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TOPIC 1

TRADE LIBERALIZATION AND THE LABOUR LAW

AUSTRIA

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I. IDEOLOGICAL DISCUSSIONS AND THE LABOUR LAW

1. There is in your country a discussion over the reformation of the labour law in view of of:

***(A)** The globalization process;*

***(B)** Technological change;*

***(C)** Changes in the Labor Organization?*

To (A) globalization process

Discussions in connection with reformation of the labour law and the globalization process are initiated and in Austria usually under the key word „safety device of the economic situation “.

Topics thereby were and/or are:

- Work time: Making the work time (in particular longer Durchrechungszeiträume, maximum work times), store opening times and Sunday work, stronger misalignment flexible of the authority to the conclusion of management and industry agreements of the collective contract levelon the operating level

- Holidays: Demand for cancellation of individual legal holidays

- Payment continued payment at illness and vacation: Demand for charge of the first rate of sick persons daily on the vacation entitlement

- Protection against dismissal: Weakening of the protection against dismissal

- Minimum wages: Misalignment of the authority to the conclusion of Lohnregelungen of the collective contract levelon the operating level

- European work council: national conversion of the European Union - guideline

Further still discussions would be in connection with ancillary wages (demand for lowering of the ancillary wages), to state the Zumutbarkeitsbestimmungen within the range of the unemployment insurance (aggravation) and permission of foreign workers (in particular increased permission of key personnel, specialists and trainees).

To (B) technological changes

At discussions in connection with reformation of the labour law and technological changes in particular questions would be in connection with the protection automation supporter data and in the range employee protection the introduction of work psychologists as preventive specialists to call the danger evaluation and the regulations in connection with screen handling (auxiliary order of the screen eyeglasses by the employer and obligating eye-medical investigations).

To the teleworking see below.

To (C) changes in the Labor Organization

led to discussions within the following ranges:

- Work time: Flexible working hours (legal defaults); Ons-call service and travel time (in particular maximum limits in connection with „the normal “work time), part-time job (when an obligation exists to the additional work; Discrimination prohibition)

- Teleworking: Time registration, reimbursement of costs for, contact would wind basic conditions up, like work place, to the enterprise

- Dispatching: Those increasingly rising turnover rate with the employer-employee relationshipsled to discussions across the conditions and the financing of the dispatchingand in the final result to a legal reorganization („dispatching again “).

- Karenzierungen: The increasing need according to Karenzierung of employer-employee relationships because of education times or care of close members led in particular to demands after a legal regulation (in particular conditions and effect on requirements pertaining to labor law)

- Demarcation between work contract, free contract of employment and work contract: By on the one hand increasing activities, and placed themselves on the other hand tendencies made the one rigid integration into the Labor Organization less and less necessary for the evasion work and sociallegal] increasingly to questions to the demarcation and work and social security-legal treatment of work contract, free contract of employment and work contract.

2. *If your answer is positive to (1), would you know details over the value of this discussion and the interlocutors, which participate in it call (e.g. whether them are academic nature or whether also the government, the social participants, the legislation, those financially responsible person, other one) in it are complicated?*

The discussions in connection with the globalization process and/or the location debate (A) were launched naturally by representatives of the economy and predominantly led of the political opinion carrier (politician and social]). Academic experts, like in particular lawyers and economic researchers, were participated with these discussions rather in the edge or led these among experts.

The distribution of the discussions in connection with technological changes (B) is less kontroversiell and in the distribution between the relevant experts (right expert, ministerial

official, work physician, data-security commissioner) and the political opinion carriers more balanced in the difference to the location debate. With topics, which were politically less from interest and high special know-how required (in particular technical employee protection) was the discussion with officials and concentrates experts.

The emphasis of the discussion over reformation of the labour law due to changes in the Labor Organization (C) was at the social participants and the academic circles (predominantly right experts). The policy was merged – although here tendentious rather at the end - likewise in the not insignificant extent. Particularly when positively occupy changes, as during „the dispatching new "nearly all political opinion carriers stressed the authority for the topic.

With increasing concretizing of possible legal defaults also the legislation was and/or was merged the puttingists in the Ministries with all reform discussions ((A) – (C)).

