, available at: <https://www.theguardian.com/world/2007/sep/28/burma.marktran>.

²² Matt Richtel, *Egypt Cuts Off Most Internet and Cell Service*, The New York Times, 28 January 2011, available at: <https://www.nytimes.com/2011/01/29/technology/internet/29cutoff.html>.

²³ Reuters, *At Least 29 Killed in Central Sudan's Worst Unrest for Years*, 26 September 2013, available at <http://www.reuters.com/article/2013/09/26/sudan-protest-idUSL5N0HM2SN20130926>.

²⁴ Access Now, *Bleeding Lives and Money: The Cost of Internet Shutdowns from Turkey to Bahrain*, 27 October 2016, available at: <https://www.accessnow.org/bleeding-lives-money-cost-internet-shutdowns-turkey-bahrain>.

²⁵ See: OECD, *Guide for National Contact Points on the Initial Assessment of Specific Instances*, 2019, available at: <https://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-the-Initial-Assessment-of-Specific-Instances.pdf>, p. 5.

further examination, the NCP will need to determine whether the issue is bona fide and relevant to the implementation of the Guidelines. In this context the NCP will take into account:

- the identity of the party concerned and its interest in the matter
- whether the issue is substantiated
- whether there seems to be a link between the enterprises activities and the issue raised in the specific instance
- the relevance of applicable law and procedures including court rulings
- how similar issues have been, or are being, treated in other domestic or international proceedings
- whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.”²⁶

18. The complainant sets out the above issues in turn below, referring to questions on applicable law and similar issues in domestic and international proceedings in a section specifying the OECD Guidelines violations in detail.

The Identity of the Party and its Interest in the Matter

19. The Open Society Justice Initiative (“OSJI”), part of the Open Society Foundations, is a program that pursues strategic litigation, advocacy, and other legal work to strengthen the law’s protection for all. It works with partners in different jurisdictions, documents violations, and offers assistance to combat human rights abuses, drawing on its global legal experience. Part of the organization’s mission is to counter increasing digital authoritarianism and ensure corporate accountability.²⁷

20. OSJI is bringing this complaint in relation to the internet shutdowns in Belarus in furtherance of its mission to advance justice and accountability in this individual case and, more broadly, to strengthen the application of the international human rights framework, specifically in relation to corporate actions in the technology sector, including the effects of internet shutdowns. The OECD Guidelines for Multinational Enterprises are one of the key framework documents outlining the human rights obligations for corporate actors in this space. As such, OSJI heavily relies and draws on the OECD Guidelines and related Guidance in identifying possible risks to fundamental rights and freedoms posed by individual corporate action.

Whether the Issue is Material and Substantiated

21. The Complainant alleges that Telekom Austria’s activities in Belarus breached the OECD Guidelines in the following key respects: (1) lack of respect for internally recognized human rights;²⁸ (2) inadequate due diligence;²⁹ (3) failure to avoid contributing to adverse impacts and to prevent or

²⁶ See: OECD, *Guide for National Contact Points on the Initial Assessment of Specific Instances*, 2019, available at: <https://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-the-Initial-Assessment-of-Specific-Instances.pdf>, p. 5.

²⁷ OSJI has been involved in litigation highlighting the human rights impacts of advanced technology in national digital ID systems (*Nubian Rights Forum et al v the Honourable Attorney General of Kenya et al*); OSJI has also litigated on the exports of harmful chemicals for the production of sarin to Syria (*German and Belgian Chemicals Exports Complaints*), see Open Society Justice Initiative, *Global Human Rights Litigation Report*, 2021, available at: <https://www.justiceinitiative.org/uploads/8cae4f38-4107-4063-831b-0249311eb19b/litigation-global-report-06222021.pdf>

²⁸ OECD, *OECD Guidelines for Multinational Enterprises*, 2011, available at: <http://mneguidelines.oecd.org/guidelines/>, Chapters II.A.2. and IV.1.

²⁹ OECD, *OECD Guidelines for Multinational Enterprises*, Chapters II.A.10 and IV.5.

mitigate them;³⁰ (4) failure to effectively engage with stakeholders;³¹ (5) failure to remediate adverse impacts;³² (6) improper involvement in local political activities;³³ (7) insufficient disclosure policies;³⁴ and (8) failure to promote internet freedom.³⁵

22. These repeated violations of key guideline provisions are substantiated and set out below in paragraphs 38-92.

Whether There Is a Link between the Enterprise’s Activity and the Issue Raised in the Specific Instance

23. As set out above, Telekom Austria is the parent company of A1 Belarus. Precedent under the OECD complaint system clearly establishes that under the Guidelines, a company is responsible for the business conduct of a wholly owned subsidiary.³⁶

24. Telekom Austria, through A1 Belarus, has substantially contributed to the internet shutdown, which in and of itself constitutes a human rights violation and has further created space for other human rights violations to occur (see below paras. 41-48].

25. The 2018 OECD Due Diligence Guidance for Responsible Business Conduct (“OECD Due Diligence Guidance”) indicates that three factors can be used to determine whether a company is involved in a “substantial contribution” to human rights violations: a) the degree to which the activity increased the risk of the adverse impact occurring; b) the degree of foreseeability; c) the degree to which any of the enterprise’s activities may have actually mitigated the adverse impact or the risk of the impact occurring.³⁷ These factors are set out and analyzed here in turn.

1. The degree to which the activity increased the risk of the adverse impact occurring or continuing

26. In setting out due diligence standards, the OECD Guidelines specify that “contributing to an adverse impact should be interpreted as a substantial contribution, meaning an activity that causes, facilitates, or incentivizes another entity to cause an adverse impact.”³⁸ The OECD Due Diligence Guidance further clarifies that a company can contribute to an impact if its activities increase the risk of an impact occurring or continuing.³⁹ This can happen if an action or omission by the company makes it easier for another entity to cause harm.⁴⁰

27. The degree to which the activities by Telekom Austria and its subsidiary increased the risk of the adverse impact, i.e. the internet shutdown itself, as well as the resulting human rights violations, was

³⁰ *Id.*, Chapters II.A.11 and IV.2.

³¹ OECD, *OECD Guidelines for Multinational Enterprises*, Chapter II.A.14.

³² *Id.* Chapter IV.6.

³³ *Id.* Chapter II.A.15.

³⁴ *Id.* Chapters III.2.f, III.3.b and III.3.c

³⁵ *Id.* Chapter II.B.1.

³⁶ See e.g. *Egbema Voice of Freedom et al vs ENI*, 2017 (in which the Italian NCP accepted a complaint against wholly owned subsidiaries of ENI S.P.A), available at: <https://www.oecdwatch.org/complaint/egbema-voice-of-freedom-et-al-vs-eni/>.

³⁷ See OECD, *OECD Due Diligence Guidance for Responsible Business Conduct*, 2018, available at:

<http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>, p. 70.

³⁸ OECD, *OECD Guidelines for Multinational Enterprises*, 2011, Commentary on General Principles, para 14.

³⁹ OECD, *OECD Due Diligence Guidance for Responsible Business Conduct*, 2018, p. 70.

⁴⁰ *Id.*

very high. A1 Belarus controls⁴¹ the mobile internet in the country and used its technology to actively and substantially contribute to the internet shutdowns.

28. In this case, A1 Belarus actively followed government orders, which were unlawful under international human rights law (see paras. 49-54) and technologically facilitated the mobile internet outages in Belarus.⁴²
29. A1 Belarus acknowledged its contribution to the internet shutdowns. On 23 August 2020, A1 Belarus confirmed that it was restricting mobile internet on its 3G network at the request of the Belarusian state.⁴³ Prior to this date, however, A1 Belarus issued a number of conflicting statements misrepresenting and attempting to play down their contribution to the internet shutdown, further muddying the waters around the lawfulness of the Government's original request (see ANNEX 1 for a timeline of events and public statements relevant to A1 Belarus and the A1 Group). After the nationwide outages of both mobile and fixed internet between 9 and 12 August 2020, A1 attributed the outages to "reasons beyond [its] control".⁴⁴ In the same vein, A1 Belarus suggested, in two statements of 9 August 2020, that mobile internet outages were attributable to its "upstream provider".⁴⁵ In their 2020 annual report, the A1 Group acknowledged its involvement in the internet shutdowns in Belarus, explaining that "all operators were ordered to reduce capacity of its mobile network in Minsk for limited time periods ... A1 Belarus complied with the requirements of the governmental authorized bodies".⁴⁶ The changed narrative on the reason behind the internet outages suggests that A1 Belarus and the A1 Group

⁴¹ In response to the internet outages in Belarus, Michael Höfler, director of communications for the A1 Group, was quoted in Wiener Zeitung, an Austrian newspaper, as saying: "A1 controls its own networks, we have a 2G and 3G network that belongs to us [...] 4G and the international data and voice gateway must be purchased by all operators from government agencies". Wiener Zeitung, *A1 Belarus: Daten für den Autokraten*, 13 August 2020, available at: <https://www.wienerzeitung.at/nachrichten/politik/europa/2071454-A1-Belarus-Daten-fuer-den-Autokraten.html>.

⁴² Fixed internet refers to wired and broadband services.

⁴³ "We regret to inform you that, at the request of state authorities, in connection with ensuring national security, the bandwidth of the A1 3G network has been significantly reduced in some districts of Minsk. The fulfilment of this requirement leads to a deterioration in the quality of the data transmission service" (text in original, Russian: "С сожалением сообщаем, что по требованию государственных органов в связи с обеспечением национальной безопасности существенно снижена пропускная способность 3G-сети А1 на территории некоторых районов г. Минска. Исполнение данного требования приводит к ухудшению качества сервиса передачи данных. О восстановлении корректного доступа к услуге будет сообщено дополнительно. Приносим извинения и надеемся на скорое восстановление обслуживания"). See: A1 Belarus press release, 23 August 2020, available at: <https://www.a1.by/ru/company/news/o-rabote-mobilnogo-interneta-3g-v-minske/p/rabota-mobilnogo-interneta-3g>, (accessed 11 September 2021). See also: A1 Belarus Facebook feed, 23 August 2020, available at: <https://www.facebook.com/a1belarus/posts/3147355055319014>; and A1 Belarus Twitter feed, 23 August 2020, available at: <https://twitter.com/a1belarus/status/1297582209797443584>.

⁴⁴ Text in original, Russian: "К сожалению, по независящим от нас причинам наблюдаются сложности с доступом к некоторым сервисам через мобильный и фиксированный интернет. Решение о компенсации из-за недоступности интернет-сервисов будет принято после детального изучения ситуации и оценки времени простоя. Надеемся на скорое восстановление обслуживания!", see A1 Belarus press release, 9 August 2020, available at: <https://www.a1.by/ru/company/news/o-dostupe-k-nekotorym-servisam-cherez-internet/p/o-dostupe-k-nekotorym-servisam-cherez-internet>. See also A1 Belarus Facebook feed, 9 August 2020, available at: <https://www.facebook.com/a1belarus/posts/3106233196097867>; and A1 Belarus Twitter feed, 9 August 2020, available at: <https://twitter.com/a1belarus/status/1292378297490460672>.

⁴⁵ Text in original, Russian: "К сожалению, сегодня по независящим от нас причинам наблюдаются сложности с доступом к некоторым сервисам через мобильный и фиксированный интернет. Корректное предоставление доступа в интернет будет автоматически продолжено после того, как наш вышестоящий провайдер восстановит свой сервис. Надеемся на скорое восстановление обслуживания! See: A1 Belarus Facebook feed, 9 August 2020, available at: <https://www.facebook.com/a1belarus/posts/3106233196097867>. On Twitter it said: "for reasons beyond our control, there are difficulties with access to services via mobile and fixed internet. As soon as our upstream provider continues the correct service, access will be restored automatically" (Text in original, Russian: "Сегодня по независящим от нас причинам наблюдаются сложности с доступом к сервисам через мобильный и фиксированный интернет. Как только наш вышестоящий провайдер продолжит корректное обслуживание, доступ будет восстановлен автоматически"). See: A1 Belarus Twitter feed, 9 August 2020, available at: <https://twitter.com/a1belarus/status/1292378297490460672>.

⁴⁶ A1 Group, *Management Report*, 2020, available at: https://cdn1.a1.group/final/en/media/pdf/Group%20Management%20Report_2021.pdf, p. 14.

may have felt the need to adjust their statements and clarify their involvement in response to overwhelming condemnation of the shutdown.⁴⁷

30. In tandem with the internet outages, A1 Belarus changed its mobile and fixed internet subscriber contracts. In July and August 2020, A1 Belarus inserted a clause into its subscriber contracts regarding its existing obligations before the Presidential Administration's Operations and Analysis Centre ("OAC"), when providing internet services to state organs and agencies. The OAC operates as part of the Belarusian national security system and is tasked with "coordinating efforts to ensure the cybersecurity of the state in the national segment of the internet".⁴⁸ The amendment stated that one of A1 Belarus's obligations is to implement hardware and/or software solutions for the provision of internet traffic management, including limiting speed and blocking, across apps and VoIP services (VoIP apps include Telegram, WhatsApp, etc.).⁴⁹ The contractual amendments indicate that the company wanted to strengthen its protections against consumer claims in relation to further internet limitations and shutdowns.

2. The degree of foreseeability of the adverse impact

31. The ample negative impact of A1 Belarus's involvement in the internet shutdowns was entirely foreseeable, considering the very high number of subscribers that Telekom Austria has in Belarus, which amounts to a quarter of the country's entire population.⁵⁰ As set out in further detail below (paras. 41-45), the negative impact of an internet shutdown is clearly established.
32. In this case, internal government communications and international NGOs had warned of the risks of an internet shutdown (see para. 10 above).
33. In addition to the high level of foreseeability in relation to the first shutdown, the subsequent weekly blackouts caused further foreseeable harm as set out below in paras. 47-48 below.
34. A1 Group's CEO Thomas Arnolder said that in facilitating the mobile internet outages, A1 Belarus was acting in accordance with laws and regulations in the country: he told an Austrian newspaper that the A1 Group "was firmly against network blocking . . . but here too we are obliged to follow local laws".⁵¹ If A1 Group operated in the country knowing that laws allowing for internet outage orders were in place, then the harm was fully foreseeable, particularly considering Belarus's history of repressive human rights tactics.⁵² The fact that the A1 Group's CEO expressed openly that he is against network blocking indicates that he is familiar with the risks posed by this activity.

⁴⁷ See e.g. EDRI, *NGO Demands Disclosure of A1 Telekom Austria Group's Entanglements in Belarus*, 14 July 2021, available at: <https://edri.org/our-work/ngo-demands-disclosure-of-a1-telekom-austria-groups-entanglements-in-belarus/>.

⁴⁸ President of the Republic of Belarus, *Operations and Analysis Center under the President of the Republic of Belarus*, no date, available at: <https://president.gov.by/en/statebodies/the-operational-and-analysis-center-under-the-president> (accessed 9 March 2022).

⁴⁹ See archived versions of the Subscriber Agreements of the Mobile Agreement, 13 July 2020, available at: <https://www.a1.by/ru/private/support/59739.htm>; Fixed-Line Agreement, 13 July 2020, available at: <https://www.a1.by/ru/private/support/59739.htm>.

