

**OECD NCP Initial Assessment of alleged breach of the
OECD Guidelines for Multinational Enterprises
Warsaw, 11 January 2021**

1. On February 9th, 2020 the OECD National Contact Point (OECD NCP) received a notification of an alleged breach of the *OECD Guidelines for Multinational Enterprises* (hereafter “*the OECD Guidelines*”).
2. The notification was submitted by Mr. Daniel Wilk (hereafter “the Notifier”), a representative of the “LICZNIK” social movement established by the residents of Skawina.
3. The notification is with regards to one of the production plants of the Polish enterprise Valeo Autosystemy Sp. z o.o. (hereafter “the Company”), located in Skawina, being part of the Valeo Group which is seated in France and is a multinational enterprise.

The Valeo Group is a global supplier and partner of car manufacturers, listed on the Paris Stock Exchange.
4. The OECD NCP accepted the case for further consideration on September 30th, 2020.

LOCATION INDICATED IN THE NOTIFICATION

Skawina is a small town inhabited by approx. 25,000 inhabitants, located in southern Poland. In total, over 40,000 people live in the city and the commune.

The municipal commune of Skawina constitutes an economically important area for the nearby Krakow (approx. 20 km away) and the region of Małopolska. In 2019, the REGON register in Skawina registered 3228 national economy entities, of which 3080 were micro-enterprises, 112 small enterprises (10-49 employees), 26 medium-sized enterprises (50-249 employees), nine large enterprises (250 -999 employees) and one large enterprise (thousand and more employees)¹.

THE SUBJECT OF THE NOTIFICATION

In the opinion of the Notifier, the production plants of the Company operating in Skawina have a negative impact on the environment, which manifests itself as odor nuisance, air pollution and excessive noise.

The following chapters of the OECD Guidelines were indicated as the subject of the notification:

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.*

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

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, measureable and verifiable (where applicable) and timely information on the potential environmental, 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

Upon receiving the notification the OECD NCP took the following actions:

- 1) On 11 February 2020 the OECD NCP confirmed with the Notifier of having received the notification by way of email;
- 2) Due to the fact that Valeo Autosystemy Sp. z o.o. is part of the Valeo Group, which is seated in France, the Polish OECD NCP notified the French OECD NCP of the receipt of this notification on 11 February 2020. The French OECD NCP has expressed its will to support the Polish OECD NCP in carrying out this proceeding, should the need arise;
- 3) On 12 February 2020 and 24 March 2020, the OECD NCP sent letters to the Company notifying of having received the notification along with a request for the Company to take a position on the matter;
- 4) On 13 March 2020, with the agreement of the Polish OECD NCP, the French OECD NCP informed Valeo Group about the existence of the specific instance and that it was being handled by the Polish OECD NCP;
- 5) Due to the COVID-19 pandemic developing at that time and subsequent logistical constraints, the Polish OECD NCP's contact with the Company was finally established on 21 April 2020;
- 6) On 18 May 2020, the Company conveyed its position on the matter by way of email;
- 7) On 2 June 2020, the OECD NCP informed the parties to the proceedings that due to the restrictions resulting from counteraction of the COVID-19 pandemic introduced in the Ministry of Development Funds and Regional Policy, where the Polish OECD NCP operates, it was not possible to organise direct meetings with the parties. At the same time, in line with the pandemic management strategy adopted by the OECD NCP, it was agreed that direct meetings with the parties would be preferred to ensure the confidentiality of the proceedings. Hence, the OECD NCP announced that it would contact the parties on the organisation of direct meetings when the rules for organising meetings during the COVID-19 pandemic will be softened;
- 8) On 25 June 2020, a virtual meeting of representatives of the Polish OECD NCP and the Secretariat of the French OECD NCP was held, during which the activities undertaken so far by Polish OECD NCP in the matter were discussed;
- 9) On 9 July 2020, the OECD NCP held a meeting with the representatives of the Company;
- 10) On 6 August 2020, the OECD NCP held a meeting with the Notifier.

DECISION OF THE OECD NCP

After its analysis of the documentation received together with the notification and the information obtained by the OECD NCP during separate meetings with the parties as well as from the additional documentation provided by the Parties, **the Polish OECD NCP accepted the case for further consideration on 30 September 2020.**

The acceptance of the case for further proceedings does not equate to a determination by the OECD NCP of a breach of the *OECD Guidelines for Multinational Enterprises*.