3. Is this discussion based on suggestions for law reforms or on recent reforms concerning the labour law? If this is the case, you could call, e.g. those details of these reforms in connection with:

(A) *the work contract*

(B) *Completion of the occupation (you compare also down, question 5)*

(C) *Collective treaty negotiations*

(D) *Methods of the Lohnfestsetzung*

(E) *Duration of the work and organization of the work time*

(f) *Alteration of the running time and the conditions of the work and occupation*

(g) *Labor mobility*

(h) *Other topics?*

The discussion was based only in the rarest cases on suggestions for law reforms or concerning reforms the labour law, but rather in most cases led to it.
To the individual topics:

(A) the work contract
There were discussions for the term of the employer-employee relationship and/or the demarcation work contract – free contract of employment – work contract (see above). The discussions flowed in particular in a change with the social security right (definition of the free contract of employment and inclusion into the social security) some years ago. The question of a redefinition of the employee term in the labour law is still located in the area. A discussion in addition takes place at present however only occasionally among experts.

(B) Completion of the occupation
To the protection against dismissal occasionally discussions on political level and among experts take place. Demands for liberalisation, raised from individual political participants and representatives of the economy, usually find due to the comparatively weakly minted general protection against dismissal in Austria little going eye.

In the last years there was in this connection only a slight change.

(C) Collective treaty negotiations

The discussion is very kontroversiell about misalignment of the authority to the conclusion of management and industry agreements of the collective contract levelon the operating level. It

concerns thereby primarily work time questions and wage negotiations. Also in the government program of the present government are appropriate projects.

(D) Methods of the Lohnfestsetzung

In this connection the discussions would be to be called for the misalignment of the authority to the conclusion of wages agreements of] on the operating level (see above) and the demand after a general legal minimum wage. The latter was rejected so far by relevant social participants (in particular trade unions and chamber of economics).

In all other respects there was some years ago legal change with the share options (fiscal promotion, Nichtberücksichtigung with the calculation of the payment continued payment and requirements for completion). This released also a short term debate to the pro and cons of share options. Also so-called universe Inclusive clausesgive regularly cause for discussions.

(E) Duration of the work and organization of the work time

The topic work time is on political level in more or less larger temporal distances regularly in discussion. To an extensive reorganization it came 1997. Most important regulation contents of this reform were longer calculating periods, rise of the borders of the daily work time, regulations at the call readiness and travel times as well as week END and holiday peace.

Points of discussion since then are the opening times of the business (opening times in the evening, keeping the business open on Sunday), the most permissible daytime work time, making and simplification of the work time right flexible. Also a short term discussion over an extension of the work time was generally released some months ago by some economic representatives.

Regarding the opening times it came 2003 to a reorganization in the sense extension of the permissible evening opening times. 2004 were introduced the parent time (requirement on partial time for parents under certain conditions).

To the topic „work as required “see below.

(f) Alteration of the running time and the conditions of the work and occupation

In this connection if necessary the national conversion of the anti-discrimination guidelines of the European Union [1][to be mentioned, which led particularly among experts to a stronger argument with this problem.
To the teleworking see above.

(g) Labor mobility

In this connection the topic unfair and mobility-restraining clauses of a contract is current in discussion. Workers' delegates criticize that in work contracts increases regulations to be found are, which limit either the mobility and the vocational progress of the employees substantially, how Konkurrenzklauselnor back replacement of costs of education or the work place so extensively regulate that employees of a local transfer without consideration of family conditions must follow.
To mention also the reorganization of the Zumutbarkeitsbestimmungen would be in the range of the unemployment insurance [2][12](into force stepped with Jänner 2005).

(h) Other topics?

In the last months it came also to kontroversiellen discussions in connection with the European Union commission suggestion on the service guideline and their effects on the labour law. In particular the workers' delegates try to point the problem out of occurring labour law and the danger of the wage and/or Sozialdumpings, standing thereby in the

[1]Guideline 2000/43/EEC (so-called Antirassismusrichtlinie) and guideline 2000/78/EEC (so-called framework guideline).
[2]Thus the question under which conditions unemployment pay subscriber a work offer with other loss of their achievement to assume must.

connection. To discussion it came within the social participants, Nichtregierungsorganisationen, ministerial officials, individual government representatives and Austrian European Union politicians. Universitäre of experts still hardly took up this topic. In the year 2000 it came to changes during the payment continued payment with service preventions and/or in the medical case, during the vacation indemnificationand with the leisure requirement during the term of notice. When background of these changes know however neither the globalization process, nor technological changes or changes in the Labor Organization are regarded.

