

# **Polish National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights 2017-2020**

*Adopted by the Council of Ministers on 29 May 2017*

# National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights 2017-2020

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## Introduction

Issues related to business and human rights have recently become an increasingly popular subject of discussion among international organisations, including the United Nations (UN), the Organisation for Economic Co-operation and Development (OECD), the European Union (EU), the Council of Europe (CoE), and the International Labour Organization (ILO). The international community has developed a number of initiatives and has taken practical steps to specify the role and responsibility of individual actors in protecting and respecting human rights. Poland has been actively involved in the process of creating a new approach to this issue at both national and international levels.

### *1. History of the initiative*

In 1948, the UN General Assembly adopted the Universal Declaration of Human Rights. Together with the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966), these documents constitute the canon of international human rights law, the so-called Charter of Human Rights. At the European level, the Convention for the Protection of Human Rights and Fundamental Freedoms was adopted, which was signed in Rome on 4 November 1950. On the other hand, international labour standards are included in the so-called International Labour Code, which consists of ILO conventions.<sup>1</sup>

States are obliged to respect and implement human rights provisions in ratified conventions. The obligation to respect human rights means that governments take appropriate measures to enable the exercise of human rights by both citizens and people under the jurisdiction of the state. This is an ongoing process as human rights evolve, and the scope of the protection thereof increases in response to changing political, social, and technological conditions.

In response to suggestions that business and human rights issues should be addressed in UN documents, the UN Human Rights Council adopted by consensus in 2011 the *UN Guiding Principles on Business and Human Rights*, developed by a team of experts led by Professor John Ruggie. The *Guiding Principles* constitute an important step for the international community to reduce the risk of human rights abuses in connection with business. They primarily address the obligations of states to ensure the protection of the individual's rights against violations on the part of enterprises. They also emphasise the role of companies in the implementation and protection of human rights, resulting from both national law and international obligations. It is essential that states ensure the effective judicial and extrajudicial enforcement of mechanisms for the handling of complaints on human rights violations in connection with economic activity. According to the *Guiding Principles*, victims should be given access to remedies and the possibility of redress for any harm incurred.

Work on the development of the adopted *Guiding Principles* has been conducted by the UN Working Group on Business and Human Rights on an ongoing basis, as well as at the annual UN Forum and at the level of regional institutions responsible for

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<sup>1</sup> An overview of international non-binding mechanisms and international legal bases for business and human rights is given in Appendix 1 hereto.

business and human rights. Business and human rights issues were also included in the Sustainable Development Goals adopted by the UN General Assembly in September 2015.

The EU has been actively engaged in the practical implementation of the *Guiding Principles* since the time of their inception, and each of its Member States is committed to the effective implementation of the principles of corporate social responsibility at the national level. In this context, the EU promotes both voluntary policy measures and recommendations, such as *The Strategy of Corporate Social Responsibility*, as well as legally binding regulations.

The EU also attaches great importance to the promotion of business and human rights issues in its external policy. In the document “Action Plan on Human Rights and Democracy 2015-2019”, adopted by the Foreign Affairs Council on 20 June 2015, the EU identified actions to raise awareness and knowledge of the *Guiding Principles* in non-EU countries. The Plan also aims to take into account the principles of corporate social responsibility in EU trade and investment agreements. In the above-mentioned document, the European Union and its Member States declared that they would develop national action plans for practical implementation of the *UN Guiding Principles*. The European Council addressed the issue of business and human rights in its conclusions on Responsible Global Value Chains of 12 May 2016 and on Child Labour of 20 May 2016. In its conclusions of 20 June 2016, the European Council stressed the importance of raising the issue of business and human rights in international forums, particularly by the UN and OECD, as well as by international financial institutions implementing aid programmes. It urged the EU Member States to adopt and implement national action plans on the *UN Guiding Principles*, encouraging governments to act more proactively in accordance with the *Guiding Principles*, either through public tenders or through cooperation with private-sector partners using government loans or promotional programmes. The conclusions stressed the importance of addressing, within national action plans, the issue of victims’ access to remedies. It was also recommended that the diplomatic missions of the Member States should be advised accordingly.

Business and human rights issues have also been addressed in documents adopted by the Council of Europe, including Recommendation CM/Rec(2016)3 of the Committee of Ministers to Member States. This Recommendation aims to provide advice to Council of Europe members on how to implement the *UN Guiding Principles* and to fill in gaps in their implementation at the European level. In accordance with the Recommendation, Poland, as a member state of the Council of Europe, should:

- 1) review its national law and practice to ensure compliance with the recommendations, principles, and further guidelines set out in the Recommendation, and evaluate the effectiveness of the measures taken at regular intervals;
- 2) ensure, by appropriate means and action, the wide dissemination of the Recommendation among competent authorities and stakeholders, with a view to raising awareness of the corporate responsibility to respect human rights and contribute to the realisation thereof;
- 3) share examples of good practices related to the implementation of the Recommendation with a view to their inclusion in a shared information system to be established and maintained by the Council of Europe;

- 4) prepare and disseminate the national action plan for the implementation of the *UN Guiding Principles on Business and Human Rights*, as well as share best practices concerning the development and review of national action plans in a shared information system to be maintained by the Council of Europe;
- 5) examine the implementation of the Recommendation no later than five years after its adoption.

## ***2. Responsible business conduct (CSR/RBC) and human rights***

The fundamental issue in conducting business activity is to act in accordance with the applicable regulations of civil, criminal, and administrative law; the provisions on conducting economic activity; the Labour Code; environmental standards; industry regulations, etc.

The principles included in the second pillar of the *UN Guidelines on Business and Human Rights* refer to corporate responsibility for respecting human rights. This responsibility also covers the idea of corporate social responsibility (CSR). As defined by the European Commission in 2011,<sup>2</sup> this involves the responsibility on the part of businesses for their impact on society. This impact has a multidimensional nature and is manifested not only in terms of how companies care for the environment, their employees, and working conditions. The impact that companies have on the world is also evident in conducting business on the basis of similar values; taking into account people in production, distribution, and consumption processes; and implementing social responsibility in all areas of a company's operations.

The OECD takes a slightly broader approach to RBC, with a clear focus on the investment context, respect for human rights, protection of consumer rights, and due diligence in business. The principles of responsible business conduct were formulated in the *OECD Guidelines for Multinational Enterprises* in 1976, which were subsequently updated several times. In 2011, the scope of the *OECD Guidelines* was expanded to also include business relationships in the supply chain, introducing the concept of due diligence on the basis of risk assessment, with the addition of a chapter on human rights.

From the point of view of this document, special mention should be given to the principles resulting from two chapters in the *OECD Guidelines for Multinational Enterprises*.

In Chapter IV, Human Rights, it is stated that enterprises should respect human rights; avoid causing or contributing to adverse human rights impacts and address such impacts when they occur; seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products, or business relationships; have a policy commitment to respect human rights; carry out human rights due diligence; and co-operate through legitimate processes in the remediation of adverse human rights impacts.

On the other hand, Chapter V of the *OECD Guidelines for Multinational Enterprises* deals with the issues of employment and industrial relations. It emphasises that enterprises should, within the framework of applicable law, respect the right to establish or join trade unions, contribute to the effective abolition of child labour,

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<sup>2</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "A renewed EU strategy 2011-2014 for Corporate Social Responsibility Strategy" COM (2011) 681, 25 October 2011.

contribute to the elimination of forced labour, be guided by the principle of equality of opportunity and treatment, and not discriminate against their workers on such grounds as race, colour, sex, political opinion, national extraction or social origin, or other status unless selectivity concerning worker characteristics furthers established governmental policies that specifically promote greater equality of employment opportunity or relates to a job's inherent requirements. The guidelines also encourage, among other things, the promotion of consultations and co-operation between employers and workers, as well as compliance with standards of employment and industrial relations.

The functions of public administration, enterprises, and civil society in the field of corporate social responsibility (also concerning issues related to respect for human rights by business) are mutually complementary, mutually dependent, and require the cooperation of all stakeholders: public administration, business, employers' organisations, trade unions, industry organisations, civil society, the scientific community, and the general public.

Issues related to responsible business conduct are included in the strategic vision for the country's development, *A Plan for Responsible Development*. Responsible development, which is the Plan's guiding idea, means development based on solid economic foundations, supporting the development of companies, their productivity and foreign expansion, and thus the balanced development of the entire country. Responsible business conduct is also included in the *Strategy for Responsible Development*, which supplements the *Plan for Responsible Development*.

### **3. Actions taken to align NAPs with the UN Guiding Principles**

The Ministry of Foreign Affairs has assumed the role of coordinator of the process of developing the Polish National Action Plan (NAP) with respect to the implementation of the *United Nations Guiding Principles on Business and Human Rights*. The development and regular updating of the NAP requires the cooperation of many entities: governmental institutions, industry and non-governmental organisations. The issue of ensuring the observance of human rights in business is the shared responsibility of the state, including the executive, legislative, and judicial branches, as well as business circles and civil society. The government plays a key role in this process, as it is responsible for the majority of planned activities under the NAP.

The development of the NAP and its updating involves the participation of the ministries of Foreign Affairs; Economic Development; Finance; Family, Labour and Social Policy; Justice, as well as the Government Plenipotentiary for Equal Treatment, the Government Plenipotentiary for Civil Society, the National Labour Inspectorate, and the Commissioner for Human Rights. The work on the National Action Plan required a comprehensive analysis of the current legal status in relation to the subject of the *UN Guiding Principles*, so as to identify whether and where Polish law and practice require specific changes and adjustments. Such an analysis was carried out by the relevant ministries and was included in this first edition of the NAP. Consultations with a wide range of stakeholders, primarily with employers' organisations, trade unions, and NGOs, facilitated an evaluation of the issues from different perspectives and the collection of specific recommendations for the NAP. The document was forwarded to the Social Dialogue Council and passed through a public consultation process by making its content available on the website [www.konsultacje.gov.pl](http://www.konsultacje.gov.pl).

The National Action Plan for the implementation of the *United Nations Guiding Principles on Business and Human Rights* was created on the basis of the three pillars included in the *Guiding Principles*:

- I. The state's duty to protect human rights;
- II. The corporate responsibility to respect human rights; and
- III. Access to remedies.

Through the implementation of the *UN Guiding Principles*, the NAP primarily aims to enhance the protection of human rights of individuals and to enable them to seek justice when their rights are violated by business. By describing the government's actions to promote corporate social responsibility, as well as referring to strategic documents in this area, the NAP demonstrates a deliberate state policy of supporting businesses while stressing the need for human rights.

## PILLAR I

### The state's duty to protect human rights

#### *1. Regulations relating to business and human rights under Polish law*

*The United Nations Guiding Principles on Business and Human Rights* put significant emphasis on the state's positive responsibilities and highlight, among other things, the following issues:

- the state's duty to protect human rights is a standard of conduct;
- states are not responsible for human rights abuses by private actors, but states may breach international human rights where they fail to take appropriate steps to prevent abuses by private actors;
- states should consider the full range of permissible and preventative and remedial measures, including policies, legislation, regulations, and adjudication;
- states also have a duty to protect and promote the rule of law, including by taking measures to ensure equality before the law, fairness in its application, and procedural and legal transparency.

The state's duty to protect human rights is enshrined in the Constitution of the Republic of Poland and in ratified international agreements that obligate States Parties to respect, protect, and implement the human rights of individuals within their territory and/or jurisdiction. This includes the duty to protect against human rights abuse by third parties, including business enterprises.

The Constitution of the Republic of Poland contains a number of principles relevant to the protection of human rights in the context of business activity. Poland's economic system is based on, among other things, solidarity, dialogue, and cooperation among social partners (Article 20), and limitations on the freedom of economic activity may be imposed only in exceptional cases (Article 22).

The Constitution introduces the principle of equality before the law and the total prohibition of discrimination for any reason, including in economic life (Article 32). Chapter II of the Constitution contains a broad catalogue of economic, social, and cultural rights and freedoms (Articles 64-76).

At the statutory level, the provisions of labour law guarantee the observance of labour standards and rights arising from Poland's international obligations, in particular from the UN International Covenant on Economic, Social and Cultural Rights and the European Social Charter, as well as those contained in the ILO's fundamental conventions in line with the ILO Declaration on Fundamental Principles and Rights at Work.



The fulfilment of the basic principles of labour law is possible on the basis of numerous provisions of the Labour Code (LC) and other acts specifying in detail the rights of employees and employers, outlining the ways they can be used, and implementing ILO conventions ratified by Poland.

The standards set forth in the international agreements are reflected in Chapter II of the Labour Code, which contains the basic principles of labour law. The following deserve a mention here: the right to work (Article 10), the principle of discretion when establishing an employment relationship (Article 11), respect for personal rights (Article 11<sup>1</sup>), the principle of equality of employees (Article 11<sup>2</sup>), the prohibition against discrimination in employment (Article 11<sup>3</sup>), the right to respectful remuneration (Article 13), the right to rest (Article 14), the principle of ensuring healthy and safe working conditions by the employer (Article 15), satisfaction, as far as possible, by the employer of the welfare, social and cultural needs of employees (Article 16), helping employees improve their professional qualifications (Article 17), and ensuring the protection of employees' rights by prohibiting the introduction of collective bargaining agreements, regulations, and employment contracts that are less favourable to employees than those resulting from the provisions of general law (Article 18). The principles of labour law also include collective rights, namely the freedom of association of employees and employers (Article 18<sup>1</sup>) and the right of employees to participate in the management of the work establishment (Article 18<sup>2</sup>). These provisions do not in themselves constitute grounds for employee claims.

National law identifies areas of fundamental human rights at work, as specified in the ILO Declaration on Fundamental Principles and Rights at Work:

### **Prohibition of forced or compulsory labour**

Referring to the prohibition of this type of work, it should be noted that, although the Labour Code does not contain a definition of forced labour, according to Article 65(1) of the Constitution of the Republic of Poland, everyone shall have the freedom to choose and to pursue their own occupation and to choose their place of work (with exceptions specified by law). On the other hand, one of the basic principles of labour law is the right to choose work freely, resulting from the provision of Article 10 of the LC, which also guarantees minimum remuneration and the assistance of the public authorities in taking up employment, as part of state policies to combat unemployment. This provision does not, however, provide the grounds to demand employment. In addition to the right to choose work freely, as specified in Article 10 § 1 of the LC, there is the principle of discretion when establishing an employment relationship, set out in Article 11 of the LC.

### **Employment and occupation equality**

As regards the principle of equal treatment of employees and the prohibition of discrimination in employment, this is clearly established in further provisions of the Labour Code, in particular in Chapter II a, 'Equal treatment in employment' (Articles 18<sup>3a</sup>–18<sup>3e</sup>). Counteracting discrimination in employment is one of the basic duties of employers. Employers are also obliged to provide employees with the text of the provisions on equal treatment in employment in the form of written information distributed on the premises of a work establishment or to provide employees with access to the legislation otherwise accepted by a given employer.

The Labour Code sets out an open catalogue of grounds for discrimination. In Article 11<sup>3</sup>, the Labour Code establishes a prohibition of any discrimination on any grounds

whatsoever. Similarly, Article 18<sup>3a</sup> § 1 of the LC, which introduces the obligation to treat employees equally in respect of establishing or terminating an employment relationship, employment conditions, conditions for promotion, as well as access to training in order to improve professional qualifications, in particular regardless of sex, age, disability, race, religion, nationality, political beliefs, trade union membership, ethnic origin, creed, sexual orientation, as well as regardless of whether employment is for a definite or indefinite period of time or full-time or part-time employment.

The Labour Code contains definitions of equal treatment, direct discrimination, indirect discrimination, harassment, and sexual harassment. Equal treatment in employment means that there must be no discrimination whatsoever, directly or indirectly, whatever the grounds.

Discrimination is also taken to include:

- practices related to encouraging another person to violate the principle of equal treatment in employment or ordering a person to violate that principle;
- harassment or unwanted conduct with the purpose or effect of violating the dignity of an employee or of creating an intimidating, hostile, degrading, humiliating, or offensive atmosphere.

Concerning harassment and sexual harassment, the Labour Code guarantees employees that their submission to harassment or sexual harassment or their rejection of harassment or sexual harassment may not result in any negative consequences for said employees.

According to Article 18<sup>3b</sup> of the LC, a violation of the principle of equal treatment in employment occurs, with some exceptions, when an employer treats an employee differently on one or more grounds with the effect of, in particular:

- 1) terminating or rejecting the establishment of an employment relationship;
- 2) establishing disadvantageous conditions of remuneration for work or other terms of employment, or not being selected for promotion or not being granted other work-related benefits;
- 3) not being chosen to participate in training organised to improve professional qualifications unless the employer proves that this was done for objective reasons.

