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Maciej Żenkiewicz*
Universidad Externado de Colombia
Agnieszka Smoleńska**
Nicolaus Copernicus University in Toruń

OPERATIONALIZING THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS. POLISH AND ITALIAN STEPS TO ADOPT NATIONAL ACTION PLAN

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La strategia polacca e italiana in materia di attuazione dei principi guida delle Nazioni Unite su imprese e diritti umani a confront. Il presente articolo affronta la questione dell'attuazione delle «Linee guida dell'ONU per l'economia e i diritti dell'uomo» tramite redazione di un piano d'azione nazionale (PAN) in Polania e Italia. Le Nazioni Unite hanno lottato in passato per colmare il divario nel diritto internazionale e trovare una risposta alla domanda: come imporre obblighi di diritti umani alle società? Dopo diversi tentativi falliti di creare standard internazionali, il cambiamento è avvenuto nel 2005, quando John Ruggie è stato nominato rappresentante speciale dell'ONU per l'economia e i diritti dell'uomo. Nel 2011, le attività condotte dal professor Ruggie sono sfociate nelle «Linee guida per l'economia e i diritti dell'uomo» che vengono lentamente adottate dagli Stati sotto forma di piani d'azione nazionali. L'obiettivo di questo contributo è quello di analizzare e confrontare il PAN adottato nel dicembre 2016 in Italia e il progetto del PAN polacco, che sarà probabilmente attuato nel 2017. In base alle nostre

* Maciej Żenkiewicz – Universidad Externado de Colombia.
** Agnieszka Smoleńska – law graduate (Nicolaus Copernicus University in Toruń) and human rights activist.

osservazioni, concludiamo che entrambi i PAN non dispongono di proposte costruttive e sono caratterizzati da una certa vaghezza. Il tempo mostrerà in che misura e in che modo entrambi i governi promuoveranno le loro proposte non vincolanti.

Parola chiave: attuazione dei principi guida; Nazioni Unite; umani a confront.

Wytyczne ONZ dotyczące Biznesu i Praw Człowieka – implementacja Krajowych Planów Działania przez Polskę i Włochy. Artykuł skupia się na praktycznych metodach operacjonalizacji Wytycznych ONZ dotyczących Biznesu i Praw Człowieka poprzez implementację Krajowych Planów Działania przez Polskę i Włochy. Przez dekady ONZ usiłowała wypełnić lukę w prawie międzynarodowym i znaleźć odpowiedź na pytanie: jak zobowiązać przedsiębiorstwa do przestrzegania praw człowieka. Po wielu nieskutecznych próbach stworzenia międzynarodowych standardów w tym zakresie, w 2005 roku wraz z wyznaczeniem Johna Ruggie'go na Specjalnego Przedstawiciela Sekretarza Generalnego ONZ ds. Biznesu i Praw Człowieka, nadeszła zmiana. W 2011 roku prace zaowocowały stworzeniem Wytycznych ONZ dotyczących Biznesu i Praw Człowieka, do przestrzegania których państwa zobowiązują się poprzez wdrażanie Krajowych Planów Działania. Celem artykuły jest analiza i porównanie włoskiego KPD, przyjętego w grudniu 2016 roku, i polskiego projektu KPD, który prawdopodobnie zostanie przyjęty jeszcze w 2017 roku. Bazując na wynikach badań, Autorzy stwierdzają, że oba KPD cechuje niejasność i brakuje w nich konstruktywnych propozycji.

Słowa kluczowe: Wytyczne ONZ dotyczące Biznesu i Praw Człowieka; ONZ; prawa człowieka; Krajowe Plany Działania.

1. INTRODUCTION

The question of responsibility of multinational corporations (MNC's) for human rights abuses is still a hotly debated issue today[1]. However, the core problem arises from the question whether a MNC should be responsible for violations of human rights obligations because the necessity to regulate its actions not only on national, but also on international plane, is no longer challenged[2]. Still, the problem remains how to effectively impose human rights obligations on

[1] L.C. Backer, *Regulating Multinational Corporations: Trends, Challenges, and Opportunities*, „Brown Journal of World Affairs", vol. 22 issue 1, pp. 153–173.

