



**Polish OECD NCP Final Statement of notification of alleged breach
of the *OECD Guidelines for Multinational Enterprises*
in the case concerning Valeo Autosystemy Sp. z o.o.
Warsaw, 24 January 2024**

SUMMARY OF THE CASE

1. On **9 February 2020**, the OECD National Contact Point on Responsible Business Conduct (OECD NCP) received a notification of an alleged breach of the *OECD Guidelines for Multinational Enterprises* (hereinafter: OECD Guidelines).
2. The notification was submitted by Mr Daniel Wilk (hereinafter: **Notifier**), representing the informal social movement LICZNIK established by the residents of Skawina.
3. The notification concerned the activities of one of the production sites of the Polish company Valeo Autosystemy Sp. z o.o., located in Skawina – the Engine Cooling Systems Division (hereinafter: **Company**), part of the Valeo Group which is seated in France and is a multinational enterprise.

The Valeo Group is a global supplier and partner to car manufacturers, listed on the Paris Stock Exchange.
4. The OECD NCP accepted the case for further consideration on **30 September 2020**.
5. As part of the next stage, the OECD NCP proposed to the parties to the proceedings its *good offices*, i.e. joint discussions held in the presence of the OECD NCP in order to find a solution that would be satisfactory to both parties to the proceedings.
6. After numerous meetings, exchanges of correspondence and efforts to reach an agreement in the case – a final meeting of the parties to the proceedings took place on **27 September 2023**, during which **the parties to the proceedings failed to reach an agreement**.

LOCATION INDICATED IN THE NOTIFICATION

Skawina is a small town of around 25,000 inhabitants, located in southern Poland. In total, there are more than 40,000 residents in the city and commune.

The city and commune of Skawina are an economically important area for the nearby town of Krakow (about 20 km away) and the region of Małopolska. In the REGON register at the end of 2022, 3,641 national economy entities were registered in Skawina, of which 3,488 were micro-enterprises, 115 small enterprises (10-49 employees), 28 medium-sized enterprises (50-249 employees), nine large enterprises (250-999 employees) and one large enterprise (at least one thousand employees)¹.

¹ Source: <https://www.polskawliczbach.pl/Skawina>



SUBJECT OF THE NOTIFICATION

According to the Notifier, the Company's production plants operating in Skawina have a negative impact on the environment, which manifests itself as odour nuisance, air pollution and excessive noise.

The notification identifies the following chapters of the OECD Guidelines which, in the opinion of the Notifier, an alleged breach has occurred as a result of the Company's activities:

Chapter II, General Policies, A, according to which enterprises should:

Paragraph 1. *Contribute to economic, environmental and social progress with a view to achieving sustainable development.*

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

Paragraph 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.*

Paragraph 10. *Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.*

Paragraph 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.*

Paragraph 12. *Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.*

Chapter IV, Human Rights, according to which: *enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:*

Paragraph 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.*

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

Paragraph 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.*

Paragraph 5. *Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.*

Chapter VI, Environment, according to which: *Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:*



Paragraph 1. *Establish and maintain a system of environmental management appropriate to the enterprise, including:*

a) collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities;

b) ustanowienie wymiernych założeń oraz, tam gdzie jest to właściwe, celów mających za zadanie usprawnienie działań na rzecz środowiska i wykorzystanie zasobów, włącznie z okresową weryfikacją aktualności celów; tam gdzie jest to właściwe cele powinny być spójne z odpowiednimi politykami krajowymi i zobowiązaniami międzynarodowymi;

and

c) regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.

Paragraph 2. *Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:*

a) provide the public and workers with adequate, measurable and verifiable (where applicable) and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance;

b) and engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.

Paragraph 3. *Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.*

Paragraph 4. *Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.*

Paragraph 5. *Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.*

Paragraph 6. *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:*

a) adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise,

b) 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;



c) promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise, including, by providing accurate information on their products (for example, on greenhouse gas emissions, biodiversity, resource efficiency, or other environmental issues);

d) and exploring and assessing ways of improving the environmental performance of the enterprise over the longer term, for instance by developing strategies for emission reduction, efficient resource utilisation and recycling, substitution or reduction of use of toxic substances, or strategies on biodiversity.

