

# National Contact Point of Switzerland

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## Initial Assessment

### **Specific Instance regarding the International Ice Hockey Federation submitted by Stowarzyszenie Zawodników Hokeja na Lodzie (Polish Ice Hockey Players Association)**

Berne, July 24, 2019

#### **1 Summary**

This report on the initial assessment produced by the Swiss National Contact Point concludes that the alleged breaches of the OECD Guidelines for Multinational Enterprises raised in the submission are not sufficiently material within the scope of the OECD Guidelines and substantiated to merit further consideration. Therefore, the Swiss NCP does not accept the specific instance and does not offer its good offices to the parties.

#### **2 Submission**

The Swiss National Contact Point (henceforth referred to as "Swiss NCP") received a written submission on 16 January 2019 to consider a specific instance under the OECD Guidelines for Multinational Enterprises (the OECD Guidelines) regarding the International Ice Hockey Federation (henceforth referred to as "IIHF" or "responding party"), which is headquartered in Zurich, Switzerland. The specific instance has been raised by the Stowarzyszenie Zawodników Hokeja na Lodzie (Polish Ice Hockey Players Association) henceforth referred to as "SZHL" or "submitting party".

The submission concerns the IIHF's governance practices linked to its member national federation, the Polish Ice Hockey Federation (PIHF), and an ongoing labour conflict between the PIHF and the Polish ice hockey players associated in the SZHL. According to the submitting party the players were deprived of compensation promised to them by PIHF for training with and playing for the national team (including for playing in tournaments organized under the auspices of the IIHF). They further allege that they were threatened that a refusal to train and play in future tournaments could result in disciplinary action and trigger other, unlawful consequences if they did not comply. According to SZHL, IIHF failed to comply with the OECD Guidelines as it did not develop and apply good corporate governance practices including throughout enterprise groups, self-regulatory practices and management systems that would foster a relationship of confidence and mutual trust between PIHF and the players. The submitting party states that the IIHF has been informed that the players were unlawfully denied their promised compensations and intimidated to refrain from protest and accept new terms of cooperation which were imposed upon them from the position of power and were never negotiated with them by PIHF. According to SZHL, IIHF did not act on this notification or at least did not inform the interested players about any action on its part. Furthermore, according to the submitting party, PIHF suffers from systemic mismanagement and IIHF does not appear to have done anything meaningful about it over the years. Therefore, according to SZHL, IIHF failed to comply with the OECD Guidelines as it did not

address violations of players' labour and human rights, with which it (through PIHF as a local entity) is directly involved, or which at least are directly linked to its business operations. Specific rights mentioned in the submission include the right to freely choose and pursue a profession, the right to fair remuneration and the right not to be subject to forced labour or economic exploitation.

The submitting party states that the players complained to the responding party on 28 October 2018 about the conduct of PIHF and requested IIHF's assistance in resolving their conflict with PIHF. According to SZHL, IIHF has hitherto neither responded nor reacted to the complaint.

### **3 Alleged Violations of the OECD Guidelines**

In the submission, SZHL claims the violation of the following recommendations of the OECD Guidelines:

#### 3.1 Failure to develop and apply good corporate governance practices

The submitting party considers that the responding party has violated the OECD Guidelines by failing to develop and apply good corporate governance practices:

*Chapter II, General Policies:*

*A. Enterprises should:*

*6. Support and uphold good corporate governance principles and develop and apply good corporate governance practices, including throughout enterprise groups.*

*7. Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.*

#### 3.2 Failure to prevent or mitigate adverse human rights impacts

The submitting party considers that the responding party has violated the OECD Guidelines by failing to address violations of players' human rights, with which it (through a local entity) is directly involved, or which at least are directly linked to its operations and were reported to it:

*Chapter II, General Policies:*

*A. Enterprises should:*

*2. Respect the internationally recognized human rights of those affected by their activities.*

*11. Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.*

*Chapter IV, Human Rights:*

*[...] Enterprises should within the framework of internationally recognized human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:*

*1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.*

2. *Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.*

3. *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, even if they do not contribute to those impacts.*

6. *Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.*

#### 3.4 Failure to ensure the non-existence of forced or compulsory labour in its operations

According to the submitting party, the responding party has violated the OECD Guidelines by failing to ensure that forced or compulsory labour does not exist in its operations and by causing or contributing to adverse impacts, and not address such impacts when they occur. Furthermore, it alleges that the responding party did not promote consultation and co-operation with workers and their representatives on matters of mutual concerns.

