**Input of Poland to the report of the Working Group on Business and Human Rights to be presented to the 56th session of the Human Rights Council in June 2024**

1. **What do you understand Environmental, Social, and Governance (ESG) in finance to mean? How are human rights standards and frameworks considered by investors, if at all, in ESG?**

Environmental, Social, and Governance (ESG) in finance translates into settling for a new paradigm in running companies, in which financial profit is not the only goal of running a business.

The ESG area is an important issue from a sustainable development perspective and for the 2030 Agenda for Sustainable Development and its 17 Sustainable Development Goals (SDG). From the beginning, Poland has perceived the 2030 Agenda and the SDGs as a global and universal action plan and an opportunity for introducing the changes in the country, our region and in the world and for effective cooperation, creating synergies, strengthening sustainable development and Leaving No One Behind. At the national level in Poland, the Ministry of Economic Development and Technology is responsible for coordinating the implementation of the 2030 Agenda.

From the perspective of Polish businesses, we believe that human rights standards and frameworks are certainly considered by investors in ESG. First of all, all ESG-conscious businesses understand that human rights are an inherent part of ESG, particularly its social aspect. That is why they focus on ensuring that all human rights are followed, not only for their employees but also for all shareholders. Second, the abidance of all the most important human rights is ensured by Polish legislation, including the Constitution, the Labour Code, and the Civil Code. Thus, regardless of their interest in ESG issues, all Polish businesses must follow these laws in order to legally run in Poland.

Disrespect for human rights among Polish businesses is marginal and is prosecuted by law if committed on Polish territory.

As to standards and frameworks considered by investors in ESG, they pretty much reflect the way human rights are considered by business. As all the companies listed on the Warsaw Stock Exchange are legally run companies, thus investors have trust that all the companies they invest in do follow human rights. It is important to note that the Warsaw stock exchange runs a WIG ESG Index, which is quite popular among Polish investors. It includes all companies in the WIG20 and mWIG40. Therefore, this means that it automatically includes the largest companies listed on the stock exchange, regardless of whether and to what extent they operate in accordance with ESG guidelines.

1. **Which are the main types of investors using ESG approaches, for example, in decision-making or engagements? On what basis are they making decisions on human rights, climate change and other related matters?**

ESG is a topic more and more understood among Polish businesses and investors, however there is also a big area for improvement. Some of the major challenges are: the lack of structured knowledge of entrepreneurs in this area, the small number of experts in this field, the cost of employing them, and the lack of IT tools to facilitate reporting. ESG consciousness prevails among the top corporations, while the idea remains relatively unknown in the small and medium enterprise sector. There are two main reasons why this is the case – one is that due to much bigger resources top corporations are the only companies that are able to hire specialists in ESG field and also to take advantage of its green values in marketing. The other is that big companies operating in Poland, in contrast to the SME sector, are required to put forward yearly ESG reports under the EU Taxonomy law. The ESG reports are in fact very important indicators for investors, especially considering that the vast majority of companies listed on the stock exchange are required to release them.

Unfortunately, there is little data which allow to quantify the imp[act of using ESG approaches for decisions of Polish investors. As most of the listed companies present various incentives for investing, the motifs of investors cannot really be judged upon the companies’ stock values.

1. **To what extent do ESG approaches present constraints or opportunities for investors and businesses overall?**

It is hardly possible to report constraints or opportunities presented by those ESG approaches specifically outlined for the purpose of this report due to the relatively low knowledge of these approaches on the part of Polish investors.

On the other hand, despite its flaws, the WIG ESG index remains very popular among Polish investors. It proves that although ESG issues are not understood sufficiently in Poland, the ESG paradigm is enthusiastically received among Polish investors. Naturally, some companies and stakeholders treat the index purely in marketing categories, however real actions in the area are also being undertaken.