In discrimination cases, the burden of proof is shifted from the employee to the employer. The employee should, however, present facts that would lend credence to a case of discrimination.

The Labour Code guarantees the right to equal remuneration for the same work or for work of equal value, including all components of remuneration, regardless of their name or characteristics. At the same time, it should be noted that the Labour Code does not explicitly define the concept of “the same work”.

A person against whom an employer has violated the principle of equal treatment in employment has the right to compensation of at least the amount of the minimum remuneration for their work. The Labour Code also guarantees other rights to employees who assert their rights. The fact that an employee exercises his or her rights due to a violation of the principle of equal treatment in employment may not constitute a reason for disadvantageous treatment of the employee and may not result in any negative consequences for the employee. In particular, it may not constitute grounds for termination of an employment relationship by an employer, with or without notice. This regulation also applies to employees who have provided any form of support to an employee who has exercised his or her rights on account of a violation of the principle of equal treatment in employment.

According to Article 94<sup>3</sup> of the LC, the employer is obligated to take action against workplace mobbing, which includes acts or behaviour towards an employee or

directed against an employee involving persistent and long-lasting harassment or bullying of an employee causing specific negative consequences. An employee who was harassed at work and developed health problems may claim an appropriate amount of money from the employer as a pecuniary compensation for the damage sustained.

An employee who terminates his or her employment contract as a result of workplace bullying has the right to claim compensation from his or her employer in an amount not lower than the minimum remuneration for work, as specified under separate provisions. The employee's statement on the termination of his or her employment contract must be made in writing, stating the reason for termination.

Workplace bullying at one's place of work or in connection with one's work means a systematic repetition of certain behaviour directed at an employee that results in, e.g., the elimination of such an employee from the group. Particularly important in this case is the health aspect, which distinguishes the phenomenon of workplace bullying from an ordinary conflict.

Ensuring equal treatment with respect to, among other things, undertaking and pursuing economic or professional activity is governed by the Act on the Implementation of Certain Regulations of the European Union Regarding Equal Treatment. This law implemented the following European Union directives:

1. Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood;
2. Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;
3. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;
4. Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services;
5. Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation;
6. Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures to facilitate the exercise of the rights conferred on workers in the context of the free movement of workers (OJ L 128, 30.4.2014)

The law determines the areas and means of preventing violations of the principle of equal treatment on the grounds of sex, race, ethnic origin, nationality, religion, belief, disability, age, or sexual orientation, as well as the competent authorities in this respect. The law applies to individuals, legal entities, and organisational units.

The law (Article 3) defines the phenomenon of direct and indirect discrimination and explains the concepts of harassment, sexual harassment, unequal treatment, and the principle of equal treatment.

According to Article 4, the law applies to, among other things, undertaking vocational training (including further training, improvement, professional retraining, and apprenticeship); the conditions for undertaking and conducting an economic or professional activity (including, in particular, employment or work under a civil-law contract); joining and taking part in trade unions, employers' organisations, and

professional self-governing bodies; and also exercising the rights that members of these organisations are entitled to; having access to, and the opportunity to use, labour market instruments and services, human resources development and unemployment prevention, social security, healthcare, education and higher education, and services, including housing services, objects, and acquiring rights and energy, if they are offered to the public.

Article 8 of the law prohibits unequal treatment of individuals on the grounds of sex, race, ethnic origin, nationality, religion, denomination, belief, disability, age, or sexual orientation as regards the conditions of undertaking and conducting economic or professional activity or working under a civil-law contract.

It is also prohibited to encourage or order unequal treatment (Article 9).

The law also identifies legal remedies for the protection of the principle of equal treatment and the competent authorities to deal with violations. Everyone whose right to equal treatment has been violated has the right to compensation. Employees employed under a contract of mandate or specific work contract have the right to claim compensation from their employer. However, they must justify their claims against the employer, i.e., lend credibility to their claim that there has been a violation of the principle of equal treatment. In this case, the employer is obligated to prove that no violation occurred. According to the provisions of the law, a victim of unequal treatment can only claim compensation, as the law does not provide for the possibility of awarding redress for harm caused by unequal treatment. Victims of discrimination must exercise their rights in court, in which case, the provisions of the Civil Code and the Code of Civil Procedure apply. Employers employing individuals under civil-law contracts are required to comply with the anti-discrimination provisions of the Act on the Implementation of Certain Regulations of the European Union Regarding Equal Treatment; otherwise, they may be exposed to costs due to possible compensation proceedings.

The law introduces the principle of reversed proof of burden, as does the Labour Code. According to this regulation, anyone who alleges a violation of the principle of equal treatment should lend credibility to the fact of its violation, and the party that has been accused of discrimination must try to prove that they have not violated the principle.

## **Prevention of economic exploitation of children**

Article 39 of the Convention on the Rights of the Child states that States Parties to the Convention “recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development”.

Article 304<sup>5</sup> of the LC provides that work or other paid jobs may only be performed by a child under the age of 16 for the benefit of an entity conducting cultural, artistic, sporting, or advertising activity, and only with the prior consent of the child’s statutory representative or guardian, as well as permission from the relevant labour inspector. The relevant labour inspector must refuse permission if the performance of the work will endanger the life, health, or psychophysical development of the child or if it constitutes a threat to the child’s performance of his or her school duties. In turn, the freedom to employ individuals between the ages of 16 and 18 is limited by the provisions of the Ordinance of the Council of Ministers of 24 August 2004 listing jobs prohibited to young people and conditions of employment for some of these jobs.

## Freedom of association

Freedom of association is guaranteed by the provisions of the Constitution of the Republic of Poland (Articles 12 and 59) and legislation, in particular the Act of 23 May 1991 on Trade Unions (Journal of Laws of 2015, Item 1881). Poland has ratified the basic acts of international law on freedom of association, namely the International Covenant on Economic, Social and Cultural Rights (Article 8), the European Social Charter (Articles 5 and 6), and ILO Conventions Nos. 87 and 98.

According to Article 3 of the Act of 23 May 1991 on Trade Unions, no person should bear negative consequences of membership or non-membership in a trade union or of holding a function in a trade union. In particular, this cannot constitute a condition for entering into an employment relationship, maintenance of such a relationship, or promotion. In accordance with Article 35(1)(c) of the Act on Trade Unions, discrimination against an employee because of his or her membership in a trade union, non-membership in a trade union, or the holding of a trade union function may result in criminal liability.

The Labour Code prohibits the unequal treatment of employees with respect to establishing and terminating an employment, terms of employment, terms of promotion, as well as access to training in order to improve professional qualifications, in particular on the grounds of trade union membership (Chapter II a, Equal Treatment in Employment). An employee may seek compensation from his or her employer before a court of law for a violation of the principle of equal treatment in employment, which cannot be lower than the minimum remuneration for work stipulated in separate provisions.

In addition, Article 18<sup>3e</sup> of the LC provides for a mechanism of protection against the negative consequences of exercising employee rights or supporting an employee who has been treated unequally, e.g., on the grounds of his or her trade union membership. According to Article 18<sup>3e</sup> § 1 of the Labour Code, the fact that an employee has exercised his or her rights when there has been a violation of the principle of equal treatment in employment may not constitute a grounds for disadvantageous treatment of such employee and may not result in any negative consequences towards the employee. In particular, it may not constitute grounds for termination of employment by an employer, with or without notice. The above-mentioned provision applies accordingly to an employee who has provided support to an employee exercising his or her rights in respect of a violation of the principle of equal treatment in employment (e.g., testifying as a witness in court proceedings).

Other important areas addressing the issue of labour rights include:

## The right to a fair wage

According to Article 23 of the Universal Declaration of Human Rights, “everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection”. This right was specifically codified in Article 7 of the International Covenant on Economic, Social and Cultural Rights.

The establishment of a minimum wage and a hourly minimum wage for certain civil-law contracts represents an instrument that furthers this goal. These issues are regulated by the Act of 10 October 2002 on Minimum Remuneration for Work (Journal of Laws 2015, Item 2008, as amended). According to the law, the minimum remuneration is the subject of negotiations in the Social Dialogue Council, consisting of representatives of the government, employees (trade unions), and employers (employers’ organisations). In the event of disagreement in the Social Dialogue

Council, the decision on the amount of minimum remuneration is taken by the Council of Ministers. The amount of minimum remuneration for work determines the minimum hourly wage.

As of 1 January 2017, the minimum monthly remuneration for work is PLN 2,000. Systemic changes have also been introduced: it is no longer possible to set employee's remuneration at a level lower than the minimum remuneration for employees with a short period of service (i.e., 80 per cent of that remuneration); the scope of the minimum remuneration component was also changed by removing the allowance for night-time work.

As of 1 January 2017, a minimum hourly rate of PLN 13 applies to employees hired under mandate contracts and service contracts, including those who are self-employed. This amount will be adjusted annually to reflect the increase in the minimum remuneration for employees employed on the basis of an employment contract.

Remuneration below the minimum wage constitutes a violation of employee rights. Each increase of the minimum wage improves of the situation of the lowest-paid workers.

The introduction of a guaranteed minimum-remuneration for mandate contracts and service contracts, to which the provisions of mandate apply, is intended to generate a positive change in the labour market by preventing the abuse of civil-law contracts and introducing protections for individuals receiving remuneration at the lowest level.

## **Occupational safety and health**

Article 7 of the International Covenant on Economic, Social and Cultural Rights calls on the States Parties to the Covenant to recognise the right of everyone to enjoy of just and favourable conditions of work, including safe and healthy working conditions, as well as rest, leisure, and reasonable limitation of working hours and periodic paid holidays, as well as remuneration for public holidays.

The provisions for ensuring safe and hygienic working conditions by employers are set out in Division 10 of the Labour Code, "Health and Safety at Work", as well as in other generally applicable laws. In accordance with the provisions of the Labour Code, employers are obliged to protect the health and life of their employees by providing them with health and safety conditions at work that appropriately use science and technology achievements. Employers are also obligated to organise work in a manner that ensures the above-mentioned conditions. In addition, Division 10 of the Labour Code specifies the rights and obligations of employees with respect to health and safety at work, the basic health and safety requirements for buildings and working premises, as well as machines and other technical equipment, requirements regarding factors and processes of work that create particular threats to health or life, obligations providing employees with preventive health protection, employers' obligations related to accidents at work and occupational diseases, obligations to provide health and safety training, obligations to provide employees with measures of individual protection and work clothes and shoes, requirements to establish a health and safety at work service, requirements to provide consultations on health and safety at work and a commission on health and safety at work.

In addition to the provisions of Division 10, the Labour Code also contains other provisions for the protection of the lives and health of women and young people who are employees, included in Division 8, "The Rights of Employees in Relation to Parenthood", and Division 9, "Employment of Young People". The provision of safe and hygienic work conditions for employees is also ensured by regulations of other laws, including the Construction Law, the Atomic Law, and the Geological and Mining Law.

The state's activities as regards supervision and inspection of work conditions (in accordance with the requirements of international law) are important for ensuring health and safety at work. The system of measures that implement this policy is based, in particular, on the powers of the National Labour Inspectorate (reporting to the Sejm of the Republic of Poland) to supervise the observance of labour law, including health and safety at work, and the State Sanitary Inspection (reporting to the Minister of Health) to supervise compliance with work hygiene regulations. According to Article 304 of the LC, employers are obligated to ensure health and safety working conditions not only for their employees, but also for individuals performing work on a basis other than an employment contract at a work establishment or in a place designated by the employer, as well as for anyone conducting their own business activity at a work establishment or in a place designated by the employer. Obligations related to health and safety at work are applicable to non-employers who organise work performed by individuals on a non-employment basis and self-employed individuals. According to Article 304<sup>1</sup> of the LC, the basic duties of employees (referred to in Article 211 of the LC) within the scope determined by an employer or another entity organising work will also be imposed on individuals who perform work on a different basis than an employment contract at a work establishment or in a place designated by the employer or other entity organising work, as well as on anyone conducting their own business activity at their work establishment or in a place designated by the employer or another entity organising work.

### **Right of female workers to protection**

In view of the right of employed women to special protection under Article 8 of the European Social Charter, as well as the right of mothers to special protection during the period before and after childbirth under Article 10 of the International Covenant on Economic, Social and Cultural Rights, and under Article 177 of the LC, the employment relationship with a female employee during her pregnancy or while on maternity leave is accorded particular protection. During this time, an employer may not terminate an employment contract with or without notice unless there are reasons justifying termination without notice through the fault of the employee and an enterprise trade union representing the employee has consented to the termination of the employment contract.

During pregnancy or maternity leave, it is possible to terminate an employment contract solely in the event that the employer declares bankruptcy or is liquidated. In such cases, however, the employer is obliged to agree with the enterprise trade union representing the female employee on the date of the termination of her employment contract. If it is not possible to ensure other employment within that period of time, the female employee is entitled to the benefits specified in separate provisions on cash benefits from social security in the event of sickness or maternity.

The special protection of the employment relationship does not apply to female employees during their trial period not exceeding one month or to employees hired under an employment contract for a definite period of time concluded to replace an employee during a justified absence from work. These regulations also apply accordingly to employees on parental leave.

The Labour Code also contains a number of provisions governing specific rights of employees related to parenting, including the provisions on maternity, parental, paternity, and child-care leave, as well as provisions to facilitate the fulfilment of parental responsibilities in relation to child care and education, including regulations that make it possible to combine leave with part-time work or regulations on working time and the use of exemptions from work or breaks from work.

The particular protection of employment relationships during pregnancy and maternity leave is subject to modifications resulting from the provisions of the Act of 13 March 2003 on Special Rules regarding the Termination of an Employment Relationship for Reasons not Related to Employees (Journal of Laws of 2016, Item 1474). This law, which applies to employers with at least 20 employees, permits termination of current employment and working conditions with notice, while still prohibiting termination, both in the case of collective redundancies and individual termination of an employment relationship during pregnancy and maternity leave. These regulations also apply accordingly to employees on parental leave.

Under the Act on the Implementation of Certain Regulations of the European Union Regarding Equal Treatment, in the case of a violation of the principle of equal treatment, laid down in that law, against an individual, including in connection with pregnancy, maternity leave, leave on terms of maternity leave, paternity leave, parental leave, or child-care leave, such person is entitled to compensation.

### Improvement of professional qualifications

Employers are obliged to enable employees to improve their professional qualifications. The Labour Code outlines the rules governing the conclusion of contracts regarding supplementary education, granting leave for education, a training leave, and additional benefits.

The principle of enabling employees to improve their professional qualifications mainly relates to the qualifications necessary for the proper performance of their current job or the qualifications needed for the work that employees are supposed to do in the future for a particular employer. This does not mean that an employer should not, to the extent possible, foster their employees' overall intellectual development. Such development is not only in the interest of employees, but also in the interest of the employer, because it influences the creative attitude adopted by employees at work. The principle of enabling employees to improve their professional qualifications is connected with the right to education, which is enshrined in Article 70 of the Constitution of the Republic of Poland, the Universal Declaration of Human Rights (Article 26), and the International Covenant on Economic, Social and Cultural Rights (Article 13). At the same time, it should be noted that the idea of lifelong learning is one of the most important premises of the so-called Lisbon Strategy and also one of the elements of Europe 2020, a strategy for smart, sustainable, and inclusive growth.

Article 8 of the Act on the Implementation of Certain Regulations of the European Union Regarding Equal Treatment prohibits unequal treatment of individuals on the basis of sex, race, ethnic origin, nationality, religion, denomination, belief, disability, age, or sexual orientation, also in the scope of undertaking professional development activities (including further training, improvement, vocational retraining, and apprenticeship). In case of a violation of this prohibition, the injured party may seek compensation.

The issue of the improvement of professional qualifications of workers is also governed by Article 10 of the European Social Charter and International Labour Organization Paid Educational Leave Convention, 1974 (No 140). These regulations oblige the state to promote the training of workers by granting them various forms of assistance, in particular financial entitlements and paid release from work.



## Right to development

Another inalienable human right that should be guaranteed is the right to development. The UN Declaration on the Right to Development, adopted in 1986, emphasises the importance of human beings in the development process and points to the relationship between human rights and development. This declaration can serve as a guideline for the creation of national and international policies. It may be an instrument of:

- incorporating human rights in the development process;
- recognising the importance of the human factor in development efforts;
- providing a political, legal, social, moral, and rational basis for development cooperation;
- dialogue on human rights between developed and developing countries.