SUMMARY OF ACTIONS

Following notification of an alleged breach of the OECD Guidelines, the OECD NCP took the following actions:

- 1) **11 February 2020** the OECD NCP electronically acknowledged receipt of the notification to the Notifier;
- 2) due to the fact that the Company concerned is a company within the Valeo Group, which has its headquarters in France, the Polish OECD NCP notified the French OECD NCP of receipt of the above notification **on 11 February 2020**. The French OECD NCP has expressed its willingness to support the Polish OECD NCP in conducting the present proceedings, if necessary;
- 3) **12 February 2020** and **24 March 2020** the OECD NCP sent letters to the Company informing that the above-mentioned notification had been received by the OECD NCP, along with a request for the Company to take a position on the case;
- 4) **18 May 2020** the Company conveyed its position on the case;
- 5) on **9 July 2020**, a meeting was held between the OECD NCP and representatives of the Company;
- 6) on **6 August 2020**, a meeting was held between the OECD NCP and the Notifier;
- 7) Following the preliminary analysis of the case by the OECD NCP, on **30 September 2020** the OECD NCP accepted the case for further consideration and formulated a draft Initial Assessment;
- 8) the final wording of the Initial Assessment was agreed with the parties to the proceedings **on 11 January 2021**;
- 9) [The Initial Assessment](#) was published on the OECD NCP website on **18 January 2021**, of which the parties to the proceedings and the French OECD NCP were notified. The OECD NCP then proposed that the parties to the proceedings meet in the presence of the OECD NCP to start *good offices* to find a solution to the case.

In the course of conducting *good offices*, **meetings between the parties to the proceedings in the presence of the OECD NCP and meetings between the OECD NCP and the parties:**

- 1) The first meeting of the parties took place on **16 February 2021**.
- 2) The second meeting of the parties took place on **26 August 2021**.



- 3) on **21 October 2021**, a separate meeting was held between the OECD NCP and the Company.
- 4) on **17 November 2021**, a separate meeting was held between the OECD NCP and the Notifier.
- 5) The third meeting of the parties to the proceedings took place on **16 December 2021**.
- 6) on **7 September 2022**, a meeting took place between the OECD NCP and the Company.
- 7) on **15 September 2022**, a meeting took place between the OECD NCP and the Notifier.
- 8) The fourth meeting of the parties to the proceedings took place on **25 October 2022** in Krakow.
- 9) At the request of the Company on **13 March 2023**. The OECD NCP met only with representatives of the Company.
- 10) The fifth meeting of the parties to the proceedings was scheduled for **27 April 2023**. Only representatives of the Company attended the meeting.
- 11) The sixth meeting of the parties to the proceedings was held on **27 September 2023**.

At a meeting on **27 September 2023**, after hearing the arguments of the parties and previously analysing the proposed content of the agreement between the parties – **the parties to the proceedings did not reach an agreement**.

The OECD NCP on **27 October 2023** circulated the draft of the Final Statement to the parties to the proceedings.

SUMMARY OF THE NOTIFICATION

The notification identified the following chapters of the OECD Guidelines: Chapter II "General Principles", Chapter IV "Human Rights" and Chapter VI "Environment" the breach of which allegedly occurred as a result of the Company's activities in the opinion of the Notifier.

In the course of the proceedings, it was established that the notification concerns the activities of one of the four plants of the Company operating in Poland, i.e. the Engine Cooling Systems Production Plant operating in Skawina. In the opinion of the Notifier, the activities of the aforementioned plant have a negative impact on the environment, which manifests itself as odour nuisance and air pollution.

At the first meeting of the parties to the proceedings in February 2021, the parties to the proceedings agreed that the **issue of the noise nuisance** identified in the notification was **no longer within the scope of the subject matter** of the notification, due to the fact that the Company had already taken appropriate steps to eliminate the noise nuisance, which had consequently proved to be effective.

The subject matter of the notification therefore remained **odour nuisance** and **air pollution** arising, in the opinion of the Notifier, from the activities conducted by the Company.

POSITION OF THE COMPANY

The Company made its position known in a letter dated **18 May 2020**, in which it described the activities of its engine cooling and wiper system production plants and provided a summary of the pro-environmental projects underway. The Company has assured the OECD NCP of its willingness to



comply with the OECD Guidelines and to implement a number of environmental measures, including retrofitting work at the Company's facilities.