[2] See C. Branson, *Business and Human Rights: the New Global Consensus?*, „Flinders Law Journal" 2014, vol. 16, p. 187; S. Ratner, *Corporations and Human Rights: A Theory of Legal Responsibility*, „Yale Law Journal" 2001–2002, Vol. 111.

companies. Should this be done only by national legislation, voluntary code of conducts, regulations of international organizations, international non-binding initiatives, or by binding obligations imposed by treaty?[3]

There have been various attempts to deal with the issue of the multinational corporations and human rights, on different levels. Various international or non-government organizations have addressed that issue[4]. However, the most important and prominent initiatives were undertaken within the UN[5]. An important UN initiative regarding business and Human Rights is the UN Global Compact, a voluntary framework for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, the environment and anti-corruption[6]. But the UN also tried to develop more concrete and binding obligations. The UN tried to adopt a code of conduct for transnational corporations in the 1970s and 1980s, but failed to do so. The UN Commission on Transnational Corporations had been preparing the draft United Nations Code of Conduct for Transnational Corporations since 1977, but its last draft, completed in 1990, was never concluded[7]. Then, a new attempt was made in 1998[8], resulting in the revised draft of the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, adopted by the Working Group and unanimously approved by the Sub-Commission in its resolution 2003/16 of 14 August 2003. Even though the Norms were transmitted to the Commission on Human Rights, there were no serious steps undertaken to adopt them in the form of a treaty, due to "the lack of political will to adopt a truly global instrument on business and human rights"[9]. However, a new development regarding that issue occurred in

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[3] See J. Nolan, *Refining the Rules of the Game: The Corporate Responsibility to Respect Human Rights*, „Utrecht Journal of International and European Law" 2014, vol. 30, p. 20.

[4] *Inter alia* OECD, Kimberley Process, the European Commission or International Organisation for Standardisation (ISO).

[5] See P. Feeney, *Business and Human Rights: The Struggle for Accountability in the UN and the Future Direction of the Advocacy Agenda*, „International Law on Human Rights" 2009, vol. 11; M. Żenkiewicz, *Human Rights Violations by Multinational Corporations and UN Initiatives*, „Review of International Law and Politics" 2016, vol. 12, issue 1, pp. 121–160.

[6] http://www.unglobalcompact.org/AboutTheGC/index.html, (1.06.2017).

[7] D. Weissbrodt, M. Kruger, *Human Rights Responsibilities of Business as Non-State Actors*, [in:] P. Alston, ed., Non-State Actors and Human rights, ed. P. Alston, Oxford 2006, p. 319.

[8] On 20 August 1998, the Sub-Commission on the Promotion and Protection of Human Rights established working group of the Sub-Commission to prepare the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights. See UN Doc. E/CN.4/Sub.2/1998/45 (1998).

[9] P. Feeney, *Business and Human Rights: The Struggle for Accountability in the UN and the Future Direction of the Advocacy Agenda*, „International Law on Human Rights" 2009, vol. 11, p. 165.

2014, when a new open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights was established by the Human Rights Council in its Resolution A/HRC/RES/26/9 on 26 June 2014. That intergovernmental working group once again turned its focus towards the internationally binding instrument – such as the Norms. The work of that group is still in progress, but some fear that "it is entirely possible – even predictable – that a similar [like the Norms] fate will greet any new mandatory approach"[10].

For sure, all of those initiatives helped to develop responsibility of MNC on the different levels, but none of them has addressed the issue in a comprehensive and ultimate manner. Also, for an issue of business and human rights the crucial feature is the absence on any 'hard' direct corporate responsibility in international law[11].

In that rather heterogeneous group of initiatives, one of the newest and the most prominent is the work of John Ruggie, Special Representative of the Secretary-General (SGSR) on the issue of human rights and transnational corporations and other business enterprises[12], followed by the work of the Working Group (UNWG).

In 2004, the Commission on Human Rights requested the Office of the High Commissioner on Human Rights to prepare the report about the existing legal initiative and standards[13], and after considering that report[14] adopted the resolution, requesting the Secretary General to appoint a Special Representative (SGSR) on this issue[15]. Briefly speaking, during his mandate[16] the SGSR 'were to' 'identify and clarify' existing standards and practices regarding corporate responsibility

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[10] A. Grear, B.H. Weston, *The Betrayal of Human Rights and the Urgency of Universal Corporate Accountability: Reflections on a Post-Kiobel Lawscape*, „Human Rights Law Review" 2015, vol. 15, p. 42.