States are obliged to pursue their chosen national development policies with a view to the steady growth of the well-being of society and of all individuals, growth based on a fair distribution of benefits.

Both the Vienna Declaration and the Programme of Action adopted at the World Conference on Human Rights in Vienna state that development facilitates the enjoyment of all human rights. On the other hand, one may not claim a lack of development and, at the same time, justify a violation of human rights. This is due to the universal nature of these regulations being beyond all discussion.

Article 55 of the United Nations Charter details the areas of international economic and social co-operation that, pursuant to Article 56 of the Charter, require common and independent action by UN member states. This co-operation includes:

- a) higher standards of living, full employment, and conditions of economic and social progress and development;
- b) solutions to international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

## 2. Public procurement

On 28 July 2016, an amendment to the Public Procurement Law (PPL) came into force, introducing a number of changes related to the implementation of new EU directives in the field of public procurement in the Polish legal system.<sup>3</sup> One of the objectives of the new regulation is to enable contracting institutions to make better use of public procurement to support social policy objectives, for instance, by introducing a requirement to hire contractors and subcontractors under employment contracts. Recognising the problems of contracting authorities with the practical application of Article 29(3)(a) of the PPL, and intending to ensure the most effective application of employment requirements, the Public Procurement Office drafted and published on its website a legal opinion on the application of Article 29(3)(a) of the PPL. The opinion takes into consideration the position of the Inspector-General for the Protection of Personal Data and, while providing guidance regarding the ability of contracting authorities to verify the fulfilment by contractors and subcontractors of the requirement to employ personnel performing activities envisioned in the contract, together with the sample provisions referred to in Article 36(2)(8)(a) of the Public Procurement Law.

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<sup>3</sup> Directive 2014/24/EU on public procurement and Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors.

According to *Recommendations of the Council of Ministers on the consideration of social aspects in public procurement by the government administration*, the heads of government administration units are obliged to analyse the possibility of applying social clauses to all public procurement proceedings, including contracts that do not comply with the provisions of the Public Procurement Law.

Successful implementation of social goals through public procurement requires educational activities among public procurement market participants. The Public Procurement Office carries out educational activities aimed at promoting social issues in public procurement primarily on the basis of the *National Action Plans for Sustainable Public Procurement*. The *National Action Plan for Sustainable Public Procurement 2017-2020* calls for educational activities such as conferences, training, or the preparation of relevant publications.

Plans are in store to identify and publish a catalogue of good practices and to develop specimen documents. As part of the planned educational activities, the Public Procurement Office intends to present to the Polish contracting authorities, among other things, the possibility of including public symbols of a social nature based on the criteria of respecting human rights in the production of goods subject to a public contract in the procurement procedure.<sup>4</sup> With respect to reporting information on sustainable public procurement, the contracting authority will, under the new rules for drawing up annual reports on contracts awarded, include detailed information on social aspects in the new Part VIII of the annual report form (*Contracts to which the provisions of the law taking into account social aspects apply*). This will help obtain comprehensive data about the social aspects incorporated into public procurement.

### 3. Regulations on European Funds

Article 7 of Regulation No 1303/2013 of the European Parliament and of the European Council of 17 December 2013 laying down common provisions on five EU funds<sup>5</sup> obligates all Member States to take appropriate steps to prevent any form of discrimination, including based on disability.<sup>6</sup>

In view of the above, in 2015, the Ministry of Infrastructure and Development developed the *Guidelines for the implementation of the principle of equal opportunities and non-discrimination, including accessibility for people with disabilities and the principle of equal opportunities for women and men within EU funds for 2014-2020*.<sup>7</sup>

The above-mentioned *Guidelines* aim to ensure the compatibility of operational programmes (OPs) with the principle of equal opportunities and non-discrimination, including accessibility, for people with disabilities and the principle of equal opportunities for women and men, as well as to ensure a coherent approach in this respect under the European Social Fund (ESF), the European Regional Development

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<sup>4</sup> The National Action Plan on sustainable public procurement for 2017-2020 provides detailed information on the activities carried out by the PPO together with the timetable for their implementation.

<sup>5</sup> The European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development, and the European Maritime and Fisheries Fund.

<sup>6</sup> “The Member States and the Commission shall ensure that equality between men and women and the integration of gender perspective are taken into account and promoted throughout the preparation and implementation of programmes, including in relation to monitoring, reporting and evaluation”. “The Member States and the Commission shall take appropriate steps to prevent any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the preparation and implementation of programmes. In particular, accessibility for persons with disabilities shall be taken into account throughout the preparation and implementation of programmes.”.

<sup>7</sup> Available at: <http://www.funduszeuropejskie.gov.pl/strony/o-funduszach/dokumenty/wytyczne-w-zakresie-realizacji-zasady-rownosci-szans-i-niedyskryminacji-oraz-zasady-rownosci-szans/>

Fund (ERDF), and the Cohesion Fund (CF). *The Guidelines* are addressed to all institutions that participate in the implementation of operational programmes co-financed by the ESF, the ERDF and the CF, in particular managing authorities (MAs), intermediate bodies (IPs) and implementing authorities (IAs). MAs ensure that the competent decision-making body or which is a party to a project co-financing agreement under an OP will commit the beneficiary in a decision or project co-financing agreement to apply the current *Guiding Principles*.

The provisions adopted in these *Guiding Principles* are also an expression of the inclusion of the provisions of the *United Nations Convention on the Rights of Persons with Disabilities*, ratified by Poland in 2012, within the framework of structural funds. According to the *Guiding Principles*, the managing authorities of operating programmes develop criteria for the evaluation of applications for co-financing allocation in such a way that co-financing (also projects implemented by enterprises) is offered to projects that have a positive or neutral impact on the principle of equal opportunities and non-discrimination, including accessibility for people with disabilities, and the principle of equal opportunities for women and men.

The creation of administrative capacity to implement equal opportunities and non-discrimination policies, including accessibility for people with disabilities and equal opportunities for women and men in relation to the European Structural and Investment Funds (EFSI) was regulated in the *Action Plan for Equality and Non-discrimination 2014-2020 (22 April 2015)*.<sup>8</sup> This document is primarily an action plan for the measures that should be taken by the institutions involved in the implementation of EU funds to ensure accessibility for people with disabilities.

The above-mentioned documents provide a strategic and operational framework for the disbursement of structural funds corresponding to EU policies on equal opportunity. They also represent the government's efforts to implement and promote the provisions of the *United Nations Convention on the Rights of Persons with Disabilities*. In practice, the intention is to give disabled clients of European funds an opportunity to participate in the EU budget, i.e., the opportunity to use the funds, choose a career without barriers, and thus enjoy full inclusion in society. Hence, the introduction of a number of tools intended to ensure such accessibility, e.g., universal design, rational improvements, digital accessibility, or architectural availability.

#### ***4. Strategic documents: Strategy for Responsible Development***

The Polish perspective on actions for sustainable and responsible economic development was formulated in Poland's *National Action Plan for Responsible Development* adopted by the government on 16 February 2016. It contains a diagnosis of the situation, indicates the key areas for long-term development, and proposes concrete solutions that will ensure Poland's growth. Detailed measures to achieve the *Plan's* goals are reflected in the *Strategy for Responsible Development (SRD)* adopted on 14 February 2017, which due to its role and tasks is an instrument for flexible management of the main development processes in the country. It indicates the goals and necessary actions, implementation instruments, and key projects to ensure its implementation. It also establishes a coordination system, assigning roles to individual public entities and ways of working with the world of business, science, and society. The development strategy is based on the concept of sustainable and responsible development and remains in line with the *United Nations Guiding Principles on*

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<sup>8</sup> Available at: [https://www.funduszeuropejskie.gov.pl/media/6131/Agenda\\_ZATWIERDZONA.pdf](https://www.funduszeuropejskie.gov.pl/media/6131/Agenda_ZATWIERDZONA.pdf)

*Business and Human Rights*. Its implementation will support the implementation of the 2030 Agenda in Poland.

Responsible development means not only economic growth based on solid economic foundations (entrepreneurship, diligence, resources, and the skills of Poles), but also multidimensional social solidarity—between present and future generations; between regions, cities, and rural areas; or between employers and employees—originating from concerns for the common good.

Social capital is both a prerequisite for such trust-based cooperation and the starting point for the development of a modern economy. The success of planned development actions depends on the shaping of the attitudes that promote cooperation, creativity, and communication, increasing public participation and citizens' influence on public life and cultural potential. Both a climate of lasting trust between citizens, also in the state-citizen relationship, and the development of creative entrepreneurship should be viewed as a catalyst for other changes or actions, or a practical leverage for initiatives and development goals.

While preserving the constitutional model of a social market economy, the *Strategy for Responsible Development* proposes increasing the responsibility of state institutions for shaping economic, social and territorial processes. Responsible only to a limited extent for the business decisions of private entities, state institutions become the driving force behind entrepreneurial behaviour, enable the development of new branches and economic fields, and facilitate the use of market mechanisms to stimulate, develop, and implement modern technological solutions.

The strategy combines a strategic dimension with an operational one, and it identifies the necessary actions and implementation tools: flagship and strategic projects to ensure its implementation. A significant number of the more than 180 projects are related to different spheres of social policy, referring to issues important to citizens, specific groups of people, or regions of the country. The strategy also includes a number of strategic projects that will increase social engagement and cooperation between public and private entities, the science sector, and civil society, including the *National Programme for Supporting Civil Society Development*.

In the area of *Law in the service of citizens and the economy*, the *SRD* also lays down measures to improve the quality of legislation aimed at providing better conditions for conducting business and satisfying citizens' needs. There is still a challenge related to the large number of legal regulations, their inconsistencies and ambiguities; frequent changes in regulations in recent years; and numerous legal obligations imposed on citizens and entrepreneurs (and on administration at various levels). The measures aimed at addressing the problem include improving the effectiveness of the regulatory impact assessment system, “100 changes for businesses”—the first package of legislative solutions—and the *Business Constitution* package, which aims to ensure further improvement of the legal environment, enhance legal certainty and legal culture, and strengthen the auxiliary role of the administration towards citizens and businesses.

## ***5. Planned changes in national legislation:***

### **Act on Counteracting the Unfair Use of Contractual Advantage in the Trade in Agricultural and Food Products.**

The Act on Counteracting the Unfair Use of Contractual Advantage in the Trade in Agricultural and Food Products was prepared by the Ministry of Agriculture and Rural Development. Signed by the President on 28 December 2016, it will enter into force

on 12 July 2017. The new act's primary goal is to ensure the effective dispute resolution between suppliers and buyers of food and agricultural products. A contractual advantage occurs in cases where there is a significant disparity in economic potential between the two parties and where the weaker of these parties lacks the sufficient capacity for selling or purchasing agricultural or food products from other entrepreneurs.

Any entrepreneur who has a reasonable suspicion that it is being subjected to any practices which involve the unfair use of contractual advantage may submit a written complaint to the President of the Office of Competition and Consumer Protection. The Office of Competition and Consumer Protection may only intervene where the total value of the turnover between the supplier and the customer exceeded the amount of PLN 50 000 - during any of the two years preceding the year in which the proceedings were initiated and where the turnover of the supplier or customer applying the practices in question exceeded PLN 100 000 000 - during the year preceding the year in which the proceedings were initiated.

The regulation will help provide greater protection for smaller companies that, in situations of unfair use of contractual advantage, lost their liquidity, and consequently shifted the cost burden onto employees (e.g., delayed payment of wages).

### **“Package for Creditors”**

As a result of a review of legal provisions related to the recovery of debtors' receivables, in view of the impact of delays in settling obligations on the financial condition of enterprises, particularly in the SME sector and households, as well as the negative effects of actions by unreliable contracting parties, a draft law's amendment was drawn up to strengthen the rights and guarantees for creditors protecting or enforcing their ownership by:

- 1) providing broader possibilities for verifying payment credibility of potential contracting parties, based on the data from the registries of economic information offices and the newly created Public-Law Debt Registry, while at the same time respecting the rights of debtors;
- 2) raising the upper limit of the subject matter of disputes for cases heard in simplified proceedings;
- 3) extending the scope of cases heard in class actions and eliminating the main barriers to the effective resolution of cases in these proceedings;
- 4) increasing the effectiveness of a solvency safeguard procedure and enforcement proceedings.

Most of the changes introduced pursuant to the Act of 7 April 2017 on the Amendment of Certain Acts to Facilitate Debt Recovery (Journal of Laws, Item 933) will apply to both entrepreneurs and non-entrepreneurs.

Attention should be paid, in the context of human rights, to regulations on collective bargaining aimed at:

- a) extension of the scope of class actions by enabling redress in class actions arising from non-performance or improper performance of a contract or from unjust enrichment and making claims for liability in cases related to injury to life or health;
- b) increasing the possibility of using class actions for payment through a less rigorous approach to harmonising claims in such cases and clarifying the effects of the harmonisation of claims;
- c) shortening the duration of class actions—their formal phases, e.g., through removal of the obligation to adjudicate at hearings on the admissibility of class actions, giving

- up appeals against the decision on the case in class actions, and making it possible for a case to be heard (with respect to circumstances common to all members of the group) at the time when the complaint against the group composition is being heard;
- d) streamlining class actions for liability through clarification of the nature and subject matter of such proceedings;
- e) clarification of the rules regarding the use of a deposit to secure the costs of proceedings.

The changes are intended to shorten and streamline class actions. They will also make it possible to adjudicate more cases in class actions, including the claims of entrepreneurs. Making multiple claims for payment or determining liability for a specific event that affects the property of many individuals in single proceedings will improve the economics of the proceedings. It will help save time and resources related to bringing many individual actions that result from the same event or event of one kind. Consequently, these changes will facilitate the effective exercise of the right to access the courts.

Most of the changes will enter into force on 1 June 2017. The Ministry of Economic Development was responsible for drafting the bill.

#### Addition of general principles in administrative proceedings:

##### *Friendly interpretation of the law (in dubio pro libertate)*

The Act of 7 April 2017 Amending the Administrative Procedure Code and Certain Other Acts (Journal of Laws, Item 935) introduced into the Administrative Procedure Code the principle that, in the event of different interpretations of the law, the authority conducting the proceedings should adopt an interpretation favourable to the party. Thus, the party will be given protection against the negative consequences of unclear legal regulations and the associated uncertainty.

Interpretation of the law may cause difficulties both to citizens (other entities) and administrative authorities, as well as courts and entities performing tasks entrusted to public administration.

Decisions of public authorities where interpretative uncertainties have been adjudicated to the detriment of the party reduce confidence in the state and the laws it introduces. The proposed principle will have particular significance in proceedings imposing an obligation or punishment on the party or revoking the party's right. In such proceedings the party's sphere of freedom is restricted either directly or indirectly.

In the area of tax law, the Constitutional Court<sup>9</sup> has indicated that the public administration authorities should, in accordance with the principle of *in dubio pro tributario*, resolve interpretation doubts in favour of the taxpayer. On the other hand, in the context of the protection of the right to property, the Supreme Administrative Court has argued in favour of restrictive interpretation with regard to interference with the rights of the owner.<sup>10</sup> There is no doubt that the principle of *in dubio pro libertate*

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<sup>9</sup> Decision of the Constitutional Court of 18 July 2013, Ref. SK 18/09, OTK 2013/6/80.

<sup>10</sup> NSA Resolution of 13 November 2012: 'First of all, in the event of the ambiguous wording of the rule restricting the owner's rights—and this is the case at hand—the court is obliged to follow the directive *in dubio pro libertate*. It should therefore interpret the rule in such a way as to reduce interference in the content of the co-owners' right to manage joint property to a minimum.'

permeates the entire administrative law.<sup>11</sup> By extending this principle to the level of proceedings before administrative authorities, the provisions that cause uncertainty should be interpreted in a way that does not harm the legitimate interests of citizens. The constitutional principle of correct legislation serves to protect the confidence of citizens in the state and the law it adopts. The same values should also be more extensively protected in the process of application of the law. Consequently, this principle aims to comply with the same values as the above-mentioned constitutional principle. Although the law should be formulated in such a way that it is not difficult to interpret the meaning of its provisions, the occurrence of such difficulties cannot be ruled out. Therefore, the proposed principle aims to reduce the risk of any possible ambiguity of the provisions affecting the parties.

*The principle of proportionality (relevance), impartiality, and the principle of equal treatment*

The principles of impartiality and equal treatment, which should be of particular importance in cases involving several parties, have also been included in the provisions of the Act Amending the Administrative Procedure Code. The principle of impartiality means that administration authorities and their employees should not be guided in their actions by any interests or motives beyond the law that might violate the interests of the parties. In accordance with the principle of equal treatment, all parties in the same situation should be treated in a comparable manner without any discrimination.

