

# **Practical Application of the UN Guiding Principles on Business and Human Rights to the activities of technology companies**

## **Input by Poland**

In reference to the Note Verbale of the Office of the UN High Commissioner for Human Rights dated December 22, 2021 Poland is pleased to submit the following input to the four themes of the consultations regarding the practical application of the UN Guiding Principles on Business and Human Rights to the activities of technology companies:

### ***1. The role of States in promoting respect for human rights by technology companies.***

The role of states in promoting respect for human rights by technology companies should be emphasized. Governments are required to respond to the current needs of technological development by taking new legislative initiatives to improve the respect for human rights in business. Established law, as a result of appropriately defined security mechanisms, at a level adequate to violations, should allow for disciplining companies that do not respect human rights.

Issues related to the protection of human rights should also be based on standardized mechanisms for reporting complaints and irregularities, which should be subject to the supervision of special services.

It is advisable that states actively participate in developing technical standards in the emerging areas related to the digital transformation, including for example ISO, ITU, IEC and thereto related committees and working groups.

### ***2. The role of States in relation to human rights due diligence on the use of technology companies' products or services.***

One of the fundamental human rights is the right to manage one's own personal data. States should ensure that the development of the market of technological services in which personal data is traded does not become a market where no laws are in force, and data looting is a commonly used form of building a competitive advantage.

Despite the fact that data is the 'currency' of the digital economy, states are obliged to enact laws that will allow internet users to decide when and where their data will be processed. States should support the implementation of due diligence policies whereby enterprises in the supply chains identify, manage and minimize the risks related to human rights violations, which will consequently reduce the scope of any abuse. The policy of states should take into account that the policy of data trade should be shaped in such a way that there is no space for companies to make use of their services in exchange for consent to sharing and trading data.

It is also important to ensure the sustainable development based on implementation of technical standards, taking into account human needs and human-centered principles.

**3. Challenges related to the ability of State-based judicial and non-judicial grievance mechanisms to provide for accountability and remedy in case of human rights abuses relating to technology companies and potential solutions to address and/or overcome such challenges.**

State-based judicial and non-judicial mechanisms should supervise the protection of human rights and in the case of their violations – enforce and penalize properly. Additionally, they should be able to audit and control technology companies (and also others branches).

Citizens should have a possibility to file complaints against an enterprise when there are human rights violations – in this case, personal data breaches. In the case of technology companies, personal data breaches may arise especially when the companies are using the services of hosting companies.

If the relevant authority finds a violation of personal data, financial penalties are imposed. Their amount depends on many factors, e.g. the character, importance, categories of personal data concerned, duration of the violation; and if the violation was intentional or if the technology company has already taken a remedial action. The financial penalty has a repressive and preventive function.

In Poland, there is a data protection authority: Personal Data Protection Office (*Urząd Ochrony Danych Osobowych*, UODO) which is responsible for enforcing data protection law and investigating complaints about personal data breaches. The UODO President can impose financial penalties or implement other solutions, e.g. via reminders or imposing temporary or permanent restrictions on the processing of personal data.

Moreover, in the Ministry of Development Funds and Regional Policy of the Republic of Poland there is operating a non-judicial grievance mechanism, such as the Polish OECD National Contact Point for Responsible Business Conduct (OECD NCP).

The activities of the OECD NCP are described in the Polish National Action Plan for the implementation of the UN Guiding Principles on Business and Human Rights for 2017-2020. The main task of the OECD NCPs is to promote the OECD Guidelines for Multinational Enterprises (OECD Guidelines) and to consider notifications of potential breaches of the OECD Guidelines by enterprises, including violations of Chapter IV of the OECD Guidelines which covers human rights issues.

The Polish OECD NCP considers notifications in accordance with its own procedure that is available on the OECD NCP website in four languages – in [Polish](#), [English](#), [Russian](#) and [Ukrainian](#). The proceedings before the OECD NCP are conducted in Polish, and the results of the proceedings are published on the websites of the OECD NCP (in [Polish](#) and [English](#)).