⁵⁰ A1 customers in Belarus are more than 4.9 million people, over 1.1 million households have accessibility to a fixed communication network using GPON and Ethernet technologies in regional cities and the largest district centers. In addition, A1 provides IPTV digital television services under the brand name VOKA, as well as data storage and cloud services based on its own data center, one of the largest in the country. The company employs about 2,700 people, and branded sales and service centers are located in all major cities of the country. See: <https://www.a1.by/en/company/>.

⁵¹ Die Presse, *Telekom Austria hält an Weißrussland fest*, 21 October 2020, available at: <https://www.diepresse.com/5885835/telekom-austria-haelt-an-weissrussland-fest>.

⁵² See e.g. Human Rights Watch, *World Report 2016 – Belarus*, available at: <https://www.hrw.org/world-report/2016/country-chapters/belarus#>.

35. Even if the company argued that it had not understood the relevance of any existing legislation in Belarus governing internet throttling and shutdowns, the lack of response to the first shutdown order on 9-12 August 2020 and continued engagement in the shutdowns that followed, highlight the lack of willingness to engage on the matter and to prevent or mitigate the foreseen adverse impacts of the internet outages on 23, 26 and 30 August 2020; 6, 13, 20, 27 September 2020; 4, 11, 18, 25 October 2020; 1, 8, 15, 22 and 29 November 2020.

3. The degree to which any of the enterprise’s activities actually mitigated the adverse impact or decreased the risk of it occurring

36. As set out in further detail below in paras. 61-68, Telekom Austria or the A1 Group did not undertake any action to mitigate the adverse impact or decrease the risk of shutdowns and related human rights violations occurring. In fact, the Belarusian government introduced further legislation in May and July 2021 that strengthened its ability to order broad internet outages in the interests of national security, public order, or the protection of rights and freedoms.⁵³ There is no indication that Telekom Austria or the A1 Group used its leverage to positively influence this legislation, challenge the implications the new legislation had for existing contractual obligations, or that it introduced internal standards that would limit involvement in internet shutdowns, especially in a country with a problematic human rights records.

37. Considering the totality of actions, lacking considerations, and failed mitigation undertaken by A1 Belarus and its parent companies, Telekom Austria is directly linked and actively contributed to the mobile internet shutdown and resulting further abuses in Belarus.

VIOLATIONS OF THE OECD GUIDELINES

38. This section sets out the OECD Guidelines violations by Telekom Austria through its wholly owned subsidiary A1 Belarus. It includes references to applicable law and procedures and an examination of how similar issues have been treated in other domestic or international proceedings where relevant.

Lack of Respect for Internationally Recognized Human Rights

39. By contributing to the 2020 mobile internet disruption in Belarus, Telekom Austria violated Chapter II.A.2 and Chapter IV.1 of the OECD Guidelines. In these chapters, the Guidelines set out that enterprises should “respect the internationally recognized human rights of those affected by their activities” and specify that this includes the duty to “avoid infringing on the human rights of others” as well as “address[ing] adverse human rights impacts with which they are involved.”

⁵³ See May Amendment to Telecoms Law, Art. 21(1), available at:

<https://web.archive.org/web/20210608131048/https://pravo.by/document/?guid=12551&p0=H12100109&p1=1>; The Emergency Law and the Martial Law were amended by the Law of the Republic of Belarus dated 14 July 2021 “On Changes to the Laws Concerning the Defence of Sovereignty and Constitutional Order” (the ‘July Amendment’), see: <https://pravo.by/document/?guid=12551&p0=H12100117&p1=1> (expanded on further in paras 59,66).

40. As set out above, A1 Belarus actively facilitated internet disruptions from August 2020 onwards. These disruptions were ordered by the government, in order to quash election-related protests and silence those speaking out about abuses during this time.

1. The Internet Shutdown Violated the Right to Freedom of Expression

41. The Constitution of the International Telecommunications Union recognizes the fundamental right of the public to use the international telecommunication service and only provides for narrow lawful exceptions to this rule.⁵⁴ Multiple regional and international human rights bodies, as well as national and regional courts,⁵⁵ have clearly established the illegality of internet shutdowns, even those purportedly carried out for national security reasons. As early as 2011, four regional Special Rapporteurs⁵⁶ issued a joint declaration stating that cutting off access to the internet “can never be justified, including on public order or national security grounds”.⁵⁷ A 2016 United Nations (“UN”) resolution on the promotion, protection and enjoyment of human rights on the Internet also condemns internet shutdowns and urges states to refrain from ordering them.⁵⁸ This resolution was further maintained in 2018, when the UN General Assembly called on States to secure the enjoyment of those rights by “refraining from Internet shutdowns and content restrictions on the Internet that violate international human rights law”.⁵⁹

42. Judicial bodies have also found that internet shutdowns are unlawful under international human rights law. For instance, in June 2020, the Economic Community of West African States (ECOWAS) Community Court of Justice ruled that the Republic of Togo’s internet shutdown in September 2017 was a violation of the right to freedom of expression.⁶⁰ The court held that “[s]ince access to the internet is complementary to the enjoyment of the right to freedom of expression, it is necessary that access to

⁵⁴ See: International Telecommunications Union, *Constitution*, 1992, available at:

<https://treaties.un.org/doc/Publication/UNTS/Volume%201825/volume-1825-I-31251-English.pdf>, Articles 33-35.

⁵⁵ For a selection of litigation cases and court rulings on the illegality of internet shutdowns see: Access Now, *Judges Raise The Gavel to #KeepItOn Around The World*, 23 September 2019, available at: <https://www.accessnow.org/judges-raise-the-gavel-to-keepiton-around-the-world/>; Dunia Mekonnen Tegegn Collaboration on International ICT Policy for East and Southern Africa (CIPESA), *Advancing Strategic Litigation on Promises and Pitfalls Internet Shutdowns cases in Africa*, no date, available at: https://cipesa.org/?wpfb_dl=462.

⁵⁶ The African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, and the Organization of American States (OAS) Special Rapporteur for Freedom of Expression.

⁵⁷ Joint Declaration on Freedom of Expression and the Internet, The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, June 1, 2011, available at: [⁵⁸ United Nations General Assembly, Human Rights Council, *The Promotion, Protection and Enjoyment of Human Rights on the Internet*, A/HRC/32/L.20, 27 June 2016, available at: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G16/131/89/PDF/G1613189.pdf?OpenElement>.](https://www.oas.org/en/iachr/expression/showarticle.asp?artID=848#:~:text=Cutting%20off%20access%20to%20the.or%20parts%20of%20the%20Internet, Principle 6.b.</p></div><div data-bbox=)

⁵⁹ United Nations General Assembly, *Promotion and Protection of Human Rights and Fundamental Freedoms, Including the Rights to Peaceful Assembly and Freedom of Association*, A/RES/73/173, 8 January 2019, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/449/55/PDF/N1844955.pdf?OpenElement>.

⁶⁰ ECOWAS Community Court of Justice, 25 June 2020, suit no. ECW/CCJ/APP/61/18, jud. no. ECW/CCJ/JUD/09/20, available at: https://www.accessnow.org/cms/assets/uploads/2020/07/ECOWAS_Togo_Judgement_2020.pdf.

internet and the right to freedom of expression be deemed to be an integral part of human right that requires protection by law and makes its violation actionable”.⁶¹

43. The UN General Assembly has stated that “the same rights that individuals have offline, including the rights to freedom of expression, of peaceful assembly and of association, are also fully protected online, in accordance with human rights law”.⁶² More particularly, UN experts note the particular threat posed by internet shutdowns during times of protests. According to the experts, “[a]ccess to information and communication services is crucial at times of protests. Restricting or blocking access to Internet services not only adversely affects the enjoyment of the rights to freedom of expression, assembly and participation, but it also has severe effects on protesters demands’ regarding economic and social rights”.⁶³
44. Because of the severe human rights violations caused by internet disruption, the UN Human Rights Council has established that “network shutdowns are a clear violation of international law and cannot be justified in any circumstances”.⁶⁴
45. The Human Rights Council stated that “[a]ny measures aiming to or that intentionally prevent or disrupt access to or dissemination of information online, [are] in violation of international human rights law”.⁶⁵ In other words, internet disruptions violate a number of rights, including freedom of information and expression,⁶⁶ assembly and association,⁶⁷ as well as equality and other rights, protected by the national constitution of Austria, as well as regional and international frameworks, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (“ICCPR”) and the European Convention on Human Rights. The act of disrupting or blocking access to Internet services and websites amounts to a form of prior restraint, as it restricts Internet users from expressing themselves through these services and websites before the expression occurs. These are inherently disproportionate measures that are not justified under international human rights law.
46. In this case, by requiring that A1 Belarus disrupt its customers’ access to the internet, Belarusian authorities worked directly with A1 Belarus to restrict freedom of expression and the free flow of information online, particularly as relating to political and social views opposing the administration or representing the work of independent media. Following the August 2020 presidential election and

⁶¹ Amnesty International Togo v *The Togolese Republic*, ECW/CCJ/APP/61/18, 2020, ECOWASCJ 09, 6 July 2020, available at: <https://africanlii.org/ecowas/judgment/ecowas-community-court-justice/2020/9>.

⁶² United Nations General Assembly, *Promotion and Protection of Human Rights and Fundamental Freedoms, Including the Rights to Peaceful Assembly and Freedom of Association*, A/RES/73/173, 8 January 2019, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/449/55/PDF/N1844955.pdf?OpenElement>.

⁶³ UN experts: Mr. Aristide Nononsi, Independent Expert on the human rights situation in Sudan; Mr. Clement Nyaletsossi Voule, Special Rapporteur on the right to peaceful assembly and association; Mr. David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, *Sudan: UN Experts Denounce Internet Shutdown, Call for Immediate Restoration*, 8 July 2019, available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24803&LangID=E>.

⁶⁴ United Nations General Assembly, Human Rights Council, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, A/HRC/41/41, 17 May 2019, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/141/02/PDF/G1914102.pdf?OpenElement>, para. 52.

⁶⁵ United Nations General Assembly, Human Rights Council, *The Promotion, Protection and Enjoyment of Human Rights on the Internet*, A/HRC/32/L.20, 27 June 2016, available at: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G16/131/89/PDF/G1613189.pdf?OpenElement>.

⁶⁶ See United Nations General Assembly, Human Rights Council, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, A/HRC/17/27, 16 May 2011, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/132/01/PDF/G1113201.pdf?OpenElement>; United Nations General Assembly, Human Rights Council, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, A/HRC/35/22, 30 March 2017, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/077/46/PDF/G1707746.pdf?OpenElement>, para. 77.

⁶⁷ United Nations General Assembly, Human Rights Council, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, A/HRC/41/41, 17 May 2019, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/141/02/PDF/G1914102.pdf?OpenElement>, para. 11.

during the resulting protests, the Belarusian government mounted an unprecedented effort to disrupt the internet by blocking key news, human rights, civil society, and political opposition websites.⁶⁸ Immediately after the election, more than 70 sites were blocked, including at least 25 media sites and 25 political sites.⁶⁹ Approximately 50 key news and information websites remained blocked or had their access limited at the end of the coverage period.⁷⁰ In May 2021, the Ministry of Information indicated that it had blocked more than 480 websites.⁷¹ By shutting down its networks, A1 Belarus used its technology to contribute to this blockage of information.

2. The Internet Shutdown Prompted Further Rights Violations

47. The Internet has become vital in how we exercise our rights. As the UN’s Human Rights Council has stated, “the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one’s choice’, in accordance with article 19 of the ICCPR”.⁷² Disrupting access to the Internet services hinders the full enjoyment of a wide range of fundamental rights and freedoms, particularly the right to freedom of expression and opinion but also rights relating to access to information, freedom of assembly and association, and the right to privacy.⁷³ In times of crisis, such as during a global pandemic, disruptions endanger public health and safety, as people are unable to get essential information about what is happening around them or communicate with and protect their loved ones.
48. The following rights were affected and restricted in connection with the internet shutdown facilitated by A1 Belarus:

⁶⁸ The blocked sites included those of national independent news outlets such as RFE/RL, Belsat, Euroradio, and UDF.by; regional outlets like Vitebsk Kurier and 015.by; human rights groups including Viasna, Belarusian Association of Journalists, and Eurobelarus; election monitoring platforms like Golos and Zubr; and political movements such as Tell the Truth and the Belarusian Christian Democratic Party. For a complete list, see: Maria Xynou and Arturo Filasto, *Belarus Protests: From Internet Outages to Pervasive Website Censorship*, OONI, 15 September 2020, available at: <https://ooni.org/post/2020-belarus-internet-outages-website-censorship/#blocked-websites>.

⁶⁹ “В Беларусі заблакаваны 73 рэсурсы, сярод іх – сайты Радыё Свабода, Еврорадио, ‘Медиазона. Беларусь’ [73 resources have been blocked in Belarus, among them the sites of Radio Svoboda, Euroradio, ‘Mediazona. Belarus’]”, *Current Time*, 21 August 2020, available at: <https://www.currenttime.tv/a/belarus-media-blocking/30796313.html>; “Почему заблокировали более 70 сайтов в Беларуси? Министерство информации пока не объяснило [Why were more than 70 sites blocked in Belarus? The Ministry of Information has not yet explained]”, *TUT.by*, 21 August 2020, available at: <https://news.tut.by/society/697901.html?c>. For a comprehensive report on the blocking, see Maria Xynou and Arturo Filasto, *Belarus Protests: From Internet Outages to Pervasive Website Censorship*, OONI, 15 September 2020, available at: <https://ooni.org/post/2020-belarus-internet-outages-website-censorship/#blocked-websites>.

⁷⁰ Belarusian Association of Journalists, *The Results of Belarus Mass Media Year 2020*, 2021, available at: <https://baj.by/sites/default/files/analytics/files/2021/smi-01632021-en.pdf>.

⁷¹ Sputnik Belarus, “Мининформ подтвердил блокировку Sports.ru в Беларуси [Ministry of Information confirms the blocking of Sports.ru in Belarus]”, 22 May 2021, available at: <https://sputnik.by/20210522/Mininform-podtverdil-blokirovku-Sportsru-v-Belarusi-1047691064.html>.

⁷² United Nations General Assembly, Human Rights Council, *The Promotion, Protection and Enjoyment of Human Rights on the Internet*, A/HRC/RES/20/8, 16 July 2012, available at: <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G12/153/25/PDF/G1215325.pdf?OpenElement>, para. 1.

⁷³ According to Articles 1, 2, 17, 19, 21 and 22 on International Covenant on Civil and Political Rights; Articles 1, 8, 10, 11 and 14 of the European Convention on Human Rights.