The principle of deepening citizens' confidence in the state authorities, a fundamental premise for establishing friendly relations between the administration and citizens, needs to be defined in a more concrete way. One of the basic criteria for assessing the extent to which the administration is friendly to the individual is the predictability of the actions of the public administration authorities and their respect for the individual's interests. A party that files documents with an authority, generally in cases involving investment expenditure or requiring prior involvement of material resources, including time, has the right to arrange their interests in the belief that, acting in good faith and with respect for the law, it does not risk adverse legal consequences of their decisions, especially the effects that they could not predict at the time they were taken. The administration authorities are required to respect the principle of legitimate expectations so that the party is able to plan its activities in a rational manner.

This principle is based on the premise that the parties' expectations are legitimate if they relate to lawful and possible actions, and that the authority, acting within the limits of the law, will adhere to its established practice of resolving matters in similar factual and legal situations. The authority should not, without special and important reasons, depart from established and uniform practice.

The adopted provisions also include the principle of proportionality, which requires administration authorities to undertake only such acts that cause an inconvenience for parties that are necessary and proportionate to the intended purpose. Engaging, in the course of proceedings, in activities onerous for the party, in particular involving a limitation of the party's rights or creating a burden for the party, a public administration authority should take into account the interests of the parties and interfere in those interests only if and to the extent that it is necessary to achieve the intended purpose, in particular resolving the issue in accordance with the law.

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<sup>11</sup> Cf. J. Zimmermann, *Prawo administracyjne*, 2014, p. 45.

These principles are expressed in, e.g., Articles 5, 6, and 8 of the European Code of Good Administrative Behaviour.

*Uniform standards for the imposition of administrative penalties*

Administrative penalties under Polish law often constitute a severe sanction for violating the law. At the same time, the legal system includes no general rules that govern the imposition of these penalties, resulting in a significant differentiation of the situation of the entities subject to punishment, particularly with respect to the mechanisms mitigating the objective nature of administrative liability (e.g., as a result of the lack of determination or differentiation of the factors taken into account while estimating the amount of the pecuniary penalty), which is often unjustified due to the subject matter and the characteristics of a given regulation. Moreover, administrative sanctions are often imposed in an automatic manner, failing to take into account the causes and circumstances of the violation. In addition, administrative sanctions are in many cases more rigorous than criminal penalties, e.g., when no limitations period for the imposition of an administrative penalty has been established. Moreover, the automatic nature of imposing penalties and failure to take account of the circumstances of a given case is not conducive to ensuring a just—in a social sense—response on the part of the administration authorities.

This situation also raises doubts because of the principles established in a democratic state governed by the rule of law, in particular the principle of proportionality.

In the jurisprudence of the European Court of Human Rights, the standards of human rights protection in all sanctioning proceedings should be in line with the guarantees provided for in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, as later amended by Protocols 3, 5, and 8 and supplemented by Protocol 2.<sup>12</sup> This means that the guarantees of Article 6 of the Convention are applicable in all quasi-criminal proceedings, including those that, under Polish law, are considered administrative proceedings. Proceedings before administration authorities that may end with the imposition of a penalty should, in principle, meet all the procedural standards provided for in Article 6 of the Convention for proceedings in which the conditions of liability are adjudicated. Also, the jurisprudence of the Supreme Court and the Supreme Administrative Court indicates the need to respect the decisions of the ECHR, expressed on the basis of Article 6 of the Convention in so far as the imposition of administrative penalties is concerned.<sup>13</sup>

Therefore, the formulation of the principles for the imposition of administrative penalties was justified. This will ensure uniform standards of treatment for individuals and guarantee that penalties will be rational and commensurate with the violation.

The regulation deals with: (i) the so-called directives on administrative pecuniary penalties (e.g., the degree, circumstances, and duration of the breach of duty; the frequency of past violations; the degree of the offender's contribution to the offence; the amount of the benefits achieved; and the personal circumstances of the individual to be punished); (ii) the grounds for not imposing a penalty; (iii) postponement of the date of execution of a penalty; or (iv) division of a penalty into instalments; (v) giving

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<sup>12</sup> Journal of Laws 1993, Item 284, with later amendments

<sup>13</sup> Cf. Resolution of the Supreme Court of 10 April 1992, Ref. Act I PIP 9/92, OSNCP 1992/12/210, and the decision of the Supreme Administrative Court of 5 December 2012, Ref. Act II OSK 2377/12 (orzeczenia.nsa.gov.pl).



the entrepreneur public aid or *de minimis* aid in relation to relief in the imposition of a penalty; and (vi) the limitation of the imposition or execution of a penalty.

Although the proposed solutions may be used by all citizens, it should be noted that entrepreneurs are particularly exposed to the automatic nature and excessive rigour of imposed administrative penalties. In particular, administrative penalties exert a significant impact on the business environment of entrepreneurs from the SME sector. The introduction of general provisions on the imposition of administrative penalties into the legal order will be the first such regulation in Polish administrative law.

### **Regulations on so-called whistle-blowers**

Efforts to regulate the position of so-called whistle-blowers will continue. Without changes in the sphere of the law and awareness, it will not be possible to realistically improve the situation of people who reveal abusive practices in Poland. Legislative work is currently under way at the Ministry of Justice with regard to regulations on the protection of whistle-blowers in Poland. It is also necessary to launch a broad social campaign due to the low level of social awareness of whistle-blowing and the role it plays in the public interest.

On 10 April 2017, a pilot programme called ‘Sygnaliści’ (Whistle-blowers) was initiated by the President of the Office of Competition and Consumer Protection. Anyone may report suspected anti-competitive agreement or abuse of a dominant position by a business on a dedicated telephone number or by email. This information can be submitted anonymously, and officials have no intention of determining the identity of the whistle-blower. However, there is a need to address the legal issues related to the status of whistle-blowers in a systematic way, and to protect them from possible negative consequences from the parties whose violations they have reported.

### **Amendment to the Act on Tourism Services**

Plans are in store to undertake work on an amendment of regulations on the provision of hotel service, in order to introduce legislation related to the prevention of sexual exploitation of minors in hotel facilities (detailing requirements of hotel regulations), as recommended by the Council of Europe’s Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

### **Amendment to the Trade Union Act**

The Ministry of Family, Labour and Social Policy has drafted a bill amending the Trade Union Act that provides for extending the right of workers to organize onto individuals performing paid work but not mentioned in the provisions of the Act (in particular contractors or self-employed individuals), who have all the characteristics of workers within the meaning of the Constitution. The proposed changes are a consequence of the decision of the Constitutional Tribunal of 2 June 2015, ref. Act K 1/13, which ruled that Article 2(1) of the Trade Union Act, in so far as it restricts the freedom of associating in and joining trade unions by individuals pursuing paid work not referred to in that provision, violates Article 59(1) in conjunction with Article 12 of the Constitution of the Republic of Poland.

It is planned to adapt the provisions of the current trade union law to new realities after the extension of workers’ right to organize and the need to ensure that all trade unionists, irrespective of the nature of their legal relationship with their employer, are

able to freely exercise the right to organize in trade unions. The bill is currently in legislation. The draft law has been reviewed by social partners, e.g., as part of the proceedings of the Social Dialogue Council.

## Rules governing the liability of Internet intermediaries for hate speech and violation of freedom of speech

The Ministry of Digital Affairs plans to draft a regulation to counteract restrictions on the freedom of speech, on the one hand, and to block illegal content on the Internet, on the other. Legislative work is being carried out that clarifies the procedure for notice and takedown of the illegal content online, as well as strengthens legal safeguards for freedom of speech in the activities of electronic service providers. These efforts address i.a. issues related to hate speech or incitement to violence, as well as the use of unauthorised technical restrictions on freedom of speech in social media.

## *6. Actions resulting from the Council of Europe Recommendation on human rights and business*

- 1) The text of Recommendation CM/Rec(2016)3 to member states on human rights and business (hereinafter referred to as the Recommendation), together with the Explanatory Memorandum, was translated into Polish.
  - responsible entity: Ministry of Foreign Affairs;
- 2) The Recommendation, together with its translation into Polish, will be disseminated among competent public authorities, competent public inspection authorities, courts, prosecutors, police, entrepreneurs, business organisations, and workers' organisations, social dialogue bodies, entities working to protect human rights, and diplomatic and consular missions. It will also be duly integrated into the curricula of training programmes.
  - responsible entities: Ministry of Economic Development; Ministry of Family, Labour and Social Policy; Ministry of Justice; Ministry of the Interior and Administration; Ministry of Foreign Affairs; Government Plenipotentiary for Equal Treatment; and the Government Plenipotentiary for Civil Society, in cooperation with other relevant ministries and bodies;
- 3) The Recommendation will be analysed to assess the compatibility of the law and practice in Poland and to formulate proposals for possible actions to be taken to implement such compatibility.
  - responsible entity: Ministry of Economic Development in cooperation with other ministries, including: Ministry of Family, Labour and Social Policy; Ministry of Justice; Ministry of the Interior and Administration; Government Plenipotentiary for Equal Treatment; and the Government Plenipotentiary for Civil Society;
- 4) Poland will prepare an interim report and a final report on the state of implementation of the Recommendation with a list of good practices applied by the country:

- responsible entities: Ministry of Foreign Affairs; Ministry of Economic Development; Ministry of Family, Labour and Social Policy; and other ministries;
- completion date: by the end of 2018 (interim report and list of good practices) and by the end of 2020 (final report).

## ***7.Planned and ongoing activities***

Promotion of issues related to business and human rights in discussions and within the framework of international processes;

Cooperation within the EU for the implementation of the *United Nations Guiding Principles on Business and Human Rights*;

Inclusion of references to the *United Nations Guiding Principles on Business and Human Rights* in government documents and action plans, including in the National Action Programme for Equal Treatment.

Promotion of information on human rights in business, including as an issue that builds the credibility and brand of enterprises, and raising awareness of the issue of respect for human rights in business through publications and training.

Training in business and human rights based on the *United Nations Guiding Principles on Business and Human Rights* run by the Ministry of Foreign Affairs for heads of embassies, consulates-general, and Polish Institutes, and in CSR/RBC, business and human rights, and corruption prevention run by the Ministry of Economic Development for individuals delegated to work in Trade and Investment Promotion departments and the Permanent Representation of the Republic of Poland to the OECD.

## **Pillar II**

### **The corporate responsibility to respect human rights**

*The United Nations Guiding Principles on Business and Human Rights* outline the general principles and instruments that states can use to protect their citizens from human rights abuses by businesses. The *UN Guiding Principles* recommend that states should:

- clearly set out the expectation that all business enterprises respect human rights throughout their operations;
- enforce laws requiring business enterprises to respect human rights and assess the adequacy of such laws;
- ensure that other laws governing the operation of business enterprises do not constrain but enable business respect for human rights;
- encourage and require business enterprises to communicate how they address their human rights impact;
- encourage and require business enterprises to promote the idea of respecting human rights among their business partners;
- take steps to ensure particularly careful respect for human rights by business enterprises owned by the state;
- develop appropriate government and public administration policies by providing them with relevant training, information, and support.

In the Interpretive Guide to the *United Nations Guiding Principles on Business and Human Rights*,<sup>14</sup> Professor John Ruggie emphasises that activities to promote business and respect for human rights remain inseparable: responsible business conduct on the part of private and state-owned business enterprises that takes into account the importance of human rights serves both entrepreneurs and the entire community of citizens by helping to create jobs, expanding consumer groups, developing a sense of integrity, and contributing to the stabilisation of the market and thus to economic growth. Development opportunities are the consequence of maintaining adequate safeguards ensuring respect for human rights, such as democratic freedoms, rule of law, good governance, transparency, ownership rights, and civil society. Entrepreneurs recognise and understand the benefits of human rights. They realise that a positive action based on due diligence, transparency, and reporting can:

- help them protect and enhance the reputation and positive image of their business enterprise;
- keep and expand their customer base;
- enable business enterprises to attract and retain good staff;
- build and develop sustainable relationships with employees and stakeholders;
- reduce risks to the continuity of their business enterprise that might emerge internally and/or in its relationship with the local community or with other external partners;
- reduce the risk of judicial proceedings for human rights violations;
- attract investors who will pay more attention to ethical issues, including respect for human rights in their business activity;
- partner with/invest in business enterprises or governments that take into account the issue of human rights in their policies;
- support business ethics.

Entrepreneurs are increasingly attaching more importance to corporate social activities and to open reporting and transparency of operations. This complements the existing regulations and tools to protect the image and reputation of business enterprises very well and helps to protect the interests of both customers and investors.

By preparing the National Action Plan for implementation of the *United Nations Guiding Principles on Business and Human Rights*, the government administration is sending a clear signal to entrepreneurs, pointing out that the obligation to apply the *UN Guiding Principles* is the best way to promote a responsible approach to conducting business activity and thus implementing other international standards, including the *OECD Guidelines for Multinational Enterprises*.

At the same time, the tasks included in the NAP help public administration:

- formulate expectations for entrepreneurs and support them in their fulfilment;
- support access to effective remedies for victims of human rights violations by business enterprises under Polish jurisdiction;
- promote understanding of the need to counter emerging risks and threats to business and human rights as an instrument contributing to a successful business;
- conduct a coherent policy and provide information about planned activities in the field of respecting human rights in business.

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<sup>14</sup> [Interpretive Guide to the Corporate Responsibility to Respect Human Rights Office of the High Commissioner for Human Rights](#)

## ***1. Implementation of the UN Sustainable Development Goals (2030 Agenda)***

The concept of responsible development as the basis for the *Responsible Development Plan* and the *Strategy for Responsible Development* is consistent with the implementation of the UN Sustainable Development Goals adopted in conjunction with the 2030 Agenda in September 2015.

The Agenda highlights key global challenges, such as widespread poverty; growing inequalities; unemployment, especially among young people; health threats; natural disasters; conflicts; violence; huge disparities of opportunity, living standards, access to open and responsible public institutions; and threats related to climate change.

At the same time, the 2030 Agenda includes a framework development plan, indicating 17 Sustainable Development Goals (SDGs) and 169 targets to stimulate development in the most important areas for people and the planet. The fundamental message is the pursuit of development that will guarantee a dignified life for everyone. The premise is that achieving the SDGs requires consistent actions and progress in three areas of sustainable development: economic, social, and environmental.

The 2030 Agenda recognises the responsibility of every country for the achievement of the Sustainable Development Goals at the national level, taking into account different national realities, capacities, and levels of development, as well as respecting national policies and priorities. The goals of the 2030 Agenda relate to all social, professional, organisational, business, scientific, local, regional, and national groups. The challenge is to ensure that every stakeholder has a proper role and an opportunity to be involved in the implementation process in a responsible manner. The process of changes in the economic sphere should be accompanied by active employment policies to facilitate a fair transition to creating decent and safe working conditions.

The SDGs also have a clear business justification with real opportunities to take concrete action on both investments (including in important sectors, such as infrastructure, energy, and industrial production) and responsible business conduct, such as appropriate labour standards, respect for workers' rights, efficient use of resources, as well as clean and environmentally friendly technologies and production processes.

The key to success in achieving the Sustainable Development Goals is their alignment with business strategies, through the promotion of a circular economy (environmentally friendly circulation of closed and sustainable value chains), promotion of integrated and long-term thinking, and stakeholder engagement. Attention should also be focused on the promotion of sustainable business models and the active involvement of SMEs that have limited business opportunities.

The fulfilment of national priorities and strategic projects envisaged in the *Strategy for Responsible Development* will support the implementation of the 2030 Agenda and its SDGs.

## ***2. Dialogue and exchange of knowledge and experience in implementing CSR***

There are four categories of corporate activities that relate to corporate social responsibility: corporate governance, employees, the environment, and the product.

The activities conducted within these categories may include:

- 1) the shaping of an ethical organisational culture, codes of ethical conduct, risk management, communication of CSR/RBC activities through disclosure of

- non-financial data (social reporting, integrated reporting), anti-corruption measures;
- 2) dialogue with employees, concern for workplace safety, ensuring optimal working conditions, respect for human rights, recognition of the importance of diversity in the workplace, concern for the health of employees, and work-life balance;
  - 3) responsible management of natural resources, reduction of gaseous emissions, responsible waste and sewage management, reduction of energy and water consumption;
  - 4) responsible approach to supply chains, including the extraction and transport of raw materials, production and transport of intermediates, responsible investments, stakeholder dialogue, and consumer education.