4. This discussion had a purchase too:

(A) Judicial rulings;

(B) Processes and points of issue with collective treaty negotiations?

In three points **purchases** are to be located **to judicial rulings** (A):

1. Methods of the Lohnfestsetzung – „universe Inclusive clauses ": The discussions became regularly lively by decisions of the highest Court of Justice universe Inclusive clauses.

2. Duration of the work and organization of the work time – „work as required ": A large textile chain, which settled again some years ago in Austria, agreed upon framework work contracts with „work with the employees as required ". It concerned contracts, with which the extent and the situation of the work time employees are not specified, but are not for each individual case agreed upon according to the respective need of the employer, without the employee would have a requirement on a certain minimum occupation extent. After an appropriate case became court pending, a discussion kindled for the validity of such agreements among experts. Also an interest of the media and the public was given. The Austrian highest Court of Justice (OGH) introduced in this connection also a preliminary ruling procedure with the EuGH. This kept such agreements with the EUROPEAN UNION right compatible. 2004 decided then the OGH finally and stated that these agreements are however not compatible with Austrian right and therefore illegally and part futile.

3. Labor mobility - unfair and mobility-restraining clause of a contract: The question of the borders of the validity of such clauses are in Austria in the law unclearly regulated. A concretizing partly took place via the iurisdiction. To that extent the relevant discussion has naturally purchase to the relevant Judikatur.

Processes and points of issue with collective treaty negotiations had only small purchase to the discussions specified above. Regular topics with collective treaty negotiations are however forms of the flexible work time. Thus for instance calculating models are for more flexible distribution of the work time in many Kollektivverträgen. Further in several Kollektivverträgen basic conditions were regulated for dispatching new, and isolated too „universe Inclusive clauses "and to the teleworking.

To mark it is also that the collective treaty negotiations in the traffic sector (land, air, lake and course) became in the last years increasingly tension and the employee side turned out ever more strongly under pressure. This is to a substantial part on globalization tendencies and the possibility of the employers more easily from the foreign country to operate to be able („Ausflaggen "), to lead back. Particularly in the inland waterway craft travel and in the truck – traffic came it in the last years to misalignment of the business activity abroad to the larger extent. Now in these „"divisions transact employees expenditure-flew a flag to far more unfavorable conditions of work (in particular wages) are employed.

II. COMMERCIAL LAW AND LABOUR LAW

5. There were changes in the legislation pertaining to labor law (or the Kollektivverträgen) in connection with commercial law, e.g. with consideration of the following questions:

(A) the legal position of the employees during transmission of an enterprise or parts of it;

(B) Employee's inventions;

(C) The right employee with insolvency of the employer;

(D) Procedure when collective dismissals;

(E) Liberality of the employees after completion of their work contract (Konkurrenzklauseln);

(f) Other one?

To (A) operating transition

There were the last substantial changes in connection with operating transitions 1993 as the relevant European Union guideline (RL 77/187/EEC; so-called operating transition guideline) in view to the Austrian European Union entry in the Austrian right was converted.

To (B) employee's inventions

In addition there were no changes in the legislation or with the Kollektivverträgen. Regarding the height of the remuneration recently a further clarification took place via the iurisdiction.

To (C) of rights of the employees with insolvency of the employer

A safety device of the requirements of the employees with insolvency over an insolvency payment contingency fund gives it already in Austria since 1978. The last substantial change stepped 1998 into force. In particular the secured period for current payment was reduced at that time by 3 years to in principle 6 months.

To (D) procedure of the collective dismissal

An obligation to register with intended dissolution of a larger number of employer-employee relationships exists in Austria since 1979. In the course of the European Union entry took place 1993 a reorganization, which however essentially only formal nature was. Also since then only insignificant changes took place.

To (E) liberality of the employees after completion of the employer-employee relationship

With the Konkurrenzklausel there was 2002 a legal change, which eliminated however only an insignificant regulation.

In all other respects see above to question 3.