The Company highlighted that it is an active member of the local municipality's Enterprise Council and indicated that it interacts with the local authorities and the community, including by implementing the provisions of the 2018 agreement with the local authority.

ASSESSMENT OF THE CASE BY THE OECD NCP AT THE PRE-ACCEPTANCE STAGE

In accordance with the [Conduct procedure before the NCP in specific instance related to an alleged breach of the OECD Guidelines for Multinational Enterprises](#) (Part B. CONDUCT PROCEDURE BEFORE POLAND'S NCP, Stage one), the OECD NCP conducted an analysis of the case, which included a check of the criteria indicated in the Conduct procedure before the NCP, as a result of which it determined:

- a) **As to the reasons for the Notifier's interest in the case** – the OECD NCP stated that the Notifier represented an informal social movement of Skawina residents called LICZNIK. The notification also identifies two other persons giving notification, one of whom withdrew from the proceedings during the course of the proceedings.

The social movement LICZNIK was founded in November 2019 by participants in social protests by Skawina residents organised in relation to odour nuisance from the Company's plants. The move has been dubbed the LICZNIK, in order to count down 100 days until the deadline for the implementation of the agreement concluded between the Company and the authorities of the city and commune of Skawina. The agreement sets out the Company's actions to address odour nuisance.

According to the Notifier, the aforementioned agreement was not properly implemented by the Company. Members of the LICZNIK movement have met several times with councillors and representatives of the city and commune of Skawina, reporting the continuing odour nuisance and presenting proposals for solving the problem.

- b) The OECD NCP found that the **case was significant and justified**, arguing as follows:

The OECD NCP stated that the case concerns a large Polish enterprise with a total of more than 7,000 employees in Poland.

At the Company's plants located in Skawina, i.e. the Engine Cooling Systems Production Plant and the Wiper System Production Plant, the Company employs over 3,000 employees, of whom approximately 30% come from Skawina or surrounding locations. The Company is one of the largest employers in Skawina.

The Company is part of a global supplier and partner to car manufacturers, the Valeo Group listed on the Paris Stock Exchange. The group, which includes the Company, has a total of 191 factories, operating in 33 countries. According to information obtained by the OECD NCP, all Group factories, in each country, have the same standard of operation.

In the course of the OECD NCP's investigation of the case, it was established that the notification submitted to the OECD NCP concerned only one of the Company's plants operating in Skawina, namely. Engine Cooling Systems Production Plant. However, since, as recommended by the OECD Guidelines, the application of the accountability standards is expected of all entities that make up the Multinational Enterprise (both to the parent company and to the local units of the company), the OECD NCP considered the case to be relevant and legitimate.



Furthermore, in the opinion of the OECD NCP, the case was also relevant and justified, as it concerned environmental issues, which have been of increasing interest in Poland recently, both for social organisations, local communities and public administration. The increasing level of public awareness of environmental issues is also resulting in higher expectations for companies to implement environmental standards.

The OECD NCP considered that the solution to the problems identified in the notification, as a result of the proceedings before the OECD NCP, could be of significant importance for improving the quality of life of the inhabitants of the locality in which the Company operates and for strengthening the dialogue between the Company and the local community.

- c) The OECD NCP found that **there was a link between the Company's activities and the case**, reasoning as follows:

In examining the case, the OECD NCP noted that the mere fact of the operation of the Company's Skawina plant referred to above did not necessarily mean that the statements made in the notification were confirmed to be correct, as within the area of Skawina there are also other industrial plants, the operation of which may also have an impact on the air quality in the town.

In order to assess the link between the Company's activities and the case, the parties to the proceedings submitted additional material to the OECD NCP, including expert reports and studies on air quality assessment. As the information contained in the notification and the information provided by the parties to the proceedings concerned the activities of the above-mentioned establishment of the Company, the OECD NCP considered that there was a link between the Company's activities and the case.

At the same time, the OECD NCP noted the willingness expressed by the Company to continue with the solutions implemented so far, as well as to take appropriate action on the impact of the Company's activities on air quality, including dialogue with the Notifier.

