

To: National Contact Point Poland & OECD Centre for Responsible Business Conduct  
From: OECD Watch  
Date: 15 May 2023  
Re: OECD Watch submission to the 2023 Peer Review of NCP Poland

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OECD Watch welcomes NCP Poland'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.

This submission highlights areas for improvement of particular concern to OECD Watch. We direct NCP Poland, the Polish government, and the peer reviewers to [OECD Watch's most recent evaluation of NCP Poland](#).<sup>1</sup> We recognise the NCP's previous constructive engagement in relation to their evaluation. As our evaluation shows, some of the NCP's organisational structure, procedures, and communications do not meet civil society's expectations for NCPs. This submission includes recommendations in relation to these issues.

At the outset of this submission, it is important to note the ongoing threats to the rule of law and democracy in Poland. For several years, the Polish government has sought to undermine human rights (particularly the rights of minority groups) and the rule of law, including by introducing legislation restricting civil society organisation's access to public funding and seeking to limit the daily activities of critical NGOs.<sup>2</sup> The risks to the rule of law in Poland have repeatedly been highlighted by the European Parliament.<sup>3</sup> While civil society in Poland is still "vibrant", civil space for NGOs' functioning has narrowed.<sup>4</sup> OECD Watch urges the peer reviewers to bear in mind this context, and particularly the need to ensure stakeholder engagement and confidence in NCP Poland, when undertaking their review.

### **NCP Poland's organisation**

Several aspects of NCP Poland's organisation do not meet civil society's expectations for NCPs. An exception is the NCP's location in the Polish government bureaucracy – outside ministries focused on economics, trade, and investments. In general, however, the NCP's current organisation detrimentally affects civil society's perceptions of the NCP's accountability, accessibility, and visibility. OECD Watch urges NCP Poland, the Polish government, and the peer reviewers to critically consider the issues highlighted in relation to the NCP's organisation, in addition to our online evaluation of NCP Poland.

*NCP structure and expertise:* NCP Poland's current single ministry structure, through which complaints are handled by government officials alone, significantly limits the actual or perceived independence and expertise of the NCP. To enhance their accessibility and accountability, OECD Watch recommends

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<sup>1</sup> OECD Watch's NCP evaluations were last updated in 2021.

<sup>2</sup> See, for example, Amnesty International, 'Poland: Erosion of Human Rights and the Rule of Law: Amnesty International Submission to the 41st Session of the UPR Working Group, November 2022', 31 March 2022, <https://www.amnesty.org/en/documents/eur37/5448/2022/en/>.

<sup>3</sup> See, for example, European Parliament resolution of 15 November 2017 on the situation of the rule of law and democracy in Poland (2017/2931(RSP), [https://www.europarl.europa.eu/doceo/document/TA-8-2017-0442\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2017-0442_EN.html)); European Parliament, 'Rule of law in Poland and Hungary has worsened', 16 January 2020, <https://www.europarl.europa.eu/news/en/press-room/20200109IPR69907/rule-of-law-in-poland-and-hungary-has-worsened>.

<sup>4</sup> European Commission, '2021 Rule of Law Report: Country Chapter on the rule of law situation in Poland', SWD(2021) 722 final, 20 July 2021, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021SC0722>.

that all NCPs incorporate diverse and relevant government departments, have a multipartite structure, or have an independent expert structure. Our recommendations align with the OECD Working Party on Responsible Business Conduct's (WPRBC) final draft targeted updates to the Guidelines, which recommend for NCPs to consist of, among other things, "a body composed of representatives from the government, the business community, workers organisations and other non-governmental organisations (multi-stakeholder), and/or independent experts".<sup>5</sup>

*Stakeholder advisory body:* The NCP has a multistakeholder advisory body, which includes government officials, business, and civil society organisations. This is positive, but it is important that the body is well-integrated into the NCP's promotional and specific instance handling mandates. For example, the advisory body should not just be *informed* about new or ongoing specific instances, but rather be *consulted* in relation to the handling of these cases. Information about the advisory body's activities and responsibilities should also be clearly stated on the NCP's website.