Too (f) other topics

1996 were converted the relevant European Union guideline over the installation of a European work council and 2004 the relevant European Union guideline for the addition of the statute of the European society regarding the participation of the employees into national right.

III. INTERNATIONAL TRADE AND LABOUR LAW

6. Is your country a party of a convention over economic integration? If, indicate please, with which.

Austria is since 1995 member of the European union.

7. If your answer is positive to (6):

(A) Please you indicate whether the juridical system, which is used by the agreement addresses topics pertaining to labor law. If, give a short description over it.

(B) Do the rules of the agreement over topics pertaining to labor law have supranationally legal effects? If, how they become applied? Can one draw an evaluation from its execution?

(C) If the rules of the convention over topics pertaining to labor law do not have supranational effects, please you call details over their execution machinery, if there is such.

To (A) topics pertaining to labor law

Labour law falls in the EEC contract under the chapter social politics. The relevant regulations are in article 136 to 148 EEC contract. In particular the European community receives authority by these regulations by guidelines minimum regulations to issue. For it unanimity [3][14and partly a qualified majority in the advice under integration of the European parliament necessarily. No authority possesses the European community during pay, right of association, strike and lockout. The guidelines are to be converted by the member states into national right. Intended further a legislation is by the management and industry on community level (article 139 EEC contract).

Further regulations with purchase pertaining to labor law in the EEC contract are articles 39 to 42 (employee liberality within the community), article 49 to 55 (service liberty), article 125 to 130 (occupation), articles 2 and 3 (tasks and goals of the European community), articles 13 (fight against discriminations) and the European Union Charter of the fundamental rights.

To (B) legal effects

To the labour law strictly speaking on community level several guidelines were decided and converted into national right. The most important ranges of topics of these guidelines were: Equal treatment of women and men, (more technically) employee protection and work time right. Guidelines exist further about service note, parents vacation, anti-discrimination, operating transition, mass redundancy, insolvency payment safety device, requirements with transnational delegation, part-time job, limited employer-employee relationships, European work council, instruction and hearing of the employees, employee participation in the European society and in the European cooperative.

Within the range of the employee liberality partly directly effective regulations and partial guidelines were issued.

The European Union labour law had in Austria – in view on the fact that it concerns minimum regulations – different effects. According to whether and to what extent a national conversion need existed. The most substantial effects drew the conversion to Austria about operating transition, requirements with transnational delegation, European work council, employee liberalityand on individual equal treatment and employee protection guidelines.

[3]Unanimity is necessarily for the topics social security, collective labour law, protection against dismissal, work permit for third citizens (kind 137 EEC contract compares).

For execution it is to be marked that in particular with the requirements with transnational delegation and with the topic lack exist exhibition of a service note with the interspersing bar.

8. Was the civil society (trade unions, NGOs) merged with the development of a social dimension for trade agreements, in which your country participates, during the stage of the elaboration of national principles? If, in which form? Is a continuing advisory function for organizations of the civil society intended in the agreement and if, how the function defined and how participated the experiences?

As far as for the conclusion of the trade agreements laws or regulations will issue or as far as a legislation takes place in the context of the European union, a legal hearing right of the chambers for employees' welfare [4][.

Are in all other respects merged due to tradition for many decades the chamber of economics, the combinationcombination combination, the Landwirtschaftskammern, the trade unions and the chambers for employees' welfare during the elaboration of national principles by law projects or agreements. An integration of NGOs takes place only punctually.

Time and extent of the integration, as well as the degree of the consideration of the statements are connected however substantially with current government conditions.

9. Were there efforts in your country to approximate the national labour law to that one of its most important trade partners? If, how the procedure way was with the harmonization of the right?

There are no express efforts the national labour law to approximate to that one of the most important trade partners.

A certain approximation within individual ranges results due to the assumption and/or conversion of Europeanlegal regulations.
To notice it is that in the political discussion increasingly comparisons with other European Union member states one consults. This might on the one hand on the improved data situationand on the other hand to the intensified location discussion to due to be. These comparisons cause a certain tendency for approximation.

10. Contain the right of your country concerning the international trade regulations, which make the grant dependant on commercial advantages to third states on the fact that latter certain fundamental rights of the employees consider? If, how these regulations become applied? Did your country already impose to restaurant economics due to these regulations?