- a. *Freedom of assembly and association.*⁷⁴ Functionally, the internet is a means to facilitate the exercise of the rights of assembly and association in-person, as well as virtually.⁷⁵ In practice, it works as tool for organizers who seek to mobilize large groups of people in a prompt and effective manner (using social networks, blogs, or forums, for instance), and at little cost. It also serves as an online space for groups of people that are marginalized by society and are confronted with restrictions when operating in physical spaces.⁷⁶ The internet also offers the possibility of organizing an online protest, providing a common meeting space, shortening distances and commuting times, and simplifying formalities and agendas.⁷⁷ For these reasons, both the online and the physical space must be protected and promoted or else both rights are being violated. The obligation to protect these two venues for engagement require that positive measures be taken to prevent actions by non-state actors, including businesses, that can unduly interfere with the rights to freedom of peaceful assembly and of association.⁷⁸

NATO published an analysis, according to which the internet outages in Belarus before, during, and after the elections interfered with the rights to assembly and association. According to the report, the internet disruptions were aimed at “limiting coordination and exchange of information among the protesters” and “[p]reventing the protesters from sharing their photo and video materials of violent clashes with law enforcement (primarily to prevent them from sending to popular Telegram channels)”.⁷⁹ The use of internet disruptions (internet outages, slowdowns and internet throttling) during protest is documented in several instances in the report: “After the initial shutdown in August, more localized and intermittent internet outages took place . . . during frequent Sunday protests”.⁸⁰

- b. *Violations of economic rights, including the right to work/livelihood.* Violations of various economic rights are exacerbated by internet disruptions and government manipulation of the online narrative. When these occur, many whose livelihood depends on Internet access in rendering and promoting services and goods, or having a livelihood in their role as influencers, are unable to do so. ATMs, payment terminals, and all internet-connected real-life services and financial instruments ceased to operate. In terms of the macro economy, the Internet shutdowns “amid presidential elections and protests cost the Belarusian

⁷⁴ Freedom of assembly and association are guaranteed by Article 20 of the Universal Declaration of Human Rights, Article 21 and Article 22 of the International Covenant on Civil and Political Rights, and Article 11 of the European Convention on Human Rights.

⁷⁵ United Nations, Human Rights Council, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai*, A/HRC/29/25/Add.1, 27 April 2015, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/083/10/PDF/G1508310.pdf?OpenElement>, para. 53.

⁷⁶ United Nations, Human Rights Council, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai*, A/HRC/35/28, 29 June 2017, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/176/96/PDF/G1717696.pdf?OpenElement>.

⁷⁷ United Nations, Human Rights Council, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai*, A/HRC/23/39, 24 April 2013, available at:

https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf; Association for Progressive Communication, *The Rights to Freedom of Peaceful Assembly and Association and the Internet*, Submission to the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, available at: https://www.apc.org/sites/default/files/APC_Submission_FoA_Online.pdf, para. 14.

⁷⁸ See: Art. 2(2) of the Covenant; and Human Rights Committee, General Comment No. 31, *The nature of the general legal obligation imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, 26 May 2004, available at: <https://www.refworld.org/docid/478b26ae2.html>.

⁷⁹ International Strategic Action Network for Security, *Belarus Protests: Information Control and Technological Censorship*, NATO Strategic Communications Centre of Excellence, 2021, available at: https://stratcomcoe.org/pdfs/?file=/publications/download/belarus_protests_web_nato_stratcom_coe.pdf?zoom=page-fit, p. 7.

⁸⁰ Freedom House, *Freedom of the Net 2021, Belarus country report*, available at: https://freedomhouse.org/country/belarus/freedom-net/2021#footnote1_dtmo8ru.

economy \$56.4 million a day”⁸¹. To mid-August 2020 it amounted to a loss of \$ 141 million in 61 hours of massive outages since 9 July 2020. This follows from the COST service data from the NetBlocks group.⁸² According to the Financial Times, losses are associated with a stop in the work of digital banking, taxi calling services, cards, online shopping and interruptions in other directions.⁸³ The newspaper also explains that the indirect economic losses are expressed in the loss of a prosperous IT sector by Belarus. As a matter of fact, because of the impact of the shutdowns on the IT sector, after the third day of the Internet blockade, over 500 people who work in IT requested that the acting authorities return internet connectivity due to the intolerable economic and reputational costs that Belarus was suffering internationally following the 9 August 2020 shutdown.⁸⁴

- c. *Right to health.*⁸⁵ The right to information, including information disseminated online, is particularly important in the context of the global pandemic caused by the Covid-19 virus, so that people can understand the risks to their health and how to protect themselves from the virus. Therefore, disruptions of access to certain internet services, could be violate people’s right to health, and ultimately, their right to life.⁸⁶ The WHO guidance for dealing with information in the context of pandemics is consistent with the requirements of international human rights law.⁸⁷ It highlights the importance of the State providing reliable information to the public.⁸⁸ The UN Human rights Council goes as far as stating that internet shutdowns during a pandemic are an affront to the rights of everyone, and that there is no room for limitation of internet access at the time of a health emergency that affects everyone from the most local to the global level.⁸⁹

In Belarus, as anywhere else, people depended on access to internet to inform themselves about the Covid-19 pandemic. For this reason, “[i]n a moment of global pandemic, the right of access to the Internet should be restated and seen for what it is: a critical element of health-care policy and practice, public information and even the right to life”.⁹⁰ A poll taken in the country in March–April 2020 indicated that more Belarusians were seeking information about Covid-19 from search engines (81%) and social networks (73%) than

⁸¹ Forbes, Internet shutdown cost Belarus more than \$56 million a day, 13 August, 2020, available at:

<https://www.forbes.ru/newsroom/tehnologii/406973-pereboi-s-internetom-stoili-belorussii-bolshe-56-mln-v-den>

⁸² The NetBlocks Cost of Shutdown Tool (COST) estimates the economic impact of an internet disruption, mobile data outage or app restriction using indicators from the World Bank, ITU, Eurostat and U.S. Census. Available at: <https://netblocks.org/cost/>

⁸³ Financial Times, *Protesters find way round Belarus’s internet blackout*, 12 August, 2020, available at:

<https://www.ft.com/content/3466da92-946e-4d29-81b3-e96ba599a63e>

⁸⁴ International Strategic Action Network for Security, *Belarus Protests: Information Control and Technological Censorship*, NATO Strategic Communications Centre of Excellence, 2021, available at:

https://stratcomcoe.org/pdfjs/?file=/publications/download/belarus_protests_web_nato_stratcom_coe.pdf?zoom=page-fit, p. 8.

⁸⁵ Economic rights are protected by the International Covenant on Economic, Social and Cultural Rights and by the European Social Charter, among other international treaties.

⁸⁶ United Nations, Human Rights Council, *Disease Pandemics and the Freedom of Opinion and Expression*, A/HRC/44/49, 23 April 2020, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/097/82/PDF/G2009782.pdf?OpenElement>, para. 28.

⁸⁷ World Health Organization, *Managing Epidemics: Key Facts about Major Deadly Diseases*, 2018, available at:

<https://apps.who.int/iris/bitstream/handle/10665/272442/9789241565530-eng.pdf?sequence=1&isAllowed=y>.

⁸⁸ World Health Organization, *Managing Epidemics: Key Facts about Major Deadly Diseases*, 2018, available at:

<https://apps.who.int/iris/bitstream/handle/10665/272442/9789241565530-eng.pdf?sequence=1&isAllowed=y>.

⁸⁹ United Nations, Human Rights Council, *Disease Pandemics and the Freedom of Opinion and Expression*, A/HRC/44/49, 23 April 2020, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/097/82/PDF/G2009782.pdf?OpenElement>, para. 28.

⁹⁰ United Nations, Human Rights Council, *Disease Pandemics and the Freedom of Opinion and Expression*, A/HRC/44/49, 23 April 2020, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/097/82/PDF/G2009782.pdf?OpenElement>, para. 24.

from television (55%).⁹¹ In part because the government downplayed the severity of Covid-19, Belarusians relied on a number of Telegram channels to access information about the pandemic.⁹² That people in Belarus depended so heavily on the internet for information on the pandemic, while the information provided by the government was incomplete and limited, makes clear the impact that internet shutdowns had on people health rights, and ultimately, their right to life.

- d. *Equality*. Internet shutdowns are particularly harmful to marginalized ethnolinguistic or religious groups. Recent research recognizes digital discrimination in access to communication technology as a global trend that strongly affects specific groups of people, and large-scale disruptions only magnify this problem.⁹³ Shutdowns may constitute a targeted form of digital repression that disproportionately affects marginalized communities and thus constitutes collective punishment.⁹⁴ In the case of the internet shutdown in Belarus, the internet disruptions tended to silence certain political voices contrary to the political party and leaders in power. Heavy restrictions were imposed on connectivity during the coverage period as “it sought to repress a massive prodemocracy movement that emerged in the run-up to the presidential election, and grew significantly after the fraudulent poll”. As set out above, many of the ensuing internet disruptions were targeted at protests, where dissident ideas were being proclaimed. All these limitations of rights that have a particularly negative impact on certain groups of people are contrary to international human rights laws, which establish that people cannot on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.⁹⁵
3. A1 Belarus failed to consider or publicly question the legality of the shutdown order under international human rights law

49. The OECD Guidelines set out that “respect for human rights is the global standard of expected conduct for enterprises independently of States’ abilities and/or willingness to fulfil their human rights obligations, and does not diminish those obligations”.⁹⁶
50. Despite having prior notice of the risks associated with an internet blackout,⁹⁷ A1 Belarus actively facilitated the government’s mobile internet shutdown. It further failed to raise alarm internationally or to take any other apparent steps towards mitigating the damage caused by the government orders.

⁹¹ Reform.by, *Research: How Do Belarusians Respond to the Coronavirus and Do They Want a Quarantine? [in Russian]*, 29 April 2020, available at: <https://reform.by/issledovanie-kak-belarusy-reagirujut-na-koronavirus-i-hotjat-li-oni-karantina>.

⁹² Yan Auseyushkin, *Telegram in Belarus: More Than a Messenger*, iSANS, 28 January 2021, available at: <https://isans.org/articles-en/telegram-in-belarus-more-than-a-messenger.html>.

⁹³ Karanja, M., M. Xynou, and A. Filastò, *How the Ethiopia Protests Were Stifled by a Coordinated Internet Shutdown*, Quartz Africa, 2016, available at: <http://qz.com/757824/how-the-ethiopia-protests-were-stifled-by-a-coordinated-internet-shutdown/>.

⁹⁴ Jan Rydzak, *Disconnected: A Human Rights-based Approach to Network Disruptions*, Global Network Initiative, 2018, available at, <https://globalnetworkinitiative.org/wp-content/uploads/2018/06/Disconnected-Report-Network-Disruptions.pdf>, p. 12.

⁹⁵ Anti-discrimination rights are protected by Article 7 of the Universal Declaration of Human Rights, Article 4 of the International Covenant on Civil and Political Rights, and Article 14 of the European Convention on Human Rights.

⁹⁶ OECD, *OECD Guidelines for Multinational Enterprises*, 2011, available at: <http://mneguidelines.oecd.org/guidelines/>, Commentary to Chapter IV, para. 37.

⁹⁷ Access Now, *#KeepItOn: Joint Letter On Keeping the Internet Open and Secure During the Presidential Elections in Belarus*, 6 August 2020, available at: <https://www.accessnow.org/keepiton-joint-letter-on-keeping-the-internet-open-during-presidential-elections-in-belarus/>.

Instead, the company gave conflicting information, delaying clarity about the full extent or cause of the shutdown.

51. The A1 Group Code of Conduct states that “policies pursued” include human rights policy outlined in its Code of Conduct,⁹⁸ which is “guided by”, among others, the UN Global Compact.⁹⁹ In its 2020 annual report, the A1 Group reports, with regard to its human rights policy, that “in the event of a conflict [between commitment to human rights and national law], [it] applies national law”.¹⁰⁰ This is particularly problematic in cases, such as in Belarus, where domestic regulations are not aligned with international human rights law. While the Guidelines recognize that enterprises should seek “ways to honour [internationally recognized human rights] to the full extent which does not place them in violation of domestic law”, the onus on the company to do so is greater if the country is acting in clear violation of international law.¹⁰¹ In this case, the government’s order to A1 Belarus was in clear violation of international human rights laws. The Norwegian OECD National Contact Point recently accepted a complaint against a telecommunications company for their actions in Myanmar that complied with domestic orders but constituted a violation of international law.¹⁰²
52. Central to determining the international law violation an internet shutdown constitutes is the understanding of the legal framework governing any restrictions on human rights. Any type of restriction on the full enjoyment of human rights, including through internet shutdowns, must be provided by law and must be necessary, clear, unambiguous and must also be proportionate to the purpose it seeks to achieve;¹⁰³ it must not be serving an ulterior purpose.¹⁰⁴ States often rely on “national security” or “public order” to justify internet shutdowns or network throttling. In this case, Belarus’s “internet restrictions [were] opaque, disproportionate to stated aims, often invoked arbitrarily, and lack an independent appeals process”.¹⁰⁵
53. A1 Belarus’s public communications regarding the internet outages and the “national security” justification was inconsistent and at times contradictory. On 23 August 2020, A1 Belarus stated: “at the request of state organs in connection with ensuring national security . . . capacity of the A1 3G network in some districts of Minsk has been significantly reduced”.¹⁰⁶ A1 Belarus later asserted on 29 October

⁹⁸ A1 Group, *Code of Conduct*, 2021, available at: <https://cdn1.a1.group/final/en/media/pdf/code-of-conduct-en.pdf>, p. 6.

⁹⁹ A voluntary initiative to implement sustainability principles, requires that it undertake due diligence to ensure and demonstrate that it is meeting its responsibility with respect human rights. See: *UN Global Compact Guidelines in Relation to Human Rights Due Diligence*, available at: <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-1>.

¹⁰⁰ A1 Group, *Annual Report*, 2020, available at: https://cdn1.a1.group/final/en/media/pdf/A1_TAG_Combined-Annual-Report_2020-EN.pdf, p. 172.

¹⁰¹ OECD, *OECD Guidelines for Multinational Enterprises*, available at: <http://mneguidelines.oecd.org/guidelines/>, Commentary to Chapter IV, para. 38.

¹⁰² See: Norway NCP, *The Norwegian NCP Accepts New Complaint: CSJA vs Telenor*, 27 October 2020, available at: <https://www.responsiblebusiness.no/news/the-norwegian-ncp-accepts-new-complaint-csja-vs-telenor/>.

¹⁰³ See e.g. *EU Charter of Fundamental Rights*, Article 52(1): available at <https://fra.europa.eu/en/eu-charter/article/52-scope-and-interpretation-rights-and-principles> (“Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others”).

¹⁰⁴ See e.g. European Court on Human Rights, *Guide on Article 18 of the Convention on Human Rights*, available at: https://www.echr.coe.int/Documents/Guide_Art_18_ENG.pdf.

¹⁰⁵ Freedom House, *Freedom of the Net 2021, Belarus Country Report*, available at: https://freedomhouse.org/country/belarus/freedom-net/2021#footnote1_dtmo8ru.

¹⁰⁶ Text in original, Russian: “С сожалением сообщаем, что по требованию государственных органов в связи с обеспечением национальной безопасности существенно снижена пропускная способность 3G-сети А1 на территории некоторых районов г. Минска. Исполнение данного требования приводит к ухудшению качества сервиса передачи данных. О восстановлении корректного доступа к услуге будет сообщено дополнительно. Приносим извинения и надеемся на скорое восстановление обслуживания”. Source: A1 Belarus press release, 23 August 2020, available at: <https://www.a1.by/ru/company/news/o-rabote-mobilnogo-interneta-3g-v-minske/p/rabota-mobilnogo-interneta-3g>; A1 Belarus Facebook feed, 23 August 2020, available at: <https://www.facebook.com/a1belarus/posts/3147355055319014>; A1 Belarus Twitter feed, 23 August 2020, available at: <https://twitter.com/a1belarus/status/1297582209797443584>.

