



## Initial Assessment of the notification of an alleged breach of the OECD Guidelines for Multinational Enterprises on RBC

Warsaw, 31 October 2023

### I. NOTIFICATION

- 1) On 22 January 2023, a notification of an alleged breach of the OECD Guidelines for Multinational Enterprises (OECD Guidelines) was received by the National Contact Point for responsible business conduct (OECD NCP) by email.
- 2) The notification was submitted by Mr. Krystian Kosowski, a former employee of SII Sp. z o.o. (Notifier).
- 3) The notification concerned an alleged breach of the OECD Guidelines for Multinational Enterprises by SII Sp. z o.o., with its registered office in Warsaw (the "Company"), part of the French Groupe SII, with its registered office in Paris.

### II. DESCRIPTION OF THE SUBJECT OF THE NOTIFICATION

The information presented in the notification implies that the Notifier started working for the Company on 1 May 2022.

The Notifier informed the OECD NCP that he and his colleagues had established the Company Workers' Trade Union on 18 November 2022. He notified the employer thereof by registered letter sent on 18 November 2022.

On 25 November 2022, the Notifier received by email a document entitled: "*Termination of the employment contract without notice*", which stated that "*the reason for the termination of the contract is the gross breach of the employee's basic duties of respecting the rules of social intercourse and caring for the employer's good reputation and the loss of confidence in the employee*".

In the opinion of the Notifier, the circumstances surrounding his dismissal as well as the actions of the Company taken after receiving information on the establishment of the trade union violate the following chapters of the OECD Guidelines: Chapter II "Concepts and Principles", Chapter IV "Human Rights" and Chapter V "Employment and Industrial Relations".

In the notification, the Notifier emphasised, in particular, the violation of the following items in the aforementioned chapters of the OECD Guidelines:

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

**Paragraph 9.** *Refrain from discriminatory or disciplinary action against workers who make bona fide reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the Guidelines or the enterprise's policies.*

**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.*

**Chapter V “Employment and Industrial Relations”**, according to which: *Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards:*

**Paragraph 1(a)** *Respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organisations of their own choosing.*

**Paragraph 1(b)** *Respect the right of workers employed by the multinational enterprise to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment.*

and

**Paragraph 4(a)** *Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.*

### III. ACTIONS TAKEN BY THE OECD NCP FOLLOWING THE RECEIPT OF THE NOTIFICATION

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

- 1) **27 January 2023** the OECD NCP electronically acknowledged the receipt of the notification to the Notifier and informed that, in accordance with the Conduct procedure before the OECD NCP, it would be forwarded to the Company.
- 2) **1 February 2023** the OECD NCP sent a letter to the Company informing it that the notification had been received by the OECD NCP with a request that the Company should take a position on the matter by 14 February 2023.
- 3) Due to the fact that the Company is a Polish company which is part of the French Groupe SII, with its registered office in Paris, on **2 February 2023** the Polish OECD NCP informed the French OECD NCP by email of the receipt of the above notification.
- 4) **24 March 2023** the OECD NCP had a meeting with the Notifier.
- 5) **31 March 2023** the OECD NCP had a meeting with representatives of the Company.

### IV. SUPPLEMENTARY INFORMATION TO THE NOTIFICATION

During the meeting between the OECD NCP and the Notifier on 24 March 2023, the Notifier informed the OECD NCP of the reasons for establishing the trade union and the objectives of the trade union organisation at the Company.

Moreover, the Notifier informed the OECD NCP that, in his opinion, the situation related to his dismissal is related not only to the mere fact and form of dismissal of the Notifier, but also to the

comprehensive approach of the Company to the work organisation, the system of employee remuneration, the consideration of seniority and the respect of freedom of association.

#### **V. POSITION OF THE COMPANY**

The Company presented its position in a letter to the OECD NCP of 14 February 2023, in which it disagreed with the allegations of the Notifier as described in the notification to the OECD NCP. In the letter, the Company also provided detailed supporting documentation.