[11] See E. Brabandere, *Non-State actors and human rights: corporate responsibility and the attempts to formalize the role of corporations as participants in the international legal system*, [in:] Participants in the International Legal System, Multiple perspectives on non-state actors in international law, ed. Jean d'Aspremont, London/New York 2011, p. 274.

[12] See generally: D. Bilchitz, *The Ruggie Framework: an Adequate Rubric for Corporate Human Rights Obligations?*, „SUR International Journal on Human Rights" 2010, vol. 12, p. 199.

[13] ECOSOC, Commission on Human Rights, Sub-Comm. On the Promotion and Protection of Human Rights, Responsibilities of Transnational Corporations and Related Business Enterprises with Regard to Human Rights, UN doc. E/CN.4/2004 /L.73/Rev.1

[14] Report Of The United Nations High Commissioner On Human Rights On The Responsibilities Of Transnational Corporations And Related Business Enterprises With Regard To Human Rights, UN Doc. E/CN.4/2005/91, 15 February 2005.

[15] See OHCHR Human Rights Resolution 2005/69, available at: http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2005-69.doc, (1.06.2017).

[16] Which was prolonged twice and last for 6 years (2005–2011).

and accountability for transnational corporations and other business enterprises with regard to human rights[17]. Secondly, he presented the framework based on three pillars: the State duty to protect against human rights abuses by third parties, the corporate responsibility to respect human rights, and the need for greater access by victims to effective remedy[18]. Thirdly, the SGSR "operationalized" the Framework and provided concrete and practical recommendations for its implementation, in the form of the "Guiding Principles"[19]. John Ruggie highlighted many times that in order to address the problem of business and human rights, there is no mythical 'silver bullet', one solution to serve the purpose[20]. Instead of depending on one solution, e.g. a binding treaty, he proposed his three pillars' attitude, which can be described as polycentric governance system[21].

2. WORKING GROUP

Even if the mandate of John Ruggie was not prolonged, his work as the SGSR has not been abandoned. As an aftermath of his activity, the Human Rights Council has established the UN Working Group on human rights and transnational corporation and other business enterprises[22]. This group of five experts has

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[17] See The Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, "Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts", Human Rights Council, A/HRC/4/035, 9 February 2007.

[18] The Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, "Protect, Respect and Remedy: a Framework for Business and Human Rights", A/HRC/8/5, 7 April 2008, [hereinafter the Framework], see F. Stevelman, *Global Finance, Multinationals and Human Rights: With Commentary on Backer's Critique of the 2008 Report by John Ruggie*, „Santa Clara Journal of International Law" 2011, vol. 9, p. 101.

[19] The Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations "protect, pespect and Remedy" Framework*, Human Rights Council, (Seventeenth session), A/HRC/17/31, 21 March 2011, [hereinafter the Guiding Principles or the GP], see Introduction to the Guiding Principles.

[20] E.g. see chapter 2 "No silver bullet" in: J. Ruggie, *Just Business, Multinational Corporations and Human Rights,* New York 2013, p. 251.

[21] See. J.D. Prenkert, S.J. Shackelford, Business, *Human Rights, and the Promise of Polycentricity*, „Vanderbilt Journal of Transnationa Law" 2014, vol. 47, p. 451; L.C. Backer, *Moving Forward the UN Guiding Principles for Business and Human Rights: Between Enterprise Social Norm, State Domestic Legal Orreds, and the Treaty Law That Might Bind Them All*, „Fordham International Law Journal" 2015, vol. 38, p. 457.

[22] Human Rights Council, Human Rights and transnational corporations and other business

been established for a three-year period with tasks such as: dissemination, promoting implementation, best practice identification, capacity-building, country visits, recommendations on access to remedies, dialogue, and cooperation with relevant actors. The UNWG, in the words of one of its experts, "helps to stop the slide of the GPs into insignificance and the strategy adopted by the UNWG to achieve its mandate helps to prevent this risk"[23]. The activity of the UNWG in general shares the attitude and follows the work of John Ruggie. The main task of the UNWG is to promote and work on implementation of the Ruggie's framework. This task is conducted by organizing sessions and forums, submitting reports to the Human Rights Council and the General Assembly, and also by undertaking country visits to assess the progress and challenges associated with its mandates. Also, one of the most important activities of the UNWG is to promote the framework of National Action Plans (NAPs), which "are understood to offer a tool for governments to articulate priorities and coordinate the implementations of the GPs"[24].