The Polish government administration has been working intensively for years on the implementation of CSR principles. Following Poland's accession to the OECD in 1996, a National Contact Point (OECD NCP) was established, the main task of which is to promote the *OECD Guidelines for Multinational Enterprises*, which provide an international standard for responsible business.

Responsible Business Conduct (RBC) is supported by public administration through dialogue with business and social stakeholders. This dialogue has so far been conducted by two corporate social responsibility advisory boards:

- 1) The CSR Advisory Board that was a subsidiary body to the Prime Minister in the years 2009-2013,
- 2) The CSR Advisory Board that was a subsidiary body to the Minister of Economy in the years 2014-2015.

In September 2016, the Minister of Economic Development and Finance established the Advisory Board for Sustainable Development and Corporate Social Responsibility (CSR Advisory Board) (Journal of the Minister of Economic Development of 22 September 2016, Item 49). The main task of this subsidiary body to the Minister of Economic Development and Finance is to conduct dialogue and exchange experiences between public administration, businesses, social partners, non-governmental organisations, and research and development institutions in order to develop recommendations and proposals for sustainable development and disseminate the principle of social solidarity and responsible business conduct.

The CSR Advisory Board convenes four times a year and continues in the following working groups between its meetings:

- 1) The working group for CSR strategy;
- 2) The working group for business ethics and responsible business conduct standards;
- 3) The working group for education and popularisation of CSR.

### ***3. Non-financial reporting: implementation of Directive 2014/95/EU.***

Since January 2017, it has been mandatory for a certain group of companies to disclose information regarding the application of human rights policies in business practice in connection with the transposition of Directive 2014/95/EU into Polish law.

Directive 2014/95/EU on disclosure of non-financial and diversity information by certain large enterprises and groups came into force on 6 December 2014. EU Member States had two years to transpose the directive into national law.

It is estimated that the provisions will affect about 6,000 entities in the European Union, while in Poland some 300 enterprises may be required to disclose non-financial data. In Poland, the Ministry of Finance was responsible for the transposition. The Act of 15 December 2016 amending the Accounting Act was published on 11 January 2017 in the Journal of Laws (Journal of Laws 2017, Item 61) as a transposition of the above-mentioned Directive with respect to disclosure of extended non-financial information. The Act came into force on 26 January 2017 and will apply for the first time to reports prepared for the financial year beginning on or after 1 January 2017.

The implemented provisions of the Directive aim to increase the transparency of information with respect to corporate social responsibility (CSR) presented in management reports (in the form of a statement) or in separate reports as regards environmental, social, and occupational issues, respect for human rights, and anti-corruption measures. New reporting obligations are addressed to large entities and generally include those that primarily operate in the financial sector, including banks, insurance companies, issuers of securities, and large capital groups.

Under the Directive and its transposed law, the companies subject to this obligation may apply any national, EU, or international reporting standards or guidelines, including their own rules.

#### ***4. Investment strategy and an ideal investor's profile***

The development of the objectives of the *Investment Strategy* and investment support tools, including the amendment of the *Programme for Supporting Investments of Significant Importance for the Polish Economy in 2011-2023*, constitutes one of the measures implementing the Responsible Development Plan and the Strategy for Responsible Development.

Defining the criteria for obtaining government assistance by selected investors who meet certain criteria (the so-called good practice catalogue) that, at the same time, are consistent with the concept of corporate responsibility, is an important element of the investment strategy from the perspective of respecting human rights. Apart from the elements of a purely economic nature, assistance should be granted to investors who not only contribute to the economic development of the country, but who also affect its development in the social, environmental, and work culture areas.

Special assistance will be offered to investors who provide or plan to provide specialised workplaces under employment contracts. This requirement is consistent, e.g., with the content of the International Labour Organization's Philadelphia Declaration, whose signatories commit to conducting programmes to implement policies on pay and earnings, working hours, and other working conditions designed to ensure equitable distribution of progress for everyone and minimum remuneration for all employees, or whenever this kind of protection is necessary. This is a particularly important condition for ensuring the personal development of employees and realizing their full potential, which directly translates into the social and economic progress of the country.

From the perspective of the right to decent work, the level of remuneration of employees is also important. At the same time, special importance in this context is given to entrepreneurial investors who declare their willingness to support their employees in improving their qualifications.

Such activities contribute to increasing the potential of employees and their development, not only in the professional field. They make employees feel greater satisfaction and motivation in all fields of their activities and thus shape their pro-social attitudes.

The ideal investor should engage in broad employee care activities (e.g., by offering additional healthcare programmes or the ability to use in-company preschools and crèches). This contributes greatly to building responsible entrepreneurship and to recognising the role of entrepreneurs as actors of particular importance in the process of building civil society.

In addition, of special importance will be those investors who provide employees with tools that enable or facilitate saving. Investors should act in accordance with the UN principles for responsible investment and positively affect the regional communities and their immediate economic environment.

### ***5. Corporate social responsibility in companies with State Treasury shareholding***

All businesses share the same responsibility for respecting human rights regardless of the title of ownership. State-owned companies should serve as a model for socially responsible business practices and should conduct business based on ethical, pro-social, and environmentally friendly principles across the board. These entities should promote a modern model of operations based on social responsibility and sustainable development in order to ensure their long-term economic viability. With that in mind, the Ministry of Treasury published the document *Good Practices in the Scope of Corporate Social Responsibility in Companies with State Treasury Shareholding*, which:

- groups the expectations of the Minister of Treasury regarding actions in the field of corporate social responsibility, in accordance with the *UN Guiding Principles*;
- specifies the guidelines for corporate social responsibility in companies with State Treasury shareholding;
- presents recommendations for the managing bodies (management and supervisory boards) of companies with State Treasury shareholding and detailed recommendations for companies with State Treasury shareholding.

As Poland ratified the Protocol of 2014 to Forced Labour Convention No 29 of 1930, it is necessary to initiate measures that will require employers in the public and private sectors to provide information under their reporting procedures on implemented procedures, processes, and standards for counteracting forced labour.

### ***6. UN Guiding Principles in the operations of the Export Credit Insurance Corporation***

The Export Credit Insurance Corporation (KUKE) draws upon the *UN Guiding Principles on Business and Human Rights* in the course of the environmental procedure related to credit insurance and export contracts guaranteed by the State Treasury. The procedure following the current OECD Recommendation published as TAD/ECG(2012)5 of 28 June 2012 and adapted to Resolution No 2/2013 of the Export Insurance Policy Committee of 6 February 2013 takes into account broader human rights issues, including the *UN Guiding Principles*.

The issue of respecting human rights in the operations of export credit agencies was raised both in the work on the 2012 Recommendation (modification of the 2007



document) and during several years of its revision, culminating in the adoption of the current version by the OECD Council on 6 April 2016. The current version of the Recommendation, officially published on 3 April 2016 (TAD/ECG (2016) 3) takes greater account of the requirements for respecting human rights in a procedure known as due diligence in the social and environmental aspects, e.g., in the classification of export undertakings and risk assessment.

The implementation of the *UN Guiding Principles* in light of the Recommendation is based on the Corporation's growing experience in the application of appropriate methods of assessment of human rights observance in individual importing countries. The exchange of experience with the cooperating institutions and as part of the Export Credit Group is a great help.

### ***7. Social entrepreneurship as an instrument for creating high-quality jobs for individuals at risk of poverty and social exclusion***

When considering a responsible approach to doing business and respect for human rights, also by entrepreneurs, it is impossible not to mention the specific form of economic activity known as social entrepreneurship. Social entrepreneurship plays a very important role in the process of social and occupational reintegration of people from different groups who, for various reasons, find themselves in particularly difficult living and working conditions, e.g., the long-term unemployed, the homeless, former prisoners, addicts, and people with disabilities. These people can return to professional life and full participation in the life of their local community in particular through work and the ability to co-decide about the future of the enterprise they are involved with, but also through other types of activities that are firmly rooted in the local community.

The social economy in Poland, which is a systemic basis for social entrepreneurship, has been intensively developed since 2008. It led to the establishment of the Unit for Systemic Solutions in the Social Economy (Order No 141 of the Prime Minister of 15 December 2008), chaired by the Minister of Labour and Social Policy. The result of several years of the Unit's work was, among other things, the drafting of the National Programme for the Development of the Social Economy (KPRES), which was adopted by the Council of Ministers on 12 August 2014.

The KPRES identified the key directions of public intervention aimed at shaping the best conditions for developing the social economy and social enterprises in Poland. KPRES goals, measures, and expected results were formulated on the basis of a diagnosis of the social-economy sector, taking into account the current political, social, and economic context in Poland and in the European Union. The accepted assumptions, structure, and content make the KPRES a document open to phenomena and processes that may occur in the short and long term, potentially influencing the development of the social economy.

Between 2007 and 2013, European Social Fund (ESF) resources were invested in three types of actions for the development of the social-economy sector, which, apart from the social-entrepreneurship sector, also includes its environment:

1. Systemic measures that, e.g., support the process of developing programmatic objectives for the development of the social-economy sector at the national (KPRES) and regional (multi-annual regional plans or programmes for the development of the social-economy sector) levels;

2. Measures to support the social-enterprise environment. In this area, investments focused on:
  - the establishment of a network of social-economy support centres, i.e., organisations that provide services for the entire social-economy sector (services supporting the emergence of new social enterprises, but also services helping establish a market for existing entities) and ensuring the quality of services offered by these entities;
  - the establishment of return financing instruments for social enterprises that help social enterprises use development loans;
3. Measures directly supporting social enterprises, including donation-type, advisory, and training support for the establishment of social co-operatives, as the only legally regulated form of social enterprises.

In the period 2014-2020, ESF investments focused more on new job creation in social enterprises. Social Economy Support Centres (OWES) award donations for this purpose, coming from the ESF under regional operational programmes. Bridge support is also provided. In accordance with the KPRES, OWESs also render the following social-economy support services:

- activation and promotion of the social economy;
- support for emerging new social-economy entities;
- support for existing social enterprises.

The OWES accreditation process is also being financed to confirm these entities' ability to provide high-quality support services in the social economy. Only the centres accredited by the minister responsible for social security can apply for funding under calls for proposals.

What is essential is that, in the period 2014-2020, it is possible to create jobs not only in social co-operatives but also in other entities that fall under the definition of a social enterprise adopted for the implementation of the ESF at the level of the regulations of the Ministry of Economic Development on the basis of the National Programme for the Development of the Social Economy. The lack of a legal definition of a social enterprise is creating a growing barrier to the implementation of ESF funds for the development of social entrepreneurship and the creation of new jobs in existing social enterprises. The introduction of a legal definition of a social enterprise would facilitate the process of restoring employment to people at risk of marginalisation.

Instruments financed by the ESF are also targeted at job creation and unemployment benefits. In 2014-2020, other instruments will also be available in addition to loans. First, re-guarantees will be launched. In addition, work is being carried out on the kick-off of a guarantee system and new innovative financial instruments, as well as innovative ways of financing the sector, such as social bonds.

## *7. Equal opportunities for people with disabilities*

As regards equal opportunities for disabled people, entrepreneurs should take into account the following issues:

- architectural accessibility: conducting accessibility audits, application of solutions that meet the needs of people with various disabilities, including systems supporting hearing, e.g., in conference rooms, main reception areas, facilities for the blind and visually impaired, ensuring the availability of sanitary facilities;
- developing products, services, goods, and space based on the universal design concept or designing for everyone, including the disabled, seniors, pregnant women, people with baby strollers;
- digital accessibility: accessible websites that should meet the WCAG 2.0 accessibility standard; accessibility of all digital content should be ensured, i.e., online publication of editable documents (e.g., open PDF, Word), avoiding scans of paper documents;
- human resources policy: accessible working environment, employing disabled people (also other disadvantaged groups in the labour market);
- application of rational improvements, i.e., changes and adjustments, in accordance with the needs of disabled employees and customers;
- accessibility in information and promotion activities: social clauses in orders for the performance of tasks and services, communications (e.g., PR) expressed in a language that is easy to understand, respect for diversity, organisation of accessible events;
- treatment of accessibility as the operating standard and the philosophy of the subject rather than a one-off operation.

These issues are addressed both to the public administration and the business sector, and their implementation will enable the creation of modern-looking entities that are open to serving clients with diverse needs and effectively meet their expectations.

## *9. Support in the implementation the UN Guiding Principles by companies*

### **Equal treatment policy**

The obligation to treat all employees equally regardless of their sex, i.e., the legal prohibition of discrimination on grounds of sex is one of the fundamental human rights under the applicable law. Equal treatment is based on the principle of equal pay for the same work or work of equal value, equality in decision-making processes, and equal access to training and promotion. The key areas in this respect include:

- combating discrimination in the workplace (including on grounds of sex);
- equal access for men and women to promotions and training;
- equal remuneration for the same work or work of equal value;
- increasing the participation of women in corporate decision-making bodies;
- diversity management, including employee recruitment and selection, talent management and payroll policies, also in the sphere of an enterprise's organisational culture;
- providing employees with instruments and mechanisms to enable a good work-life balance.

Measures planned by the government to support the implementation of the *UN Guiding Principles* in these areas focus on working with business representatives, representatives of social partners, and non-governmental organisations dealing with the protection and pursuit of equal opportunities, e.g., through:

- supporting initiatives to improve compliance with human rights standards, including initiatives to strengthen gender equality and diversity in the workplace;
- promoting available solutions and developing, in collaboration with business and social partners, new tools and methods to promote awareness of human rights and equal treatment in the workplace;
- supporting initiatives to promote available solutions and developing, in collaboration with business representatives and social partners, new tools and methods to promote awareness in the area of implementation of equal-treatment policies at enterprises;
- promoting knowledge about the application of compensatory measures in the workplace, or promoting equal opportunities for people belonging to disadvantaged groups;
- measures promoting the benefits of diversity policy and equal opportunities, e.g., balanced participation of women and men in decision-making bodies (promotional and information campaigns, projects co-financed from EU funds, support for initiatives undertaken by entrepreneurs);
- promoting good practices with a view to ensuring equal opportunities by enterprises, e.g., in employee recruitment and selection, talent management, protection against discrimination, management of the remuneration system, etc.;
- supporting initiatives to build a broad coalition for creating a working environment that is free of discrimination and based on the principle of equal opportunities. These measures should involve a wide range of actors, both state institutions and private companies, NGOs, academia, the media, and social partners;
- supporting the development of research and analysis of social inequalities, which may serve as the basis for any possible remedial actions.

## The constitution for Business

Polish legislation on matters of undertaking and conducting economic activity does not contain any provisions that differentiate the situation of entities based on religion, belief, disability, age, gender, or sexual orientation. Moreover, Article 6(1) of the Act of 2 July 2004 on Freedom of Economic Activity (Journal of Laws of 2016, Item 1829, as amended) expresses the principle of freedom of economic activity by ensuring that everyone is free to undertake, conduct, and terminate economic activity under equal rights pursuant to the terms and conditions set forth by the law. Consequently, all entrepreneurs should be treated equally, i.e., without either discriminating or favouring differentiation.

As part of the ongoing efforts to implement the objectives of the Responsible Development Plan, the current Act on Freedom of Economic Activity is to be replaced by a new transparent legal act of economic law, i.e., the Law of Entrepreneurs. Together with the accompanying laws, the act forms a part of the so-called Constitution for Business package, i.e. a set of legal acts that regulate and streamline the economic activity of entrepreneurs in a comprehensive manner, and stimulate Polish business. According to the proposed regulations, the Law for Entrepreneurs will

include the obligation to respect and protect human rights, in accordance with applicable international standards, as well as a number of legal principles governing the position, rights, and obligations of entrepreneurs. In the context of respect for human rights by the business world, it is necessary to pay special attention to the proposed principle of fair competition and respect for good practices and legitimate interests of other entrepreneurs and consumers, which will serve as the guiding principles for the conduct required from entrepreneurs in relation to their economic activity.

## ***10. Planned and ongoing activities***

- 1) Promoting good practices in human rights and business, including with respect to state-owned enterprises and enterprises commissioned by the state;
- 2) Supporting enterprises in the assessment of risks with respect to human rights in doing business in non-EU countries, using the expertise of foreign institutions in Poland;
- 3) Increasing the involvement of foreign institutions in issues related to human rights and business, including local laws and enterprise operations in Poland, with a view to exercising human rights, with particular regard to the situation of armed conflicts;
- 4) Promoting dialogue, as needed, between entrepreneurs, civil society organisations, and the government on the implementation of the *UN Guiding Principles on Business and Human Rights*;
- 5) Working to establish cooperation between state institutions and business-sector entities to counteract and reduce the phenomenon of forced labour, as one of the forms of trafficking in human beings.

