



**Polish OECD NCP Final Statement of notification of alleged breach of
the *OECD Guidelines for Multinational Enterprises*
Warsaw, February 17, 2023**

1. On 29 June 2020, the Polish OECD National Contact Point (OECD NCP) received a notification of alleged breach of the *OECD Guidelines for Multinational Enterprises* (hereafter "the OECD MNE Guidelines").
2. The notification was submitted by an individual (hereafter "the Notifier"), representing his family, which owns a residential property and land located in the immediate vicinity of the Grupa LOTOS S.A.
3. The notification concerned the operations of the Grupa LOTOS S.A. multinational company (hereafter "the Company") based in Gdańsk – a Polish company in the extractive sector operating mainly in the fuel industry and in oil and gas production. The entities that are part of the Company conduct their operations in Poland, Norway and Lithuania.

Until 12 August 2022, the Company was listed on the Warsaw Stock Exchange.

As of the date of the Final Statement, the Company had been deleted from the National Court Register due to its merger with PKN ORLEN S.A. on 1 August 2022. The merger was carried out in accordance with Article 492(1)(1)1 of the Code of Commercial Partnerships and Companies, and as a result PKN ORLEN S.A. assumed all the rights and obligations of the Company.

SUBJECT OF THE NOTIFICATION

In the notification submitted to the OECD NCP, the Notifier indicated the following chapters of the OECD MNE Guidelines:

Chapter II, General Policies, A, paragraphs 2, 11 and 12, according to which enterprises should:

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

Paragraph 11. *Avoid causing or contributing to adverse impacts on matters covered by the OECD 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.*

Chapter III, Disclosure, paragraph 1 and paragraphs 28 and 33 of the commentary to the chapter "Disclosure", according to which enterprises should:

Paragraph 1. *ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance. This information should be disclosed for the enterprise as a whole, and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.*

Paragraph 28. *The purpose of this Chapter is to help build an environment of transparency and accountability around the operations of multinational enterprises. Clear and complete information on enterprises is important to a variety of users ranging from shareholders and the*



financial community to other constituencies such as workers, local communities, special interest groups, governments and society at large. To improve public understanding of enterprises and their interaction with society and the environment, enterprises should be transparent in their operations and responsive to the public's increasingly sophisticated demands for information.

Paragraph 33. *The OECD Guidelines also encourage a second set of disclosure or communication practices in areas where reporting standards are still evolving such as, for example, social, environmental and risk reporting.*

Chapter IV, Human Rights, paragraphs 1-6 and paragraphs 37, 39 and 40 of the commentary to the chapter "Human Rights", according to which *companies should:*

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 4. *Have a policy commitment to respect human rights.*

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.*

Paragraph 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.*

Paragraph 37. *The chapeau and the first paragraph recognise that States have the duty to protect human rights, and that enterprises, regardless of their size, sector, operational context, ownership and structure, should respect human rights wherever they operate. Respect for human rights is the global standard of expected conduct for enterprises independently of States' abilities and/or willingness to fulfil their human rights obligations, and does not diminish those obligations.*

Paragraph 39. *In all cases and irrespective of the country or specific context of enterprises' operations, reference should be made at a minimum to the internationally recognised human rights expressed in the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. It is also necessary to respect the principles of fundamental rights set forth in the International Labor Organization Declaration on Principles and Rights at Work of 1998.*

Paragraph 40. *Enterprises can have an impact on virtually the entire spectrum of internationally recognised human rights (...)*

Chapter VI, Environment, which states, among other things, that *keeping in mind issues related to cost, confidentiality of information and protection of intellectual property rights, enterprises should:*

Paragraph 2(a) *provide the public and workers with adequate, measureable 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;

Paragraph 2(b) *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.*

SUMMARY OF ACTIVITIES

After receiving the notification, the OECD NCP took the following actions:

- 1) on 30 June 2020 the OECD NCP has electronically acknowledged receipt of the notification to the Notifier;
- 2) by letter dated 1 July 2020 the OECD NCP informed the Company of the receipt of the notification and issued a request for a position on the case;
- 3) in the period from July to September 2020, the OECD NCP researched the notification, including seeking information on similar substantive cases handled by the OECD NCP in other countries;
- 4) the Company responded to the OECD NCP by letter dated 16 July 2020, and provided comments on the case;
- 5) on 24 September 2020, a meeting was held between representatives of the OECD NCP and the Notifier;
- 6) on 2 October 2020, a meeting was held between representatives of the OECD NCP and the Company;
- 7) on 18 January 2021, the OECD NCP accepted the case for further consideration and formulated an Initial Assessment. The contents of the Initial Assessment were agreed with the parties to the proceedings on 24 February 2021.