*Stakeholder involvement:* NCP Poland has an individualised decision-making structure and does not involve external stakeholders in the formal composition of the NCP. OECD Watch recommends for all NCPs to formally involve representatives of all three core stakeholder groups in their governance and decision-making structures. Examples are quadripartite NCPs and NCPs in which the three stakeholder groups nominate an independent member of the NCP or steering board. Greater stakeholder involvement in NCPs is important to enhance their accessibility, accountability, and visibility. The OECD WPRBC's final draft targeted updates encourage "meaningful" stakeholder engagement by NCPs, including social partners, representatives of the business community, workers, organisations, NGOs and other interested parties.<sup>6</sup>

### **NCP Poland's procedures**

Several aspects of NCP Poland's '[Conduct Procedure Before the NCP](#)' (Conduct Procedure) are positive in civil society's view. For instance, the NCP allows complainant anonymity, its confidentiality rules are in line with OECD Watch's recommendations, and the NCP is able to engage in follow-up of recommendations made and agreements reached in final statements. However, other aspects of the Conduct Procedure should be revised to enhance the NCP's effectiveness. These revisions should occur with a view to the final draft targeted updates to the Guidelines.

*Mediation accessibility:* NCP Poland's Conduct Procedure does not commit to alter the location of mediation (including via remote video conferencing) if requested by the parties. OECD Watch recommends for all NCPs to offer to alter the location of mediation and/or enable remote video conferencing to increase the NCP's accessibility, or to have a policy commitment to do so.

*Parallel proceedings:* The Conduct Procedure does not state that parallel proceedings do not constitute a bar to specific instances. It is important for NCP's rules of procedure to expressly include this provision in order to best ensure specific instances are accessible for complainants.

*Determinations:* NCP Poland's Conduct Procedure does not provide anything in relation to determinations, nor has the NCP issued any determinations in practice. In line with the final draft targeted updates to the Guidelines, OECD Watch strongly recommends for the NCP to explicitly include in its Conduct Procedure that the NCP may, at its own discretion, set out its views in its final

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<sup>5</sup> Targeted Updates to the Guidelines, DAF/INV/RBC(2022)44/REV5, 19 April 2023, Procedures paragraph I.A.2.

<sup>6</sup> Targeted Updates to the Guidelines, DAF/INV/RBC(2022)44/REV5, 19 April 2023, Procedures paragraph I.A.3.

statement on whether an enterprise has observed the Guidelines.<sup>7</sup> Determinations are useful as they clarify the often-vague standards in the Guidelines and enable MNEs to understand and comply with the Guidelines. Determinations increase MNEs' accountability and can also represent a form of remedy for complainants in terms of public validation of their experiences and concerns.

*Consequences for MNEs refusing to engage in good faith in NCP processes:* OECD Watch recommends that all NCPs be permitted in their rules of procedure to request consequences from their respective governments, where this doesn't already exist, for poor faith of MNEs in specific instances. Neither NCP Poland's Conduct Procedure nor its website contains this option, and there is no indication that the Polish government has committed to applying any such consequences.

### **NCP Poland's communication**

Many aspects of NCP Poland's communications meet civil society's expectations for NCPs. For example, the NCP's website includes a complaint database, complaint filing instructions and the NCP's rules of procedure, an overview of the Guidelines and due diligence, as well as some information on the NCP's promotional activities. To further improve the NCP's transparency and visibility, updates should be made to the website to align it with OECD Watch's recommendations.

*Budget:* Contrary to OECD Watch's recommendations, NCP Poland does not publish its budget and spending streams.

*Domestic reporting:* The NCP's website also does not include information on its domestic reporting to the Polish government or parliament. OECD Watch recommends for all NCPs to report on their activities at the national level, to a government office or parliamentary committee, at least once a year.

### **Contact details**

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

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<sup>7</sup> Targeted Updates to the Guidelines, DAF/INV/RBC(2022)44/REV5, 19 April 2023, Procedures paragraph I.C.4.c.