Since the entry of Austria to the European Union the international commercial policy is large affair of community, since the European Union is a customs union.

The current preference system of the European Union (**APS**) makes it after observance of certain human rights, which ILO Kernarbeitsnormen sucked, incentives for environmental protection and conventions against drug trade developing countries preferential treatments in tariff matters to grant… if by a developing country preferences is requested and those altogether altogether 27 conventions is kept, can the European Union for exemption from duty possible grant.

[4]§ 93 paragraph 2 and 3 chamber for employees' welfare law 1992. The chambers for employees' welfare, that are new land chambers and the federal Chamber for Employees' Welfare as roof federation, are the legal protections of interests in Austria employed workers and employees.

- Provided in the long run of the European Union commission - the list of the relevant conventions is result of a discussion process with the member states. In this discussion the argument that conventions not ratified by European Union members themselves also from the beneficiaries of the APS were not call inable, played a certain role. Even the European Union commission meant in this connection however that it would depend to use objective criteria and to the pressure of those governments not give way, that do not want to fulfill and/or not fulfill these criteria.

Because of disregard of the minimum work standards (hard labor) the European Union preferences suspended so far only with **Myanmar**.

In Colombia, where the free trade union formation were strongly limited and trade unionists were murdered, the preferences were so far not suspended, because with to July 2005 the valid regime incentives were set against the drug trade, without having to keep the core work standards.

However this situation should change in the future, since the preference system was reformed and the earlier auxiliary preferences no longer isolated from the basic preferences is granted, so that with injury of the minimum work standards automatically would be to be suspended preferences. Preferences from the drug APS, despite non conversion of the minimum work standards should not be possible after new APS+ any longer. Countries, those by the drug APS were favoured (Colombia, Venezuela, Pakistan, El Salvador, Guatemala, Nicaragua, Honduras, Costa Rica, Panama, Ecuador and Peru) can thus in the future from the system be excluded, if they do not keep the minimum work standards.

Past experiences showed that the temporary suspension in the European Union encounters large political inhibitions, because it is felt as sanction. Thus Myanmar remained the only case for temporary suspending (offense against prisoner work). Neither against Sri Lanka nor against white Russia investigations could be introduced.

11. Does the labour law of your country of regulations become other concerning countries the international trade, with which it maintains important trade relations, affected or possibly affected? (e.g. if the trade partner of your country makes the grant dependant on commercial advantages to third states on the fact that the latter internationally recognized employee rights consider).

No.

12. If your answer is positive to (11), indicate please, whether your country was forced ever to revise its right or practices regarding work relations in order the loss of commercial advantages, which of other countries is granted, to avoid.

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IV. *SOFTLY LAW* AND EMERGING NEW PARTICIPANTS

13. If its country the seat of multinational enterprises is (MNEs):

(A) Did MNEs, which operate from your country, decide codes of practice regarding employee rights, which the subcontractors/suppliers of the MNEs to consider to have? If this the case is:

i. Please you give information about contents of these Kodizes and their execution machinery

iii. Can one evaluate the execution of these Kodizes?

(B) Did MNEs, which operate from your country, agree upon world agreement with a unionized partner, which aims at the attention of the employee rights? If:

i. Please you give information about contents of these agreements and their execution machinery

iii. Can one evaluate the execution of these agreements?

(C) Did MNEs, which operate from your country, adhere to a guideline concerning social responsibility, which was prepared by a NGO? If, please you give about these guidelines and on which way their application to information are supervised.

To (A) Kodizes MNEs, contents and execution machinery

As the first and only multinational enterprise, which operates from Austria, the OMV AG, an oil and a natural gas company, a 2002/2003 prepared a code of practice.

The Kodex concerns itself with the ranges coworker, human rights, health, security, environmental protection, relations with the Stakeholdern and finances. With the range coworkers are addressed the topics equalization, recruiting, working conditions, training and advancement, personnel planning, career and follow-up planning, payment politics, hard labor, Kinderarbeit, freedom of reunion and association. With the range health and security among other things the topics industrial medicine, health care and industrial safety.

The Kodex is formulated in the sense of a confession. It addresses itself also in principle to subcontractor supplier („we expect from our coworkers, our temporary coworkers, our partners, Kontraktoren and persons, who act in the name of the enterprise that they align their acting in the context of their daily work under keeping of the laws and according to our principles."). An execution machinery or a like is not intended.