Constraints about ESG approaches in Poland can be divided in two categories: on one hand coming from ESG-conscious shareholders concerned about the low level of institutional support for ESG; on the other hand, from traditional financial-profit-oriented investors who are worried about limitations being imposed on free trade without merit. Although the latter category of thinking poses a direct threat towards the process of implementing and popularisation of ESG on the Polish stock exchange, it is precisely for this reason that this group of shareholders should be seriously taken into account.

It is important to note that from both the opportunities and threats presented by ESG come the same conclusions: that regardless which ESG approach, whether UNGPs or others, is projected to become predominant in the Polish ESG market, it should be clearly presented to all shareholders that the implementation of an honest ESG strategy in a company will produce measurable profits in the long term. Right now, this is understood by more and more investors, but not all of them. As long as that is not understood among the vast majority of businesses, investors, as well as other shareholders, any introduction of detailed ESG approaches may prove counter effective.

1. **What responsibilities and capacity do ESG index and data providers have regarding the assessment of adverse human rights and environmental impacts, and how can ESG indexes and research products be improved to align with the UNGPs approach?**

Companies that are listed on the WIG ESG index, the main Polish ESG index on Warsaw Stock Exchange, are allowed a place on the index mainly on self-declared ESG actions. Thus, companies on the WIG ESG index are mainly nothing more than the biggest companies in Poland, as they have the biggest resources to hire specialists in ESG field to help them create an ESG strategy. Some of them genuinely put significant effort into the implementation of ESG aspects, but some apply for a place on the ESG index purely for marketing reasons.

In order to align ESG indexes with the UNGPs approach, significant institutional changes need to be made. Ambition levels need to be set higher, and in order to do that human rights should not be understood only as the basic social rights which are guaranteed by Polish law, but also environmental rights. Corporate governance values also need to be understood better.

If ambitions are set higher, it can be considered to change the indices so as to include more indicators, data providers in line with the stock exchange authorities can scrutinise companies’ declarations more closely. Also, only then it will be reasonable to popularise more sophisticated ESG indicators, like UNGPs and all ESG approaches proposed for the report, in order to include them in ESG indices and make them more qualitative.

**State duty to protect human rights**

1. **What State, regional, and international mechanisms and regulations exist to promote or restrict investment/financing using an ESG approach that takes human rights into account and how do they align with the UNGPs? How do these mechanisms and regulations promote or inhibit business respect for human rights consistent with the UNGPs?**

It should be noted that provisions and the subsequent implementation of the Strategy for Responsible Development, adopted in 2017, which is a key document of the Polish State in the field of medium- and long-term economic policy, are determined by a number of obligations which Poland is obliged to fulfil in relation to its membership of international groups and institutions and the strategic documents they adopt. One of the most important document comprise The 2030 Agenda for Sustainable Development.

Poland declared to implement the 2030 Agenda and the related Goals of Sustainable Development, as all countries signatories to the agreement. This task requires a factual cooperation of the whole administration and all stakeholders. Development model of Poland, outlined in the Strategy for Responsible Development, addresses expectations formulated in the Agenda. The concept of a lasting and responsible development, on which the Strategy is based, is consistent with an ambitious vision of the United Nations being oriented towards changes, a vision of a poverty-free world in which everybody can benefit from the development. The Strategy is also consistent with the UN Guiding Principles on Business and Human Rights, adopted by the UN Human Rights Council in 2011.

Moreover, in the field related to the competitiveness in the global economy, the importance of supporting the emergence of sectoral technological and industrial ecosystems was emphasized, fulfilling the criteria regarding environmental friendliness (i.e. minimization of adverse impact on the environment and humans).

Poland has been making efforts for a sustainable and responsible development model for many years, ensuring the implementation of the demands of the 2030 Agenda both at home and on the international forum, through active participation in international initiatives and commitments.

Poland's efforts towards a sustainable future are reflected in the rankings of international centres measuring progress in achieving sustainable development goals, where we can observe a systematic improvement in Poland's position. In 2022, Poland took a high 12th place in the SDG Index ranking (up from 15th a year earlier and 38th in the 2016 edition) with a score of 80.5% (out of 163 countries assessed).