#### *Chapter II, General Policies:*

##### *A. Enterprises should:*

11. *Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.*

#### *Chapter V, Employment and Industrial Relations*

*Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards:*

1. d) *Contribute to the elimination of all forms of forced or compulsory labour and take adequate steps to ensure that forced or compulsory labour does not exist in their operations.*

3. *Promote consultation and co-operation between employers and workers and their representatives on matters of mutual concerns.*

#### **4 Expectations of the submitting party regarding the Swiss NCP proceedings**

Since October 2018, the submitting party has engaged with the responding party and sought assistance in resolving their conflict with the PIHF. However, in the view of the submitting party, IIHF has not responded to their requests. Therefore the submitting party requests that the Swiss NCP offers its good offices for mediation between the responding and the submitting party. According to SZHL the mediation should have the following purpose:

- Discuss ways in which the particular breaches of players rights complained of could be effectively remedied in the case at hand;
- Discuss the implementation of governance measures which would prevent such breaches from reoccurring in the future and which would in particular:
  - a) Promote consultation and co-operation between IIHF and PIHF as well as the IIHF and the players and their representatives on matters of mutual concern;
  - b) Ensure that good governance principles are supported and upheld and good governance practices are developed throughout IIHF's structure, including in PIHF, and players' fundamental rights and freedoms are respected and promoted.

## 5 Statement of the responding party

On 11 February 2019, the responding party submitted a written statement to the Swiss NCP concerning the issues raised in this specific instance. In its letter, the responding party first noted, that if agreed between the PIHF and the SZHL, IIHF is willing to act as a mediator over this matter. However without such agreement, IIHF has no authority over this matter. Second, IIHF stated that based on the following reasons it does not consider the Swiss NCP to be competent over the issues submitted by the SZHL:

1. The OECD Guidelines are not applicable to IIHF as it is not a multinational enterprise and the IIHF's activities in question are not of commercial nature:

a) According to IIHF, it does not comprise entities established in more than one country and does not have a single subsidiary entity located outside of Switzerland. IIHF only has one subsidiary, *IIHF Parkring AG*, which is also registered in the Commercial Register of the Canton of Zurich and solely exists for reasons linked to the building in which IIHF has its offices in Zurich. IIHF further claims that member national associations (MNAs) such as PIHF are not local entities, but completely independent organizations incorporated under the laws of their respective country. The relationship between IIHF and the MNAs is of contractual nature whereby the MNAs pay a yearly membership fee to IIHF. The sole form of control and legal remedy that IIHF has against a MNA is the suspension or expulsion of an MNA for violations of IIHF's Statutes and Bylaws.

b) Furthermore, the responding party stated, that its activities in question are of a non-commercial nature. It makes reference to the Initial Assessment concerning FIFA and ADHRB published by the Swiss NCP.<sup>1</sup> Similarly, the relationship between IIHF and the PIHF are not of a commercial nature but is rather solely related to IIHF's mission of promoting ice hockey throughout the world<sup>2</sup>.

2. According to the responding party, the issues raised by SZHL do not fall within the scope of the OECD Guidelines as its MNAs are not local entities of the IIHF and the relationship between IIHF and PIHF is of non-commercial nature. Furthermore, IIHF stated that the Polish ice hockey players are not employees of PIHF, and all have full time jobs outside their national team participation whether that be with an ice hockey club or otherwise. Unlike a player's commitment to his club for employment, a player rather plays in the national team to gain the exposure associated with national team competition in order to advance his career. Therefore, the IIHF Statutes do not mandate to pay players for their participation on the national team and IIHF is not aware of any national team, international federation or major event organizer that pays players directly for their participation on the national team or in a respective event. According to IIHF sometimes MNAs or international federations compensate the "releasing club" as they continue to pay players during the time period that they are participating for the national team. IIHF notes that the issue between the players and the PIHF does not involve a breach of an employment contract but rather a breach of an ordinary contract not entitled to the same labour and human rights associated with employment.