- d) At the time of the examination of the case at the stage of the OECD NCP's decision to accept the case to proceed, i.e. in 2020, **there were no other proceedings pending in the case before another authority, and the OECD NCP therefore considered it possible to proceed before the OECD NCP.**

In the situation described in the notification, alternative courses of proceedings were available, including litigation. However, the proceedings before the OECD NCP carried the value of being able to reach a compromise solution acceptable to the parties to the proceedings.

In the course of the proceedings before the OECD NCP, the matter described in the notification to the OECD NCP also became the subject of other proceedings, including proceedings before the Provincial Administrative Court in Warsaw and proceedings before the Provincial Inspector of Environmental Protection in Krakow (WIOŚ). These proceedings had some impact on the handling of the case by the OECD NCP – as will be explained later in the Final Statement.

- e) After reviewing cases managed by OECD NCP in other countries, the Polish OECD NCP was not aware of a similar case being managed in other OECD NCP. Some similarities in terms of companies' cooperation with stakeholders and dialogue with representatives of local communities on environmental issues can be seen, for example, in cases such as:
- [Imperial Metals Corporation and Southeast Alaska Conservation Council](#) – Canadian OECD NCP case, Final assessment of 5 May 2020,



- [Nuon Energy N.V. and Hou Friesland Mooi](#) – Dutch OECD NCP case, Final assessment of 18 December 2018.

An example of a case handled by the Polish OECD NCP that dealt with environmental issues may also be the case of the [OLX Group Sp. z o.o. and the Frank Bold Foundation](#). The Final Statement in this case was issued on 13 June 2019 and a monitoring note for this case was published on 28 July 2020.

Following the preliminary analysis stage of the case by the OECD NCP, **on 30 September 2020. The OECD NCP accepted the case for handling** and formulated a draft Initial Assessment. The final wording of the Initial Assessment was agreed with the parties to the proceedings on 11 January 2021.

The Initial Assessment on the case was published on the OECD NCP website on **18 January 2021**, of which the parties to the proceedings and the French OECD NCP were notified. The OECD NCP then proposed that the parties to the proceedings meet in the presence of the OECD NCP to start *good offices* to find a solution to the case.

DIALOGUE BETWEEN THE PARTIES WITH THE SUPPORT OF THE OECD NCP

During individual meetings with representatives of the parties to the proceedings, the OECD NCP explained in detail the principles formulated in the OECD *Guidelines for Multinational Enterprises* and the manner in which proceedings before the OECD NCP are conducted in relation to a notification of an alleged breach of the OECD Guidelines.

The parties agreed to the OECD NCP's proposal that the solution to support the process of reaching an agreement between the parties would be *good offices*, i.e. joint discussions between the parties with the participation and support of the OECD NCP to seek a mutually satisfactory solution.

At the initiative of the OECD NCP, the first meeting of the representatives of the parties took place on **16 February 2021** in the presence of the OECD NCP. The parties to the proceedings have confirmed that their intention is to enter into a dialogue in order to reach a solution that satisfies each party. A mode of interviewing was established based on the following principles:

- a) compliance with the procedure before the OECD NCP,
- b) necessity to maintain the confidentiality of information, which would be binding on both parties to the proceedings and the OECD NCP. The details of the proceedings before the OECD NCP may neither be published by the parties on the internet nor in any way disseminated to the public,
- c) voluntary principle: the OECD NCP assumes that the parties approach with goodwill and in good faith to resolve the issue,
- d) the principle of neutrality: the OECD NCP remains neutral as to the parties to the proceedings and the subject matter of the dispute, and does not impose its solutions on the parties,
- e) the principle of impartiality: the OECD NCP ensures that both parties are treated equally in the process.

As a result of the meeting, it was agreed that the OECD NCP would forward to the parties the documents received that brought new information to the case, i.e.:

1. Copy of letter dated 15 February 2023 received by the Notifier from the Skawina City and Commune Office in response to a request to the Office for an opinion on the cooperation



between the Commune of Skawina and the Company to date regarding the implementation of the 2018 agreement on the elimination of air pollution.

2. A copy of the Krakow District Governor's decision of 20 August 2020 issuing a permit to the Company for the introduction of gases and dust into the air from the installation for the production of coolers and condensers under the conditions specified in the permit.

At the meeting, the parties to the proceedings also agreed that the **issue of the noise nuisance** identified in the subject matter of the notification was **no longer within the scope of** the subject matter of the notification, due to the fact that the Company had taken appropriate steps to eliminate the noise nuisance, which had been successful as a result.