## **Pillar III. Access to remedies**

The *UN Guiding Principles* indicate that as part of their duty to protect against business-related human rights abuse, states must take appropriate steps to ensure, through judicial, administrative, legislative, or other appropriate means, that those affected have access to effective remedies. In some cases, those affected are directly involved in seeking a remedy; in others, an intermediary seeks a remedy on their behalf. A remedy may be sought in the courts (for both criminal and civil actions), labour tribunals, national human rights institutions, National Contact Points under the OECD's *Guidelines for Multinational Enterprises*, ombudsperson offices, and government-run complaints offices. In Poland, the Commissioner for Human Rights has the status of the national institution of human rights acting under the Paris Principles.

### ***1. Current situation regarding access to legal remedies***

The Polish legal system provides people who have been victims of human rights violations in the context of a broadly defined economic activity with a range of legal measures to seek judicial protection. Access to these instruments is wide and allows appropriate remedial action to be taken, depending on the nature of the violation. These measures are universal and applicable in many situations. Such a comprehensive approach seems necessary due to the diverse nature of human rights violations in business.

## Protection under civil law

The civil-law instruments that make it possible to seek judicial protection of claims by those affected by the activities of enterprises include:

- 1) lawsuits: Article 187 et. seq. Code of Civil Procedure;
- 2) class-action lawsuits under the Act of 17 December 2009 on Collective Redress Litigation (Journal of Laws, 2010, Item 44).

By applying these civil-law instruments, those affected can seek judicial protection of their personal interests, as well as claims for damages (personal or property).

According to Article 23 of the Civil Code (CC), the personal interests of a human being, in particular their health, freedom, dignity, freedom of conscience, name or pseudonym, image, privacy of correspondence, inviolability of home, and scientific, artistic, inventive, or improvement achievements are protected by civil law, independent of protection under other regulations. Article 24 § 1 and 2 CC stipulates that any person whose personal interests are threatened by another person's actions may demand that the actions be ceased unless they are not unlawful. In the case of violation, they may also demand that the person committing the violation perform the actions necessary to remove its effects, in particular that the person make a declaration of the appropriate form and substance. Under the terms of the Civil Code, one can also claim monetary recompense or payment of an appropriate amount of money for the social cause indicated (Article 448 CC). If damage has been caused due to a violation of personal interests, the injured party may demand a remedy in accordance with general principles (Article 415 et seq. CC). The prerequisites for protecting personal interests that must be met together are: the existence of a personal interest, the threat or violation of that interest, and the unlawfulness of the threat or the violation.

The first two premises must be proven by the plaintiff seeking protection, while the defendant can defend themselves, demonstrating that they did not act unlawfully. The distribution of the burden of proof is therefore favourable to the plaintiff.

The legislator introduced the presumption of unlawfulness of the violation of personal interests (Article 24 § 1 CC). However, claims cannot be made if the perpetrator demonstrates that the occurrence of one of the circumstances rules out the unlawfulness of the action, and they thus indicate the circumstances that justified the violation of a particular personal interest.

The provisions of Articles 23 and 24 CC suggest that the protection of personal interests is comprehensive. Its exercise may take on a different character and be pursued through various measures, which may be both non-financial and financial in nature. Non-financial protection measures include:

- a) – claim for cessation;
- b) – claim for removal of the effects of a violation;
- c) – assertion lawsuit;

Financial protection measures include:

- d) – claim for redressing non-financial damage;
- e) – claim for recompense for property damage;
- f) – claim for restitution of unjust enrichment;
- g) – claim for non-performance of an agreement;
- h) – claim for non-performance of an agreement (contractual liability).

### Re: a). Claim for cessation

This claim, provided for in the first sentence of Article 24 § 1 CC, has a broad application. The premise is that somebody's personal interests are threatened by another person's unlawful actions. The eligible party may only demand that the actions be ceased.

The claim for cessation may be made primarily in the case of a violation of personal interests, but there is a risk of further violations in the future. In such a case, it will usually accompany claims for removal of the effects of a violation or for redress. This measure can also be used in situations where there is only a risk of a violation occurring in the future.

Re: b). Claim for removal of the effects of a violation

The catalogue of measures to remove the effects of a violation of personal interests is not exhaustive. When choosing the measures to remove the effects of a violation of personal interests, account should also be taken of all circumstances, such as the behaviour of the person whose interests have been violated, and, in particular, whether they provoked the incident. Issuing a statement is the most common measure of removing the effects of a violation of dignity, privacy, or bodily integrity, whereas the content and form of the statement depends on the circumstances of the case. The options include a withdrawal, an apology, a regret, a rectification, or an explanation of certain facts. An appropriate form is understood to be the manner in which the statement is communicated to third parties or the general public.

Re: c). Assertion lawsuit

Apart from the measures of non-financial protection of personal interests explicitly listed in Article 24 CC, the eligible party may also file a lawsuit to assert that it is entitled to a certain personal interest or that the interest has been violated or threatened—the claim will be based here on Article 189 of the Code of Civil Procedure.

Re: d). Claim for monetary recompense

According to Article 24 § 1, in the case of a violation of personal interests in accordance with the terms laid down in the Civil Code, the eligible party may demand monetary recompense or that an appropriate amount of money be paid to a specific public cause.

The provisions in question include:

– Article 445 CC, providing the possibility of awarding redress in the event of injury, induced health disorder, deprivation of freedom and inducement using deceit, violence or abuse of a dependence relationship to submit to an illicit sexual act. The act of harm must be an act of tort, but the principle of responsibility (fault, risk, equitability) is indifferent.

– Article 448 CC, according to which, in the event of a violation of one's personal interests, the court may award to the person whose interests have been violated an appropriate amount as monetary recompense for the harm suffered or may, upon their request, award an appropriate amount of money to be paid to a social cause chosen by them, irrespective of other means necessary to remove the effects of the violation.

In this case, the act of harm may be an act of tort, but the provision covers events of violation of personal interests other than those referred to in Article 445 CC. The liability principle will manifest itself as fault only in the case of liability for one's own act (Article 415 CC), but if the violation of personal interests results, e.g., from an action on the part of an enterprise (Article 435 CC), establishing fault will not be required.

– Article 446 § 4 CC, according to which the court may also award an appropriate sum to the closest members of the deceased's family as monetary recompense for the harm suffered. The principle of liability (fault, risk) will also depend on the basis of liability in this case.

Re: e). Claim for recompense for financial damage (personal injury)— ‘tort liability’.

Recompense for financial harm (personal injury) may be awarded in accordance with general principles, e.g., Article 415 et. seq. CC. In the case of a violation of certain personal interests (health), the principle will apply to both financial and non-financial damage.

Re: f). Claim for restitution of unjust enrichment

A violation of certain personal interests may lead to unjust enrichment of the perpetrator. This applies to incidents of financial exploitation of certain personal interests (image, name, right to privacy). It should be noted that the commercial use of personal interests, by concluding relevant agreements (e.g., to use an image or name in an advertisement, write a biography) may be the source of significant benefits.

Gaining benefits at the expense of another person without concluding a relevant agreement creates an obligation to return those benefits to the eligible party (Article 405 CC). Enrichment in this context means the expenditure saved against the conclusion of the relevant agreement. The entitled party will be impoverished by the same amount: due remuneration has not been included in his or her property. The party using the personal interests of another person for commercial purposes benefits unjustly at the expense of the entitled party. For such a claim, it is not important whether the eligible person was able to or wanted to use their interests commercially. In spite of the lack of harm, the entitled party may claim for restitution of enrichment.

Moreover, apart from the above-mentioned claims for damages in case of personal injury, individuals are entitled to adequate compensation claims in the event of financial harm. With regard to personal injury, these claims are based on the provisions of Article 415 et. seq. CC, including Article 435 CC referred to above.

According to Article 415 CC, anyone who, through their own fault, causes damage to another person is obliged to remedy it. This provision lays down general rules for liability for damage (to property and personal) caused by events called acts of tort, constituting so-called tort liability. Events causing damage (acts of tort), the occurrence of damage itself, and the causal link between the incident and the damage are the premises of tort liability based on the perpetrator’s fault. A person obliged to pay compensation is liable only for the normal consequences of the actions or omissions from which the damage arises (Article 361 § 1 CC). As a rule, the principle of full indemnity applies; thus, the remedy for damage covers the losses that the aggrieved party suffered and the benefits that it could have obtained had it not suffered the damage (Article 361 § 2 CC).

It is important to note that the above-mentioned general principles are modified when damage is caused by an action taken by an enterprise or establishment. In this regard, Article 435 CC provides that a person who runs their own business or an establishment set in motion by natural forces is liable for any personal or property damage caused by the operation of the enterprise or the establishment unless the damage is due to force majeure or solely to a fault on the part of the aggrieved party or a third party for whom they are not responsible.

Re: h). Claim for non-performance of an agreement (contractual liability)

Protection under the law is also based on the disposition resulting from the content of Article 471 CC. According to this provision, a debtor is obliged to remedy any damage arising from non-performance or improper performance of an obligation unless the non-performance or improper performance is due to circumstances for which the debtor is not liable. The recompense for non-performance of an agreement under



Article 471 CC is performance aimed at compensating for the damage caused by an unlawful action or omission on the part of the debtor. It has a different character than a claim for performance of an agreement, as its purpose is to compensate for the damage caused by the improper behaviour of the contractor, rather than to force the contractor to fulfil the obligation under the agreement. On the other hand, if the performance of a service is inconsistent with the content of the obligation, the creditor is entitled to claim recompense for the damage resulting from improper performance of the obligation.

Contractual liability covers any, even the slightest, violation of an obligation. This refers both to instances of non-performance or improper performance of an obligation indicated in the provisions of Article 475 and Articles 476-482 CC (performance impossibility, delay, default) and to any other discrepancy between the correct performance of a contractual obligation and the actual behaviour of the debtor.

According to Article 471 of the Civil Code, the debtor's contractual liability arises if the following conditions are met:

- 1) damage to the creditor occurs in the form of financial damage;
- 2) damage was caused by the debtor's non-performance or improper performance;
- 3) there is a causal link between the fact of improper performance or non-performance of an obligation and the damage suffered (Article 361 et seq. CC).

The burden of proving the above conditions rests, in light of Article 6 CC, on the creditor, as the person who derives the legal consequences from these facts.

The debtor's liability for non-performance or inadequate performance of an obligation has been formulated in accordance with the principle of fault. However, Article 471 CC contains a presumption that non-performance or improper performance of an obligation has been caused by the circumstances for which the debtor is liable. Acceptance of the debtor's liability is therefore not conditional on the creditor's proving that non-performance (or improper performance) of the obligation is a consequence of the circumstances for which the debtor is liable (Supreme Court judgment of 19 January 2002, V CKN 630/00).

### **Mediation in civil-, economic-, and individual labour- law proceedings**

National legislation makes it possible to use mediation. This instrument is widely employed, e.g., on the basis of civil, economic, and individual labour law. It may be used by anyone who has been a victim of human rights violations in the context of business activity. Mediation was given its current form by the Act of 10 September 2015 amending certain acts to support amicable methods of dispute resolution, while the provisions governing this matter are dispersed throughout various acts.

Mediation is a voluntary and confidential method of resolving disputes in which the parties themselves reach an agreement with the help of an unbiased and neutral mediator. It may be applied in all cases where the law permits a settlement. This mechanism provides an opportunity to reach a faster and cheaper resolution of a dispute by means of developing a common understanding.

In civil cases, mediation may take place before bringing a case to court (mediation agreement, out-of-court or pre-trial mediation) or after proceedings were initiated, by means of a court decision. In addition, each party to the dispute has the right to request

mediation at any stage of court proceedings. In any case, the necessary condition for mediation is the consent of the parties to the dispute, which may also be withdrawn at any stage of mediation proceedings.

Having decided to start an arbitration procedure, the mediator contacts the parties by setting the date and place of the first meeting, during which they inform the participants about their rights and outline the course of mediation proceedings.

Mediation should be understood as a joint discussion between the parties in the presence of a mediator; however, the participants may individually meet with the mediator in the course of the proceedings, where the circumstances of the case would make this advisable. In exceptional situations, this process can also take place without direct contact between the participants. Mediation is, in principle, of a confidential nature, and the mediator, the parties, and other people involved in the proceedings are required to maintain the confidentiality of the facts they learn in the course of the proceedings.

Mediation proceedings may result in the conclusion of a jointly developed settlement, and in such a case, the parties have to apply to a court for approval. The settlement, after such acceptance, has the legal force of a settlement reached before a court of law. However, if the parties fail to reach an agreement, they still have the right to pursue their claims in court proceedings.

## **Protection under criminal law**

### *The provisions of the Penal Code.*

Under the Penal Code (PC), there are a number of provisions that can cover violations of human rights in connection with business activities. According to Article 53 § 2 of the Penal Code, in imposing a penalty, the court must, above all, take into account the motivation of the perpetrator, which may be, e.g., desire for personal gain. It is important to note that this provision applies to all crimes listed in the Penal Code. Provisions of substantive law should also be noted here, such as those concerning crimes against the rights of individuals performing paid work provided for in Chapter XXVIII (Articles 218-221 PC). In this context, it is worth mentioning the amendment to the Penal Code that introduced a definition of slavery (Article 115 § 23 PC) and a definition of trafficking in human beings (Article 115 § 22 PC) modelled on the standards set by the Palermo Protocol and the Council of Europe Convention on Action against Trafficking in Human Beings. Penalisation was provided not only for the act itself, but also for the preparatory stage for its execution (Article 189a PC).

In connection with Council Decision (EU) 2015/2071 and Poland's ratification of the Protocol of 2014 to Convention No 29 on Forced Labour of 1930, it is advisable to continue the work on verifying whether the provisions related to forced labour under Article 115 § 22 PC are sufficient to penalise the phenomenon of trafficking in human beings for forced labour.

## **Liability of collective entities**

Also important is the Act of 28 October 2002 on the liability of collective entities for acts prohibited under threat of punishment.

According to the law, the liability of collective entities refers to prohibited acts that are offences (including fiscal offences) within the meaning of relevant substantive law. The exhaustive catalogue of punishable acts is broad and refers to a number of offences that are relevant for the protection of human rights, including prohibited acts against economic relations, sexual and moral rights, humanity, the environment, property, or related to terrorism.

In order to secure the proper course of proceedings, even before they are initiated, it is possible to apply to the competent court to issue an order freezing the property of the collective entity for imminent penalty or forfeiture (Article 26 of the Act). In addition, the court may apply a preventive measure in the form of a prohibition of merger, division, or transformation of the collective entity while conducting proceedings against it, and also of encumbering its estate at that time or disposing of property without the consent of the court.

Proceedings are initiated at the request of a prosecutor or the aggrieved party, and in cases concerning prohibited acts recognised by the law as acts of unfair competition, the proceedings may also be initiated at the request of the President of the Office of Competition and Consumer Protection.

Under the law, the court may impose a financial penalty of between PLN 1,000 and PLN 5,000,000 against a collective entity, but not more than 3 per cent of its revenue generated in the financial year in which the offence constituting the basis of the collective entity's liability was committed. In addition, the court may apply several other sanctions against a collective entity.

To enforce a financial penalty, forfeiture, prohibitions, and to make the judgment public under Article 42 of the aforementioned law, the provisions of the Executive Penal Code are applicable, respectively, regarding the enforcement of a fine, forfeiture, prohibitions, and publication of the judgment, with the penalty being payable from the revenue of the collective entity.

Furthermore, the determination or absence of the liability of a collective entity under the provisions of the law in question does not exclude the possibility of determining civil liability for the damage caused, administrative liability, or individual criminal liability of the perpetrator of the offence.

Legislative work is currently under way at the Ministry of Justice to change the provisions of the law. It will aim to increase the effectiveness of the collective liability system, especially with regard to combating serious economic and fiscal crimes. As practice shows, there is a need for significant improvements in the effectiveness of the existing mechanisms, as evidenced by the small number of cases against collective entities. In 2015, 14 cases were submitted before the courts; in 2014, 31 cases; in 2013, 26 cases. Analyses also indicate an insignificant amount of fines imposed under the law, which may indicate that it is used mainly for small collective entities. This leads to the conclusion that the model adopted in Poland requires substantial changes. The planned amendment is at the stage of preliminary analytical work.