In particular, the Company indicated that it had evidence confirming that the dismissal of the Notifier was justified and that he was not entitled to special trade union protection. In the opinion of the Company, the arguments of the Notifier are not true, among others, due to:

- a) defective establishment of the trade union organisation,
- b) ineffective notification of the Company of the establishment of the trade union organisation,
- c) failure to extend the activities of the trade union organisation to the entire workplace at the Company,
- d) failure to inform the Company that the Notifier was subject to special protection of the employment relationship pursuant to the resolution of the board of the trade union organisation,
- e) failure to confirm the correct election of the Notifier to serve as President of the Board of the trade union organisation.

According to the opinion of the Company, the allegations of the Notifier formulated in the notification to the OECD NCP are not supported by the facts. In addition, the Company stressed that the Notifier attempted to use the Conduct procedure before the OECD NCP for his own benefit by trying to exert public pressure on the Company.

During the meeting between the OECD NCP and representatives of the Company on 31 March 2023, the Company upheld its position presented in the aforementioned letter, arguing that the Company action consisting in terminating the employment contract of the Notifier was lawful and justified.

The Company indicated the violations allegedly committed by the Notifier during his employment with the and pointed to a number of other proceedings pending in the case concerning the termination of the employment of the Notifier.

#### **VI. ASSESSMENT OF THE CASE BY THE OECD NCP**

In the period from April to July 2023, the OECD NCP investigated the case by analysing the documents submitted by the Company and the Notifier. In accordance with the Conduct procedure before the OECD NCP (Part B. I, 2), the initial analysis of the case included checking:

- a) the identity of the Notifier and the reasons for his interest in the case,
- b) whether the case is material and justified,
- c) whether there is a connection between of the Company activities and the case,

- d) whether any alternative appeal mechanisms or legal procedures in the case (including court proceedings) could/can be applied in a particular situation,
- e) whether execution of the Conduct procedure before the OECD NCP is possible if there is a procedure carried out before another body in the same case,
- f) whether similar cases have already been considered (or are pending) under other national or international procedures,
- g) whether the involvement of the OECD NCP in handling of a particular case is likely to contribute to the implementation of new good practices in the scope of responsible business conduct.

On **22 May 2023**, the OECD NCP electronically requested the Company to send information on all proceedings pending before other authorities that had been initiated either at the initiative of the Notifier or at the initiative of the Company and relevant to the subject of the notification to the OECD NCP.

On **22 May 2023**, the OECD NCP electronically requested the Notifier to submit any information relating to the subject matter of the notification, that has arisen since the OECD NCP's meeting with the Notifier on 24 March 2023 and that may, in the Notifier's opinion, affect the OECD NCP's decision to accept the case for proceeding.

Both the Company and the Notifier have provided the OECD NCP with additional supplementary information on the case.

## VII. DECISION OF THE OECD NCP

Having considered all the documents presented in the case and the information obtained during meetings with the parties to the proceedings, **on 28 August 2023, the OECD NCP decided to accept the case for further consideration.**

The acceptance of a case for further proceeding does not, however, imply a confirmation by the OECD NCP of the breach of the OECD Guidelines by the Company.

## VIII. JUSTIFICATION OF THE OECD NCP DECISION

In accordance with the Conduct procedure in the specific instance related to an alleged breach of the OECD Guidelines (Part B. I(2)), the analysis of the case performed by the OECD NCP covered, among others, a check of the specific criteria for the availability of proceedings before the OECD NCP.

As a result of the analysis it has conducted, the OECD NCP recognised that the basic criteria for accepting a case for consideration had been met. In the opinion of the OECD NCP, the case is material and justified. The content of the notification of an alleged breach of the OECD Guidelines, as well as the positions of the parties presented during the proceedings conducted by the OECD NCP, indicated a link between the case and the activities of the Company, which is a multinational enterprise operating on the Polish market.