In the course of the proceedings before the OECD NCP, **the parties to the proceedings met at six joint meetings** and also had **a number of individual discussions with representatives of the OECD NCP** in separate meetings or during telephone conversations.

The dialogue between the parties first formulated the Notifier's expectations to the Company, which were presented to the Company in writing on **10 May 2021** and included the following points:

- 1) Indicating the principles of the OECD Guidelines formulated in Chapter II "General Principles" and Chapter VI "Environment", the Notifier expected that the Company would implement appropriate operational measures to analyse environmental risks and seek to reduce adverse environmental effects arising from the Company's activities.
- 2) The Notifier expected the Company to conduct field investigations in an area where local residents report the presence of a nuisance fodor, pointing to the Company's plant as the source, towards establishing the presence of substances detected in the Ecological Review conducted in 2020 at the Company's site.
- 3) Furthermore, pointing to the principles of the OECD Guidelines formulated in Chapter VI "Environment" (point 2a), the Notifier expected the Company to provide up-to-date information to representatives of local communities on the potential environmental, health and safety impacts of the Company's activities, including progress reports on environmental activities.

At the third meeting of the parties to the proceedings on **16 December 2021**, both the Company and the Notifier confirmed their willingness to conclude an agreement in the case. It was agreed that the starting point for the agreement would be the arrangements agreed between the parties following the meeting held on **26 August 2021**.

With reference to the new threads raised during the meeting, the Company provided additional documents for the case file after the meeting on **16 December 2021**:

1. Letter from the Chairperson of the Company's Board of Directors dated 3 November 2021, which indicates a commitment to make investments to reduce the Company's odour nuisance.
2. Link to the Public Information Bulletin (BIP) of the Krakow District, in which information is available about the issue on 23 November 2021 by the Krakow District Governor of a permit for the introduction of gases and dust into the air from the installation for the production of radiators and condensers: [Air protection | BIP Krakow District | Public Information Bulletin](#).
3. Invitation from the Mayor of the Skawina City and Commune to a meeting of the Scientific Council.



In addition, it was agreed that the OECD NCP would develop a proposal for an agreement between the parties to the proceedings, which it would forward to the parties for further agreement. The OECD NCP transferred a proposed agreement text to the parties to the proceedings on **14 January 2022**. Working on the content of the agreement was the subject of an exchange of correspondence and subsequent separate meetings between the OECD NCP and the parties to the proceedings. In the course of working on the content of the agreement, the Notifier requested permission from the OECD NCP to have a lawyer join the proceedings to represent the Notifier.

In a spirit of preserving the equality of the parties to the proceedings before the OECD NCP, the OECD NCP has agreed to allow a lawyer to join the case to represent the Notifier during the further proceedings.

Due to the fact that the work on reaching an agreement was protracted and did not produce the expected result of an agreement text that both parties to the proceedings could agree on, and it was not clear whether the Notifier would ultimately be represented by a lawyer or not – the OECD NCP proposed another joint meeting to the parties.

In order to make the parties to the proceedings more comfortable attending the meeting, the OECD NCP proposed to hold the meeting in Krakow, which was a more convenient location for the parties than coming to Warsaw. At a meeting held on **25 October 2022** in Krakow, the parties to the proceedings **reaffirmed their willingness to conclude an agreement**.

As a result of the meeting, it was agreed that the Company would send its proposal for the content of the agreement including additions and a proposal for redrafting of the points of the agreement discussed at the meeting. The exchange of correspondence between the Company, the Notifier and the OECD NCP continued until March 2023, when the Company asked the OECD NCP for a separate meeting.

During the meeting on **13 March 2023**, the Company presented its conclusions on the progress of the agreement text to the OECD NCP. In turn, the OECD NCP presented the Company with possible solutions to the situation in which the parties to the proceedings found themselves, including consideration of the possible possibility of entering into a partial agreement with the Notifier, which would mean addressing only part of the Notifier's expectations in the agreement.

The next meeting of the parties to the proceedings was scheduled for **27 April 2023**, attended only by representatives of the Company. During the meeting, on the authority of the Notifier, the OECD NCP informed the representatives of the Company that **the Notifier sees the possibility of a partial agreement with the Company only with regard to the communication activities of the Company and the cooperation of the Company with the social side in this regard**.