By accepting the case the OECD NCP strives towards strengthening responsible business conduct, keeping in mind that a responsible enterprise cares for, among others, the environment, engages in dialogue with stakeholders, takes part in economic, environmental, and social development, and mitigates the negative impacts that may arise as a result of its business practices.

By accepting this case for further consideration the OECD NCP will strive to strengthen responsible business conduct by providing the parties a platform for dialogue to help them to reach an agreement on issues raised in the notification.

JUSTIFICATION

In conclusion to its conducted analysis, the OECD NCP has determined that in the case of the notification described above, all criteria for opening proceedings have been fulfilled.

In accordance with the [Conduct procedure in specific instances related to an alleged breach of OECD Guidelines](#), Part B. Point I. para. 2, the initial analysis of the case conducted by the OECD NCP covers verification of:

a) reasons for the interest of the Notifier in the case

The Notifier, Mr. Daniel Wilk, represents the informal social movement of residents of Skawina called “LICZNIK” (“Counter”). The notification also indicated two other persons submitting the notification: Ms. Karolina Kowalczyk and Mr. Andrzej Machno (a relevant statement with signatures was attached to the notification).

The “LICZNIK” social movement was established in November 2019 by participants of social protests organised in connection with odor nuisance coming from the Company in Skawina.

The action was called “LICZNIK”, in order to count the lapse of 100 days to the date indicated in the agreement concluded between the Company and the municipal commune authorities in Skawina. The agreement sets out the actions of the Company to solve the problem of odor nuisance. In the opinion of the Notifier, this agreement is not being properly implemented by the Company.

Members of the “LICZNIK” movement met several times with councilors and representatives of the Municipal and Communal Office in Skawina, reporting odor nuisances that could still be felt and presenting proposals for solving the problem.

According to the information provided by the Company, the representatives of the Company also participated in the meetings with the social partners and representatives of the Municipal and Communal Office in Skawina.

b) Whether the specific instance is significant and justified?

The case concerns a large Polish enterprise, employing a total of over 7,000 employees in Poland.

In the plants of the Company located in Skawina, i.e. in the Engine Cooling Systems Production Plant and in the Wiper System Production Plant, the company employs 3,470 employees, of which approximately 30% come from Skawina or nearby locations. The Company is one of the largest employers in Skawina.

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

In the course of a initial assessment of the case by the OECD NCP and in the course of separated meetings with the Notifier and with representatives of the Company, it was found that the notification submitted to the OECD NCP concerns only one of the plants of the Company operating in Skawina – the Engine Cooling Systems Production Plant.

As in line with the recommendations of *the OECD Guidelines*, the implementation of responsible business conduct standards is expected of all units within a multinational enterprise (both the parent company, subsidiaries and the local units of the multinational enterprise), the OECD NCP considers this matter significant and justified.

At the same time, the OECD NCP notes that *the OECD Guidelines* emphasise that they were not developed to introduce different rules for treating multinational enterprises or domestic enterprises, and that they represent good practices for all enterprises². Therefore, the above recommendation reinforces the position of the OECD NCP as regards considering the present case as significant and justified.

In addition, in the opinion of the OECD NCP, the case is significant and justified as it concerns environmental issues that have recently become an increasing subject of interest in both social organisations, local communities and public administration in Poland. The growing level of social awareness in relation to environmental issues also raises expectations regarding the implementation of environmental standards by enterprises. Therefore, consideration of this case by the OECD NCP may be of significant importance for the improvement of the quality of life of the residents of the town in which the Company operates and to strengthen dialogue between the company and the local community on issues that are relevant to both parties.

c) Whether there is a connection between the enterprise's activity and the specific instance?

The Company operates in Poland in four production plants, two of which are located in Skawina, one in Chrzanów and one in Czechowice-Dziedzice. As indicated above, the notification to the OECD NCP concerns the Engine Cooling Systems Production Plant operating in Skawina.

The mere fact of the operation of the above mentioned plant of the Company in Skawina does not, however, equate to correctness of the statements presented in the notification, because there are also other industrial plants in Skawina, the operation of which may also affect the air quality in the town.