2020 that “the [Belarusian] state does not depend on operators in its blackout initiative to preserve national security”.¹⁰⁷ These statements are incoherent in relation to the level of action required from mobile operators to carry out the requested internet shutdowns relating to national security. In any case, even in the context of national security considerations, the Belarusian State failed to comply with the conditions necessary to justify the restriction of fundamental human rights. A1 Belarus should have been cognizant of this failure, which put into question the alleged “request” to turn off their networks.

54. Based on the above, the A1 Group’s actions in Belarus specifically and their “human rights policy” more generally are in contradiction of Chapter II.A.2 of the OECD Guidelines. The company prioritizes adherence to national law over human rights considerations, in policy and in practice, even when the national laws are in apparent violation of international human rights law.

Inadequate Due Diligence

55. Telekom Austria failed to adhere to the due diligence requirements set out in Chapter II.A.10 and Chapter IV.5 of the OECD Guidelines by entirely disregarding the human rights situation in Belarus and the ways in which their business in the country might contribute to further abuses.
56. The Commentary to the OECD Guidelines states that the human rights due diligence process “entails assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses as well as communicating how impacts are addressed”.¹⁰⁸ The OECD Due Diligence Guidance for Responsible Business Conduct sets out that due diligence is meant to be preventative: “the purpose is first and foremost to avoid causing or contributing to adverse impacts ... When involvement in adverse impacts cannot be avoided, due diligence should enable enterprises to mitigate them, prevent their recurrence, and where relevant, remediate them”.¹⁰⁹ This Guidance is in part inspired by the UN Guiding Principles on Business and Human Rights (“the UN Guiding Principles” or “the UNGPs”), which similarly state that enterprises should have “a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights”.¹¹⁰ The UN Guiding Principles further clarify that the human rights due diligence process should “include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed”.¹¹¹ Businesses should account for the fact that a human rights situation changes over time,¹¹² therefore human rights due diligence processes should include assessing actual *and* potential human rights impacts.¹¹³
57. Businesses’ due diligence processes should be transparent and interactive. The UN Guiding Principles elaborate that businesses should communicate “information on due diligence processes findings and plans” and this information “should be accessible to its intended audiences (e.g. stakeholders, investors, consumers, etc)”.¹¹⁴ For the human rights impact assessments, they should “consult and engage

¹⁰⁷ Nikolay Bredelev, Head of corporate communication at A1 Belarus, in a letter to Felicia Fauzia Anthonio, a campaigner for #KeepItOn, 29 October 2020, available at: https://www.accessnow.org/cms/assets/uploads/2020/11/A1_Belarus_Response.pdf. Mr. Bredelev was responding to a letter from #KeepItOn, dated 1 October 2020, available at: <https://www.accessnow.org/cms/assets/uploads/2020/10/KeepItOn-A1-Telekom-Austria-open-letter-signed.pdf>.

¹⁰⁸ OECD, *OECD Guidelines for Multinational Enterprises*, 2011, available at: <http://mneguidelines.oecd.org/guidelines/>, para. 45.

¹⁰⁹ OECD, *OECD Due Diligence Guidance for Responsible Business Conduct*, 2018, available at: <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>, p. 16.

¹¹⁰ United Nations, *Guiding Principles on Business and Human Rights*, 2011, available at: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf, para. II.A.15(b).

¹¹¹ *Id.* para. II.17.

¹¹² *Id.* para. II.17(c).

¹¹³ *Id.* para. II.17.

¹¹⁴ *Supra n 109* at para 19.

impacted and potentially impacted rightsholders ... to gather information on adverse impacts and risks, taking into account potential barriers to effective stakeholder engagement”.¹¹⁵ This consultation should also be ongoing. The OECD Due Diligence Guidance recommends that businesses “consult potentially impacted rightsholders both prior to and during projects or activities that may affect them”.¹¹⁶

58. As set out above, the shutdown in Belarus constituted and led to human rights abuses. These risks were foreseeable and should have been taken into account prior to Telekom Austria engaging in Belarus. The lack of the implementation of due diligence processes in relation to respect for human rights is also visible in Telekom Austria’s non-financial reports (see paras. 86-68 below). Telekom Austria should further have attempted to mitigate the abuses occurring once the shutdown was on the way. Instead, Telekom Austria did not conduct the appropriate due diligence; not during its operations in Belarus, nor prior to entering commercial activity in the country. Further, A1 Belarus more deeply entrenched its ability to restrict customers’ internet access by amending its contracts.
59. A1 Belarus and Telekom Austria must consider the human rights implications of the laws governing their systems and whether they can lead to unjustified internet shutdowns. The A1 Group has specifically stated with regards to the shutdown that “all operators were ordered to reduce capacity of its mobile network in Minsk for limited time periods. A1 Belarus complied with the requirements of the governmental authorized bodies”.¹¹⁷ Under the Telecoms Law at the time of the initial shutdown, the Belarusian state held authority to restrict telecommunications networks in the event of a state of emergency or martial law.¹¹⁸ Yet, the shutdown took place without a declaration of emergency or martial law. Since then, the government of Belarus has expanded its power by adding an amendment to the Telecoms Law which gives the Government new powers to order the suspension or restriction of telecommunications networks in the event that they are transmitting information relating to mass unrest, extremist activity and threats to public order, safety and infrastructure.¹¹⁹
60. Considering the existing laws prior to the shutdown and the tight grip Belarus holds on the provision of internet services in the country, the A1 Group and, specifically, Telekom Austria, should have recognized the risks to free speech and other fundamental rights posed by the government. In order to fully comply with the standards set out in the OECD Guidelines, they should have had processes in place to “identify ... their impact on human rights”.¹²⁰ Further, as human rights due diligence is a continuous process, Telekom Austria should have sought to consult with those whose rights were impacted by the shutdowns to determine how they might best improve their processes to safeguard against these abuses.¹²¹

Failure to Avoid Contributing to Adverse Impacts and to Prevent or Mitigate Them

61. Through the repeated and foreseeable technological involvement of A1 Belarus in the shutdowns, Telekom Austria is in violation of Chapters II.A.11 and IV.2 of the OECD Guidelines. These provisions

¹¹⁵ OECD, *OECD Due Diligence Guidance for Responsible Business Conduct*, 2018, available at: <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>, para. 2.2.h.

¹¹⁶ *Id.*

¹¹⁷ A1 Group, *Management Report*, 2020, available at: https://cdn1.a1.group/final/en/media/pdf/Group%20Management%20Report_2021.pdf, p. 14.

¹¹⁸ Belarus Telecoms Law, Articles 21 and 40, pre-May 2021 version available at: <https://web.archive.org/web/20210425081358/https://pravo.by/document/?guid=3871&p0=H10500045>.

¹¹⁹ See the May 2021 amendment to Article 21(1) of the Telecommunications Law, available at: <https://web.archive.org/web/20210608131048/https://pravo.by/document/?guid=12551&p0=H12100109&p1=1>.

¹²⁰ *See supra* n 110.

¹²¹ *See supra* n 115.

place a responsibility on enterprises to avoid causing or contributing to adverse impacts (including adverse human rights impacts) through their activities and address such impacts when they occur.¹²²

62. As the Commentary to the OECD Guidelines for Multinational Enterprises underlines, “[p]otential impacts are to be addressed through prevention or mitigation”¹²³ According to the OECD Guidelines and the UN Guiding Principles, if an enterprise contributes or may contribute to an adverse impact, then “it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impacts to the greatest extent possible”.¹²⁴ Leverage is considered to exist “where the enterprise has the ability to effect change in the wrongful practices of the entity that causes the harm”.¹²⁵
63. The UN Guiding Principles further recognize that because human rights situations are dynamic, assessments of human rights impacts¹²⁶ should be undertaken at regular intervals, including “in response to or anticipation of changes in the operating environment (e.g. rising social tensions)”,¹²⁷ and integrate the findings from their impact assessment “across relevant internal functions and processes, and take appropriate action” in order to “prevent and mitigate adverse human rights impacts”.¹²⁸
64. It is recognized that some operating contexts may increase the risks of enterprises being complicit in human rights abuses committed by other actors.¹²⁹ However, even in such complex cases, “enterprises should ensure that they do not exacerbate the situation”.¹³⁰ In assessing how best to respond in such situations, enterprises are advised to “consult externally with credible, independent experts, including from Governments, civil society, national human rights institutions and relevant multi-stakeholder initiatives”.¹³¹ The UN Guiding Principles explicitly state that “all business enterprises have the same responsibility to respect human rights wherever they operate” and where the domestic context renders it impossible to meet this responsibility fully, they are expected to “respect the principles of internationally recognized human rights to the greatest extent possible in the circumstances, and to be able to demonstrate their efforts in this regard”.¹³²
65. As set out above, the shutdowns were highly foreseeable. Further, A1 Belarus has a high level of commercial and technological leverage, being a major Information and Communications Technology (“ICT”) provider in the country.¹³³ Their control of the 3G internet, means technically a mobile internet shutdown could not go ahead without them. Yet A1 Belarus or its parent company did not take any meaningful public-facing steps to avoid contributing to the internet shutdowns, condemn the shutdowns, or to prevent or mitigate the impact of the internet shutdowns. Instead, as set out above, A1 Belarus issued a series of conflicting and misleading statements regarding the attributability of the internet

¹²² OECD, *OECD Guidelines for Multinational Enterprises*, 2011, Chapter II.A.11 and Chapter IV.2.

¹²³ *Id.* Commentary on the General Principles, para. 14.

¹²⁴ *Id.* Commentary on the General Principles, para. 19; *UN Guiding Principles on Business and Human Rights* (henceforth “UNGP”), 2011, available at: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf, Commentary to UNGP 19.

¹²⁵ OECD, *OECD Guidelines for Multinational Enterprises*, 2011, Commentary on the General Principles, para. 19; Commentary on Chapter IV, para. 42; and Commentary to UNGP 19.

¹²⁶ Both actual and potential human rights impacts, see: *UN Guiding Principles on Business and Human Rights*, 2011, available at: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf, Commentary to UNGP 19.

¹²⁷ *Id.* Commentary to UNGP 18.

¹²⁸ *Id.* Commentary to UNGP 19.

¹²⁹ *Id.* Commentary to UNGP 23.

¹³⁰ *Id.* Commentary to UNGP 23.

¹³¹ *Id.* Commentary to UNGP 23.

¹³² *Id.* Commentary to UNGP 23.

¹³³ A1 customers in Belarus are more than 4.9 million people, over 1.1 million households have accessibility to a fixed communication network using GPON and Ethernet technologies in regional cities and the largest district centers. In addition, A1 provides IPTV digital television services under the brand name VOKA, as well as data storage and cloud services based on its own data center, one of the largest in the country. The company employs about 2,700 people, and branded sales and service centers are located in all major cities of the country. See: <https://www.a1.by/en/company/>.

outage and, notably, changed the terms of its contracts with its subscribers, making it easier to justify future internet outages.

66. The lack of change in Telekom Austria's business activities or company policy that would prevent or mitigate adverse impacts on human rights is notable, especially in the context of the legislative change that expanded shutdown powers in Belarus. The amendments made to Belarusian legislation in May 2021¹³⁴ and July 2021,¹³⁵ which codified the Belarusian state's right to instruct operators to restrict telecommunications networks in the event that they are transmitting information relating to "mass unrest", did not prompt Telekom Austria to act, despite these legislative changes presenting a credible risk to respect for human rights for companies operating in the telecommunications sector in Belarus.
67. As a result of the internet shutdown, millions of Belarusians had their freedom of expression directly and severely violated, by being directly deprived of the right to disseminate, receive and store complete, reliable, and timely information, as set out above. Concurrently, by inhibiting the coordination of protesters via mobile internet, Telekom Austria contributed to the violation of their freedom to hold assemblies, rallies, street marches, demonstrations, and pickets.
68. While A1 officials in Belarus and Austria have claimed that they were just following government orders,¹³⁶ this justification regarding A1's involvement in the shutdowns is insufficient under the OECD Guidelines. The fact that the government ordered the company to engage in human rights abuses does not free the company from its obligations under the OECD Guidelines. A1 Group further suggests that existing legislation allowed the government to order the shutdown.¹³⁷ However, as set out above (see paras. 49 ff), such legislation does not meet the minimum guidance on restriction of human rights and is thus unlawful under international law. The company is therefore further in breach of the OECD Guidelines for having entered into business relationship in the full knowledge that it may be required to engage in human rights abuses in the course of its business conduct in Belarus.

Failure to Effectively Engage with Stakeholders

¹³⁴ The Telecoms Law was amended on 24 May 2021 (the 'May Amendment') to incorporate several clauses regarding the restriction and suspension of the "functioning of telecommunication networks" and the authority of the Operations and Analysis Centre's ('OAC') to instruct telecoms companies to restrict networks. The May Amendment to the Telecoms Law of includes a new article (Article 21(1)) concerning the "Management of the Public Telecommunications Network in the Interests of National Security, Public Order and the Protection of Citizen Rights and Freedoms". According to the May Amendment, OAC has new powers to order the suspension or restriction of telecommunications networks in the event that they are transmitting information relating to mass unrest, extremist activity and threats to public order, safety and infrastructure. The May Amendment empowers OAC to decide whether and when services can be resumed after any restriction. Specific amendments are listed here: <https://pravo.by/document/?guid=12551&p0=H12100109&p1=1>.

Additional information available at: <https://president.gov.by/ru/events/podpisan-zakon-ob-elektrosvyazi>; <http://house.gov.by/ru/zakony-ru/view/ob-izmenenii-zakona-respubliki-belarus-ob-elektrosvjazi-1067/>.

¹³⁵ The July Amendment codified an expanded definition of "mass unrest" to include "unrest accompanied by [...] the threat of violence from a group of individuals and organizations, as a result of which there is a danger to the [...] existence of the state". Full details on the website of the President of the Republic of Belarus, 15 July 2021, available at:

<https://president.gov.by/ru/events/podpisan-zakon-ob-izmenenii-zakonov-po-voprosam-zashchity-suvereniteta-i-konstitucionnogo-stroya>.

¹³⁶ See Annex 1 (statement by A1 on 23 August 2020 "We regret to inform you that at the request of state organs in connection with ensuring national security, the capacity of the A1 3G network in some districts of Minsk has been significantly reduced. Fulfilment of this requirement leads to a deterioration in the quality of data transmission service. We apologise and look forward to a quick restoration of service.")

¹³⁷ See Die Presse, *Telekom Austria haelt and Weissrussland fest*, 21 October 2020, available at:

<https://www.diepresse.com/5885835/telekom-austria-haelt-an-weissrussland-fest> (A1 Group's CEO, Thomas Arnoldner, in explaining the internet outages, referred not to an "order" but to laws and regulations. In October 2020 he told Die Presse, an Austrian newspaper that A1 Group was "firmly against network blocking [...] but here too we are obliged to follow local laws").