In October 2021, the National Action Plan for the implementation of the UN Guiding Principles on Business and Human Rights for 2021-2024 was adopted. The document covers planned activities of individual institutions relating to human rights in the context of business. In the context of activities undertaken by the Ministry of Funds and Regional Policy, the implementation of programs under cohesion policy was indicated, including equal opportunities for various target groups, improvement of qualifications and competences, care for the youngest children and strengthening the principle of equal opportunities for women and men. The Accessibility Plus Program is also being implemented, the aim of which is to ensure free access to goods, services and opportunities to participate in social and public life for people with special needs.

1. **How can States encourage and regulate accurate communication of ESG practices by businesses and investors to prevent misleading or unsubstantiated claims regarding respect for human rights?**

One of the ways can be promotion of the Guidelines for multinational enterprises, which is the core task of the NCP (National Contact Point for responsible business conduct). Each year, the NCP draws up the promotion and training plan which comprises the events and publications planned for the particular year.

The main way of promotion the Guidelines and other RBC standards developed by the OECD is through events organised at the Ministry. These include both conferences held on-site at the Ministry and webinars held remotely.

Moreover, representatives of the NCP participate in events organised by external stakeholders, such as: meetings of inter-ministerial groups, conferences, expert meetings and seminars, webinars.

In total, in the years 2016-2022, the NCP promoted the Guidelines at 88 events with an approximate audience of more than 10 thousand participants.

**Access to remedy**

***State-based judicial and non-judicial mechanisms***

1. **What steps have States taken to investigate, punish, and redress business-related human rights abuses connected to investors, and how effective are they? What challenges and opportunities for participation by affected stakeholders and/or redress have you observed?**

The states implementing the OECD Guidelines are obliged to appoint the OECD National Contact Point for responsible business conduct (the OECD NCP).

The main task of the OECD National Contact Points for responsible business conduct (NCP) is:

1) to promote the OECD standards on responsible business conduct (RBC),

2) to handle notifications of alleged breaches of the *OECD Guidelines for Multinational Enterprises*.

During the proceeding, the OECD NCP is obliged to adhere to the principles of: impartiality, predictability, justice and compliance with the OECD Guidelines.

The proceeding before the OECD NCP is based in particular on the principle of confidentiality which is binding both for the parties and for the OECD NCP.

1. **Please provide examples of cases submitted to State-based judicial and/or non-judicial mechanisms regarding investors in the context of business-related human rights and environmental abuses. How effective are these in providing remedies to the victims and how can they be improved?**

OLX case

On 9 April 2018, the OECD National Contact Point (OECD NCP) received a notification of an alleged breach of the OECD Guidelines for Multinational Enterprises (hereinafter the “OECD Guidelines”). The notification was submitted by the Frank Bold Foundation (hereinafter the “Notifier”), a non-governmental organization operating in the area of environmental protection with its headquarters in Krakow. The notification refers to the multinational enterprise Grupa OLX sp. z o.o., with its seat in Poznan and operating in the sector of online advertisement portals, being part of the corporate group OLX Group with its main headquarters in the Netherlands.

The Notifier pointed out to the following chapters of the OECD Guidelines: Chapter II “General Policies”, Chapter VI “Environment” and Chapter VIII “Consumer Interests”, which had been violated, in the opinion of the Notifier, through the placement of advertisements on the advertisement portal of the Company concerning sale offers for furnaces for, inter alia: burning processed oil and discarded wooden railway sleepers.

In the opinion of the Notifier, both the processed oil and discarded wooden railway sleepers constitute hazardous waste the burning of which has been prohibited under relevant legal provisions due to their substantial adverse environmental impact. Therefore, the Notifier believes that actions of users of the Company’s portal may be deemed particularly harmful due to their impact on air pollution in Poland, including the occurrence of human life-threatening smog.

As stated by the Notifier, although the Company is not directly responsible for the sale of processed oil-burning furnaces and discarded railway sleepers, which results from the profile of the advertisement portal, it does answer for enabling users of its portal to post such sale offers and to procure products the use of which is highly probable to violate the provisions on the environmental protection.