Following the meeting, the Company requested the OECD NCP to ask the Notifier whether it nevertheless saw the possibility of concluding an agreement in the remaining areas and, if so, the Company requested that the Notifier propose convenient provisions in the content of the agreement.

At a subsequent meeting of the parties to the proceedings on **27 September 2023**, after hearing each other's arguments and previously analysing the proposed changes to the content of the agreement between the parties, the Notifier abandoned the previously considered possibility of a partial agreement in respect of the Company's communication activities. Thus, **the parties to the proceedings failed to reach an agreement**.



ESSENTIAL ELEMENTS OF THE POSITIONS OF THE PARTIES TO THE PROCEEDINGS PRESENTED DURING THE DIALOGUE

During the dialogue between the parties, **the Company** stated that it considers the position of the Notifier and does not dispute that the Company is a source of gas, odour and dust emissions into the air.

The Company also reported on a number of measures taken to reduce gas and dust emissions (such as modernising and reorganising the Company's plant and commissioning relevant laboratory tests), including obtaining a new gas and dust emission permit (decision of the Krakow District Governor of 23 November 2021) considering the issue of odour emissions.

The Company presented analyses and studies on the environmental impact of the Company prepared by accredited laboratories during the proceedings.

Furthermore, having regard to the position of the Notifier and the recommendations formulated in the OECD Guidelines, **the Company** has taken the following actions:

- commissioning of non-mandatory laboratory tests on gas and dust emissions and the analysis of odour nuisance notifications commenced;
- technical study was drawn up showing that, as a result of the Company's modernisation, the recommendations of the March 2020 Environmental Review have been met and the incidence of odours in the air is now less than 8% of the time per year;
- scientific analysis of the impact of the Company on human life and health was commissioned;
- modernisation of the Company's website was commenced;
- posting stakeholder communications on the website on environmental issues was commenced;
- the website was supplemented with Polish language versions of the Company's due diligence documents;
- dedicated e-mail address was created where stakeholders can send reports on odour incidents, including the data indicated in the application instructions, which will facilitate the verification of these applications;
- regular requests for the monitoring of emissions issues were sent to the Malopolska Provincial Inspector of Environmental Protection, the Krakow District Governor and the Mayor of the Skawina City and Commune.

As regards the claim of the Notifier that the agreement between the Enterprise and the authorities of the City and Commune of Skawina has not been implemented by the Company – **the Company** indicated that, according to *this agreement*, "the assessment of the fulfilment of the obligations and declarations set out in this agreement remains with the Social Council, which will determine by resolution the manner and conditions for the assessment of the fulfilment of the provisions of the agreement". **The Company** informed the OECD NCP that no such resolution had ever been passed. In the opinion of the Company, there are therefore no grounds for claiming that the aforementioned agreement has not been implemented by the Company.

The Company also emphasised that the Notifier's expectations of the technical solutions proposed to the Company were not justified on the merits.

The Company, with a view to the equality of the parties, has on several occasions requested the OECD NCP (including in its letter of 19 June 2022) to clarify the conduct of the proceedings before the OECD NCP in terms of the principles formulated in the OECD Guidelines and the OECD NCP Procedure.



In addition, during the course of the proceedings, **the Company** commented on the alleged breach of confidentiality by the Notifier in the proceedings before the OECD NCP in the context of the Notifier engaging with lawyers and third parties on issues before the OECD NCP without informing the Company.

At the same time, the **Notifier**, in the course of the *good offices* conducted, formulated specific expectations of the Company, also with regard to the content of the agreement. Due to the fact that the solutions proposed by the Company to ensure the fulfilment of the Notifier's expectations did not meet the Notifier's expectations – at the final stage of the ongoing discussions, in April 2023, the Notifier agreed to the possibility of a partial agreement. **The partial agreement** was to address only one aspect of the Notifier's expectations, namely how the Company would communicate with local community representatives and other stakeholders.