It is important to add that the European State's actions toward the adoption of the SGSR framework, especially NAPs are coordinated and galvanized by the EU. The European Commission of the European Union in 2011 adopted a Communication on Corporate Social Responsibility and calls the States to adopt a National Action Plan for the implementation of the Guiding Principles[25]. After that, the EU adopted *Action Plan on Human Rights and Democracy for the*

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enterprises, A/HRC/17/L.17/Rev.1, 2011. This UNWG should be distinguished from the other HRC Working Group, established at its 26th session, on 26 June 2014, by the resolution A/HRC/RES/26/9 titled: "Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights". In that resolution HRC has been decided "to establish an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, whose mandate shall be to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises." As it can be seen, two working groups of HRC share the same name, differenciated only by the 'intergovernmental' word. But the main task of the intergovernental working group is to follow the work of the working group of the Sub-Commission which prepare the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights

[23] M. K. Addo, *The Reality of the United Nations Guiding Principles on Business and Human Rights*, „Human Rights Law Review" 2014, vol. 14, p. 137.

[24] L.C. Backer, *Moving Forward the UN Guiding Principles for Business and Human Rights: Between Enterprise Social Norm, State Domestic Legal Order, and the Treaty Law that Might Bind Them All*, „Fordham International Law Journal" 2015, vol. 38, p. 469.

[25] See European Commission, A Renewed EU Strategy 2011–2014 for Corporate Social Responsibility, 25 October 2011, COM (2011) 681, available at: http://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com(2011)0681_/com_com(2011)0681_en.pdf (1.06.2017); see more regarding the EU and MNC: Alexandra Gatto, *Multinational Enterprises*

period 2015-2019[26], in which, among other obligations, Member States declared to „develop and implement National Action Plans on the implementation of the UN Guiding principles or integrate the UN Guiding Principles in national CSR Strategies"[27] by 2017. So far, 10 European States have adopted the Plan[28], among others Italy, and many more States are in process of adopting NAPs, *inter alia* Poland.

3. NATIONAL ACTIONS PLAN

According to the Guidance on National Action Plans on Business and Human Rights issued by the UNWG[29], NAPs should be perceived as an „evolving policy strategy developed by a State to protect against adverse human rights impacts by business enterprises in conformity with the UN Guiding Principles on Business and Human Rights". As State duties relate to the first and the third pillar of the Framework, NAPs should offer governments a tool in order to precisely articulate their priorities and future actions to implement the Guiding Principles. However, in order to facilitate it, according to the UNWG Guidance on NAPs and DIHR/ICAR toolkit[30], states should conduct a National Baseline Assessment (NBA) before starting to formulate their NAPs. The NBA is basically a study of current conditions in the country which can be later used to compare initial status with future achievements[31]. In other words, the NBA con-

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and Human Rights, Obligations under EU Law and International Law, (Cheltenham, Northampton: Edward Elgar, 2011).

[26] Council Conclusions on the Action Plan on Human Rights and Democracy 2015–2019, Foreign Affairs Council, 20 July 2015, 10897/15; Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/action-plan-on-human-rights-and-democracy-2015–2019_en.pdf (1.06.2017)

[27] See p. 17 of the Council Conclusions.

[28] Denmark, Finland, Italy, Lithuania, Netherlands, Spain and UK.