By accepting the case for further consideration on 25 June 2018, the OECD NCP emphasized that the acceptance of the case for further examination did not mean a confirmation of the OECD NCP that the OECD Guidelines had been violated. It should be pointed out that thanks to the good offices proposed by the OECD NCP the Parties worked out a satisfactory agreement. The OECD NCP appreciates the Parties’ openness to dialogue and their commitment to working out the agreement.

Therefore, it should be concluded in the context of the OECD Guidelines that the Company did follow the recommendation specified in Chapter II “General principles”, in particular point 13 which states: In addition to addressing adverse impacts in relation to matters covered by the Guidelines, enterprises should encourage, where practicable, business partners, including suppliers and sub- contractors, to apply principles of responsible business conduct compatible with the Guidelines. Furthermore, it should be noted that the Company did recognize the significance of the provisions of Chapter VI “Environment” and of Chapter VIII “Consumer interests”, and took up appropriate actions to carry out its activities, among other things, “in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the quality and reliability of the goods and services that they provide”.

The fact that the Parties agreed that the Notifier would monitor the advertisements published in the advertisement portal of the Company to eliminate those concerning products and services which might have an adverse impact on the natural environment by violating the provisions on the environmental protection also reflects the deep commitment of both Parties to acting for the environmental protection. The actions are aimed, among other things, at ensuring that the provisions of the broadly understood law on the environmental protection will be followed (in particular the protection of air against pollution), and at promoting attitudes compliant with the principles of the environmental protection and of sustainable development.

To sum up, the OEC NCP assessed that the conducted proceeding brought a solution which is satisfactory for the Parties thereto. The recommendation which may be derived from the proceeding for other potential proceedings in Poland and in other countries in future refers to the parties’ openness to dialogue and to the correct understanding of the recommendations formulated in the OECD Guidelines for multinational enterprises which are an international standard of responsible business conduct.

PZU case

On 6 August 2018, the OECD National Contact Point (OECD NCP) received a notification of an alleged breach of the OECD Guidelines for Multinational Enterprises, hereinafter referred to as the “OECD Guidelines”.

The notification was submitted by the Foundation “Development YES – Open-Pit Mines NO” (https://rozwojtak-odkrywkinie.pl/en/) with its registered office in Legnica, which promotes the development of energy based on renewable energy sources and acts for environmental protection, hereinafter referred to as the “Notifier”.

The notification referred to the activities of multinational enterprise Group PZU S.A. with its registered office in Warsaw, operating in the financial sector (insurance and banking).

The Notifier pointed out to the following chapters of the OECD Guidelines: Chapter II “General Policies”, Chapter III “Disclosure”, Chapter IV “Human Rights”, Chapter VI “Environment” and Chapter VIII “Consumer Interests”, which had been violated, in the opinion of the Notifier, through the omission of certain information in the Company’s non-financial statement for 2017.

The Notifier believes that the Company did not include any information about the effects of the activities of the entities the Company insures, including their environmental impacts and climate- related matters, in its non-financial statement for 2017. The non-financial information provided by the Company on environmental matters and on respecting human rights were not sufficient in the opinion of the Notifier.

The Notifier argues that although the Company fulfilled legal requirements, it did not fulfil its obligations in terms of complete reporting and ensuring transparency as to the environmental impacts of its activities and of its services. The Company’s non-financial statement mentions that the Company carried out an engineering risk assessment by the valuation of the insurance premium, but it does neither contain any details on the assessment, nor specifies risks which may be related to insuring entities emitting significant volumes of greenhouse gases.

Based on the Company’s non-financial statement for 2017, the Notifier concluded that the environmental matters were not a key criterion for capital investments and the statement lacked information on the emissions of CO2 to the atmosphere and on the Company’s role in insuring the coal mining sector in Poland.