3. The claims by the SZHL to state court should be taken into consideration by the Swiss NCP when assessing whether it will pursue the specific instance.

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<sup>1</sup> See National Contact Point of Switzerland, Initial Assessment Specific Instance regarding the Fédération Internationale de Football Association (FIFA) submitted by Americans for Democracy and Human Rights in Bahrain (ADHRB), 17 August 2016, para. 6.c. available at [www.seco.admin.ch/ncp](http://www.seco.admin.ch/ncp) > Information on Specific Cases

<sup>2</sup> IIHF Statute 4

4. Involvement of the Swiss NCP regarding this issue would not contribute to the purpose and effectiveness of the OECD Guidelines: According to IIHF, it indicated to SZHL based on the letter from the latter dated 28 October 2018 that IIHF's Statutes do not provide the possibility for IIHF to act as a mediator between the players and the PIHF in this type of case, and as such, the only possible action by IIHF was to inform the PIHF that the IIHF was aware of the issue. IIHF stated that it sent such letter to PIHF on 12 November 2018. Based on the answer received from the PIHF, IIHF determined that the issue between the SZHL and the PIHF was of contractual nature of a purely national interest, and unless both parties request IIHF to act as a mediator, the IIHF had no jurisdiction.

## **6 The proceedings of the Swiss NCP up to date**

Since the receipt of the submission on 16 January 2019 the Swiss NCP took the following steps:

- Written confirmation to the submitting party to acknowledge receipt of the submission on 22 January 2019.
- Preliminary discussion by phone with the responding party in order to inform it about the submission and explain the Swiss NCP proceedings and forwarding the submission to the responding party on 30 January 2019.
- On 25 January 2019, the Polish NCP was informed by the Swiss NCP regarding the submission.
- On 31 January 2019, according to the Specific Instances Procedure of the Swiss NCP<sup>3</sup> an ad hoc working group was constituted, including representatives from the State Secretariat for Economic Affairs and the Federal Department of Foreign Affairs. This working group is involved in all steps of the procedure of the specific instance.
- On 6 February 2019, the Swiss Embassy in Poland was informed about the submission.
- On 11 February 2019, the Swiss NCP received a written statement by the responding party in response to the submission. The statement was forwarded to the submitting party on 18 February 2019.
- On 18 February and 5 March respectively 27 February 2019, the Secretariat of the Swiss NCP held a phone call with the responding party respectively the submitting party to clarify open questions about the issues raised in the submission and provide further information about the procedure of the specific instance.
- After various consultations, the ad hoc working group held a meeting on 13 March 2019, where it came to the conclusion that the issues raised in the submission do not meet the criteria to accept a specific instance set out in the OECD Guidelines. Based on this decision the draft report on the initial assessment has been drafted.
- According to the NCP's procedure, the Advisory Board of the NCP has been consulted by written procedure on the decision of the ad hoc working group that the submission does not merit further consideration on 13 May 2019. The Advisory Board has raised no objection.
- On 18 June 2019, the NCP sent its draft report on the initial assessment to both parties for comments on possible misrepresentations of factual information. The NCP has taken the comments received into account as far as possible and finalized its report on the initial assessment.

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<sup>3</sup>[www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik\\_Wirtschaftliche\\_Zusammenarbeit/Wirtschaftsbeziehungen/NKP/organisation-und-kontaktaufnahme.html](http://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/NKP/organisation-und-kontaktaufnahme.html)

## 7 Considerations and decision of the Swiss NCP

Based on the Procedural Guidance for the OECD Guidelines<sup>4</sup> and the Specific Instances Procedures of the Swiss NCP<sup>5</sup>, the Swiss NCP has considered the following points in its initial assessment:

### a) Identity of the parties concerned and their interest in the matter

The Swiss NCP comes to the conclusion that the submitting party has provided sufficient information regarding its interest in the issues raised. The submitting party is an association of ice hockey players established in Poland in November 2018. In the notification submitted to the Swiss NCP, SZHL is represented by plenipotentiaries on the basis of the power of attorney dated January 10, 2019. SZHL groups Polish and foreign players and aims to assist them in their professional development and in the pursuit and advancement of their rights in Poland. The submitting party has been in contact with the responding party since 28 October 2018 regarding the issues raised in the submission.