[29] Guidance on National Action Plans on Business and Human Rights, UN Working Group on Business and Human Rights, Geneve 2016, p. i. (herenafter: Guidance on NAPs); Text available at: http://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf

[30] In 2014 The Danish Institute for Human Rights (DIHR) and International Corporate Accountability Roundtable (ICAR) issued the Toolkit for the Development, Implementation and Review of State Commitments to Business and Human Rights Framework, (hereinafter DIHR/ICAR Toolkit). The aim of the project was to develop guidance for the governments and other stakeholders participating in NAPs creation. Available at: https://www.icar.ngo/about/publications/ (1.06.2017)

[31] However, some of the NAPs adopted, fail to include NBA within its text. Such an attitude is perceived as udesireable. See Switzerland's NAP and criticism on the lack of NBA: Swiss

stitutes a reference point that helps to assess the impact of all actions taken by the state.[32]

The UNWG considers four essential criteria to be indispensable for effective NAPs[33]. First, NAPs need to be founded on the UNGPs. Second, NAPs need to be context-specific and address to country's actual and potential business-related human rights abuses. Third, NAPs need to be developed in inclusive and transparent processes. Fourth, NAP processes need to be regularly reviewed and updated.

4. POLISH ACTIONS TO ADOPT NAP AND ASSESSMENT

On 15 December 2016 Poland released its draft National Action Plan on Business and Human Rights for consultation[34]. According to the Polish government, the final version of the NAP will be „possibly adopted by the government in the first half of the 2017"[35]. For now, it is difficult to predict if the government will adopt the NAP within that period of time. The draft contains mostly continuous text with a few headlines, making it difficult to pick up any first-glance information. Obviously, every document should be treated holistically, but the same message can be conveyed in a more concise maner. According to the document, a thorough analysis of the Polish legal framework and practise enabled to determine the burning issues in the context of business and human rights. The question arises whether the authors did not focus too much on the analysis itself, forgetting to clearly formulate the solutions.

As it was highlighted above, before drafting a NAP it is crucial for a state to conduct a NBA, which can serve as a reference point that helps to assess the impact of all actions taken. However, the whole Polish draft resembles a badly structured NBA rather than a NAP. All three parts dedicated to UNGP pillars constitute mostly a presentation of legal *status quo*[36]. To some extent it is acceptable when the Polish Government refers to the recent achievements such as

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Coalition for Corporate Justice, Report dated 9 December 2016 on Switzerland's strategy for the implementation of the UN Guiding Principles on Business and Human Rights; p. 9.

[32] See p. 17 of the DIHR/ICAR Toolkit.

[33] See p. 3 of the Guidance on NAP.

[34] Polish NAP draft; Text available at: http://konsultacje.gov.pl/node/4377, (1.06.2017).

[35] http://www.konsultacje.gov.pl/node/4371, (1.06.2017).

[36] This issue was also raised by The All-Poland Alliance of Trade Unions (OPZZ) and Polish Institute of Business and Human Rights (PIBHR) in their comments regarding Polish draft. Available at: http://www.opzz.org.pl/-/opzz-trzeba-poprawic-krajowy-plan-dzialania; (1.06.2017).

implementation of the Plan on Sustainable Development from 2016 or the EU Non-Financial Reporting Directive from 2014. However, it is highly questionable if the mechanism guaranteed by the Civil Code of 1964, largely quoted in a chapter dedicated to the third UNGP pillar, may be considered as an action proposal simply because it does not introduce any novelty. The same comment applies to the references about institutions such as National Labour Inspectorate or employment agencies and their broad competences. It has not been indicated how this institutional system is going to be improved or extended. PIBHR argues that such introduction to the existing regulations may help national administration understand the issue of business and human rights in the Polish context, but notices that the draft is still missing constructive proposals.[37]

By scrutiny of the section 6.4 of the DIHR/ICAR Toolkit on scope, content and priorities of NAPS, one learns that a model NAP should comprise action points that are specific, measurable, achievable, relevant, and time-specific.[38] Unfortunately, it is an Achilles heel of the Polish proposal. In the section on investment strategy and model investor profile, the government declares support for the investors who contribute not only to the economic growth, but also to the social, environmental and labour market culture development. Despite such bold statement, no specific plans in support of that initiative have been introduced in the document.

Authors of the Polish NAP draft indeed analyse the law, but rather poorly identify the gaps, hence if the reader eventually finds the concrete proposals, he or she may find it difficult to assess to which problem they are actually responding to. A good example is the proposal to unify standards related to administrative penalties as a form of realization of state's duty to protect. The authors indicate that due to the lack of general principles regulating penalties imposition in the Polish administrative procedure, entrepreneurs are exposed to excessive financial penalties. The solution, however legitimate, does not correspond to any of the principles stated in the UNGP.