Due to the interests of the case, the Initial Assessment was a confidential document intended only for the Parties to the proceedings and for the case file at the OECD NCP, and was not subject to publication on the OECD NCP website, nor was it made available to the OECD Secretariat.

An information note (in Polish and English) about the acceptance of the case for further consideration was posted on the OECD NCP website on 3 March 2021;

- 8) subsequently, the OECD NCP proposed that the parties to the proceedings its *good offices*;
- 9) on 22 March 2021, a meeting was held between representatives of the Company and the Notifier in the presence of the OECD NCP (due to the situation arising from the COVID-19 pandemic, the meeting was conducted remotely via the Cisco Webex platform);
- 10) on 14 July 2021, a second meeting was held between representatives of the Company and the Notifier in the presence of the OECD NCP (the meeting was held in a stationary format at the headquarters of the Ministry of Development Funds and Regional Policy, where the Polish OECD NCP operates). During the meeting, the parties to the proceedings presented their arguments, documents and also films;
- 11) in the further course of the proceedings, the OECD NCP held separate meetings with the parties to the proceedings:



- on 18 November 2021, it met with representatives of the Company, and
 - on 9 December 2021, a meeting with the Notifier was held;
- 12) another meeting of the parties to the proceedings was held on 26 April 2022, during which the parties reached a partial agreement;
- 13) on 31 May 2022, the OECD NCP submitted the draft Final Statement to the parties to the proceedings for their agreement.

SUMMARY OF THE NOTIFICATION

The Notifier identified the following chapters of the OECD MNE Guidelines: Chapter II, General Policies, Chapter III, Disclosure, 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.

Providing details of the situation in which the potential breach of the above-mentioned chapters of the OECD MNE Guidelines allegedly occurred, the Notifier specified in the notification that his family lived from 1945 to 1998 in a house in the vicinity of which the Company built an oil refinery and a waste treatment plant in 1970.

According to the Notifier, the immediate vicinity of the Company engaged in oil refining causes negative effects by polluting the air with toxic compounds, causes contamination of surface water, groundwater, noise nuisance and imminent threat of industrial disaster.

The Notifier accompanied the notification with additional documentation, photos and links to pages containing information about the accident at the refinery site.

POSITION OF THE COMPANY

The Company presented its position in a letter dated 16 July 2020, in which it disagreed with the Notifier's allegations as described in the notification to the OECD NCP.

According to the Company, the refinery's environmental impact to date, supported by studies, expert opinions, inspections by competent authorities and offices as well as by environmental audits, has not resulted in any breaches, sanctions or restrictions, nor has it imposed an obligation to perform an environmental review.

The Company stressed that it has acted and continues to act in compliance and in accordance with the law.

NCP OECD ASSESSMENT OF THE CASE

The OECD NCP in accordance with the [Conduct procedure in specific instance related to an alleged breach of the OECD Guidelines for Multinational Enterprises](#) (Part B. PROCEDURE BEFORE THE POLISH OECD NCP, Stage I.) conducted an initial analysis of the case, which covers verification of:

- a) reasons for the Notifier's interest in the notification of the case;
- b) whether the case is significant and justified;
- c) whether there is a connection between the enterprise's activity and the case;
- d) whether there are alternative appeal mechanisms or legal procedures in the case (including court proceedings);

- e) whether execution of the procedure before the NCP is possible – if there is a procedure carried out before another body in the case;
- f) whether similar cases have been considered (or similar procedures are being conducted) as part of other national or international procedures;
- g) whether the NCP's involvement may contribute to the implementation of new good practices within the scope of responsible business conduct.

As a result of its analysis, the OECD NCP concluded that the criteria for accepting a case for prosecution had been met. According to the OECD NCP, the case was important and legitimate. The contents of the notification of alleged breach of the OECD MNE Guidelines, as well as the positions of the parties presented during the OECD NCP's investigation, indicated a link between the case and the activities of the Company, which is a multinational enterprise operating in the Polish market.