### b) Responsibility of the Swiss NCP

The OECD Guidelines say that a specific instance should be raised in the country in which the alleged issues arise. If this country is not a signatory state of the OECD Guidelines and therefore does not have its own NCP, the issue should be raised in the country where the multinational enterprise has its headquarters.

According to the expectations of the submitting party (see above, paragraph 4), part of the issues to be discussed concern the implementation of good governance measures by IIHF which would prevent the alleged breaches from reoccurring in the future based on the OECD Guidelines. The governance policy of the responding party is based on IIHF's Statutes and Bylaws 2018–2022, and the IIHF's Code of Conduct<sup>6</sup>. The statutes include e.g. the "*Membership Rights and Obligations*" which set out that "*a MNA has to comply fully with the IIHF Statutes, Bylaws, Regulations / Codes and decisions*". This policy is published and implemented under the responsibility of IIHF, which is headquartered in Zürich, Switzerland (see register of commerce of the canton of Zürich)<sup>7</sup>. For the discussion on such policies, the Swiss NCP is therefore competent.

The submission is based on the alleged breaches of players' rights by PIHF which is registered and domiciled in Poland. However, possible discussions regarding the terms and conditions of any cooperation and a possible compensation between the PIHF and the SZHL would not fall within the mandate of the Swiss NCP. According to the OECD Guidelines, such issues should primarily be dealt with by the NCP of the country in which the issues have arisen.

According to the Procedural Guidance for the OECD Guidelines, when a specific instance relates to activities that take place in several adhering countries, the NCPs involved consult each other and agree on which NCP will take the lead in assisting the parties.<sup>8</sup> In the present case, part of the issues to be discussed concern the development and implementation of policies of IIHF regarding corporate governance. As explained above,

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<sup>4</sup> OECD Guidelines, Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises, Paragraph 25

<sup>5</sup> OECD Guidelines for Multinational Enterprises: National Contact Point for Switzerland – Information of the Specific Instance Procedure, p. 3

<sup>6</sup> [www.iihf.com](https://www.iihf.com) > The IIHF > Who we are > Statutes and Bylaws (<https://www.iihf.com/en/static/5024/statutes-bylaws>)

<sup>7</sup> <https://zh.chregister.ch/cr-portal/auszug/auszug.xhtml?uid=CHE-108.688.788>

<sup>8</sup> OECD Guidelines, Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises, Paragraph 24

they are within the competence of the Swiss NCP. For this reason, the Swiss and Polish NCP have consulted and agreed that the Swiss NCP will take the lead in dealing with this submission. The Polish NCP has supported the Swiss NCP, as appropriate.

### c) Applicability of the OECD Guidelines to the responding party

The OECD Guidelines establish legally non-binding principles and standards of responsible business conduct for “*multinational enterprises*”. The Guidelines do not provide a precise definition of the term “*multinational enterprises*”. However, they state that these include enterprises in all sectors of the economy and that ownership may be private, State or mixed. In addition, they usually comprise companies or other entities established in more than one country and so linked that they may coordinate their operations in various ways.<sup>9</sup>

The OECD Guidelines expressly establish legally non-binding principles and standards for responsible business conduct, which is generally understood as the responsibility of entities involved in business or commercial activities. Thus, even though the OECD Guidelines do not explicitly refer to the “*commercial nature*” of the operations of multinational enterprises, the key question should be whether the activities in question are of commercial nature. This should be decided by the competent NCP through a case-by-case analysis based on the concrete circumstances, independently of the legal form of the entity.