Following a review of cases conducted by OECD National Contact Points in other countries, the Polish OECD NCP obtained knowledge of a number of cases conducted by other OECD NCPs regarding breaches of the OECD Guidelines in relation to Chapter II. “General Policies”, Chapter IV. “Human Rights” and Chapter V. “Employment and Industrial Relations”.

According to OECD statistics, since 2011, when the OECD Guidelines were expanded to include a chapter on human rights, the most commonly indicated alleged breaches of Chapter IV “Human Rights” by enterprises have been most frequently reported in the notifications addressed to the OECD NCP.

In 2021, Chapter V. “Employment and Industrial Relations” was the third most violated chapter indicated in the notifications submitted to the OECD NCP (24% of total number of cases conducted by the OECD NCP in 2021) following the breaches of Chapter II. “General Policies” (30%) and Chapter IV. “Human rights” (56%).

Moreover, as a result of its analysis, the NCP OECD concluded that other alternative appeal mechanisms or legal procedures may be applicable to the case, including court proceedings.

At the same time, the OECD NCP obtained knowledge of pending proceedings in the case, including: proceedings before the district court for re-employment, criminal proceedings conducted by the public prosecutor's office, proceedings in minor offence cases before the district court, court proceedings for violation of personal rights, court proceedings to determine the size of the Company Workers' Trade Union and inspections conducted by the State Labour Inspectorate and the Office for Personal Data Protection.

In the light of the information obtained and the analysis performed, the OECD NCP carefully considered the recommendations indicated in the OECD Guidelines (*Part II. Implementation Procedures of the OECD Guidelines for Multinational Enterprises, section: Commentary on “Implementation Procedures of the OECD Guidelines for Multinational Enterprises, I. Commentary on the Procedural Guidance for NCPs, Initial Assessment, paragraph 26*) stating that OECD NCPs should not automatically reject a case simply because other proceedings are (or have been) conducted in the case.

The OECD NCP also assessed whether the potential acceptance of a case for consideration would not work to the detriment of parties conducting other proceedings in the case.

As a result of the assessment, the OECD NCP concluded that although the proceedings indicated above are pending in this particular case, due to the materiality of the alleged breach of the right to establish and join trade unions indicated in the notification, the OECD NCP accepts the case for further consideration.

By accepting the case for further consideration, the OECD NCP aims, among other things, to strengthen the standards of responsible business conduct, bearing in mind that a responsible enterprise cares for the environment, engages in dialogue with stakeholders, participates in economic, environmental and social development by mitigating the negative impact that may arise from its activities and, furthermore, ensures respect for human rights and communicates transparently about all its activities.

By accepting this case for further consideration, the OECD NCP will seek to strengthen the implementation of responsible business conduct standards by providing the parties to the proceedings with a platform for dialogue to assist the parties in reaching agreement on the issues outlined in the Notification.

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#### Further steps and additional information

1. The draft Initial Assessment, in accordance with the Conduct procedure in specific instance related to an alleged breach of the OECD Guidelines (Part B. I(7)), will be sent to the parties to the proceedings with a request to communicate any potential comments or propose records within 10 days from receiving the document.
2. Once the content has been agreed with the parties to the proceedings, the Initial Assessment will be published in Polish and in English on the website of the Polish OECD NCP.
3. Due to the fact that the Company is a Polish company forming a part of a French group, the English version of the Initial Assessment will be forwarded to the French OECD NCP.
4. The English version of the Initial Assessment will be submitted to the OECD Secretariat and posted in the OECD database of cases proceeded by OECD National Contact Points.
5. Subsequently, the OECD NCP will invite parties to a joint meeting, during which it will propose mediation to the parties in order to find a mutually satisfactory solution to resolving the case.
6. The OECD NCP 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) had been in force since 8 June 2023.

However, due to the fact that the Notification was received by the OECD NCP on 22 January 2023 as well as the fact that the Polish language version of the OECD Guidelines, 2023 edition had not yet been published on the date the case was accepted for consideration (28 August 2023) – the OECD NCP is considering the present case based on the text of the OECD Guidelines, 2011 edition and the Procedure before the OECD NCP of 7 October 2019.