69. Through a lack of effective consultation with relevant stakeholders “in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities”,¹³⁸ Telekom Austria is in violation of Chapter II.A.14 the OECD Guidelines.
70. As the Commentary to the OECD Guidelines sets out, stakeholder engagement involves “interactive processes of engagement with relevant stakeholders, through, for example, meetings, hearings or consultation proceedings”.¹³⁹ According to the Guidelines, Effective stakeholder engagement is characterised by “two-way communication and depends on the good faith of the participants on both sides”.¹⁴⁰ The OECD Guidelines also note that this engagement can be particularly helpful in the planning and decision-making concerning projects or other activities which could “significantly affect local communities”.¹⁴¹
71. The importance of engaging with relevant stakeholders is underlined also in the UN Guiding Principles, which place such engagement as a key step in gauging human rights risks,¹⁴² addressing human rights impacts,¹⁴³ and remedying adverse impacts.¹⁴⁴ As the UNGPs point out, in order for business enterprises to assess their human rights impacts accurately, they should “seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement” and in situations where such consultation is not possible “business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society”.¹⁴⁵
72. A number of international NGOs and other affected groups have reached out to the A1 Group and Telekom Austria to engage in dialogue about the shutdown and how future human rights violations of that nature can be mitigated or avoided.¹⁴⁶ Yet, the company has sought only to wash its hands of the disruption and has placed the responsibility fully with the Belarusian government.¹⁴⁷ They have failed to listen to groups in order to consider ways in which they might be in particularly strong position to influence the situation around internet shutdowns in the country. Thus, Telekom Austria has failed to follow the standards set out in the OECD Guidelines as it did not provide meaningful opportunities for stakeholders’ views to be taken into consideration in its decision-making process regarding shutting down mobile internet, addressing the human rights impact of its operations and providing remedies for adverse impacts.

Failure to Remediate Adverse Impacts

¹³⁸ OECD, *OECD Guidelines for Multinational Enterprises*, 2011, Chapter II.A.14.

¹³⁹ *Id.* Commentary on Chapter II, para. 25, 25.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* Commentary on Chapter II, para. 25.

¹⁴² UNGP 18(b).

¹⁴³ UNGP 20 and 21.

¹⁴⁴ UNGP 29 and 31.

¹⁴⁵ UNGP, 20.

¹⁴⁶ Access Now, *Joint Letter to A1 Belarus Calling on Telecom Service Providers in Belarus To Be Transparent and Resist Internet Shutdowns*, 1 October 2020, available at: <https://www.accessnow.org/cms/assets/uploads/2020/10/KeepItOn-A1-Telekom-Austria-open-letter-signed.pdf>.

¹⁴⁷ Business and Human Rights Resource Center, *Letter from A1 Belarus to KeepItOn Coalition Regarding Business Transparency & Internet Shutdowns in Belarus*, 29 October 2020, available at: https://media.business-humanrights.org/media/documents/A1_Belarus_KeepItOn_29.10.2020_Minsk.pdf.

73. Telekom Austria is in violation of Chapter IV.6 of the OECD Guidelines, which states that enterprises should “provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts”. As the Commentary to the OECD Guidelines asserts, “potential impacts are to be addressed through prevention or mitigation, while actual impacts are to be addressed through remediation”.¹⁴⁸
74. When enterprises identify that they have contributed to an adverse impact, the OECD Guidelines and the UN Guiding Principles recommend that enterprises have processes in place to enable remediation.¹⁴⁹ For grievances to be addressed early and remediated directly, the UN Guiding Principles recommend business enterprises to establish or participate in effective operational-level grievance mechanisms for individuals *and* communities who may be adversely impacted.¹⁵⁰
75. As the Commentary to the OECD Guidelines and the UN Guiding Principles explain, operational-level grievance mechanisms for those potentially impacted by enterprises’ activities can be an effective means of providing for such processes when they meet the core criteria of: legitimacy, accessibility, predictability, equitability, compatibility with the Guidelines and transparency, and are based on dialogue and engagement with a view to seeking agreed solutions.¹⁵¹
76. For an operational-level grievance mechanism, engaging with affected stakeholder groups about its design and performance can help to ensure that “it meets their needs, that they will use it in practice, and that there is a shared interest in ensuring its success”.¹⁵² A business enterprise cannot, with legitimacy, both be the subject of complaints and unilaterally determine their outcome, therefore these mechanisms should focus on reaching agreed solutions through dialogue.¹⁵³
77. While Telekom Austria provided some financial compensation to its subscribers for the shutdowns,¹⁵⁴ this does not mean that the enterprise has fulfilled its responsibility to remediate adverse impacts under the OECD Guidelines. In this specific case, remedy goes beyond compensation for its customers, given that the operations of A1 Belarus had an impact that constituted much more than a violation of consumer rights. The adverse impacts of the enterprise’s operations manifested in violations of fundamental human rights. To remedy such violations, Telekom Austria should have meaningfully engaged with relevant stakeholders and affected communities, established effective operational-level grievance mechanisms affected communities, and, notably, should have used its leverage to encourage remedy of any remaining impacts which the enterprise could not address by itself and to ensure non-repetition. Telekom Austria failed to respect any of these responsibilities.

Improper Involvement in Local Political Activities

78. Through the business activity of A1 Belarus, Telekom Austria failed to comply with Chapter II.A.15 of the OECD Guidelines, i.e. to “abstain from any improper involvement in local political activities”. By following the orders of the Belarusian government to shut down the internet and failing to take any steps to prevent or mitigate the impact that this would have on the local community, Telekom Austria consented to be in service of the government at a time of a prolonged political crisis that manifested in a crackdown on political dissidents and protestors and resulted in multiple human rights violations.

¹⁴⁸ OECD, *OECD Guidelines for Multinational Enterprises*, 2011, Commentary on Chapter II, para. 14.

¹⁴⁹ *Id.* Commentary on Chapter IV, para. 46; UNGP 22.

¹⁵⁰ UNGP 29.

¹⁵¹ OECD, *OECD Guidelines for Multinational Enterprises*, 2011, Commentary on Chapter IV, para. 46; UNGP 31.

¹⁵² UNGP, Commentary to UNGP 31 (h).

¹⁵³ *Id.* Commentary to UNGP 31 (h).

¹⁵⁴ Access Now, *Shattered Dreams and Lost Opportunities: A Year in the Fight to #KeepItOn*, March 2021, https://www.accessnow.org/cms/assets/uploads/2021/03/KeepItOn-report-on-the-2020-data_Mar-2021_3.pdf, pp. 22-23.

79. The Internet has become the accepted means by which people freely determine their political status and conduct of public affairs (as guaranteed by articles 1 and 25 of ICCPR), participate in their government and seek to hold their governments accountable. As a response to the opportunities offered by the online space to political rights, the UN Special Rapporteur on the rights to freedom of peaceful assembly and association has observed that “numerous jurisdictions have resorted to shutting down access to [internet] during elections and public demonstrations”.¹⁵⁵ This type of restriction prevents people from having accessing or disseminating information at key political moments, such as a national election, with an impact on the ability to monitor and organize.¹⁵⁶ In the context of elections, and particularly when protests ensue elections, when tensions are at their highest, internet freedom is actually needed to prevent disinformation and dispel rumors, as well as to protect the rights to liberty and personal integrity, by allowing access to emergency help and contact with family and friends.¹⁵⁷
80. In recent years, the internet has been the main tool for advancing civic and political activism in Belarus, which has seen a rapid growth of online political blogging and activism.¹⁵⁸ A leading candidate in the elections was a blogger and so were many members of his campaigning team.¹⁵⁹ In addition, all opposition candidates relied on social media and messenger to communicate with the electorate.¹⁶⁰
81. During the four-day shutdown in August 2020, two major grass-roots platforms were created by the opposition IT experts to collect information about fraudulent and genuine votes in the Belarusian elections (Онлайн-платформа Голос and ZUBR). Once the mobile internet connections were restored, these groups were quickly banned by the acting authorities.¹⁶¹
82. Through its contribution to the mobile internet shutdown, Telekom Austria limited the functioning of VoIP apps, such as Telegram. This was particularly problematic since Telegram became the main information and mobilization tool during the post-election protests.¹⁶² Given the key role the internet plays during elections, the internet shutdowns in Belarus affected essential election processes and precluded persons from holding their government to account and participating in the political life of their communities.
83. In effect, Telekom Austria’s contribution to the shutdowns constituted improper involvement in political activities particularly because of how their activity limited political rights and supported government repression on opposition and dissidents. By shutting down the internet, Telekom Austria contributed to the closure of online space and limited citizens’ participation in political debates and

¹⁵⁵ United Nations, Human Rights Council, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, A/HRC/41/41, 17 May 2019, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/141/02/PDF/G1914102.pdf?OpenElement>, para. 29.

¹⁵⁶ *Id.*

¹⁵⁷ Jan Rydzak, *Disconnected: A Human Rights-based Approach to Network Disruptions*, Global Network Initiative, no date, available at: <https://globalnetworkinitiative.org/wp-content/uploads/2018/06/Disconnected-Report-Network-Disruptions.pdf>.

¹⁵⁸ See: Katia Glod, *Belarus’s New Age of Civic Activism is Changing the Country*, Carnegie Europe, 22 February 2021, available at: <https://carnegieeurope.eu/2021/02/22/belarus-s-new-age-of-civic-activism-is-changing-country-pub-83904>; Freedom House, *Freedom on the Net 2021 – Belarus*, available at: https://freedomhouse.org/country/belarus/freedom-net/2021?fbclid=IwAR3Uy7dWNbsr8LIdOufx7mketCW2xA57gg6y88vsSOwsMYIceb50I8bIrmg#footnote6_ztdlq4y, point B8.

¹⁵⁹ DW News, *Siarhei Tsikhanouski: From Blogger to Activist to Political Prisoner*, 14 December 2021, <https://www.dw.com/en/siarhei-tsikhanouski-from-blogger-to-activist-to-political-prisoner/a-60118302>; Freedom House *Freedom on the Net 2021 – Belarus*, available at: https://freedomhouse.org/country/belarus/freedom-net/2021?fbclid=IwAR3Uy7dWNbsr8LIdOufx7mketCW2xA57gg6y88vsSOwsMYIceb50I8bIrmg#footnote6_ztdlq4y, point B8.

¹⁶⁰ DW News, *Siarhei Tsikhanouski: From Blogger to Activist to Political Prisoner*, 14 December 2021, <https://www.dw.com/en/siarhei-tsikhanouski-from-blogger-to-activist-to-political-prisoner/a-60118302>.

¹⁶¹ Tut.by News, *Беларусіограничилидоступ к сайтамплатформ “Голос” и Zubr.in.*, 21 August 2020, <https://42.tut.by/697599>

¹⁶² Madeleine Schwartz, *How Journalists Beyond the U.S. Fight Back Against Government Intimidation*, Neiman Reports, Winter 2021, available at: <https://neimanreports.org/articles/how-journalists-beyond-the-u-s-fight-back-against-state-sponsored-disinformation/>; Freedom House, *Freedom on the Net 2021 – Belarus*, available at: https://freedomhouse.org/country/belarus/freedom-net/2021?fbclid=IwAR3Uy7dWNbsr8LIdOufx7mketCW2xA57gg6y88vsSOwsMYIceb50I8bIrmg#footnote6_ztdlq4y, point B8.

activities. This included not only limiting citizens' online means to hold their government accountable by exposing election fraud and voter intimidation, but also limiting engagement in political campaigning.¹⁶³

Insufficient Disclosure Policies

84. Telekom Austria violated Chapter III.2.f, Chapter III.3.b and Chapter III.3.c of the OECD Guidelines by failing to disclose their activities in Belarus and their business relationship with the Belarusian government as a heightened risk factor, from a human rights perspective, and by failing to communicate information about its performance in relation to human rights policies and other codes of conduct to which the enterprise subscribes. In their regular reporting, Telekom Austria did not report on specific risks arising out of commercial activity in countries with problematic human rights records, such as Belarus. Specifically, Telekom Austria did not include such risk factors in their assessments prior to the shutdowns or after the shutdowns in Belarus.¹⁶⁴
85. As the UN Guiding Principles emphasize, enterprises' reporting responsibilities are heightened when their operating contexts pose risks of severe human rights impact.¹⁶⁵ Companies should formally report on "topics and indicators concerning how enterprises identify and address adverse impacts on human rights".¹⁶⁶ Business enterprises should be ready to communicate externally how they address human rights impacts and such communications should be "of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences" and "provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved".¹⁶⁷
86. Specific disclosure responsibilities fall on Telekom Austria due to their UN Global Compact membership¹⁶⁸ and, importantly, under the EU Non-Financial Reporting Directive ("NFRD"), which requires certain large companies, such as Telekom Austria, to publish information related to respect for human rights¹⁶⁹ and encourages disclosure of material information and key performance indicators regarding operations at significant risk of human rights violations.¹⁷⁰ In characterizing its non-financial reporting, the A1 Group does not refer to NFRD per se but it reports that its Consolidated Non-Financial Report is compiled in accordance with Section 267a of the Austrian Company Code (the

¹⁶³ See, for example: Human Rights Watch, *Belarus: Internet Disruptions, Online Censorship Authorities Restrict Internet Traffic over Continuing Protests*, 28 August 2020, available at: <https://www.hrw.org/news/2020/08/28/belarus-internet-disruptions-online-censorship>; Access Now, *Shattered Dreams and Lost Opportunities: A year in the fight to #KeepItOn*, March 2021, available at: https://www.accessnow.org/cms/assets/uploads/2021/03/KeepItOn-report-on-the-2020-data_Mar-2021_3.pdf, pp. 22-23; Reuters, *Internet Blackout in Belarus Leaves Protesters in the Dark*, 11 August 2020, available at: <https://www.reuters.com/article/us-belarus-election-internet-idUSKCN2571Q4>.

¹⁶⁴ See A1 Group's Consolidated Non-Financial Reports (NFR), available at: <https://www.a1.group/en/ir/combined-annualreports> (The NFR does not include Key Performance Indicator specifically in relation to human rights (it does with other relevant matters, such as environmental and employee for example)).

¹⁶⁵ UNGP, 2011, Commentary to UNGP 21.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ The UN Global Compact is a voluntary initiative to implement sustainability principles, requires that it undertake due diligence to ensure and demonstrate that it is meeting its responsibility with respect human rights. See: <https://www.unglobalcompact.org/what-is-gc/mission/principles>.

¹⁶⁹ Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095>, Art. 1.

¹⁷⁰ European Commission, *Communication from the Commission — Guidelines on Non-financial Reporting (Methodology for reporting non-financial information)*, C/2017/4234, 2017, available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017XC0705\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017XC0705(01)), Section 4.6(c).

“Unternehmenshandbuch” or “UGB”), which contains identical non-financial reporting provisions as the NFRD.