Against this background, the Swiss NCP makes the following considerations on whether the IIHF has a multinational scope and if its activity is commercial in the case at question:

- IIHF, the world ice hockey’s governing body, is a non-profit organization in the legal form of an association registered in the Commercial Register of the Canton of Zurich.<sup>10</sup> Furthermore, IIHF is also the owner of a subsidiary, the *Parkring AG*, established in Zurich<sup>11</sup>. IIHF’s administration is headquartered in Zurich. IIHF was established in 1908 by four MNAs for the purpose of organizing and promoting ice hockey around the world.<sup>12</sup> It has currently 76 MNAs who are incorporated under the laws of their respective country<sup>13</sup>. They pay a yearly membership fee to IIHF and the 56 full members have the right to vote at IIHF’s Congress which is the supreme, legislative body of IIHF<sup>14</sup>. The Congress powers include to adopt and modify the statutes and bylaws and to admit and expel MNAs<sup>15</sup>. According to its statutes, the IIHF’s role includes to “*legislate for and govern IIHF activities in compliance with good governance principles*” and “*establish and maintain the IIHF judicial system, providing processes for the appeal of decisions and the settlement of disputes*”.<sup>16</sup> It shall therefore establish statutes and bylaws to govern the game of ice hockey and the relations between the MNAs and to establish the rights of IIHF towards the MNAs.<sup>17</sup> The statutes also impose wide-ranging membership obligations on MNAs, e.g. to conduct an independent audit by an external auditor of the MNA’s accounts at the request of IIHF<sup>18</sup>. According to the

<sup>9</sup> OECD Guidelines, Chapter I, Paragraph 4

<sup>10</sup> <https://zh.chregister.ch/cr-portal/auszug/auszug.xhtml?uid=CHE-108.688.788>

<sup>11</sup> The IIHF Parking AG, is registered in the Commercial Register of the Canton of Zurich (see <https://zh.chregister.ch/cr-portal/auszug/auszug.xhtml?uid=CHE-103.438.095>) and solely exists for reasons linked to the building in which the IIHF has its offices in Zurich.

<sup>12</sup> <https://www.iihf.com/en/statichub/4857/1908-1913>

<sup>13</sup> <https://www.iihf.com/en/associations>

<sup>14</sup> Statute 12.2 Membership Obligations (e) and 12 Membership Rights and Obligations, 12.1.1 (a)

<sup>15</sup> Statute 14.2 Congress Powers, (d) and (o)

<sup>16</sup> Statute 4 Mission and Role, (e) and (f)

<sup>17</sup> Statute 5 Statutes, Bylaws and Regulation/Codes, 5.1

<sup>18</sup> Statute 12.2.1 Membership Obligations, (k)



IIHF statutes, a MNA's statutes and/or bylaws must comply with principles of good governance, and shall ensure that its members and all relevant stakeholders agree to and recognize the jurisdiction and authority of the IIHF<sup>19</sup>. Thus, these provisions lead to the conclusion that IIHF comprises entities established in more than one country which are linked in order to coordinate their global activities. Therefore, the Swiss NCP concludes that it has international operations and a multinational scope.