It is not anything over the completion of the relations with a subcontractor/a supplier well-known, which did not consider the Kodex. Further it is not well-known also that such was condemned or continued to it to consider the Kodex.

Considering its that the self obligations of the Kodex are very general and relatively formulated and are intended no control or sanction mechanisms, it is not to be taken from the Kodex a legally seizable content. To positively evaluate it is that the company contacts does not shrink from to critics and co-operates within the range human rights with Amnesty international.

To (B) world agreements

No.

To (C) MNEs and guidelines of NGOs

No; in this connection nothing is publicly well-known.

14. If in your country subcontractors of MNEs or other export-oriented enterprises act:

i. Some these enterprises were obligated or encouraged to obey a code of practice? If, please you indicate the kind of the Kodex, which they keep.

ii. Obeyed some these enterprises voluntarily concerning a guideline social responsibility?

iii. Does it give to persons, who became certified from NGOs to it, to supervise the observance concerning guideline social responsibility? If, are there regular examinations? How are they accomplished?

Yes, some enterprises were obligated and/or encouraged to obey a code of practice. That is, it usually concerned defaults of the company center.

Central one points of these codes of practice were data security, keeping of professional secrets, Hintanhaltung of corruption and prevention of insider trade.

Employee and/or coworker-referred topics were frequently also contents of the Kodizes. It mostly concerned thereby health and security or anti-discrimination and/or Diversity management.

It is not anything over the fact well-known that some these enterprises voluntarily concerning a guideline obeyed social responsibility.

It is completely general marks that Corporate Social Responsibility is in Austria a relatively new topic and possesses no tradition. Over the compelling labour law going out regulations are made traditionally in the form of] or employment agreements. Kollektivverträge have outsider effect and both right instruments on employee side due to the Austrian labor management relations right also to have normative effect.

15. There is a voucher in your country for the fact that the existence and application of one or several of the following public instruments soft law had an effect on the labour law or collective treaty negotiations:

(A) the guidelines of the OECD for multinational enterprises

(B) the three-lateral Declaration of Principle of the ILO over multinational enterprises and social politics

C) the explanation of the ILO over fundamental principles and rights with the work

D) the world-comprehensive contract of the United Nations

No.

At the relatively most well-known the core work standards of the ILO might be. Possible referring to injury of the core work standards have therefore in the public discussion the relatively highest effect. There is not a voucher for an effect on the labour law or collective treaty negotiations however.

[5]In Austria the collective conclusions of contracts usually take place on industry level.

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[6]In Austria there is no general legal minimum wage, but the minimum wages are usually regulated on industry level by Kollektivverträge.

[7]End of the 90's lasted only somewhat more as half of the employer-employee relationships longer than 3 years.

[8]After the old dispatching right only a requirement after 3 years, which rose thereafter with the length of the employer-employee relationship precipitously, existed. Besides the employee lost the requirement, if it solved on its part the employer-employee relationship.

[9]In the discussion in addition also the term was in-patriated „escape from the labour law “.

[10]Among the social participants primarily chamber of economics, trade unions, is to rank combinationcombination combination and chambers for employees' welfare in Austria.

[11]In Austria the collective conclusions of contracts usually take place on industry level.

[12]In Austria the collective conclusions of contracts usually take place on industry level.

[13]Among them a fixer amount is understood, which is to contain as agreed all payment parts (for example also extra pay and overtime).

[14]Konkurrenzklauseln obligate employees after end of the employer-employee relationship neither in the industry of the employer to be employed to be able to become still there independently active.

[15]Requirement for payment for used up vacation on completion of the employer-employee relationship.

[16]In particular free job market entrance for European Union citizens and close member of Austrians.

[17]Both the exhibition of the service note, and the grant of the minimum conditions of work with transnational delegation are only civilly interspersable.

[18]Data to the land comparison become increasingly better available and the subject of the European Union politics, like for example in the framework so-called Lisbon of the process or the so-called open method of the coordination.

[19]This is nearly never limited Austria to bare wage tables, but contained in the so-called framework right regulations pertaining to labor law, which go the partly substantially beyond law.

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