The Polish National Action Plan for the implementation of the UN Guiding Principles on Business and Human Rights for 2021-2024 indicates, inter alia, the planned activities of the OECD NCP, such as the organization of events promoting standards of responsible business in the context of respect for human rights in the activities of enterprises.

Poland is actively involved in the process of creating a new approach to the protection of human rights with regard to technology at the national and international fora. An important issue in the UN Guiding Principles is that of ensuring effective judicial and extrajudicial mechanisms for dealing with complaints on violations of human rights in connection with economic activity. According to the Guiding Principles, victims should be guaranteed access to remedies and the possibility of seeking redress for harm suffered.

It should be observed that business organizations should know the areas where abuse may occur and take action to minimize the likelihood of such an event, and when it occurs – to initiate corrective actions. As a result, understanding and monitoring the supply chains and creating more transparent processes in this regard will reduce the room for abuses. The implementation of the Guiding Principles in this regard so far has mainly involved the elimination of barriers to access to court by changing the provisions on local jurisdiction, streamlining court proceedings, lowering court fees in certain types of cases, and encouraging amicable settlement of disputes.

In particular, in 2019, inter alia:

- the fee for the claimant who attempted to resolve the dispute amicably was lowered; while in cases of claims resulting from banking activities, a fixed fee was introduced for the party who is a consumer or a natural person running a family farm;
- the possibility of bringing actions against consumers according to the alternating property was excluded. At the same time, the basis for the alternating property was extended to include the property of the place of residence or the seat of the plaintiff, among others in cases against a bank or its legal successor for claims arising from banking activities.

Furthermore, it is worth paying attention to the current EU works concerning the regulation on the single market for digital services. The mentioned draft regulation is intended to ensure consistent monitoring of rights and obligations and equivalent sanctions in all Member States as well as effective cooperation between the supervisory authorities of individual Member States at Union level. The proposal clearly defines the responsibilities and accountability of intermediary service providers, in particular online platforms such as social media and trading platforms. By setting out clear due diligence obligations for certain intermediary services, including the notification and removal process of illegal content and the possibility of repealing decisions made by platforms to moderate content, the proposal aims to improve the safety of online users and the protection of their fundamental rights. Moreover, imposing on some online platforms the obligation to obtain, store and partially verify and publish information about entrepreneurs using the services of these platforms is to ensure a higher level of security and transparency of the online environment for consumers.

#### ***4. Lessons learnt and good practices to advance implementation of the Guiding Principles in the technology sector.***

Companies have more and more awareness and knowledge in the field of protection of human rights, also in the context of the above-mentioned personal data. They often have internal systems to monitor and report incidents of personal data breaches. In order to increase the level of protection of personal data, additional IT security is introduced and training for employees is carried out.

In 2020, the Polish OECD NCP completed the case regarding the Polish company OLX (which is part of the OLX Group capital group, whose headquarters is located in the Netherlands) operating in the sector of internet advertising portals. The notification was submitted by a Polish non-governmental organization operating in the field of environmental protection.

As a result of the proceedings before the Polish OECD NCP, the company changed its procedures for placing advertisements on its website. Also as a result of proceedings, the company removed several thousand incorrect advertisements from its website. Details of the cases and the results of the proceedings are described in the [monitoring note of the OLX case](#).

The case was noticed at the OECD level and included in the report published for the 20th anniversary of the OECD NCPs Network, which included descriptions of the twenty most interesting cases (*National Contact Points for Responsible Business Conduct. Providing access to remedy: 20 years and the road ahead*).

In addition, at the invitation of the OECD, a representative of the Polish OECD NCP and representatives of the parties to the proceedings in the OLX case, participated in the session on access to remedy in the tech sector on June 15, 2021: [Access to remedy in the tech sector: The role of NCPs in providing access to remedy for technology-related human rights abuses](#) organized as part of the OECD Global Forum on Responsible Business Conduct.

Moreover, guidelines should be based on transparency. Any fraud cases should be carefully explained in the light of product and process specifications, taking into account the perspective of the user.