87. According to the UGB, Telekom Austria’s non-financial disclosure report must address the potential impact of a group of companies’ operations on human rights.¹⁷¹ The UGB also requires that A1 includes in the report a discussion of the applied due-diligence processes and the risks of its operation as well as the handling of such risks.¹⁷² The UGB aligns in many points with the standards set by the OECD Guidelines for Multinational Enterprises and the OECD Due Diligence Guidance. However, an analysis of A1 Group’s compliance with these standards reveals that A1’s non-financial disclosure obligations are not respected.
88. Furthermore, in its non-financial reporting, A1 Group does not report key performance indicators (“KPIs”) in relation to human rights (unlike with other matters listed under NFRD).¹⁷³ A1 Group does not include respect for human rights under its “risk management system” as outlined in its 2020 annual report and does not discuss the applied due-diligence processes and the risks of its operation and the handling of such risks.¹⁷⁴ However, other matters under NFRD – environmental, social, employee, compliance (i.e. anti-corruption and bribery) – are included in A1 Group’s risk management system.¹⁷⁵ Notably, information relating to human rights is also absent from its Global Reporting Initiative Content Index (a template aimed at helping large companies provide easily digestible information regarding sustainability).¹⁷⁶
89. Moreover, none of the A1 Group’s earlier non-financial reports address the potential risk of operating business in Belarus,¹⁷⁷ even though they have been operating there since 2007. Only the 2020 non-financial report discusses the potential issues with operating business in Belarus, albeit vaguely. It states: “A1 Belarus complied with the requirements of the governmental authorized bodies [to restrict mobile internet] and transparently communicated all the cases as decisions by the Belarusian government”.¹⁷⁸ This insufficient reference to the situation of A1 in Belarus does not respond with a human rights impact assessment or risk assessment, does not come up with a mitigation or remediation solution and definitely does not suggest an ex-post facto due diligence policy. Even at the time of the completion of the report, the shutdowns had happened and numerous reports by independent media and civil society groups had documented and denounced the human rights violations caused and facilitated by the repeated internet disruptions.
90. The A1 Group’s failure to disclose key non-financial policies, particularly with regards to human rights, as well as their applications and limitations renders A1 Belarus to be in violation of important provisions in the OECD Guidelines.

¹⁷¹ Sec 267a (2) UGB: The consolidated non-financial report has to include such information which is necessary to understand [...] the impact of its operations and which must, at least, refer to [...] the respect for human rights”. See English Translation of the UGB produced by the Austrian Working Group for Corporate Governance, January 2021, 76, available at: <https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewjGhfH2qz2AhXsQEEAHV17AZAQFnoECAkQAQ&url=https%3A%2F%2Fecgi.global%2Fdownload%2Ffile%2Ffid%2F24241&usq=AOvVaw0A1FVE4hbW0PRYgYXVgTjl>.

¹⁷² *Id* act Section 267a (3) UGB.

¹⁷³ Telekom Austria, *Consolidated Non-Financial Report*, 2020, available at: <https://cdn1.a1.group/final/en/media/pdf/Consolidated%20Non%20Financial%20Report.pdf>, pp. 15 and 16.

¹⁷⁴ A1 Group, *Annual Report*, 2020, available at: https://cdn1.a1.group/final/en/media/pdf/A1_TAG_Combined-Annual-Report_2020-EN.pdf, pp. 84-85; Telekom Austria, *Consolidated Non-Financial Report*, 2020, available at: <https://cdn1.a1.group/final/en/media/pdf/Consolidated%20Non%20Financial%20Report.pdf>, pp. 15 and 16.

¹⁷⁵ Set forth in Section 267a UGB, *see supra* n 171

¹⁷⁶ *See*: Global Reporting Initiative Content Index, available at: <https://www.globalreporting.org/reporting-support/services/content-index-service/>.

¹⁷⁷ *See supra* n 164, *see also* for example, A1 Group, *Consolidated Non-Financial Report 2019*, available at: https://cdn1.a1.group/final/en/media/pdf/A1_TAG_KJB_2019_eng.pdf, pp 15 et seq.

¹⁷⁸ A1 Group, *Q4 2020 Earnings Release*, 9 February 2021, available at: <https://newsroom.a1.group/Content/484745/d50811ea-4bec-40bd-9794-105314a8ff7f/0/0/attachment?l=english>, p. 9.

Failure to Promote Internet Freedom through Respect of Freedom of Expression, Assembly, and Association Online

91. Through the business activity of A1 Belarus, Telekom Austria violated Chapter II.B.1 of the OECD Guidelines, which encourages enterprises to “[s]upport, as appropriate to their circumstances, cooperative efforts in the appropriate fora to promote Internet Freedom through respect of freedom of expression, assembly and association online”.
92. Despite A1 Belarus’ control over the mobile internet in Belarus, Telekom Austria did not sufficiently exercise its leverage to prevent and/or mitigate the impact of the internet shutdowns and failed to remediate the shutdowns’ impacts through collaboration with relevant actors, at either the regional or global level. As set out in detail above (paras. 61 ff), the internet shutdowns actively hindered the rights to freedom of expression, assembly and association online. In facilitating the mobile internet shutdown, the company not only failed to promote internet freedom but actively limited the right to internet freedom, despite being active in one of the leading industries relating to this obligation.

WHETHER THE CONSIDERATION OF THE SPECIFIC ISSUE WOULD CONTRIBUTE TO THE PURPOSES AND EFFECTIVENESS OF THE GUIDELINES

93. Governments increasingly rely on multinational corporations for administrative and governance activities, for example by digitizing government identification or financial systems. As technology increasingly becomes a vital tool of governments, technological companies are moving to the center of governance structures but are not bound by the same transparency requirements and accountability mechanisms as democratically elected governments.
94. The UN Human Rights Council has noted that “[i]n the digital age, the exercise of the rights of peaceful assembly and association has become largely dependent on business enterprises” and “international human rights law should guide private sector actors and be the basis for their policies”.¹⁷⁹ The Human Rights Council has also highlighted that the “global framework for assessing digital technology companies’ responsibilities to respect human rights is provided by the Guiding Principles on Business and Human Rights”.¹⁸⁰
95. The OECD Guidelines are one of the few tools that effectively outline corporate responsibility in relation to the activities set out in the complaint below. This particular issue is of heightened relevance to the Guidelines because it relates to internet outages as a tool of stifling dissent and democratic engagement. This method of repression has gained increasing popularity in countries across the globe. In 2020, more than 155 internet shutdowns were documented in 29 countries.¹⁸¹ Frequently, these countries lack their own OECD national contact points but the governments rely on technology produced and exported by corporations headquartered in countries that do offer OECD redress mechanisms, as is the case in this situation.
96. A facilitated conversation between the Complainant and Telekom Austria would not only clarify existing obligations under the OECD Guidelines and connect its principles with contemporary issues.

¹⁷⁹ United Nations General Assembly, Human Rights Council, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, A/HRC/41/41, 17 May 2019, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/141/02/PDF/G1914102.pdf?OpenElement>, paras. 17 and 18.

¹⁸⁰ United Nations General Assembly, Human Rights Council, *Resolution adopted by the Human Rights Council*, A/HRC/RES/38/7, July 2018, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/215/67/PDF/G1821567.pdf?OpenElement>.

¹⁸¹ Access Now, *Shattered Dreams and Lost Opportunities: A Year in the Fight to #KeepItOn*, March 2021, available at: https://www.accessnow.org/cms/assets/uploads/2021/03/KeepItOn-report-on-the-2020-data_Mar-2021_3.pdf, pp. 2-3.

It would also push for a development of standards on the issues set out below, in a constructive manner, with the inclusion of relevant stakeholders.

CONCLUSION AND RECOMMENDATIONS

97. The above submissions highlight the high risks and adverse impact that can result from an internet shutdown. As corporations hold increasingly more power by controlling the technological arms of government power, they must also take increased responsibility for the actions they take with such power.
98. In light of the above submissions, the complainant requests that the NCP facilitate a meeting between Telekom Austria and Open Society Justice Initiative to discuss mitigating and remediating measures that can be taken with regards to the 2020 internet shutdown in Belarus and to ensure that future human rights violations through shutdowns are not facilitated by the company.
99. The Complainant suggests the following recommendations for Telekom Austria and its subsidiaries:
 - a. Make a public statement to acknowledge its contribution to the shutdowns in Belarus and the adverse impacts caused and state how these risks will be prevented in future;
 - i. Publicly denounce internet shutdowns and disruptions and highlight their devastating impact;
 - b. Set out how leverage may be used to improve domestic, regional and international frameworks on internet freedom;
 - i. Set out what steps were taken in the Belarusian context to oppose, resist or challenge requests or directions to shut down the internet;
 - ii. Exhaust all legal avenues, including at the supra-national level, to challenge requests or directions to facilitate internet shutdowns;
 - iii. Upon receiving requests or orders for internet shutdowns, consult civil society and rally peer companies to jointly push back against government censorship demands;
 - c. Publish a human rights due diligence plan, accounting for the human rights environment and risk of abuses in individual jurisdictions, in which the company is active;
 - i. Ensure that this plan is in line with the OECD Guidelines;
 - ii. Rectify the company's human rights policy, which is prioritizes national law over human rights, even when national law is in direct contravention of international human rights law;
 - d. Establish a network and fund of technology companies to promote internet freedom and address new age challenges emerging in authoritarian systems;
 - e. Implement and follow the OECD Guidelines on remediation and establish an operational grievance system for affected people to apply for remedies;
 - i. Engage with affected communities and relevant stakeholders in establishing the system;
 - ii. Establish a trust fund that funds project by Belarusian diaspora groups that seek to monitor and promote internet freedom;
 - f. Preserve evidence and reveal demands from the Belarusian government to disrupt internet access;

- i. Work with those affected by the shutdown, civil society, and shareholders to hold the Belarusian government to account for the shutdowns in a jurisdiction with an independent judiciary or complaint mechanism, such as Austria.

Annex One – Timeline of A1 Group public statements re. internet outages

Internet outages in Belarus – timeline of events and public statements relevant to A1 Belarus and A1 Group

| Date | Event | Statement by A1 Group or A1 Belarus, or authorised representative | Service affected | Attribution of fault |
|---------------------|--|--|-------------------------|---|
| 29 May | Arrest of Sergei Tikhanovsky, pro-democracy activist and husband of opposition leader Svetlana Tikhanovskaya | | | |
| 18 June | Arrest of Viktor Babaryko, opposition politician; protests in Minsk | | | |
| 19 June (Friday) | Mobile internet outage | <p>“Some subscribers may experience difficulties in the functioning of mobile internet. The situation was caused by a <u>temporary failure of some network maintenance services</u>. Now the situation has stabilized and the <u>problems</u> have been fixed.¹⁸²</p> <p>This mobile internet outage was unplanned and was not reported in advance on A1 Belarus’s website (which provides details of “planned maintenance works”).¹⁸³</p> | Mobile internet | <p>“temporary failure of some network maintenance services”</p> <p>“problems”</p> |
| 30 July | Rally in Minsk in support of Svetlana Tikhanovskaya | | | |
| 9 August | Presidential elections held | | | |

¹⁸² Text in original Russian: “Некоторые абоненты могли испытывать трудности в работе мобильного интернета. Ситуация была вызвана временным сбоем некоторых сервисов по обслуживанию сети. Сейчас ситуация стабилизировалась, а неполадки устранены. Приносим извинения за неудобства! (Source: [A1 Belarus Twitter feed](#))

¹⁸³ Source: A1 Belarus [website](#)

| | | | | |
|----------------------|-----------------------------------|---|---------------------------|--|
| 9 August (Sunday) | Mobile and fixed internet outages | <p>“Unfortunately, today, for reasons beyond our control, there are difficulties with access to some services via mobile and fixed internet. Correct provision of internet access will be automatically continued after our upstream provider restores its service.”¹⁸⁴</p> <p>“Unfortunately, for reasons beyond our control, there are difficulties with access to some services via mobile and fixed internet. The decision on compensation due to the inaccessibility of internet services will be made after a detailed study of the situation and an assessment of the downtime.”¹⁸⁵</p> <p>“Today, for reasons beyond our control, there are difficulties with access to services via mobile and fixed internet. As soon as our upstream provider continues the correct service, access will be restored automatically.”¹⁸⁶</p> | Mobile and fixed internet | <p>“reasons beyond our control”</p> <p>“Difficulties”</p> <p>“Upstream provider”</p> |
|----------------------|-----------------------------------|---|---------------------------|--|

¹⁸⁴ Text in original Russian: “К сожалению, сегодня по независящим от нас причинам наблюдаются сложности с доступом к некоторым сервисам через мобильный и фиксированный интернет. Корректное предоставление доступа в интернет будет автоматически продолжено после того, как наш вышестоящий провайдер восстановит свой сервис. Надеемся на скорое восстановление обслуживания!” (Source: [A1 Belarus Facebook feed](#))

¹⁸⁵ Text in original Russian: “К сожалению, по независящим от нас причинам наблюдаются сложности с доступом к некоторым сервисам через мобильный и фиксированный интернет. Решение о компенсации из-за недоступности интернет-сервисов будет принято после детального изучения ситуации и оценки времени простоя. Надеемся на скорое восстановление обслуживания!” (Source: [A1 Belarus press release](#))

¹⁸⁶ Text in original Russian: “Сегодня по независящим от нас причинам наблюдаются сложности с доступом к сервисам через мобильный и фиксированный интернет. Как только наш вышестоящий провайдер продолжит корректное обслуживание, доступ будет восстановлен автоматически.” (Source: [A1 Belarus Twitter feed](#))

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| 9 August (Sunday) | International internet-traffic outage | “We, like all other providers, get access to international internet traffic from authorised operators – RUE Beltelecom and the National Traffic Exchange Centre. As soon as our upstream provider continues the correct service, access will be restored automatically.” ¹⁸⁷ | International internet-traffic | “RUE Beltelecom and the National Traffic Exchange Centre” |
| 10 August | <p>National Traffic Exchange Centre issues a statement attributing the “deterioration of subscribers’ access to certain internet resources and services” to a failure of anti-DDoS equipment to counter “massive DDoS attacks” emanating from IP networks outside Belarus.¹⁸⁸</p> <p>Beltelecom issues a statement attributing “difficulties with access for subscribers to certain resources and services of the internet” to “multiple cyberattacks of varying intensity” from IP networks outside Belarus, which led to a “significant overload of the network, failure and breakdown of telecommunication equipment”.¹⁸⁹</p> | | | |

¹⁸⁷ Text in original Russian: “Мы, как все другие провайдеры, получаем доступ к международному интернет-трафику от уполномоченных операторов - РУП “Белтелеком” и Национальный центр обмена трафиком. Как только наш вышестоящий провайдер продолжит корректное обслуживание, доступ будет восстановлен автоматически.” (Source: [A1 Belarus Twitter feed](#))

¹⁸⁸ Source: [NTEC website](#)

¹⁸⁹ Source: [Beltelecom website](#)

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| 12 August | A1 Belarus offer of adjustment of subscriber fees re. mobile and fixed internet outages | Offer extended to private clients and businesses for disruptions taking place from 9 to 11 August. “Due to the difficulties with access to some services via mobile and fixed internet for <u>reasons beyond the control of the company</u> , A1 management has decided to adjust the subscription fees for mobile subscribers, as well as for home internet and television customers [...]”. ¹⁹⁰ | Mobile and fixed internet | “Reasons beyond the control of the company” “difficulties” |
| 12 August | National Traffic Exchange Centre issues a statement saying that “there has been a significant decrease in massive DDoS attacks on Belarusian operators’ networks” and that it has “managed to restore access to internet resources almost in full”. ¹⁹¹ Beltelecom issues a statement that it had “ <u>carried out work to increase the capacity of the anti-DDoS system</u> ”, making it possible to “restore access to internet services and resources in full”. ¹⁹² | | | |