### **Access to pre-trial legal assistance**

In this context, it is also necessary to mention legal assistance at the pre-trial stage, which is a new mechanism under Polish law, facilitating access to the protective measures described above. The system of gratuitous legal assistance was launched on 1 January 2016, and is accessible from 1524 locations throughout Poland. These centres were established as a result of cooperation between the central administration and local governments. Some of the existing centres were entrusted to specialised non-governmental organisations. Advice is given primarily by lawyers and legal advisors, and relates to cases at the pre-trial stage. Free legal services can be used by, among others, social assistance beneficiaries, Large Family Card holders, veterans, or individuals under the age of 26 or older than 65. Assistance is offered in the form of, e.g., advice about legal status, rights or obligations, presentation of a solution to a case, or preparation of necessary letters and documents.

## ***2. Freedom of association and the right to collective bargaining***

Polish legislation regulates mechanisms for protecting the period of the employment relationship with trade union activists. In accordance with Article 32 of the *Act on Trade Unions*, the guarantees of the duration of the employment relationship protect:

- members of the board of the establishment trade union organisation referred to by name (para. 1);
- other members of the establishment trade union organisation, referred to by name, entitled to represent the organisation before the employer or the authority or a person who performs activities in the area of labour law on behalf of the employer (para. 1);
- employees listed by name in the resolution of the founding committee (para. 7);
- employees who perform a function by choice in a trade union outside the establishment, who benefit from unpaid leave or an exemption from performing work (para. 9).

This list is exhaustive. In the case of an establishment trade union with the status of a representative organisation, the limit of employees covered by protection is calculated with the application of one of the two statutory methods (parity or progressive), and the choice of method is exclusive to the trade union.

In light of Article 32(1) of the Act on Trade Unions, the employer may not, without the consent of the board of the establishment trade union organisation (respectively, the founding committee or the statutory body of a multi-establishment trade union organisation):

- terminate the employment relationship with a trade union activist (point 1);
- terminate the employment relationship with that person without notice (point 1);
- unilaterally change working or pay conditions to the detriment of a trade union activist (point 2), unless separate regulations provide for this (e.g., in the event of bankruptcy or liquidation of the employer).

The protection referred to above is available:

- for the period specified in the resolution of the board and after that period for an additional period corresponding to half of the period specified by the resolution; however, not longer than one year after that period (Article 32(2)); or
- a period of six months from the day the founding committee is established (Article 32(7)); or
- a period of leave or exemption and for one year after that period (Article 32(9)).

The lack of consent of the competent body of the trade union organisation is binding on the employer in the sense that they may not legally unilaterally terminate or change the employment relationship with a trade union activist. In certain situations, the protection of the period of the trade union activist's employment relationship may, however, be excluded because of an abuse of the freedom of association. The Supreme Court has discussed the subject of abuse of protection of the period of the employment relationship of trade union activists, e.g., stating in judgement I PKN 23/00 of 12 September 2000 that the statutory guarantee of enhanced protection of the period of the employment relationship should be used only by a trade union activist who cannot be charged with a serious violation of basic labour obligations and using a trade union function as a kind of protective umbrella against justified labour-law sanctions. In the justification for the judgement, it was declared that, in the event of a breach of the formal provision for termination of an employment relationship under this procedure, resulting from the lack of consent of the establishment trade union organisation to terminate the employment relationship with a trade union official, the labour court is entitled, in accordance with established law, to order compensation in lieu of reinstatement.

Article 8 of the Act of 3 December 2010 on the Implementation of Certain European Union Provisions on Equal Treatment (Journal of Laws No 254, Item 1700, as amended) prohibits the unequal treatment of individuals on grounds of sex, race, ethnic descent, nationality, religion, religious denomination, world view, disability, age, or sexual orientation, including with respect to joining and working in trade unions, employers' organisations, and enjoying the rights of members of such organisations. Everyone whose right to equal treatment has been violated has the right to compensation as laid down in the Act of 23 April 1964, the Civil Code (Journal of Laws of 2016, Item 380, as amended).

Out-of-court mechanisms for dealing with collective bargaining by employees include the possibility of initiating collective labour disputes between employees and their employer or employers concerning working conditions, remuneration, or social benefits, and the rights and freedoms of trade union workers or other groups entitled to form trade unions, under Article 1 of the Act of 23 May 1991 *on Solving Collective Disputes* (Journal of Laws of 2015, Item 295, as amended). Moreover, in light of the provisions of Articles 240 § 2 and 241<sup>1</sup> Pt. 3 of the Labour Code, the parties to a collective agreement may, within the framework of the freedom of association, establish procedures for interpreting the contents of the agreement and for settling disputes between the parties in this regard. The parties to the agreement may determine procedures for settling disputes related to the subject of negotiations to conclude a collective labour agreement, or other controversial issues that may arise during the negotiations (Article 241<sup>3</sup> § 2 of the Labour Code).

### ***3. National Labour Inspectorate (PIP): an institution that oversees business and human rights***

The National Labour Inspectorate is an authority established in order to oversee and verify the observance of labour law, in particular occupational health and safety rules and regulations.

During the implementation of its tasks, the National Labour Inspectorate cooperates with specialised authorities for supervision and inspection of working conditions, trade unions, employers' organisations, workers' self-government authorities, workers' councils, social labour inspections, public employment services and state administration authorities, particularly authorities for overseeing and inspecting working conditions, the Police, the Border Guard, customs authorities, revenue offices, and the Social Insurance Institution, as well as local self-government authorities.

#### **Statutory tasks**

The statutory tasks of the National Labour Inspectorate include, in particular:

- oversight and verification of labour law compliance by enterprises, in particular occupational health and safety rules and regulations;
- inspection of goods placed on the market or commissioned for use as regards their compliance with essential or other requirements of occupational health and safety;
- taking actions aimed at preventing and reducing hazards in the working environment;
- lodging complaints and participation in legal proceedings for the establishment of an employment relationship before labour courts, if the legal relationship between the parties fulfils the criteria of an employment relationship;
- providing technical guidance and legal advice;

– cooperation with other European Union Member States' authorities competent for the supervision of employment and working conditions.

The National Labour Inspectorate inspects the legality of employment and other paid work (also by foreigners), payment of contributions to the Labour Fund, and running employment agencies in accordance with the terms and conditions laid down in the laws governing the promotion of employment and labour market institutions.

Some of the PIP's competencies derive from specific provisions. These tasks include:

– recommending that the competent Social Insurance Institution's organisational unit increases the accident insurance premium rates (set for the next premium year) if a labour inspector finds serious violations of the health and safety regulations during two consecutive inspections;

– registration of an establishment's collective labour agreements;

– ordering the establishment of occupational health and safety services or an increase in the number of service staff, if justified by occupational hazards discovered during an inspection. The authorities from the National Labour Inspectorate take part in the decision-making (granting permission) process on the organisation of permanent work sites below ground level and on the use of electrical lighting only in permanent work areas.

In addition to the above-mentioned tasks, the National Labour Inspectorate has an important impact on the working conditions of individuals performing work on a basis other than an employment relationship and on enforcement of the payment of the minimum hourly rate for mandate contracts (Article 734 of the Civil Code) or service contracts to which the provisions on mandate apply (Article 750 of the Civil Code), which are applicable to natural persons who do not conduct an economic activity and to natural persons engaged in an economic activity acting individually and personally while performing contractual tasks.

### **Powers of PIP authorities**

The National Labour Inspectorate's bodies include: labour inspectors, district labour inspectors, and the Chief Labour Inspector.

Labour inspectors have the right to conduct an inspection with respect to the observance of the provisions of labour law, and in particular occupational health and safety, without prior notice at any time of day or night.

In the event that a violation of the regulations concerning labour law is found, the competent labour inspector is entitled to issue legal remedies (improvement notices, oral instructions, oral and written decisions) aimed at removing any irregularities (including the possibility of ordering the cessation of operations or operations of a particular nature).

In addition, the powers and competencies of a labour inspector include:

– imposing fines in punishment proceedings and lodging motions with a court of law to punish the parties responsible for violation of employee rights as specified in the Labour Code and Petty Offences Code referred to in Articles 119-123 of the Act of 20 April 2004 on the Promotion of Employment and Labour Market Institutions, as well as for other offences, when provided for by law, and to participate in these cases as public prosecutors;

– imposing fines on entities performing carriage by road or other activities related to this kind of carriage in violation of the obligations or conditions of carriage by road.

The PIP authorities enforce the decisions issued by administrative execution.

## **Supervisory and inspection activities**

The oversight and inspection activities of the National Labour Inspectorate in the observance of labour law, in particular the provisions and regulations of occupational health and safety, focus on eliminating or at least significantly reducing occupational hazards in the work environment. Oversight and inspection activities are carried out in accordance with an annual and long-term (three-year) action plan, based on an analysis of the results of previous inspections, as well as the Parliament's comments and observations and recommendations by trade unions, employer organisations, ministries and central offices, authorities supervising and inspecting working conditions, and research institutes.

Priority is given to inspections of industries and establishments with a particularly high occupational risk associated with the presence of factors which are dangerous, harmful, and damaging for health. Moreover, inspection activities are undertaken as a result of requests for inspection by social partners and other public administration authorities, as well as complaints and petitions addressed to the Inspectorate's organisational units.

One of the tasks of the National Labour Inspectorate is to investigate the circumstances and causes of accidents at work. Fatal, serious, and collective accidents are investigated, as reported by employers (pursuant to Article 234 § 2 of the Labour Code), as well as by other authorities.

The National Labour Inspectorate actively supports employers' involvement in issues concerning safety and working conditions, as well as employee participation, both in its oversight and inspection capacity and in its preventive and promotional activities. These include seminars, conferences, and training meetings with employers involved in permanent workplace safety improvement programmes (enhanced oversight in industrial establishments, regular inspections in construction, rail infrastructure, forestry, and mining sectors).

## **Tasks of the National Labour Inspectorate in the field of combating human trafficking, and, in particular, forced labour**

National Labour Inspectorate services play an extremely important role in combating trafficking in human beings, including forced labour. The National Labour Inspectorate is included in a group of institutions and organisations carrying out tasks to counteract this phenomenon, as part of their competencies. At the central level, a representative of the Chief Labour Inspectorate participates in meetings of the inter-ministerial Team for Combating and Preventing Trafficking in Human Beings and in proceedings of the Unit's Working Group. The National Labour Inspectorate carries out tasks under the National Plan and reports annually on their implementation to the Ministry of the Interior and Administration. In addition, selected labour inspectors from district labour inspectorates participate in the work of Voivodship Units for Preventing Trafficking in Human Beings.

Within the framework of the supervisory and inspection tasks, in particular when inspecting the legality of employment and the assignation and performance of work by foreign nationals, labour inspectors check whether there are indications of forced labour at an inspected establishment, a phenomenon which is characterised by taking control over an employee and results in a violation of human rights. In order to evaluate and identify potential victims of trafficking, a number of indicators are used (developed by both ILO and the Ministry of the Interior and Administration), i.e., the circumstances of taking up and performing work, which may indicate that the employee is a victim of this type of crime. The signing of an agreement between the

Border Guard Chief Commander and the Chief Labour Inspector in 2008 and then in 2015 served as an instrument to strengthen the capacity of labour inspectors to respond to the illegal employment of foreign nationals and to the phenomenon of trafficking in human beings. The agreement offers a basis for cooperation in undertaking joint inspections by Border Guard officers and labour inspectors, and for exchanging information on violations of the law concerning foreign nationals, including cases of their illegal employment. Effective combating of crimes of trafficking in human beings for forced labour is also possible thanks to mechanisms of cooperation and exchange of information between National Labour Inspectorate units and prosecutors' offices, at both the central and local levels, also on the basis of an agreement concluded in 2014. Training courses are conducted at the National Labour Inspectorate Training Centre in Wroclaw to help improve the qualifications of the inspectorial staff involved in the activities related to the issues in question. The procedure for handling complaints by PIP authorities is an important tool in the prevention of trafficking in human beings for forced labour and violations of labour rights of foreign nationals. Complaints that suggest the need for immediate action are examined first.

### **Tasks of the National Labour Inspectorate in the field of combating discrimination in access to employment and in relation to the provision of services by employment agencies**

Respecting the dignity and other personal interests of employees is a fundamental duty of employers. This also includes the prohibition of unequal treatment and discrimination at work. The activities of the National Labour Inspectorate to prevent and combat unequal treatment and discrimination in labour relations include the implementation of oversight and inspection measures, as well as prevention and information. Oversight and inspection activities are carried out as a result of, among other things, complaints, notices, and indications of irregularities sent to the National Labour Inspectorate, but also within the framework of inspections carried out in accordance with the Inspectorate's action programme (thematic inspections), where issues of equal treatment and discrimination are addressed.

Inspections of employment agencies include audits of the implementation of the prohibition of discrimination on grounds of sex, age, disability, race, religion, ethnic origin, nationality, sexual orientation, political beliefs, and religious denomination or trade union affiliation of individuals for whom the agency sought employment or other paid work.

By verifying compliance with the law in relation to temporary workers, labour inspectors make sure that there has been no violation of the prohibition on unequal treatment of temporary workers—with respect to working conditions and other conditions of employment—as compared to workers employed by the employer in the same or a similar position. As part of inspections concerning the legality of employment, labour inspectors examine issues related to respecting the principle of equal treatment and non-discrimination in access to employment. These activities are aimed at disclosing offences with regard to a refusal to employ a candidate for a vacant position or place of vocational training on the basis of their gender, age, disability, race, religion, nationality, political beliefs, ethnic origin, religious denomination, or sexual orientation. Most often, they involve the examination of job advertisements in which employers post illegal criteria for people who apply for employment, where the nature of the work does not justify their use (e.g., relating to gender or age).

Labour inspectors also check compliance with the principle of equal treatment of foreign nationals in terms of working conditions and other conditions of employment,



compared to Polish citizens employed in corresponding or similar positions. Promotion of the idea of equal treatment and non-discrimination in the labour market, especially with respect to foreign nationals, is supported by projects co-financed from European funds, as well as PIP publications (leaflets, brochures, guides) addressed to a wide audience.

#### **Receiving, processing, and handling complaints and requests before the PIP**

Apart from negligence or inadequate performance of tasks by the authorities or employees of the National Labour Inspectorate, complaints may deal, in particular, with breaches of the rule of law or interests of complainants, lengthy or bureaucratic handling of cases, violations of labour law, including occupational health and safety regulations and the legality of employment.

Complaints and applications are accepted by all district labour inspectors and the Chief Labour Inspectorate. They may be submitted in writing by mail, fax, and electronic means (sample complaint and application forms are posted on PIP websites), and also orally for the record.

#### **Planned changes aimed at enhancing the inspection powers of the PIP**

Taking into account that the National Labour Inspectorate applies a different inspection procedure to entrepreneurs than to other entities, and that the rights of the former group of inspected entities may significantly affect the findings and effectiveness of actions undertaken, it is necessary for the Ministry of Economic Development to analyse, in cooperation with the National Labour Inspectorate, the rules governing inspections of entrepreneurs under the *Act on Freedom of Economic Activity* in terms of their impact on the operations and effectiveness of the PIP and to shape them in such a way as to ensure maximum effectiveness of inspections and compliance with international agreements in force in Poland.

One of the elements that ensure respect for the rules is the application of sanctions for violations identified during inspections. In the current legal situation, these penalties are inadequate in comparison with the benefits of illegal employment, which is particularly important as regards undeclared work. Accordingly, the Ministry of Justice, in cooperation with the Ministry of Family, Labour and Social Policy and the National Labour Inspectorate, will review violations of the rights of individuals engaged in gainful employment and the amount of penalties for individual offences and examine the possibility of tightening sanctions (including as part of proceedings on fines), or introducing administrative sanctions, in lieu of liability for offences.

#### **4. OECD National Contact Point**

One of the remedies available to victims of human rights abuses by multinational enterprises is the possibility of notifying the OECD National Contact Point (OECD NCP) about the situation.

The OECD NCP's main task is to promote and disseminate the *OECD Guidelines for Multinational Enterprises* and, in particular situations, conduct proceedings to resolve conflicts that may arise in the course of the implementation of these *Guidelines*, also with respect to human rights.

*The OECD Guidelines* are recommendations for the standards of responsible business conduct addressed by governments to enterprises whose business extends in any way

beyond the boundaries of one country. The *Guidelines* should be respected by enterprises that are based in one of the countries that implement the *Guidelines* and wherever they conduct their economic activity. For this reason, it is worth ensuring that the *Guidelines* are available to all entrepreneurs.