- IIHF's operations may not *per se* be qualified as being of commercial nature. On the contrary, large parts of IIHF's activities strive towards fostering ice hockey as a global game without pursuing any business or profit motives whatsoever. According to its statutes, IIHF has one main objective which is *"to promote ice hockey (...) throughout the world and to lead the ice hockey movement."*<sup>20</sup> In particular, the relationship between IIHF and its MNAs is, regardless of the financial flows involved, generally not governed by business interests but by the goal of promoting the cause of ice hockey. IIHF's status as a multinational enterprise under the OECD Guidelines must therefore be established in a case-by-case analysis based on the concrete circumstances.
- With regard to the present submission, the key question should therefore be whether in particular the tournaments where the Polish players have participated with the Polish national ice hockey team and in which context human rights and corporate governance violations have been alleged by the submitting party can be considered as commercial activities of IIHF: In the period when the alleged issues happened, the Polish national team has participated in Division I of the World Championship organised by IIHF in 2017 and 2018. According to its statutes, IIHF should *"allocate and organize all IIHF events and competitions"* and *"arrange sponsorship, media coverage licensing rights, advertising and merchandising in connection with IIHF competitions"*.<sup>21</sup> It is the sole owner of all commercial rights pertaining to all IIHF competitions and related activities. *"These rights include audio-visual and radio recording, reproduction and broadcasting rights, multimedia rights, sponsorships, advertising and promotional rights and incorporeal rights such as IIHF general and event marks, rights arising under copyright law and any rights which has the potential to yield financial benefit. The exercise of IIHF commercial rights by the IIHF (and/or contracted commercial partner) is binding on all MNAs and their constituent bodies, leagues, clubs, teams players"* etc.<sup>22</sup> Thus, and as also set out in the Commercial Register of the Canton of Zurich<sup>23</sup>, IIHF is, directly or indirectly, through its MNAs, involved in commercial activities with regard of the organisation of the World Championship in 2017 and 2018 where the Polish national team has participated.

Based on these considerations, the Swiss NCP concludes that in the particular case of the present submission the OECD Guidelines apply to the responding party.

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<sup>19</sup> Statute 12.2.2 (c)

<sup>20</sup> Statute 4 Mission and Role

<sup>21</sup> Statute 4 Mission and Role, (g) and (h)

<sup>22</sup> Statute 24 Commercial, 24.1 and 24.2

<sup>23</sup> <https://zh.chregister.ch/cr-portal/auszug/auszug.xhtml?uid=CHE-108.688.788#>



#### d) Scope of application of the OECD Guidelines and materiality of the specific instance

The submission refers to alleged breaches of specific provisions of Chapter II (General Policies), IV (Human Rights) and V (Employment and Industrial Relations) of the OECD Guidelines. The submitting party requests to discuss ways in which the alleged breaches of the players' human and labour rights could be effectively remedied in the case at hand and to discuss the implementation of good governance measures which would prevent the alleged breaches from reoccurring in the future.

- i) Failure to prevent or mitigate adverse human rights impacts (Chapter II and IV of the OECD Guidelines)

According to the submitting party, IIHF failed to address violations of players' human rights, with which it (through a local entity) is directly involved or which are indirectly linked to its business operations. The key question is whether the non-payment of expenses and remunerations of players which according to the submitting party were orally and contractually agreed between a number of Polish players and the PIHF can amount to a violation of the players' human rights. In this context, the submitting party explains that players expect to be compensated "*not so much to make a living out of these appearances, but to be fairly remunerated for their risks (e.g. of injury) and efforts (e.g. absence from their family)*". When it comes to the definition of human rights, the Chapters II (General Policies) and IV (Human Rights) of the OECD Guidelines make reference to the internationally recognised human rights and in particular to the International Bill of Human Rights<sup>24</sup>. Article 23 paragraph 3 the Universal Declaration on Human Rights contained therein sets out that "*everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity*"<sup>25</sup>. With regard to this, the NCP notes that the Polish ice hockey players' existence is not put in danger as their main occupation is outside their participation in the national team, e.g. with an ice hockey club or otherwise. The IIHF asserts that clubs continue to pay players during the time period that they are participating in training and competitions for their national team. It further reports that some MNAs or international federations compensate the releasing clubs, rather than the players themselves, during the time period when they participate for their national team. Accordingly, IIHF's Statutes do not mandate that a player is paid for this participation on the national team or in a respective event. As it seems, national teams, international federations or major event organizers active in ice hockey usually do not pay players directly for their participation on the national team or in a respective event. For the Swiss NCP the submitting party therefore does not demonstrate that the alleged non-payments may amount to a human rights violation within the scope of the OECD Guidelines. Thus, the Swiss NCP concludes that the alleged breach of paragraphs A.2 and 11 of Chapter II and paragraphs 1-3 and 6 of Chapter IV of the OECD Guidelines is not sufficiently material and substantiated.