¹⁹⁰ Source: A1 Belarus website: [offer to private clients](#) and [offer to businesses](#)

¹⁹¹ Source: [NTEC website](#)

¹⁹² Source: [Beltelecom website](#)

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| 13 August | A1 Group statement on internet outages | <p>Full statement: “A1 Belarus, a 100% subsidiary of A1 Telekom Austria AG, was affected by internet outages from August 9 to 12, 2020.</p> <p>“A1 Belarus, like all other internet service providers in Belarus, <u>receives access to international internet traffic from higher-level state operators</u> (Beltelecom, a 100% state-owned fixed line and service provider (https://www.beltelecom.by/en) and the “National Traffic Exchange Center ”).</p> <p>“According to the law, only these operators are authorised to connect to foreign networks, including the international internet. A1 Belarus Services depend on the functioning of this infrastructure. The disruptions in the last few days affected not only A1 Belarus, but all internet providers in Belarus equally. The outages, which we very much regret, were <u>demonstrably beyond our control</u>.</p> <p>“A1 Belarus stands for the best network quality and strives to provide its customers with the best service quality. Of course, the unavailability of the networks is not in the interest of A1 customers and therefore not in the interests of A1 itself.</p> <p>As of August 12, in the morning, access was restored by state institutes.”¹⁹³</p> | International internet-traffic Internet | <p>“higher-level state operators (Beltelecom, a 100% state-owned fixed line and service provider [...] and the “National Traffic Exchange Center”</p> <p>“outages, which we very much regret, were demonstrably beyond our control”</p> <p>“access was restored by</p> |
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| | | | | state institutes.” |
| 13 August | Beltelecom offers to adjust subscriber fees re. internet and hosting services: “Due to the difficulties in the operation of data transmission services for subscribers of internet access and hosting services of RUE Beltelecom that arose in the period from the afternoon of 9 to 11 August 2020 <u>for reasons beyond the control of RUE Beltelecom</u> , the management of the company has decided to adjust the amount of charges for three days [...].” ¹⁹⁴ | | | |
| 13 August | A1 commentary re. networks in Belarus | <p>In response to the internet outages in Belarus, Michael Höfler, director of communications for the A1 Group, was quoted in Wiener Zeitung, an Austrian newspaper, as saying:¹⁹⁵</p> <ul style="list-style-type: none"> - “A1 controls its own networks, <u>we have a 2G and 3G network that belongs to us</u> [...] 4G and the international data and voice gateway must be purchased by all operators from government agencies.” - "A1 Belarus is legally obliged to provide the authorities with technical interfaces for accessing data [...] This is an international standard and is also used in other European countries. [...] The interface for accessing telephone calls is actually standardized. This was also what the hardware manufacturers wanted, they didn't want to invent something new for every country." - "We can rule out any active transfer of data from opponents of the regime or demonstration participants [...] Since this is a legally required interface, we do not know the type, content and frequency of the data that can potentially be called up.” | | |
| 16 August | Large opposition protests | | | |
| 17 August | Beltelecom releases statement regarding “short-term technical failure” from 11:30 to 11:40 causing “difficulties” with access to the internet. Network reportedly fully operational at the time of the statement’s release. | | | |
| 23 August | Large opposition march | | | |

¹⁹³ Source: [A1 Group website](#)

¹⁹⁴ Source: [Beltelecom website](#)

¹⁹⁵ Source: “A1 Belarus: Daten für den Autokraten”, 13 August 2020, [Wiener Zeitung](#)

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| 23 August (Sunday) | 3G mobile internet outage in Minsk | <p>“We regret to inform you that <u>at the request of state organs in connection with ensuring national security</u>, the capacity of the A1 3G network in some districts of Minsk has been significantly reduced. Fulfilment of this requirement leads to a <u>deterioration in the quality of data transmission service</u>. We apologise and look forward to a quick restoration of service.”¹⁹⁶</p> <p>(By 20:42 data transfer services were operational, so claimed A1 Belarus.¹⁹⁷)</p> | 3G mobile internet | “at the request of state organs in connection with ensuring national security” |
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¹⁹⁶ Text in original Russian: “С сожалением сообщаем, что по требованию государственных органов в связи с обеспечением национальной безопасности существенно снижена пропускная способность 3G-сети А1 на территории некоторых районов г. Минска. Исполнение данного требования приводит к ухудшению качества сервиса передачи данных. О восстановлении корректного доступа к услуге будет сообщено дополнительно. Приносим извинения и надеемся на скорое восстановление обслуживания.” (Source: [A1 Belarus press release](#); [A1 Belarus Facebook feed](#); [A1 Belarus Twitter feed](#))

¹⁹⁷ Source: [A1 Belarus press release](#)

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| 26 August (Wednesday) | Mobile internet and temporary fixed internet outages | <p>A1 provides advanced notice of reduction in mobile internet services: <u>“By order of the authorised state organs, on 26 August from 20:40 the bandwidth of the mobile internet in Minsk will be reduced.</u></p> <p>Fulfilment of this requirement leads to a deterioration in the quality of data transmission or temporary unavailability of the service.¹⁹⁸</p> <p>A1 provides explanation for fixed internet outage: <u>“Due to the actions of the authorised state organs and for reasons beyond the control of the company, on 26 August from 20:50 to 21:00 access to the internet via A1 fixed line was hampered.</u>¹⁹⁹</p> | Mobile and fixed internet | <p>“By order of authorised state organs”</p> <p>“Due to the actions of the authorised state organs and for reasons beyond the control of the company”</p> |
| 30 August (Sunday) | Mobile internet outage in Minsk | <p><u>“By order of the authorised state organs on the territory of Minsk the bandwidth of the mobile internet has been reduced. Fulfilment of the requirement leads to a deterioration in the quality of the data transmission service or temporary unavailability of the service.”</u>²⁰⁰</p> <p>(Data transfer services had been fully restored by 18:00, according to A1 Belarus.²⁰¹)</p> | Mobile internet (specifically 3G, according to URL of press release) | “By order of the authorised state organs” |

¹⁹⁸ Text in original Russian: “По распоряжению уполномоченных государственных органов 26 августа с 20:40 в Минске будет снижена пропускная способность мобильного интернета. Исполнение данного требования ведет к ухудшению качества передачи данных или временной недоступности услуги.” (Source: [A1 Belarus press release](#); [A1 Belarus Twitter feed](#))

¹⁹⁹ Text in original Russian: “В связи с действиями уполномоченных государственных органов и по независящим от компании причинам 26 августа в период с 20:50 до 21:00 был затруднен доступ в интернет по фиксированной связи А1.” (Source: [A1 Belarus press release](#))

²⁰⁰ Text in original Russian: “По распоряжению уполномоченных государственных органов на территории г. Минска снижена пропускная способность мобильного интернета. Выполнение требования ведет к ухудшению качества сервиса передачи данных или временной недоступности услуги.” Source: [A1 Belarus press release](#); [A1 Belarus Twitter feed](#)

²⁰¹ Source: [A1 Belarus press release](#);

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| 1 September (Tuesday) | Austrian Foreign Ministry re. internet outages | Austrian Foreign Ministry reported to have told Der Standard, an Austrian newspaper, that it “clearly condemns” that a “state blocks free access to the internet” and that there is “absolutely no sympathy” for the fact that “authorities are forcing telecom providers to restrict their services”. At the same time, the Ministry reportedly stated that “the Republic does not interfere in the operational business activities of the associated companies”. ²⁰² | internet (not specified whether mobile or fixed) | “authorities are forcing telecom providers to restrict their services” |
| 6 September (Sunday) | Mobile internet outage in Minsk | “ <u>By order of the authorised state organs</u> on the territory of Minsk, the bandwidth of the mobile internet has been reduced. Fulfilment of the requirement leads to a deterioration in the quality of the data transmission service or temporary unavailability of the service.” ²⁰³ (Data transfer services had been fully restored by 18:10, according to A1 Belarus. ²⁰⁴) | Mobile internet (specifically 3G, according to URL of press release) | “By order of the authorised state organs” |

²⁰² Source: “internetzensur in Belarus: Wien "mischt sich nicht in die Geschäfte von A1 ein", 1 September 2020, [Der Standard](#)

²⁰³ Text in original Russian: “По распоряжению уполномоченных государственных органов на территории г. Минска снижена пропускная способность мобильного интернета. Выполнение требования ведет к ухудшению качества сервиса передачи данных или временной недоступности услуги.” (Source: [A1 Belarus press release](#); [A1 Belarus Twitter feed](#))

²⁰⁴ Source: [A1 Belarus press release](#);

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| 8 September (Tuesday) | A1 Belarus offer of compensation for mobile internet outages of 23, 26 and 30 August | “Due to restrictions on the operation of the mobile internet in Minsk on August 23, 26 and 30, 2020 (the total time of incorrect operation of the service was 6 hours 16 minutes), <u>related to the fulfilment of the requirements of the authorised state organs and due to reasons beyond the control of the company</u> , the A1 management made a decision on compensation for mobile subscribers (individuals and legal entities) who were affected by the problem of unavailability of services during the specified period [...]” ²⁰⁵ | Mobile internet | “related to the fulfilment of the requirements of the authorised state organs and due to reasons beyond the control of the company” |
| 13 September (Sunday) | Mobile internet outage in Minsk | “ <u>In accordance with the order of the authorised state organs</u> on September 13, the bandwidth of the mobile internet was reduced in Minsk. Fulfilment of this requirement leads to a deterioration in the quality of the data transmission service or temporary unavailability of the service. ²⁰⁶ (Data transfer services had been fully restored by 19:15, according to A1 Belarus. ²⁰⁷) | Mobile internet (specifically 3G, according to URL of press release) | “In accordance with the order of authorised state organs” |

²⁰⁵ Text in original Russian: “В связи с ограничениями в работе мобильного интернета в Минске 23, 26 и 30 августа 2020 года (общее время некорректной работы сервиса составило 6 часов 16 минут), связанными с выполнением требований уполномоченных государственных органов и возникших по независящим от компании причинам, руководством А1 принято решение о проведении компенсаций абонентам мобильной связи (физическим и юридическим лицам), которых коснулась проблема недоступности сервисов в указанный период [...]” (Source: [A1 Belarus press release](#))

²⁰⁶ Text in original Russian: “В соответствии с распоряжением уполномоченных государственных органов 13 сентября в Минске снижена пропускная способность мобильного интернета. Выполнение данного требования ведет к ухудшению качества сервиса передачи данных или временной недоступности услуги.” (Source: [A1 Belarus press release](#); [A1 Belarus Twitter feed](#))

²⁰⁷ Source: [A1 Belarus press release](#);

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| 16 September (Wednesday) | A1 Group statement to ETNO | The A1 Group quoted in a letter from the European Telecommunications Network Operators' Association to MEP Karin Karlsbro: "A1 Belarus is not able to provide communication services without monopolized services provided by the State. <u>Both national/international, voice/data interconnectivity is under full control of state-owned institutions and outside of A1 Belarus control.</u> Liberalization of these gateways has been escalated numerous times, without success. WTO's accession priorities towards Belarus includes liberalization of gateways." ²⁰⁸ | national/international, voice/data inter- connectivity | "under full control of state-owned institutions and outside of A1 Belarus control" |
| 20 September (Sunday) | Mobile internet outage in Minsk | "In accordance with the order of the authorised state organs, on September 20, the bandwidth of the mobile internet was reduced in Minsk. Fulfilment of this requirement leads to a deterioration in the quality of the data transmission service or temporary unavailability of the service." ²⁰⁹ (Data transfer services had been fully restored by 19:05, according to A1 Belarus. ²¹⁰) | Mobile internet (specifically 3G, according to URL of press release) | "In accordance with the order of authorised state organs" |

²⁰⁸ Source: [ETNO](#)

²⁰⁹ Text in original Russian: "В соответствии с распоряжением уполномоченных государственных органов 20 сентября в Минске снижена пропускная способность мобильного интернета. Выполнение данного требования ведет к ухудшению качества сервиса передачи данных или временной недоступности услуги." (Source: [A1 Belarus press release](#); [A1 Belarus Twitter feed](#))

²¹⁰ Source: [A1 Belarus press release](#)

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| 27 September (Sunday) | Mobile internet outage in Minsk | <p>“<u>In accordance with the order of the authorised state organs</u>, on September 27, the bandwidth of the mobile internet was reduced in Minsk. Fulfilment of this requirement leads to a deterioration in the quality of the data transmission service or temporary unavailability of the service.”²¹¹</p> <p>(Data transfer services had been fully restored by 19:00, according to A1 Belarus.²¹²)</p> | Mobile internet (specifically 3G, according to URL of press release) | “In accordance with the order of authorised state organs” |
| 1 October (Thursday) | A1 Belarus offer of compensation for mobile internet outages 6, 13, 20 and 27 September | <p>“Due to restrictions on the operation of the mobile internet in Minsk on September 6, 13, 20 and 27, 2020 (the total time of incorrect operation of the service was 17 hours 12 minutes), <u>related to the fulfilment of the requirements of the authorised state organs and due to reasons beyond the control of the company</u>, the management of A1 a decision was made to compensate mobile subscribers (individuals and legal entities) who were affected by the problem of unavailability of services during the specified period”²¹³</p> | Mobile internet | “related to the fulfilment of the requirements of the authorised state organs and due to reasons beyond the control of the company” |

²¹¹ Text in original Russian: “В соответствии с распоряжением уполномоченных государственных органов 27 сентября в Минске снижена пропускная способность мобильного интернета. Выполнение данного требования ведет к ухудшению качества сервиса передачи данных или временной недоступности услуги.” (Source: [A1 press release](#); [A1 Belarus Twitter feed](#)) Belarus

²¹² Source: [A1 Belarus press release](#)

²¹³ Source: [A1 press release](#)

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| 4 October (Sunday) | Mobile internet outage in Minsk | <p>“<u>In accordance with the order of the authorised state organs</u> on October 4, the bandwidth of the mobile internet was reduced in Minsk. Fulfilment of this requirement leads to a deterioration in the quality of the data transmission service or temporary unavailability of the service.”²¹⁴</p> <p>(Data transfer services had been fully restored by 18:05, according to A1 Belarus.²¹⁵)</p> | Mobile internet (specifically 3G, according to URL of press release) | “In accordance with the order of authorised state organs” |
| 11 October (Sunday) | Mobile internet outage in Minsk | <p>“<u>In accordance with the order of the authorised state organs</u> on October 11, the bandwidth of the mobile internet was reduced in the territory of Minsk. Fulfilment of this requirement leads to a significant deterioration in the quality of the data transmission service or temporary unavailability of the service.”²¹⁶</p> <p>(Data transfer services had been fully restored by 18:05, according to A1 Belarus.²¹⁷)</p> | Mobile internet (specifically 3G, according to URL of press release) | “In accordance with the order of authorised state organs” |

²¹⁴ Text in original Russian: “В соответствии с распоряжением уполномоченных государственных органов 4 октября в Минске снижена пропускная способность мобильного интернета. Выполнение данного требования ведет к ухудшению качества сервиса передачи данных или временной недоступности услуги.” (Source: [A1 Belarus press release](#); [A1 Belarus Twitter feed](#))

²¹⁵ Source: [A1 Belarus press release](#)