The Notifier also emphasized in its notification that one of the human rights is the right to live in a clean environment. The judicature of the European Court of Human Rights created the basis for understanding that complaints for environmental pollution are based on Article 8 of the European Convention on Human Rights (the right to respect for private and family life). On the other hand, the OECD Guidelines encourage enterprises to perform an analysis in terms of respecting human rights by covering the assessment of real and potential forms of impacting human rights, integrating, reacting and informing about the way of reacting to the results of the analysis. Insuring or investing in the activities of entities which extract or burn coal may, in the opinion of the Notifier, limit the right to live in a clean environment.

Therefore, the Notifier believes that the Company’s activities in 2017 should also have been analysed in terms of respecting human rights and of whether the Company took any actions to minimize air pollution with the use of available measures, e.g. by extending the Company’s strategies to include environmental matters and investment risk. The Notifier claims that the public documents, including the Company’s non-financial statement for 2017, did not confirm that such an analysis had been performed.

Furthermore, the Notifier believes that the omission of information about the scale of the Company’s investment in the carbon-intensive sector and about the stake in the market for corporate insurance for the carbon-intensive sector in the Company’s statements also caused that the majority of consumers could not gain a full picture of the nature and scope of the Company’s activities, including of the effects of the activities of other enterprises related to the Company by investment or insurance decisions

By accepting the case for further proceeding on 8 November 2018, the OECD NCP emphasized that the acceptance of the case for further examination did not mean a confirmation of the OECD NCP that the OECD Guidelines had been violated.

By accepting the case for further proceeding, the OECD NCP expressed its commitment to strengthen responsible business conduct standards by taking into account that a responsible enterprise should, among other things, care for the natural environment, conduct a dialogue with stakeholders, participate in the economic, environmental and social development and minimize adverse impacts of its activities, and should commit to respecting human rights and inform diligently about any actions it may take up.

During the talks of the Parties, the OECD NCP kept emphasizing that the proceeding it conducts is specific, based on the OECD Guidelines which are the international soft law and constitute an international standard of responsible business conduct. Poland is one of 48 counties which implement the OECD Guidelines and recommends so the multinational enterprises operating in the country to follow the OECD Guidelines, among other things, by minimizing adverse impacts which may occur in relation to the enterprises’ activities.

Therefore, it should be concluded in the context of the OECD Guidelines that the Company did follow the recommendation specified in Chapter II “General principles”, A, in particular point 1 which states that: “Enterprises should contribute to economic, environmental and social progress with a view to achieving sustainable development”, and in Chapter III “Disclosure, A, point 4 which states that: “Enterprises should apply high quality standards for accounting, and financial as well as non-financial disclosure, including environmental and social reporting where they exist. (...)”.

Furthermore, it should be noted that the Company did recognize the significance of the provisions of Chapter IV “Human Rights” and took actions to seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship.

It should also be pointed to the change in the Company’s approach to the matters discussed in Chapter VI “Environment” which states that “in particular, enterprises should continually seek to improve corporate environmental performance, at the level of the enterprise and, where appropriate, of its supply chain, by encouraging such activities as: development and provision of products or services that have no undue environmental impacts; are safe in their intended use; reduce greenhouse gas emissions; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely”.

The result of the Parties’ dialogue which was achieved in this proceeding, in particular on the disclosure of non-financial information, may also have a significant educational value for other Polish insurance holdings or financial enterprises in a broader sense. This is significant mainly in the light of recommendations and regulations on responsible business conduct in the financial sector, which are elaborated internationally. In particular, this refers to the regulations of the European Union on sustainable finance which will introduce new requirements concerning the approach of financial enterprises to consider environmental matters, in particular the impact on climate change.

To sum up, the OECD NCP assesses that the conducted proceeding brought a solution which is satisfactory for the Parties thereto. The recommendation which may be derived from the proceeding for other potential proceedings in Poland and in other countries in future refers to the Parties’ openness to dialogue and to the correct understanding of the recommendations formulated in the OECD Guidelines for Multinational Enterprises which are an international standard of responsible business conduct.