In the situation described in the notification, alternative ways were available, but the proceedings before the OECD NCP carried the valor of being able to reach a compromise solution acceptable to the parties to the proceedings. The OECD NCP has not obtained information on the conduct of proceedings in this case before another body. Also, during the proceedings before the OECD NCP, the Notifier confirmed that the matter reported in the notification to the OECD NCP is not the subject of another proceeding before another authority.

After reviewing cases handled by OECD NCPs in other countries, the Polish OECD NCP was not aware of a similar case being handled by an OECD NCP in another country.

DIALOGUE OF THE PARTIES WITH THE SUPPORT OF THE OECD NCP

In individual meetings with representatives of the parties, the OECD NCP explained in detail the principles formulated in the OECD MNE Guidelines and how to proceed before the OECD NCP in connection with the alleged breach of the OECD MNE Guidelines. The parties agreed to the OECD NCP's proposal that the solution that will contribute to an agreement between the parties are the *good offices*, i.e. joint talks conducted by the parties with the participation and support of the OECD NCP to seek a mutually satisfactory solution.

On the initiative of the OECD NCP, the first meeting of the parties' representatives was held on 22 March 2021 in the presence of the OECD NCP. The parties to the proceeding have confirmed that their intention is to enter into dialogue in order to reach a solution that satisfies each party. The mode of the discussion was established based on the following principles:

- the compliance with the OECD NCP procedure,
- the need to maintain the confidentiality of information, which is binding on both parties to the proceedings and the OECD NCP. The details of the proceedings before the OECD NCP may not be published by the parties either on the Internet or disseminated to the public in any way,
- voluntary principle: the OECD NCP assumes that the parties approach the problem with goodwill and in good faith,
- neutrality principle: 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,
- principle of impartiality: the OECD NCP ensures that both parties are treated equally in the process.

Discussions between the parties to the proceeding focused on the following areas: surface and groundwater pollution, air pollution, the threat of accidents, noise nuisance issues, investment plans and the impact of the Company's activities on the health of nearby residents, as well as the payment

of compensation to the Notifier and the purchase of land and property belonging to persons represented by the Notifier.

It should also be stated that in the course of the proceedings before the OECD NCP there were changes in the structure of the Company, so that during the proceedings before the OECD NCP the Company was represented by both representatives of Grupa LOTOS S.A. and representatives of LOTOS Asphalt sp. z o.o. (now Rafineria Gdańska sp. z o.o.).

CONCLUSIONS OF THE PROCEEDINGS

In accepting the case for further consideration on 18 January 2021, the OECD NCP stressed that accepting the case for further consideration does not mean that the OECD NCP has confirmed the breach of the OECD MNE Guidelines.

As a result of individual meetings between representatives of the OECD NCP and the parties to the proceedings, detailed proposals were developed and discussed by the parties to the proceedings at a meeting in the presence of representatives of the OECD NCP on 26 April 2022. As a result of this meeting, the parties to the proceedings reached a partial agreement on the case.

In accordance with the provision in the [Conduct procedure in specific instance related to an alleged breach of the OECD Guidelines for Multinational Enterprises](#) (Part A, paragraph 10), information regarding the agreement is not included in the content of this Final Statement due to the lack of consent by one of the parties to its disclosure.

Due to the fact that the Notifier did not accept the proposals of the Final Statement prepared by the OECD NCP, the OECD NCP decided to publish the Final Statement containing only basic information about the case.

MONITORING

Due to the fact that the partial agreement reached by the parties to the proceedings covers issues outside the competence of the OECD NCP – there will be no follow-up of the implementation of this agreement.

Therefore, the OECD NCP concludes the proceedings in this case.

Additional Information

1. This Final Statement will be published in Polish and in English on the website of the Polish OECD NCP.
2. An English version of the Final Statement will be submitted to the OECD Secretariat and entered in the OECD database of cases handled by OECD National Contact Points.
3. In addition, the OECD NCP stresses that the principle of confidentiality of proceedings is a key principle of proceedings before the OECD NCP. It applies to the entirety of the proceedings and refers to both of the parties to the proceedings and the OECD NCP. The documentation of a case before the OECD NCP, except for documents subject to disclosure on the OECD NCP website, is confidential and not subject to release.