²¹⁶ Text in original Russian: “В соответствии с распоряжением уполномоченных государственных органов 11 октября в Минске снижена пропускная способность мобильного интернета. Выполнение данного требования ведет к ухудшению качества сервиса передачи данных или временной недоступности услуги.” (Source: [A1 Belarus press release](#); [A1 Belarus Twitter feed](#))

²¹⁷ Source: [A1 Belarus press release](#)

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| 18 October (Sunday) | Mobile internet outage in Minsk | <p>“<u>In accordance with the order of the authorised state organs</u> on October 18, the bandwidth of the mobile internet was reduced in Minsk. Fulfilment of this requirement leads to a deterioration in the quality of the data transmission service or temporary unavailability of the service.”²¹⁸</p> <p>The press release published on A1 Belarus’s website on 18 October ostensibly has a typo: “In accordance with the order of the authorised state organs on <u>October 25</u>, the bandwidth of the mobile internet was reduced in the territory of Minsk.”</p> <p>A reduction in mobile internet services did indeed occur on 25 October. By way of speculation, it may be that A1 Belarus had prepared this press release in advance.</p> | Mobile internet (specifically 3G, according to URL of press release) | “In accordance with the order of authorised state organs” |
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²¹⁸ Text in original Russian: “В соответствии с распоряжением уполномоченных государственных органов 18 октября в Минске снижена пропускная способность мобильного интернета. Выполнение данного требования ведет к ухудшению качества сервиса передачи данных или временной недоступности услуги.” (Source: [A1 Belarus press release](#); [A1 Belarus Twitter feed](#))

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| 20 October | A1 Group comments on Belarus events in Q3 results | <p>“The situation in Belarus was shaped by political uncertainty. Customers from all internet providers in Belarus were affected by a service shutdown on August, 9-12. A1 Belarus as the first operator had publicly disclosed disruption of services due to <u>the unavailability of respective service from state owned providers, which are the sole operators to maintain external gateway</u>. During August and September <u>all operators were ordered to reduce capacity of its mobile network in Minsk for limited time periods</u>. A1 Belarus complied with the requirements of the governmental authorised organs and transparently communicated all the cases as decisions of the Belarusian Government.”²¹⁹</p> <p>A1 Group reports in the same Q3 results: “operator’s SMS broadcasting functionalities were used as a regular governmental channel to inform citizens on national security violations.”²²⁰</p> | internet and mobile network in Minsk | <p>“unavailability of respective service from state owned providers, which are the sole operators to maintain external gateway”</p> <p>“all operators were ordered to reduce capacity of its mobile network in Minsk for limited time periods”</p> <p>“requirements of the governmental authorised organs”</p> |
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| 21 October | Thomas Arnoldner, CEO of the A1 Group, quoted in Die Presse, an Austrian daily broadsheet, as saying: ²²¹ "Business in Belarus is doing extremely well in local currency" [...] We are firmly against network blocking and hope that they will come to an end. But here too we are obliged to follow local laws." | | | |
| 22 October (Thursday) | Access to Telegram (http://t.me) via Google Chrome disrupted | "Currently, some A1 subscribers may experience difficulties accessing the http://t.me resource through certain browsers, such as Google Chrome, <u>for technical reasons</u> . But the resource remains accessible through other browsers, such as Microsoft Edge or Opera." ²²² For context, note that Belarusian authorities had restricted access to certain websites and online messaging services in August 2020 using Deep Packet Inspection technologies. ²²³ | Telegram | "technical reasons" |

²¹⁹ Source: [A1 Group website](#)

²²⁰ Source: [A1 Group website](#)

²²¹ Source: Telekom Austria hält an Weißrussland fest, 21 October 2020, [Die Presse](#)

²²² Source: [A1 Belarus Twitter feed](#)

²²³ Source: [Human Rights Watch](#)

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| 25 October (Sunday) | Mobile internet outage in Minsk | <p>“In accordance with the order of the authorised state organs on October 25, the bandwidth of the mobile internet was reduced in Minsk. Fulfilment of this requirement leads to a deterioration in the quality of the data transmission service or temporary unavailability of the service.”²²⁴</p> <p>(Data transfer services had been fully restored by 18:40, according to A1 Belarus.²²⁵)</p> | Mobile internet (specifically 3G, according to URL of press release) | “In accordance with the order of authorised state organs” |
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²²⁴ Text in original Russian: “В соответствии с распоряжением уполномоченных государственных органов 25 октября в Минске снижена пропускная способность мобильного интернета. Выполнение данного требования ведет к ухудшению качества сервиса передачи данных или временной недоступности услуги.” (Source: [A1 Belarus press release](#); [A1 Belarus Twitter feed](#))

²²⁵ Source: [A1 Belarus press release](#)

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| 29 October | A1 Belarus open letter re. events in Belarus | <p>Nikolay Bredelev, head of corporate communication at A1 Belarus, in a letter to Felicia Fauzia Anthonio, a campaigner for #KeepItOn, a coalition of organisations campaigning against internet restrictions, states the following:²²⁶</p> <ul style="list-style-type: none"> - “our strong commitment towards legal compliance and establishment of transparency in governmental interventions on public internet access do not always include disclosure/publishment of all endeavours to limit or fade out such interventions. - “A1 Belarus has publicly disclosed that the company is currently experiencing disruption of it’s [sic] services due to both the decisions of the Belarusian Government and the Belarusian state owned providers, which are the sole operators of networks that carry the traffic from and to Belarus. [...] - “A1 Belarus is not able to provide communication services without monopolized services provided by the state. Both national and international, voice and data interconnectivity are under full control of state-owned institutions and outside of A1 Belarus control. Taking into account the fact that such a set-up is unique or Europe, the state does not depend on operators in its blackout initiative to preserve “national security”. | <p>“internet” “Public internet access” “services” “traffic” “communication services” “voice and data inter-connectivity” “internet services”</p> | <p>“due to both the decisions of the Belarusian Government and the Belarusian state owned providers, which are the sole operators of networks that carry the traffic from and to Belarus” “A1 Belarus is not able to provide communication services without monopolized services</p> |
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²²⁶ Source: [AccessNow website](#). Bredelev was responding to a letter from #KeepItOn, available on AccessNow’s [website](#)

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| | | <p>- “Clearly, the continuous countrywide internet services blackouts or targeted filtering of internet services by the Government of Belarus are not in our interest or in the interest of our customers. However, as in every country in which A12 Telekom Austria Group operates, we have to comply with the local legal and regulatory requirements and in this case, we had to implement them accordingly. In case of failing to comply with an order, blackouts are and have been implemented by state in a much larger scale and resulted in the disconnection of all internet services, both fixed and mobile, for our customers countrywide as it was already experienced by A1 Belarus on August 26, 2020 which was publicly reported.”</p> | | provided by the state” |
| 1 November (Sunday) | Mobile internet outage in Minsk | <p>“<u>In accordance with the order of the authorised state organs</u>, on November 1, the bandwidth of the mobile internet was reduced in Minsk. Fulfilment of this requirement leads to a deterioration in the quality of the data transmission service or temporary unavailability of the service.”²²⁷</p> <p>(Data transfer services had been fully restored by 18:10, according to A1 Belarus.²²⁸)</p> | Mobile internet (specifically 3G, according to URL of press release) | “In accordance with the order of authorised state organs” |

²²⁷ Text in original Russian: “В соответствии с распоряжением уполномоченных государственных органов 1 ноября в Минске снижена пропускная способность мобильного интернета. Выполнение данного требования ведет к ухудшению качества сервиса передачи данных или временной недоступности услуги.” (Source: [A1 Belarus press release](#); [A1 Belarus Twitter feed](#))

²²⁸ Source: [A1 Belarus press release](#)

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| 2 November | A1 offers compensation for mobile internet outages in Minsk on 4, 11, 18 and 25 October. | “Due to restrictions on the operation of the mobile internet in Minsk on October 4, 11, 18 and 25, 2020 (the total time of incorrect operation of the service was 19 hours 27 minutes), <u>related to the fulfilment of the requirements of the authorised state organs and due to reasons beyond the control of the company</u> , the management of A1 a decision was made to compensate mobile subscribers (individuals and legal entities) who faced the problem of unavailability of services during the specified period” ²²⁹ | Mobile internet | “related to the fulfilment of the requirements of the authorised state organs and due to reasons beyond the control of the company” |
| 8 November (Sunday) | Mobile internet outage in Minsk | “ <u>In accordance with the order of the authorised state organs</u> on November 8, the bandwidth of the mobile internet was reduced in Minsk. Fulfillment of this requirement leads to a deterioration in the quality of the data transmission service or temporary unavailability of the service.” ²³⁰ (Data transfer services had been fully restored by 16:45, according to A1 Belarus. ²³¹) | Mobile internet (specifically 3G, according to URL of press release) | “In accordance with the order of authorised state organs” |

²²⁹ Source: [A1 Belarus press release](#)

²³⁰ Text in original Russian: “В соответствии с распоряжением уполномоченных государственных органов 8 ноября в Минске снижена пропускная способность мобильного интернета. Выполнение данного требования ведет к ухудшению качества сервиса передачи данных или временной недоступности услуги.” (Source: [A1 Belarus press release](#); [A1 Belarus Twitter feed](#))

²³¹ Source: [A1 Belarus press release](#)

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| 15 November (Sunday) | Mobile internet outage in Minsk | <p>“<u>In accordance with the order of the authorised state organs</u> on November 15, the bandwidth of the mobile internet was reduced in Minsk. Fulfilment of this requirement leads to a deterioration in the quality of the data transmission service or temporary unavailability of the service.”²³²</p> <p>(Data transfer services had been fully restored by 17:35, according to A1 Belarus.²³³)</p> | Mobile internet (specifically 3G, according to URL of press release) | “In accordance with the order of authorised state organs” |
| 22 November (Sunday) | Mobile internet outage in Minsk | <p>“<u>In accordance with the order of the authorised state organs</u>, on November 22, the bandwidth of the mobile internet was reduced in Minsk. Fulfilment of this requirement leads to a deterioration in the quality of the data transmission service or temporary unavailability of the service.”²³⁴</p> <p>(Data transfer services had been fully restored by 16:00, according to A1 Belarus.²³⁵)</p> | Mobile internet (specifically 3G, according to URL of press release) | “In accordance with the order of authorised state organs” |

²³² Text in original Russian: “В соответствии с распоряжением уполномоченных государственных органов 15 ноября в Минске снижена пропускная способность мобильного интернета. Выполнение данного требования ведет к ухудшению качества сервиса передачи данных или временной недоступности услуги.” (Source: [A1 Belarus press release](#); [A1 Belarus Twitter feed](#))

²³³ Source: [A1 Belarus press release](#)

²³⁴ Text in original Russian: “В соответствии с распоряжением уполномоченных государственных органов 22 ноября в Минске снижена пропускная способность мобильного интернета. Выполнение данного требования ведет к ухудшению качества сервиса передачи данных или временной недоступности услуги.” (Source: [A1 Belarus press release](#); [A1 Belarus Twitter feed](#))

²³⁵ Source: [A1 Belarus press release](#)

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| 29 November (Sunday) | Mobile internet outage in Minsk | “In accordance with the order of the authorised state organs, on November 29, the bandwidth of the mobile internet was reduced in Minsk. Fulfilment of this requirement leads to a deterioration in the quality of the data transmission service or temporary unavailability of the service.” ²³⁶ (Data transfer services had been fully restored by 15:50, according to A1 Belarus. ²³⁷) | Mobile internet (specifically 3G, according to URL of press release) | “In accordance with the order of authorised state organs” |
| 30 November | A1 offers compensation for mobile internet outages in Minsk on 1, 8, 15, 22 and 29 November. | “Due to restrictions on the operation of the mobile internet in Minsk on November 1, 8, 15, 22 and 29, 2020 (the total time of incorrect operation of the service was 29 hours and 20 minutes), <u>related to the fulfilment of the requirements of authorised state organs and caused by reasons beyond the control of the company</u> , A1 management made a decision to compensate mobile subscribers (individuals and legal entities) who faced the problem of unavailability of services during the specified period” ²³⁸ | Mobile internet | “related to the fulfilment of the requirements of the authorised state organs and due to reasons beyond the control of the company” |

²³⁶ Text in original Russian: “В соответствии с распоряжением уполномоченных государственных органов 29 ноября в Минске снижена пропускная способность мобильного интернета. Выполнение данного требования ведет к ухудшению качества сервиса передачи данных или временной недоступности услуги.” (Source: [A1 Belarus press release](#); [A1 Belarus Twitter feed](#))

²³⁷ Source: [A1 Belarus press release](#)

²³⁸ Source: [A1 Belarus press release](#)

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| 6 December (Sunday) | Netblocks, an internet monitoring website run by Alp Toker, a digital rights activist, reported that on Sunday, 6 December 2020, there was “a period of unusually widespread outages lasting some 20 minutes, impacting most networks outside of the national gateway”. The cause of the blackout had not been identified and no response was issued by A1. ²³⁹ | | | |
| 9 February 2021 | A1 Group comments on Belarus events in Q4 results | “The economic situation in Belarus continues to be shaped by political uncertainty. Throughout the fourth quarter, all operators were ordered to reduce capacity of their mobile network in Minsk for limited time periods. A1 Belarus complied with the requirements of the governmental authorised organs and transparently communicated all the cases as decisions by the Belarusian government.” ²⁴⁰ | Mobile network capacity (i.e. mobile internet) | “ordered to reduce capacity of their mobile network in Minsk for limited time periods.” “the requirements of the governmental authorised organs” |

²³⁹ Source: “internet disruption hits Belarus on election day”, [Netblocks](#)

²⁴⁰ Source: [A1 Group website](#)

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| <p>10 June 2021</p> | <p>A1 Group open letter re. events in Belarus</p> | <p>A1 Group CEO Thomas Arnoldner, following a protest outside A1 Group headquarters by epicenter.works, a digital rights NGO, write an open letter to epicenter.works’ managing director, Thomas Lohninger, stating:</p> <ul style="list-style-type: none"> - “The primary goal of A1 was and is to protect our 2,500 colleagues, to maintain our mobile and internet service for the Belarusian population and to prevent damage to A1 Belarus. One thing is clear - and we all agree: the best internet is a functioning internet. - “It is known that we as a company in Belarus have restricted access to the internet due to a lack of capacity on the part of the state monopoly nationwide and as a result we were forced to reduce the internet speed on a few days at specified locations due to regulatory framework conditions. - “As the only provider in Belarus, we have always announced this and made it transparent. We did this against the background that <u>the authorities in Belarus technically have the option outside of our network to not only throttle the entire internet in the entire country, but to prevent it if the instructions are not complied with.</u> The last order to restrict internet access in Belarus was issued to us in November 2020, around seven months ago. Since then, we have been providing the Belarusian people with our internet services around the clock. We have also compensated our customers | <p>“internet speed” (refers to both mobile and fixed internet)</p> | <p>“we were forced to reduce the internet speed on a few days at specified locations due to regulatory framework conditions.”</p> <p>“the authorities in Belarus technically have the option outside of our network to not only throttle the entire internet in the entire country, but to prevent it if the instructions are</p> |
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| | | financially for internet failures, so you can be sure that such internet blocks are not in the company's interest." ²⁴¹ | | not complied with" |
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²⁴¹ Source: [ATS newswire](#)