Moreover, PIBHR and OPZZ have raised objections regarding the monitoring mechanisms proposed by the Polish draft. The Institute emphasizes that they are insufficient, and some of them, namely workshops and seminars, have been wrongly assigned to this category. PIBHR suggests that these two means of training should be contained in the previous section, dedicated to education.[39] Additionally, OPZZ

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[37] http://pihrb.org/13-12-2016-konsultacje-spoleczne-krajowego-planu-dzialan-w-obszarze-biznesu-i-praw-czlowieka-rozpoczete/ ; (1.06.2017).

[38] See p. 46, sec. 6.4 of the DIHR/ICAR Toolkit.

[39] *Ibidem*.

notices that besides public administration the government should engage trade unions and non-governmental organizations in the monitoring processes.[40]

5. ITALIAN ACTIONS TO ADOPT NAP AND ASSESSMENT

The Italian NAP was officially adopted on 1st December 2016[41], after the period of public consultations (July 27 – September 10). It is noticeable that the document is better organized than the Polish draft. After the statement of commitment and brief introduction to the background and context, all national priorities are set. Italy focuses on 6 main priorities, and declares that they will be subject to a regular review and update by the steering group. What draws attention is that the word 'promotion' appears in four out of six priorities[42]. It gives an impression of vagueness and imprecision that returns frequently in the further parts of the document.

On September 2016, Human Rights International Corner, European Coalition for Corporate Justice (ECCJ), MANI TESE and International Federation for Human Rights (FIDH) submitted comments to the Italian NAP's proposal as a contribution to the public consultations[43]. They noticed that Italy is to promote human rights due diligence processes, and they suggest that in accordance with the UNGPs related provisions, it would be more appropriate to introduce a mandatory Human Rights Due Diligence in the Italian legislation[44]. Recently, such a solution has been adopted in France[45] and it is a recommended model to follow. Even though the objection was raised before the issuance of the official NAP, Italy did not modify this priority. There is another comment regarding voluntarism in the Italian NAP. In the chapter titled Government Expectations Towards Business one learns that the Italian Government relies on voluntary approaches

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[40] http://www.opzz.org.pl/-/opzz-trzeba-poprawic-krajowy-plan-dzialania; (1.06.2017)

[41] Italian NAP; Text available at: http://www.cidu.esteri.it/resource/2016/12/49117_f_NAPBHRENGFINALEDEC152017.pdf; (1.06.2017). It has to be duly noted, that the document under scrutiny, unlike the Polish draft discussed above, is the final version of the NAP, officialy endorsed by the government.

[42] See p. 7 of the Italian NAP.

[43] Contribution to the Italian NAP on Business and Human Rights 2016–2021; Available at: https://www.fidh.org/IMG/pdf/comments_to_italian_nap_2016.pdf (1.06..2017).

[44] See also recomendations regarding HR Due Diligence in: M. Bordignon, G.M. Cremonesi, The UNGPs Third Pillar in the Italian Action Plan: an assessment of the existing NAPs and of the barriers to the Italian judicial system. Available at: https://business-humanrights.org. (1.06.2017).

[45] http://www.csreurope.org/france-adopts-law-imposing-due-diligence-multinationals#.WR2iUGjyjIU; (1.06.2017).

of human rights respect and promotion by business. Commenting organisations suggest that the NAP should be based on regulatory measures as the most effective method of bridging the existing gaps.[46] Italy notices the importance of mandatory reporting initiatives such as the EU Non-Financial Reporting Directive, but does not recommend reporting guidelines and standards which would facilitate disclosure process[47]. It appears that Italy relies merely on the existence of the documents, but does not indicate what concrete actions it will take in order to increase their efficacy.

In chapter IV part A, concerning foundational principles, one can find a few promising declarations of the Italian government. The first one concerns establishment of an independent National Human Rights Institution in adherence with the 1993 Paris Principles[48], the second, contained in the same paragraph, the approval of the draft law which is to introduce the crime of torture in the Italian Penal Code. Even though these proposed changes were well-received in the public consultations, the FIDH and other commenting organizations emphasized that the government should provide more specific information on timing and methodologies of the monitoring process.[49] Another declaration is to conduct a comprehensive overview and monitoring of the implementation of international and regional human rights binding instruments and to engage in awareness raising through the means of educational programmes and cultural events such as art exhibitions and film retrospectives. Finally, the government wants to strengthen cooperation with trade union organizations, human rights defenders, non-governmental organizations and civil society, but no specific methods are proposed in this regard either.