However, during the last meeting of the parties to the proceedings, on **27 September 2023**, the **Notifier** emphasised that, in his opinion, after almost three years of dialogue with representatives of the Company, the situation related to the odour nuisance caused, in the opinion of the Notifier, by the Company – has not improved, although the Company convinced the Notifier about the measures taken to reduce emissions and the effectiveness of the technological solutions introduced to this end (it presented a technical analysis of the spread of odours after the Company's modernisation, confirming the fulfilment of the recommendation of the Environmental Review).

The Company at the meeting of 27 September 2023 invariably declared its willingness to conclude a partial agreement, while the **Notifier** acknowledged that it had become impossible to conclude an agreement.

In addition, **both parties to the proceedings** took the view that work on the draft agreement had been prolonged because there were difficulties in communication and meeting deadlines for the opposing party to work on the text of the agreement.

CONCLUSIONS OF THE PROCEEDINGS

In accepting the present case for handling on **30 September 2020**, the OECD NCP stressed that the acceptance of the case for further consideration did not imply a confirmation by the OECD NCP of the Company's breach of the OECD Guidelines.

In the course of discussions, meetings and exchanges of correspondence between the parties to the proceedings, the OECD NCP repeatedly emphasised that the proceedings before the OECD NCP are proceedings of a specific nature, conducted on the basis of the OECD Guidelines, which are *soft* international law, but at the same time represent an internationally recognised standard for responsible business conduct.

Poland is among the 51 countries that adhere to the OECD Guidelines and therefore recommends that multinational companies operating in the country comply with the OECD Guidelines by, inter alia, minimising negative impacts that may arise from their activities.

In the present case, the OECD NCP appreciates the openness of both parties to the proceedings – both the Company and the Notifier – to dialogue, which was conducted under difficult conditions during the initial period of the proceedings due to the state of epidemiological emergency caused by the COVID-19 pandemic.



In particular, the OECD NCP appreciates the fact that both parties to the proceedings attended meetings organised by the OECD NCP, provided the OECD NCP with additional documents in the case and pursued an agreement over a long period of time.

In the course of the proceedings related to present case, the OECD NCP noted a difficulty arising from the imbalance of the parties to the proceedings. The Notifier was an individual, with no legal training and representing an informal social movement of the residents of the locality where the Company conducts its operations. In turn, the Company was represented in the proceedings by one of Poland's leading law firms. Accordingly, the OECD NCP specifically assisted the Notifier in situations requiring it, explaining the complexities arising from the procedure before the OECD NCP.

The OECD NCP also acknowledges that the conduct of the proceedings in the present case was also hampered by the fact that parallel proceedings before other administrative authorities and courts were initiated while the present proceedings were at the *good offices* stage. The parties' references to decisions issued by, inter alia, administrative bodies shifted the burden of the discussions between the parties to specific actions and activities to be carried out by the Company recommended by another body – which, in the view of the OECD NCP, caused the discussions between the parties to deviate from the substance of the subject matter of the notification as understood in accordance with the chapters of the OECD Guidelines indicated in the notification.

This included the decision of the Krakow District Governor of 23 November 2021 and the decision of 20 December 2021 concerning the permit for the introduction of gases and dust into the air from the radiator and condenser plant. The OECD NCP emphasised on several occasions during discussions and meetings with the parties to the proceedings that the OECD NCP does not have the competence to assess or analyse decisions issued by another administrative body.

In addition, the OECD NCP encountered a difficulty in proposing the possible addition of external experts to the present case, as requested by the Notifier. For procedural reasons, the OECD NCP did not choose to add such experts to the proceedings, stressing that the subject of the notification would then become specific environmental issues and how they would be addressed by the Company. The OECD NCP, on the other hand, emphasised in discussions and meetings with the parties that the proceedings before the OECD NCP are based on the recommendations of the OECD Guidelines, allowing, of course, detailed factual clarifications with respect to specific chapters of the OECD Guidelines, but that the search for a solution to the situation described in the notification must be based on the assumptions of the OECD Guidelines.

In the end, after numerous discussions and meetings and attempts made to find a solution that would be satisfactory to both parties to the proceedings, and despite a great deal of effort put into trying to find a solution, the parties did not reach an agreement.

The recommendation from this proceeding for potential similar proceedings in the future in Poland and in other countries pertains to a proper understanding of the recommendations formulated in the OECD Guidelines, which constitute the international standard for responsible business conduct. This is of particular relevance in the countries of the European Union, due to the mention of the OECD Guidelines in Article 18 of the EU Taxonomy² stating that a company must meet minimum safeguards, including but not limited to the requirements of the OECD Guidelines, for its activities to be considered environmentally sustainable.

