

To: Hungary National Contact Point & OECD Centre for Responsible Business Conduct
From: OECD Watch
Date: 8 March 2023
Re: OECD Watch submission to the 2023 Peer Review of NCP Hungary

OECD Watch welcomes NCP Hungary's willingness to undergo a peer review to improve the NCP's effectiveness in promoting the OECD Guidelines for Multinational Enterprises (Guidelines) and contributing to resolving irresponsible business conduct by multinational enterprises (MNEs) in specific instances. We appreciate the opportunity to provide input into this peer review.

Civil society under attack by the Hungarian government

Since 2013, civil society organisations have come under attack by the Hungarian government.¹ These attacks have targeted organisations seeking to hold the government accountable for corruption, environmental failures, and erosion of human rights, democracy, and the rule of law.² These attacks and the deteriorating climate in Hungary is making it extremely difficult for civil society organisations to operate safely and without fear of retribution for their activities.

In June 2017, for example, the Hungarian parliament adopted an oppressive anti-non-governmental organisation (NGO) law, which stigmatised NGOs receiving foreign funding. In response to the law's passage, Amnesty International Hungary, the Hungarian Civil Liberties Union, and the Hungarian Helsinki Committee, among others, signed a joint letter to the OECD, drawing attention to the "alarmingly shrinking civic space for civil society and the growing obstacles faced by human rights defenders in Hungary."³ The European Union (EU) subsequently launched infringement proceedings against Hungary and in 2020 the law was ruled discriminatory by the Court of Justice of the European Union (CJEU).⁴ In February 2018, the 'Stop Soros' legislative package was passed, which empowered the government to conduct national security screenings of NGOs working on immigration issues and to dissolve those it decided not to permit.⁵ Despite a 2021 ruling of the CJEU instructing the Hungarian government to repeal this law, the government has refused to do so.⁶

Numerous international bodies have responded to the deteriorating climate of human rights, democracy, and civic space in Hungary.⁷ In March 2017, the UN Special Rapporteur on the situation of

¹ Hungarian Civil Liberties Union, "Hungary Steps Up Its Attack on Civil Society", Liberties, last modified February 15, 2018, <https://www.liberties.eu/en/stories/new-governmental-attack-against-civil-society-in-hungary/14296>.

² Hungarian Civil Liberties Union, "Independent civil society under attack in Hungary", TASZ, last modified September 12, 2017, <https://hclu.hu/en/articles/independent-civil-society-under-attack-in-hungary-1>.

³ Hungarian Civil Liberties Union, "Independent civil society under attack in Hungary", TASZ, last modified September 12, 2017, <https://hclu.hu/en/articles/independent-civil-society-under-attack-in-hungary-1>.

⁴ DW, "Hungary to revoke 2017 anti-NGO law after EU court rebuke", Deutsche Welle, last modified April 21, 2021, <https://www.dw.com/en/hungary-to-revoke-2017-anti-ngo-law-after-eu-court-rebuke/a-57282186>.

⁵ The purpose of the "Stop Soros" legislative package is to restrict the activities of individuals or groups assisting illegal immigrants to stay in Hungary. Organisations that work with migrants and on migration issues in Hungary will be subjected to a national security screening and will have to obtain authorisation from the government. Failure to comply may lead to financial penalties and also the closure of such organisations.

⁶ Miriam Berger, "Hungary's law targeting asylum seekers violates E.U. rules, top European court finds", The Washington Post, last modified November 16, 2021, <https://www.washingtonpost.com/world/2021/11/16/hungary-stop-soros-law-illegal-european-union-court-ruling/>.

⁷ Hungarian Civil Liberties Union, "Independent civil society under attack in Hungary", TASZ, last modified September 12, 2017, <https://hclu.hu/en/articles/independent-civil-society-under-attack-in-hungary-1>.

human rights defenders expressed concern about the “continued stigmatization of human rights defenders and about the chilling effect of the inflammatory language used by senior government officials on the public perception of the value of civil society.”⁸ In December 2022 the EU withheld almost €22 billion of Hungary’s 2021-27 cohesion funding, primarily due to the government’s failure to comply with the EU Charter of Fundamental Rights.⁹

In this context, in OECD Watch’s view it is impossible for NCP Hungary to carry out its dual mandate effectively. The NCP cannot adequately raise awareness of the Guidelines among all relevant stakeholders, especially NGOs, if their activities are restricted to such an extent as they are unable, or otherwise unwilling, to operate in the country. NCP Hungary cannot contribute to resolving irresponsible conduct and adverse impacts related to MNEs’ incorrect or incomplete implementation of the standards in specific instances if civil society actors do not feel they are safely able to file and/or participate in specific instances against MNEs. This is particularly so for cases alleging adverse impacts linked to the Hungarian government or MNEs with close connections to the government. This issue is particularly acute given that the majority of all NCP cases filed between 2011-2019 were submitted by civil society organisations – 40% by NGOs and 26% by trade unions.¹⁰ None of these cases were filed to NCP Hungary.¹¹ Civil society is under attack in Hungary, either from being directly targeted by the government’s laws or indirectly as a result of the chilling effect of those laws.