- ii) Failure to ensure the non-existence of forced or compulsory labour in its operations and to promote consultation and cooperation (Chapter V of the OECD Guidelines)

With regard to the alleged issue of forced or compulsory labour, Chapter V (Employment and Industrial Relations) paragraph 1d) of the OECD Guidelines recommends that "*enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards:*  
c) *Contribute to the elimination of all forms of forced or compulsory labour and*

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<sup>24</sup> OECD Guidelines, Chapter II, Paragraph A.2 and Chapter IV, Paragraph 39

<sup>25</sup> <https://www.ohchr.org/documents/publications/compilation1.1en.pdf>

*take adequate steps to ensure that forces or compulsory labour does not exist in their operations.”*

The reference from this core labour right is based on the ILO Convention 29 of 1930 and its Protocol of 2014 and the ILO Convention 105 of 1957. According to the ILO Convention 29 paragraph 1 for the purposes of this Convention the term forced or compulsory labour means “*all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.*” Forced labour is distinct from simple exploitative or poor working conditions. The ILO provides different indicators<sup>26</sup> that can be used to establish the existence of a situation of forced labour such as restrictions of movement, withholding of wages<sup>27</sup>, retention of identity documents, physical and sexual violence, intimidation and threats<sup>28</sup>, debt bondage or abusive working and living conditions. The presence of a single indicator would normally not point to a forced labour case.<sup>29</sup>

According to the submitting party, the players were deprived of compensation promised to them by PIHF for training with and playing for the national team. The submitting party also alleges that PIHF threatened the players with disciplinary and other “unlawful consequences”, if they would refuse to take part in the Euro Ice Hockey Challenge in Gdansk in November 2018. However, as noted above, the submitting party explains that players expect to be compensated “*not so much to make a living out of these appearances, but to be fairly remunerated for their risks and efforts*”. Thus, the player’s commitment to the national team is normally not for employment, but rather to gain exposure in the hopes of advancing the career. This reasoning is supported by the submitting party when it concedes that playing for the national team is an honour and prestige for a player, which can have significant impact on his or her professional career. It asserts that players actually compete for places in the national team. Hence, in light of the information submitted in the present case and as also discussed above (particularly in paragraph 7.d i)), there are not enough elements which can amount to a situation of forced labour within the scope of the OECD Guidelines. Thus, the Swiss NCP concludes that the alleged breach of paragraph 1.d) of Chapter V and paragraph A.11 of Chapter II (General Policies) of the OECD Guidelines are not sufficiently material and substantiated.

Regarding Chapter V of the OECD Guidelines the submitting party furthermore alleges the breach of paragraph 3 which recommends that enterprises “*promote consultation and co-operation between employers and workers and their representatives on matters of mutual concern*”. However, the Swiss NCP states that this provision of the OECD Guidelines does not apply as the PIHF is not an employer of the Polish ice hockey players.

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<sup>26</sup> ILO Indicators of forced labour, available at [https://www.ilo.org/global/topics/forced-labour/publications/WCMS\\_203832/lang-en/index.htm](https://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang-en/index.htm) and ILO Forced Labour and Human Trafficking – Handbook for Labour Inspectors available at [https://www.ilo.org/global/topics/forced-labour/publications/WCMS\\_097835/lang-en/index.htm](https://www.ilo.org/global/topics/forced-labour/publications/WCMS_097835/lang-en/index.htm)

<sup>27</sup> According to the ILO, “*The fact of irregular or delayed payment of wages does not automatically imply a forced labour situation. But when wages are systematically and deliberately withheld as a means to compel the worker to remain, and deny him or her of the opportunity to change employer, this points to forced labour*” (ILO Indicators of forced labour, p.19)

<sup>28</sup> According to the ILO, “*the credibility and impact of the threats must be evaluated from the worker’s perspective, taking into account his or her (...) age, cultural background and social and economic status*” (ILO Indicators of forced labour, p.15).

<sup>29</sup> Idem, p. 3.