It should be noted that, according to the information provided by the Company, in the opinion of the Company, the subject of the proceedings before the OECD NCP should only be the odor nuisance generated by the above mentioned plant. In order to assess the relationship between the activities of the Company and the case, the parties submitted additional materials, including expert opinions and air quality assessments.

Moreover, according to the information provided by the Company, an additional issue to be considered during the proceedings before the OECD NCP should be the fact that at the time the above mentioned plants of the Company in Skawina were being constructed, there were no plans of erection of a multi-family development in the surrounding areas.

Due to the fact that the information contained in the notification and the information provided by the parties relate to the activities of the above mentioned plant of the Company, hence the OECD NCP recognizes that there is a link between the activity of the Company and the case.

At the same time, the OECD NCP recognizes the readiness expressed by the Company to continue the solutions implemented so far, as well as to take appropriate actions regarding the impact of the operations of the Company on air quality, including dialogue with the Notifier.

² See: the OECD Guidelines, Chapter I, "Concepts and Principles", paragraphs 4 and 5.

d) Whether there are alternative paths of conduct in the specific instance (arbitration, appeal mechanism, court proceedings, etc.)?

To the best knowledge of the OECD NCP, no proceedings are currently pending in this case before another body.

e) Whether execution of the procedure is possible? – If there is a procedure carried out before another body in the same case.

The criterion does not apply to this case.

f) Whether similar issues were considered (or similar proceedings are carried out) within the framework of other national or international proceedings?

As already emphasise above, the issue of air quality has recently been present in the public debate in Poland. This entails an increasing level of awareness of climate change in Polish society, pressure from social organisations operating in the field of environmental protection, as well as media interest in environmental protection issues in the activities of enterprises. These trends are also reflected in the directions of public policies that create appropriate conditions for the improvement of air quality in Poland.

After considering cases conducted by OECD National Contact Points in other countries, the Polish OECD NCPs did not possess knowledge on the treatment of a similar case in other OECD NCPs.

Certain similarities in the field of cooperation between enterprises and stakeholders and conducting dialogue with representatives of local communities on environmental issues can be seen, for example, in such matters as:

- [Imperial Metals Corporation and Southeast Alaska Conservation Council](#) – case conducted by the Canadian OECD NCP, final assessment of 5 May 2020,
- [Nuon Energy N.V. and Hou Friesland Mooi](#) – case conducted by the Dutch OECD NCP, final assessment of 18 December 2018.

An example of a case conducted by the Polish OECD NCP, which concerned environmental issues, may also be the case of [Grupa OLX Sp. z o.o. and the Frank Bold Foundation](#). The final assessment in this case was issued on 13 June 2019, and on 28 July 2020, a note on the follow-up of this case was published.

g) Whether the NCP's involvement may contribute to the implementation of new good practices within the scope of responsible business conduct?

In the opinion of the OECD NCP, in the situation of a settlement for the case being worked out, its results can contribute towards the implementation of new good practices with regards to responsible business conduct in the automotive sector's supply chains, as well as good practices in the field of dialogue with stakeholders.

It should also be noted that the parties to the proceedings expressed their readiness to cooperate and openness to dialogue.

It is important to note however, that the proceedings overseen by the OECD NCP are of a particular nature, conducted on the basis of *the OECD Guidelines*, which are an international soft law instrument and constitute an international standard of responsible business conduct.

SUBSEQUENT STAGES OF THE PROCEEDINGS

1. This Initial Assessment will be published in Polish and in English on the Polish OECD NCP website.
2. Due to the participation of the Company in the structure of the Valeo Group, seated in France, the English version of the Initial Assessment will be submitted to the French OECD NCP.
3. The English version of the Initial Assessment will be forwarded to the OECD Secretariat, which will include it in the database of cases considered by the OECD NCP (<https://mneguidelines.oecd.org/database/>).
4. At a later stage of the proceedings, the OECD NCP will propose to the parties its good offices (joint talks and activities with the active support of the OECD NCP).
5. During the proceedings, both the parties and the OECD NCP will respect the principle of confidentiality and other rules set out in the Procedure for proceedings before the OECD NCP.
6. The consideration of the case will end with the formulation by the OECD NCP of the Final Assessment, which will be published on the website of the OECD NCP and will be submitted to the French OECD NCP and the OECD Secretariat.