Chapter IV part B contains operational principles. This part, to a certain extent, meets the standard set by the DIHR/ICAR Toolkit regarding the scope and content of the NAP. The authors very often refer to the ongoing initiatives and recently adopted laws. However, all these are linked to the planned measures and in such case it is reasonable to introduce them briefly. The actions proposed are not specific and based mainly on 'promotion' and 'strengthening' activities. Nevertheless, they do not need to be vague. For instance, the culture of human rights protection in business action is to be promoted through cooperation with universities and human rights respect is to be fostered among small and medium-

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[46] See p. 2 of the Contribution to the Italian NAP on Business and Human Rights 2016-2021.

[47] See p. 16 of the Italian NAP.

[48] Paris Principles were adopted by the UN General Assembly on 20 December 1993. It is a set of international standards that regulate status, role and functions of national human rights institutions (NHRIs).

[49] See p. 3 of the Contribution to the Italian NAP on Business and Human Rights 2016–2021.

sized enterprises through the dissemination of self-assessment toolkits. As stated by DIHR and ICAR, actions should be concrete enough to ensure that the effects can be measured.[50] 'Promotion' is hardly measurable, but hours of workshops held at the universities certainly are.

The Italian NAP constitutes a summary of ongoing processes and commitments which are hard to measure and monitor, but it also includes positive elements, as it was duly noted by the ECCJ. The ECCJ especially appreciates the idea of a comprehensive review of the domestic legal framework and the planned measures related to the realization of the third pillar. The organization emphasizes that the Italian NAP, despite its flaws, may initiate a dialogue in Italy and begin a period of stronger actions in the context of business and human rights.[51]

6. TABLE

Basing on the DIHR/ICAR Toolkit and the UNWG Guidance on NAPs, it was possible to create a table which sums up the criteria set out by the international community and present by contrast to what extent Polish and Italian documents meet the standards.

Standards set by UNWG and/ or DIHR/ICAR	Italian NAP	Polish NAP draft
NAP process	– Existing policies analysed and gaps defined in the document entitled The Foundations of the Italian Action Plan on the UNGP on Business and Human Rights – Draft published and consulted with several stakeholders, – Official version developed by the main ministries and other public entities concerned, – First planned review: 2018.	– Relevant ministries involved in the Polish legal framework analysis – Establishment of Social Dialogue Council as a consultation forum for all stakeholders, – Draft published and consulted with several stakeholders.
UNWG: I. Initiation II. Assessment and consultation III. Drafting of initial NAP IV. Implementation V. Update		

[50] See p. 46, sec. 6.4.6 of the DIHR/ICAR Toolkit.

[51] http://corporatejustice.org/news/374-switzerland-italy-germany-and-the-us-release-business-and-human-rights-national-action-plans ; (1.06.2017).

Structure UNWG: sections recommended or inclusion: I. Statement of commitment to implementing UNGPs II. Background and context III. Government expectation IV. Government response V. Monitoring and update	– In accordance with Guidance on NAP on Business and Human Rights by UN Working Group; – Clear division into five sections; – Table of contents included.	– Chaotic structure, unclear division; – Descriptive character; – No correspondence with UNWG Guidance, – No table of contents.
Scope of the NAP DIHR/ICAR: NAP should cover: – the full scope of the UNGP, – the full scope of the state's jurisdiction – international and regional organizations and standards	– Addresses the full scope of the UNGP; – Extends to the interactions with organizations such as OECD, ILO, UNICEF; – Extends to the matters outside the State's territorial jurisdiction:	– Does not address the full scope of the UNGP; questionable contribution to the realization of the UNGP; – Cooperation within the EU; – Extends to the matters outside the State's territorial jurisdiction.
Addressing challenges DIHR/ICAR: the most serious business-related human rights abuses prioritized; particular focus on the most vulnerable and excluded groups UNWG: priority areas identification, strategic orientation of their approach to business and human rights	– Sets out 6 national priorities; – Most serious human rights abuses addressed: – different forms of exploitation, – forced labour, – child labour, – slavery, – irregular work, – discrimination. – Particular focus on migrants and victims of trafficking, – Significant vagueness.	– No priorities formulated, – The document does not present the results of human rights situation analysis – Does not indicate loopholes in the legal framework
Comprised action points DIHR/ICAR: Action points should be: – specific; measurable; achievable; relevant; time-specific.	– Contains formulated action proposals; – Prevalent part of action proposals vague, hardly measurable, achievable and time specific, – Generally action proposals linked to the UNGPs	– Action proposals scattered throughout the document; – Prevalent part of action proposals does not answer the UNGP challenges.