- iii) Failure to develop and apply good corporate governance practices (Chapter II of the OECD Guidelines)

The submitting party requests that the responding party should develop and apply corporate governance measures which would prevent the alleged breaches by PIHF from reoccurring in the future. Thus, the paragraphs A.6 and 7 of Chapter II (General Policies) of the OECD Guidelines should be considered with regard to the issue of the alleged non-payment of expenses and remuneration of players, forced or compulsory labour respectively the non-promotion of consultation and co-operation between employers and workers. However, as set out in the preceding paragraphs 7 d) i) and ii), the alleged breaches of players' rights are not sufficiently material within the scope of the OECD Guidelines and substantiated. Hence, the Swiss NCP concludes that there is not sufficient substance in order to pursue a discussion on issues of governance of IIHF with regard to its MNAs based on paragraphs A.6 and 7 of Chapter II of the OECD Guidelines.

Based on these considerations, the Swiss NCP concludes that the alleged breaches of the OECD Guidelines raised in the present submission are not sufficiently material within the scope of the OECD Guidelines and substantiated.

#### **e) Legal context and parallel proceedings**

The Swiss NCP takes into consideration ongoing parallel proceedings, including court rulings. The NCP has been informed that SZHL has written to the Polish Minister of Sports and Tourism and to the Polish Ombudsman. The Polish Minister of Sports and Tourism has responded on 27 December 2018, refusing to intervene and invoked the autonomy of sport. However, it has recently published a Code of Good Governance Principles for National Sport Federations. Furthermore, the NCP is aware that SZHL has submitted the players' claims to state court litigation in Poland on 11 January 2019. According to the Specific Instances Procedures of the Swiss NCP, parallel proceedings will not necessarily prevent the Swiss NCP from pursuing a specific instance. The Swiss NCP concludes that an offer to mediate would neither make a positive contribution to the resolution of the issues raised nor would it prejudice either of the parties involved in other proceedings as possible discussions under the auspices of the Swiss NCP would focus on the implementation of good governance measures by IIHF. However, the alleged breaches of players' rights by PIHF and the terms and conditions of any cooperation and a possible compensation between the PIHF and the Polish players would not fall within the mandate of the Swiss NCP (cf. 7.b.).

#### **f) Contribution to the purpose and effectiveness of the OECD Guidelines**

The role of the NCP is to contribute to the purpose and effectiveness of the OECD Guidelines by offering a forum for discussion and assisting the parties concerned to deal with the issues raised in order to find future oriented solutions.

As the alleged breaches of the OECD Guidelines raised in the submission are in the NCP's view not sufficiently material within the scope of the OECD Guidelines and substantiated (cf. 7.d), this point will not be examined further. However, it has to be noted that the underlying issue of this submission is the alleged breach of players' rights by PIHF which is registered and domiciled in Poland. Therefore, any discussions regarding terms and conditions of a cooperation and a possible compensation between the PIHF and the Polish players would not fall within the mandate of the Swiss NCP (cf. 7.b).

Finally, the NCP notes IIHF's statement that it has offered to the parties to act as a mediator between PIHF and the players if agreed by them. However, unless both parties request the IIHF to act as a mediator, IIHF determined that it has no authority over this matter as the issue between the players and the PIHF is a contractual issue of national interest.

## **8 Further proceedings**

The initial assessment of the Swiss NCP results in the conclusion that the issues raised in this submission do not fulfil the requirement for pursuing the specific instance according to the Specific Instance Procedures of the Swiss NCP. Therefore, the Swiss NCP will not give further consideration to the issues raised.

When fulfilling its mission to promote ice hockey throughout the world, IIHF benefits from the well-functioning of the MNAs. Therefore, the Swiss NCP acknowledges that IIHF has sent a team to conduct an audit on the PIHF for organisation/governance and financial reasons in March/April 2019.

The Swiss NCP will publish its report on the initial assessment on the Swiss NCP website.<sup>30</sup>

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<sup>30</sup> [https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik\\_Wirtschaftliche\\_Zusammenarbeit/Wirtschaftsbeziehungen/NKP/Statements\\_zu\\_konkreten\\_Faellen.html](https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/NKP/Statements_zu_konkreten_Faellen.html)