² [Regulation \(EU\) 2020/852 of the European Parliament and of the Council of 18 June 2020 on establishing a framework to facilitate sustainable investment](#)



MONITORING

The multinational enterprises operating in the Republic of Poland and conducting their activities in a manner consistent with responsible business conduct should act on the basis of the recommendations formulated in the OECD Guidelines.

Through accepting the present case for further consideration, the OECD NCP expressed its willingness to strive to strengthen the implementation of responsible business conduct standards by providing a platform for dialogue and support to the parties to the proceedings in their discussions to reach a mutually satisfactory agreement.

Although the parties to the proceedings have not reached an agreement in the present case, the OECD NCP still considers the issues identified in the notification to be significant and justified. Therefore, the OECD NCP, bearing in mind the specific nature of the OECD Guidelines and the expectations for enterprises contained therein, makes the following **recommendations to the Company**:

The OECD NCP recommends that the Company continues its efforts to analyse environmental risks and seek to reduce adverse environmental effects that may arise from the Company's activities.

In particular, **the OECD NCP recommends that the Company implement appropriate due diligence procedures** in relation to environmental issues, respect for human rights and conduct a detailed risks assessments in relation to environmental issues and respect for human rights in the Company's operations.

The **OECD NCP recommends that** the Company translate into Polish and post on the Company's website the relevant sustainability documents that are in place in the Group of which the Company is a part and to consider developing specific sustainability documents at the Company level.

As indicated in the *OECD Due Diligence Guidelines for Responsible Business Conduct* **communicating relevant due diligence information** and communicating information about the processes and activities carried out to identify and address actual or potential adverse impacts that may arise as a result of a company's activities is an essential element, of the due diligence³. Therefore **the OECD NCP sees an urgent need to upgrade** the Company's website to publish information on the Company's sustainability efforts, the application of responsible business conduct standards, including the implementation of appropriate environmental due diligence procedures and respect for human rights, and information on how to communicate with local communities and other stakeholders of the Company.

The **OECD NCP encourages the Company** to systematically provide up-to-date information to representatives of local communities on the potential environmental, health and safety impacts of the Company's activities.

One year after the publication of the Final Statement, the OECD NCP will invite the parties to the proceedings to a meeting to assess the progress made by the Company on the issues covered by the notification and the above recommendations.

³ See [OECD Due Diligence Guidance for Responsible Business Conduct](#), p. 33 and pp. 85-87

Additional information

1. The present proceedings were conducted on the basis of the text of the OECD Guidelines, 2011 edition and the Conduct procedure before the NCP in specific instance related to an alleged breach of the OECD Guidelines for Multinational Enterprises, dated 19 October 2019.

The OECD NCP has, however, informed the parties to the proceedings that a new text of the OECD Guidelines (OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Guidelines, 2023 edition) has been in force since 8 June 2023.

2. This Final Statement, once the content has been agreed with the parties to the proceedings⁴, will be published in Polish and in English on the website of the Polish OECD NCP.
3. Due to the Company's participation in the Group structure, which is based in France, the final version of the Final Statement in English will be forwarded to the French OECD NCP.
4. The English version of the Final Statement will be forwarded to the OECD Secretariat and posted on the [OECD database](#) concerning cases handled by OECD National Contact Points.
5. The Polish version of the Final Statement will also be transferred to the relevant units in the following government administrations, including: the Ministry of Finance, the Ministry of Economic Development and Technology and the Permanent Representation of the Republic of Poland to the OECD for information.
6. Furthermore, the OECD NCP emphasises that the principle of confidentiality of proceedings is a key principle of proceedings before the OECD NCP. It applies to the proceedings as a whole and refers to both the parties to the proceedings and the OECD NCP. The documentation of a case before the OECD NCP, other than documents subject to disclosure on the OECD NCP website, is confidential and not subject to disclosure.

⁴ In accordance with [Conduct procedure before the NCP in specific instance related to an alleged breach of the OECD Guidelines for Multinational Enterprises](#) (Part B. PROCEDURE BEFORE THE OECD NCP, Stage III, pp. 1, 3-8).