Civil society’s concerns and recommendations regarding NCP Hungary’s organisational structure and procedures

Particularly in light of the government-sponsored repression of civil society in Hungary, NCP Hungary’s organisational structure raises serious concerns for civil society. The NCP is located in the Ministry of Finance, Strategy Department for EU Affairs. This arrangement is, in general, not recommended by OECD Watch, which encourages NCPs not to be housed in ministries focused on economics, trade, or investment to ensure there is no real or perceived conflict of interest. NCP Hungary’s structure, in which complaints are handled by government officials only, does neither promote accessibility, accountability, nor the NCP’s independence. This likely plays a key role in discouraging civil society from filing complaints at all. OECD Watch strongly recommends for NCP Hungary to be re-established with an independent expert structure whereby complaints are handled strictly by non-governmental, independent experts.

There is no stakeholder involvement in the structure of the NCP, which does not have a stakeholder advocacy body with representatives from different stakeholder groups (trade unions, business and NGOs). Based on NCP Hungary’s English website, since January 2020, the NCP has also not (co-) organised any promotional event on the Guidelines that was attended by any stakeholder group. The absence of stakeholder involvement and outreach by NCP Hungary detrimentally affects the accessibility, visibility, and accountability of the NCP. OECD Watch strongly recommends for the NCP to better engage with key stakeholders, including NGOs and trade unions, through a new multi-

⁸ United Nations General Assembly, Human Rights Council, Thirty-fourth session, Report of the Special Rapporteur on the situation of human rights defenders on his mission to Hungary, (Geneva: United Nations office, 2017), paragraph 59, <https://www.refworld.org/docid/58ada5344.html>.

⁹ Cohesion funding is provided to less developed EU members to enable them to meet their developmental needs. The primary reason for blocking Hungary’s cohesion funds is that Hungary failed to comply with the Charter of Fundamental Rights. More specifically, the rights concerning academic freedom, refugees, and LGBTQ people.

¹⁰ OECD, National Contact Points for Responsible Business Conduct. Providing access to remedy: 20 years and the road ahead, 2020, page 20.

¹¹ OECD, [https://mneguidelines.oecd.org/database/searchresults/?q=\(NCP:\(Hungary\)\)](https://mneguidelines.oecd.org/database/searchresults/?q=(NCP:(Hungary))).

stakeholder advisory body involving representatives from core stakeholder groups (business, trade unions, and NGOs). This body must then be consulted at least twice per year.

In relation to complainant confidentiality, NCP Hungary's rules of procedure do not clarify whether complainants can request their identities to be kept confidential for security reasons or not. Further, the NCP's rules of procedure do not provide that the NCP should seek to protect the complainants against attacks or reprisals related to a specific instance. Particularly given the deteriorating situation in Hungary and the unsafe space for civil society to file complaints, OECD Watch recommends for the NCP's rules of procedure to be amended to explicitly state that complainants' identities can be kept confidential in certain situations, and also that the NCP will support complainants experiencing reprisals following the filing of a specific instance.

We also direct NCP Hungary, the Hungarian government, and the peer reviewers to [OECD Watch's most recent evaluation of NCP Hungary](#).¹² As our evaluation shows, aspects of the NCP's procedures, organisational structure, and communications do not meet civil society's expectations for NCPs. In our previous submissions for other NCPs' peer reviews, OECD Watch has raised other issues of concern for civil society (such as the importance of recommendations and determinations by NCPs, as well as consequences for MNEs refusing to engage in good faith in NCP processes and the importance of follow-up). Given the Hungarian government's repeated attacks on civil society organisations in the country, OECD Watch has prioritised in this submission recommendations related to the NCP's organisational structure and the importance of outreach to civil society stakeholders. OECD Watch strongly encourages NCP Hungary to rectify the issues identified in this submission, as well as the other issues noted in our evaluation.

We note that in November 2021, OECD Watch engaged in a call with NCP Hungary, in which we raised the concerns highlighted in this submission. OECD Watch remains open to engagement if the NCP takes meaningful steps to address the issues outlined above.

OECD Watch urges the peer reviewers to acknowledge in their final report that the Hungarian government's attacks on civil society cannot be disconnected from the ability of NCP Hungary to carry out its dual mandate effectively.

Contact details

For questions or clarification on this submission, please contact the OECD Watch Secretariat.

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¹² OECD Watch's NCP evaluations were last updated in 2021.