Character of measures UNWG: smart mix of mandatory and voluntary, international and national measures	– Relies on voluntary approaches of human rights respect and promotion by business; – Voluntarism prevails mandatory measures.	– Missing constructive proposals.
Framework for monitoring UNWG: monitoring processes and mechanisms specified, recommends to establish multi-stakeholder monitoring group DIHR/ICAR: monitoring and reporting conducted on a periodic basis	– Establishes the Working Group on Business and Human Rights (GLIDU); – Periodic monitoring; – Dissemination of the NAP to all relevant stakeholders.	– Emphasizes that a cyclical update and review require wide cooperation of several actors, but they have been not specified; – Monitoring realized only through the analysis of the annual report by OECD National Contact Point.
Highlights	– Establishment of an independent National Human Rights Institution – Introducing the crime of torture in the Penal Code Monitoring of the implementation of human rights binding instruments – Raising awareness through educational programmes and cultural event – Dissemination of self-assessment toolkits among small and medium-sized enterprises	– Workshops on UNGP for the Ministry of Foreign Affairs' employees assigned to diplomatic outposts – Recognized the importance of introducing whistle-blowers protection, – Overall misunderstanding of the NAP concept.

7. CONCLUSIONS

The main aim of the article is to critically assess Polish draft and Italian NAP. But in the first place, it has to be highlighted that the Polish and Italian actions to adopt NAP deserve support and appreciation. Even if some criticism were to be raised, it should not overshadow the general positive perception of the actions taken by governments, who are eager to commit and support human rights obligations of business.

Our criticism of NAPs, of its imperfect structure and contents, does not mean that the principles of the UNGP will not be observed, or that those actions are preordained to be ineffective. What is of the greatest importance is its ap-

plication and attitude of the state to fulfil it. Therefore, even a perfectly shaped NAP does not automatically guarantee full respect of human rights obligations. On the other hand, chaoticallly or poorly written NAP – if taken seriously by the government – can be very effective. There are plenty of examples of rules and initiatives, which were supposed to be effective tool to regulate business and human rights, but turn to be corrupted by the parties who were only interested in its PR, and not willing to seriously promote human rights and conforming to set of rulet only symbolically[52].

Our analysis reveals the overall tendency of Polish and Italian governments to reach mainly for voluntary solutions, instead of trying to balance them with legally binding measures as recommended by the UNWG. Time will show to what extent and how effectively both governments will promote their non-binding proposals. Perhaps it will turn out that voluntarism is indeed a good first step to start a conversation about human rights in business and companies, if encouraged, will start to open towards further regulations. Nevertheless, it is essential to avoid the vagueness which characterises both documents analyzed in this article. Imprecision gives an impression that the governments do not want, or do not know how to address a particular problem. That is why it is important to consult NAPs and cooperate with civic society organizations which, on the one hand, demand clear answers and model solutions, which by several reasons cannot be achieved, but also constantly push the limits and put the government under pressure to improve and engage more. The Polish government still has a chance to analyze and fix some of the flaws noticed during public consultations, but it is surely a long way to go. Questions on what the NAP is and what it can change must be answered once again.

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[52] Symbolic conformity (or paper compliance) can be described as a situation when "organizations under pressure to adopt particular structures or procedures may opt to respond in a ceremonial manner, making changes in their formal structures to signal conformity but then buffering internal units, allowing them to operate independent of these pressures. Organizations decouple formal structure from work activity to avoid the detection of inconsistencies and the loss of legitimacy", see: D. Jamali, *MNCs and International Accountability Standards through an Institutional Lens: Evidence of Symbolic Conformity or Decoupling*, „Journal of Business Ethics" 2010, vol. 95, p. 625.

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