The OECD National Contact Points operate in all 35 OECD countries and 13 non-OECD countries that implement the *OECD Guidelines for Multinational Enterprises* (Argentina, Brazil, Egypt, Jordan, Lithuania, Colombia, Costa Rica, Morocco, Peru, Romania, Tunisia).<sup>15</sup>

In Poland, the OECD NCP was established in 1998 within central administration structures (the Ministry of Treasury and afterwards the Ministry of Economy). Since 2001, the OECD NCP had been operating within the Polish Information and Foreign Investment Agency (PAIiIZ). In June 2016, in order to unify public administration operations in the field of CSR and responsible business conduct (RBC), the OECD NCP was transferred from the PAIiIZ to the Ministry of Economic Development. The website of the Ministry of Economic Development provides detailed information about the *OECD Guidelines for Multinational Enterprises* and OECD NCP activities (<http://www.mr.gov.pl/strony/zadania/wsparcie-przedsiębiorczosci/spoleczna-odpowiedzialnosc-przedsiębiorstw-csr/krajowy-punkt-kontaktowy-oecd/>). To file a notification of an alleged non-observance of the *OECD Guidelines for Multinational Enterprises*, one should complete the appropriate form, available on the website of the Ministry of Economic Development, in particular referring to the specific provisions of the *OECD Guidelines* to which the notification applies, and provide a detailed description of the activities of the enterprise that caused the non-observance of the *OECD Guidelines* in the above areas. Upon receipt of the notification, the case is subject to a detailed examination by the OECD NCP, which may refer the case to mediation if it is accepted by the NCP.

### ***5. The Committee for Matters of the European Court of Human Rights***

The Minister of Foreign Affairs provides assistance to the inter-ministerial Committee for Matters of the European Court of Human Rights, which is an opinion-making and advisory body to the Prime Minister<sup>16</sup>. The Committee discusses issues related to Poland's observance of the Convention for the Protection of Human Rights and Fundamental Freedoms, including the enforcement of judgements of the European Court of Human Rights.

### ***6. Planned actions to provide access to remedies***

#### **Employment agencies**

There have been instances of labour-law violations identified among entities conducting the activities of a temporary employment agency. This phenomenon is not widespread, but given its social dimension, it is necessary to monitor it continuously and take actions to improve the standards of temporary work and the protection of temporary workers.

In Poland, issues related to employment agencies are governed by the Act of 20 April 2004 on Promotion of Employment and Labour Market Institutions (Journal of Laws of 2016, Item 645, as amended).

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<sup>15</sup> Also Ukraine since March 2017, Kazakhstan since June 2017 (inf. in English version of NAP)

<sup>16</sup> Order No 73 of the Prime Minister of 19 July 2007 on the establishment of the Committee for Matters of the European Court of Human Rights.

Employment agencies are entities that provide one or more of the following services: job matching, temporary work, vocational guidance, and personal counselling, and that are not—except for temporary employment agencies—parties to employment relationships which may arise from their services.

There are two mechanisms for dealing with complaints about abusive practices in employment agencies. Any person who becomes aware of non-compliance by an employment agency with the provisions of the Act on Promotion of Employment and Labour Market Institutions, including abuse and fraudulent practices on the part of such an entity, may file a complaint to the marshal of the voivodship competent for the seat of the employment agency or the National Labour Inspectorate. In the case of temporary employment agencies, the complaint may also concern non-compliance with the provisions of the Act on the Employment of Temporary Workers and other labour-law provisions. Employees' organisations (i.e., trade unions) and employers' organisations are also entitled to lodge such complaints.

If the inspection services determine non-compliance on the part of an employment agency—abuse of employees and fraudulent practices—the agency may be removed from the register of employment agencies (Article 18m of the Act on Promotion of Employment and Labour Market Institutions) and liable to a fine (Article 121 of the above-mentioned law).

Article 121 of the Act on Promotion of Employment and Labour Market Institutions imposes the following sanctions against individuals who provide employment agency services for offences against the provisions of this law: a fine of not less than PLN 3,000.

The following parties are subject to this penalty:

- anyone who operates an unregistered employment agency;
- anyone who, while providing services referred to in Article 18(1) or Article 18c(2) of the law, collects additional fees other than those specified in Article 87(2)(7) of the law, from the person for whom the agency is seeking employment or other paid work;
- anyone who, while providing services referred to in Article 18(1) or Article 18c(2) of the law, does not respect the principle of non-discrimination on grounds of sex, age, disability, race, religion, ethnic origin, nationality, sexual orientation, political beliefs, religious denomination, or trade union membership;
- anyone who, prior to sending a person to work (or temporary work) abroad, does not provide that person with written information on the costs, fees, and other charges (including those referred to in Article 85(2)(7) of the law) related to delegating someone to work, as well as taking up and performing work abroad.

A fine of not less than PLN 4,000.

Penalties are imposed on any person who delegates a person to work abroad for foreign employers without a written agreement with that person.

The Ministry of Family, Labour and Social Policy has taken steps to improve the conditions of temporary employment, increase protection for the clients of employment agencies, improve the effectiveness of the National Labour Inspectorate's inspections in the area of temporary employment, as well as the legal security of temporary work agencies and the employers of their clients and, consequently, raise the standards of services provided by employment agencies.

## Mediation

Undertakings that support the establishment and operations of mediation and arbitration centres are planned as part of measures co-financed by the European Social Fund. These activities are scheduled to start within the Operational Programme

Knowledge Education Development (OP KED) in 2017. They will involve the establishment of such entities in regions where they are not yet in operation, and will serve to standardise the operation of the existing centres. Due to the limited scope of ESF support in the OP KED decision accepted by the European Commission, support in this area will focus exclusively on the issue of mediation in disputes between business entities.

### *7. Planned and ongoing activities*

Continuation of activities to ensure access to court and out-of-court remedies;  
Continuation of support for NGOs working in business and human rights.

# Implementation of the National Action Plan

## 1. Education

The public administration's role in implementing responsible business conduct includes creating favourable conditions for shaping appropriate forms of cooperation that facilitate making a voluntary commitment to responsible development and social responsibility.

Education and wide dissemination of RBC standards is an important element in this respect, including responsible supply chains and respect for human rights. These actions should be addressed both to direct producers and companies in the supply chain, as well as consumers.

It is appropriate to take preventive measures against forced labour, including education and information initiatives for employers, and to support both the public and private sectors in preventing and responding to the threat of forced labour.

Information on the *UN Guiding Principles on Business and Human Rights* and the European Council conclusions of 20 June 2016 recommending the inclusion of diplomatic missions in the promotion of the *Guiding Principles* and their application in their ongoing operations has been sent by the Ministry of Foreign Affairs to all embassies, consulates and Polish Institutes.

## 2. Monitoring

Monitoring of the implementation of the National Action Plan for the implementation of the *UN Guiding Principles on Business and Human Rights* will be carried out through:

- preparation of action timetables by individual ministries responsible for the fulfilment of NAP plans for implementation between 2017-2020— with a completion date by the end of 2017;<sup>17</sup>
- preparation of an interim report and a list of good practices by the end of 2018;
- preparation of the final report by the end of 2020;<sup>18</sup>

as well as:

- analysis of the annual OECD NCP report submitted to the OECD, with respect to the number of notifications submitted to the OECD NCP about multinational enterprises' non-observance of Chapters IV and V of the *OECD Guidelines for Multinational Enterprises* on human rights and labour rights;
- analysis of the annual OECD NCP report submitted to the OECD, with respect to the number of training sessions and seminars promoting the *OECD Guidelines for Multinational Enterprises* (Chapter IV on Human Rights);

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<sup>17</sup> The date refers to the timetables of these activities that have not yet been included in the work plans of the ministries and require analysis, preparation, and identification of the sources of funding.

<sup>18</sup> The completion dates for the interim report and the final report are based on correlation with the completion dates set out in Council of Europe Recommendation CM/Rec (2016) 3.

– training sessions and conferences conducted by the government administration on CSR/RBC, including those that promote knowledge of the *UN Guiding Principles on Business and Human Rights*.

The Ministry of Foreign Affairs, in cooperation with competent ministries, is responsible for scheduling activities resulting from the adoption by the Council of Ministers of the National Action Plan for the Implementation of the *UN Guiding Principles on Business and Human Rights*.

The Ministry of Foreign Affairs, in cooperation with the competent ministries and government institutions, is responsible for preparing the interim report and the final report on the implementation of the National Action Plan.

The Ministry of Foreign Affairs, in cooperation with competent ministries and governmental and non-governmental institutions, as well as trade unions and employers' organisations, is responsible for the preparation of the next edition of the National Action Plan for the Implementation of the *UN Guiding Principles on Business and Human Rights*.

## Appendix 1

### *International non-binding mechanisms and international legal framework in force in Poland in relation to business and human rights*

#### International non-binding mechanisms

Corporate responsibility for violations of international human rights standards/norms is provided for in non-binding mechanisms. In this regard, besides the *UN Guiding Principles on Business and Human Rights*, the following documents should be mentioned:

1. The *OECD Guidelines for Multinational Enterprises*: a set of rules for different areas, from employee relations, environmental issues, respect for human rights, and occupational safety, through issues of access to information, taxation, environmental protection, and due diligence in business. The *OECD Guidelines* contain a dispute settlement mechanism involving the possibility of submitting notifications to the OECD NCP of non-observance of the *Guidelines*. The OECD NCP examines the case and, provided it has grounds to do so, recommends mediation proceedings to the parties<sup>19</sup>;
2. 10 Principles of the Global Compact, an initiative of the UN Secretary-General: a 2000 declaration containing voluntary commitments for those enterprises that signed it. The document covers the principles of human rights, labour law, environmental protection, and anti-corruption provisions. The declaration was signed by 82 entities from Poland;
3. *ILO Tripartite Declaration of Principles on Multinational Enterprises and Social Policy* of 1977 (last change in 2006): refers to the obligation of enterprises to respect human rights and workers' rights in many respects, taking into account the existing ILO acquis;
4. Children's Rights and Business Principles: a set of guidelines for the wide-ranging rights of children prepared in 2012 by, among others, UNICEF and the Global Compact;
5. ISO 26000 standard: this standard is a practical guide to the concept of responsible business, specifies its framework, and outlines its values and ideas;<sup>20</sup>
6. GRI G4 Non-Financial Reporting Standard.<sup>21</sup>

#### International legal framework in force in Poland

In 1948, the UN General Assembly adopted the Universal Declaration of Human Rights. Together with the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966), these documents constitute the canon of international law with respect to human rights, the so-called

Human Rights Charter. At the European level, the Convention for the Protection of Human Rights and Fundamental Freedoms was adopted, which was signed in Rome on 4 November 1950.

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<sup>19</sup> The *Guidelines for Multinational Enterprises* were adopted by the OECD in 1976. Poland has implemented the *Guidelines* since joining the OECD in 1996.

<sup>20</sup> The ISO2600 standard has been available in a Polish-language version since 2013

<sup>21</sup> The GRI G4 has been available in a Polish-language version since 2016.

At the same time, international labour standards are included in the so-called International Labour Code, which consists of the ILO conventions.

The ILO Declaration of 1998 distinguishes the basic principles and laws relating to four areas of human rights at work:

- freedom of association and the right to collective bargaining;
  - prohibition of all forms of forced and compulsory labour;
  - effective elimination of child labour;
  - elimination of discrimination in employment and occupation;
- These rights were included in the eight core ILO conventions.<sup>22</sup>

In international law, there are no treaty provisions that would impose obligations on international enterprises to respect human rights and make them liable for human rights violations. Nevertheless, in certain multilateral conventions, states undertake to establish their jurisdiction over the extraterritorial activities of legal entities falling within the scope of the convention in question. Treaties of this kind provide for the obligation to introduce criminal liability for legal entities in national legislation. The agreements of this type to which Poland is a party include:

1. Council of Europe Criminal Law Convention on Corruption of 27 January 1999 (Journal of Laws of 2005, Item 249);
2. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 17 December 1999 (Journal of Laws of 2001, Item 264);
3. Council of Europe Convention on Cybercrime of 23 November 2001 (Journal of Laws of 2015, Item 728)
4. Council of Europe Convention on Action against Trafficking in Human Beings of 16 May 2005. (Journal of Laws of 2009, Item 107);
5. Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 25 October 2007 (Journal of Laws of 2015, Item 608).
6. Directive 2014/95/EU on disclosure of non-financial and diversity information by certain large undertakings and groups.

The rights that relate to the special aspects of human rights envisaged in international agreements and that require special attention in the context of corporate social responsibility - provided that the provisions in this respect are addressed to States Parties - are laid down in the following documents:

### European Social Charter

- Article 1: The right to work
- Article 2: The right to just conditions of work
- Article 3: The right to safe and healthy working conditions
- Article 4: The right to a fair remuneration
- Article 5: The right to organise

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<sup>22</sup> - Forced Labour Convention, 1930 (No 29);

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87);

- Right to Organise and Collective Bargaining Convention, 1949 (No 98);

- Equal Remuneration Convention, 1951 (No 100);

- Abolition of Forced Labour Convention, 1957 (No 105);

- Discrimination (Employment and Occupation) Convention, 1958 (No 111);

- Minimum Age Convention 1973 (No 138);

- Worst Forms of Child Labour Convention, 1999 (No 182).



- Article 6: The right to bargain collectively
- Article 7: The right of children and young persons
- Article 8: The right of employed women to protection of maternity
- Article 10: The right to vocational training
- Article 15: The right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement
- Article 19: The right of migrant workers and their families to protection and assistance

### **International Covenant on Economic, Social and Cultural Rights**

- Article 6: The right to work
- Article 7: The right of everyone to the enjoyment of just and favourable conditions of work
- Article 8: The right of everyone to form trade unions and join the trade union of his choice
- Article 10: Special protection accorded to mothers before and after childbirth, protection of children from economic and social exploitation
- Article 11: The right of everyone to be free from hunger
- Article 13: The right of everyone to education

### **Convention on the Rights of the Child**

- Article 11: – Combating the illicit transfer and non-return of children abroad
- Article 16: Prohibition of arbitrary or unlawful interference with a child’s privacy, family, home or correspondence
- Article 19: Protection of the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation
- Article 23: Enabling a mentally or physically disabled child to enjoy a full and decent life, in conditions which ensure dignity
- Article 28: The right of the child to education
- Article 31: The right of the child to rest and leisure
- Article 32: The right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development
- Article 36: The protection of the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare;

### **Convention on the Rights of Persons with Disabilities**

- Article 9: Accessibility
- Article 14: Liberty and security of person
- Article 16: Freedom from exploitation, violence and abuse
- Article 17: Protecting the integrity of the person
- Article 20: Personal mobility
- Article 21: Freedom of expression and opinion, and access to information
- Article 27: Work and employment
- Article 28: Adequate standard of living and social protection.

## Convention for the Protection of Human Rights and Fundamental Freedoms

Poland has also ratified the Convention for the Protection of Human Rights and Fundamental Freedoms (Journal of Laws of 1993, No 61, Item 284, as amended). Article 34 of the Convention provides for the right to file an individual application, which makes it possible to initiate proceedings against the defendant state before the Court in order to protect the rights and freedoms of the Convention:

- Article 2: Right to life
- Article 3: Prohibition of torture
- Article 4: Prohibition of slavery and forced labour
- Article 6: Right to a fair trial
- Article 8: Right to respect for private and family life
- Article 9: Freedom of thought, conscience and religion
- Article 10: Freedom of expression
- Article 11: Freedom of assembly and association
- Article 13: Right to an effective remedy
- Article 14: Prohibition of discrimination

and

- Article 1 of Protocol No 1 to the Convention: Protection of property
- Article 1 of Protocol No 4 to the Convention: Prohibition of imprisonment for debt
- Article 4 of Protocol No 7 to the Convention: Right not to be tried or punished twice

Although Articles 33 and 34 of the Convention provide for the possibility of filing applications only against states, in the course of the development of the Court's jurisdiction, the protection of Convention rights has been extended—by means of positive obligations of the state or the duty of the state to ensure effective protection of the rights and prevention of their breach by private entities to the sphere of horizontal relations between the individual and the private entity.

Human rights are also covered by binding acts of international law and 'soft' documents regarding certain sensitive groups, including:

- The International Convention on the Elimination of All Forms of Racial Discrimination;
- The International Convention on the Elimination of All Forms of Discrimination against Women;
- The Convention on the Rights of the Child;
- The Convention on the Rights of Persons with Disabilities;
- The Declaration on the Rights of Indigenous Peoples;
- The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.