

**Polish OECD NCP Final Statement of alleged non-observance
of the *OECD Guidelines for Multinational Enterprises*
Warsaw, 13 June 2019**

1. On 9 April 2018, the OECD National Contact Point (OECD NCP) received a notification of an alleged breach of the *OECD Guidelines for Multinational Enterprises* (hereinafter the “*OECD Guidelines*”).
2. The notification was submitted by the Frank Bold Foundation (hereinafter the “Notifier”), a non-governmental organization operating in the area of environmental protection with its headquarters in Krakow.
3. The notification refers to the multinational enterprise Grupa OLX sp. z o.o., with its seat in Poznan and operating in the sector of online advertisement portals, being part of the corporate group OLX Group with its main headquarters in the Netherlands (hereinafter the “Company”).

SUBJECT OF THE NOTIFICATION

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

- **Chapter II, General Policies, A, point 1**, which states that: *Enterprises should contribute to economic, environmental and social progress with a view to achieving sustainable development;*
- **Chapter II, General Policies, A, point 13**, which states that: *In addition to addressing adverse impacts in relation to matters covered by the Guidelines, enterprises should encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the Guidelines;*
- **Chapter VI, Environment, point 6**, which states that: *In particular, enterprises should 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 (point 6.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;*
- **Chapter VIII, Consumer Interests, points 2 and 5**, which states that: *When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the quality and reliability of the goods and services that they provide. In particular, they should:*
(point 2) Provide accurate, verifiable and clear information that is sufficient to enable consumers to make informed decisions, including information on the prices and, where

appropriate, content, safe use, environmental attributes, maintenance, storage and disposal of goods and services. Where feasible this information should be provided in a manner that facilitates consumers' ability to compare products;

(point 5) Support efforts to promote consumer education in areas that relate to their business activities, with the aim of, inter alia, improving the ability of consumers to: i) make informed decisions involving complex goods, services and markets, ii) better understand the economic, environmental and social impact of their decisions and iii) support sustainable consumption.

SUMMARY OF ACTIONS

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

- 1) On 23 April 2018, the OECD NCP confirmed with the Notifier that it had received the notification by electronic mail;
- 2) The OECD NCP informed the Company that it had received the notification and requested a position on the matter by official letter dated 25 April 2018;
- 3) On 26 April 2018, the Dutch OECD NCP (competent for the headquarters of OLX Group being the parent company for Grupa OLX Sp. z o.o., i.e. the notification's subject) was informed about the received notification of an alleged breach of the *OECD Guidelines*;
- 4) In May and June 2018, the OECD NCP assessed the notification, seeking out similar cases and consulting relevant experts;
- 5) The Company responded to the letter of the OECD NCP and conveyed its position on the matter by official letter dated 10 May 2018;
- 6) On 28 May 2018, members of the OECD NCP held a meeting with the Notifier;
- 7) On 11 June 2018, members of the OECD NCP held a meeting with a representative of the Company;
- 8) On 25 June 2018, the OECD NCP accepted the case for further consideration and published the Initial Assessment in Polish and English on the Internet website of the OECD NCP;
- 9) On 14 September 2018, representatives of the Company and of the Notifier held a meeting in the presence of the OECD NCP during which the Parties expressed their commitment and openness to engage in dialogue;
- 10) Further actions were taken up directly by the Parties without the participation of the OECD NCP;
- 11) On 5 February 2019 and on 26 February 2019, the OECD NCP received from the Parties written information on the progress in the cooperation between the Parties;
- 12) On 13 May 2019, the OECD NCP submitted to the Parties the draft Final Statement for acceptance.
- 13) The Parties to the proceeding accepted the Final Statement on 13 June 2019.

SUMMARY OF THE NOTIFICATION

The Notifier pointed out to the following chapters of the OECD Guidelines: Chapter II “General Policies”, Chapter VI “Environment” and Chapter VIII “Consumer Interests”, which had been violated, in the opinion of the Notifier, through the placement of advertisements on the advertisement portal of the Company concerning sale offers for furnaces for, inter alia: burning processed oil and discarded wooden railway sleepers.

In the opinion of the Notifier, both the processed oil and discarded wooden railway sleepers constitute hazardous waste the burning of which has been prohibited under relevant legal provisions due to their substantial adverse environmental impact. Therefore, the Notifier believes that actions of users of the Company’s portal may be deemed particularly harmful due to their impact on air pollution in Poland, including the occurrence of human life-threatening smog.

As stated by the Notifier, although the Company is not directly responsible for the sale of processed oil-burning furnaces and discarded railway sleepers, which results from the profile of the advertisement portal, it does answer for enabling users of its portal to post such sale offers and to procure products the use of which is highly probable to violate the provisions on the environmental protection.

POSITION OF THE COMPANY

In the letter sent by the Company to the OECD NCP on 10 May 2019, the Company upheld its position that the notification submitted to the OECD NCP was groundless and resulted from an incorrect understanding of the essence of the advertisements placed in the online advertisement portal, disregarding binding legal provisions and from the incorrect understanding of the Company’s role on the market for online advertisement portals. As emphasized, the Company is not a middleman in sale transactions in the online portal and cannot influence their terms, e.g. it does not determine the content of the offers or the price of the product sold. In particular, it does not influence the manner in which the product purchased by users of the portal is used.

The Company notified the OECD NCP that it did not interfere in the terms and conditions of transactions between sellers and buyers in any way. Furthermore, the Company is not able to identify and block advertisements which may be contrary to the rules and regulations of the online portal and to the common legal provisions in force. The Company may delete an advertisement once it has received a respective notification. Furthermore, the Company argued that it is not prohibited to trade in goods specified by the Notifier in accordance with the legal provisions in force.

NCP OECD ASSESSMENT OF THE CASE

In accordance with the *Conduct procedure in specific instances related to an alleged breach of OECD Guidelines* (Part II. Procedure, Stage I), the OECD NCP verified whether the notification fulfilled the following criteria:

- Is the case related to the implementation process of the *OECD Guidelines*?

- Is the case significant and justified?;
- Is there a link between the activities of the Company and the case?;
- Are there alternative paths of conduct in the specific case (arbitration, appeal mechanism, court proceedings, etc.)?;
- Is it possible to conduct the proceeding - if there is a procedure carried out before another body in the same case?;
- Were there similar cases in the past, and how were their examined?;
- May the NCP's involvement contribute to the implementation of new best practices with regard to responsible business conduct?.

Based on its assessment, the OECD NCP determined that all criteria for opening proceedings had been fulfilled. The OECD NCP assessed that the case was significant and justified. The content of the notification of the alleged breach of the *OECD Guidelines* and the positions of the Parties presented during the proceeding of the OECD NCP revealed a link between the case and the activities of the Company which is a multinational enterprise operating on the Polish market.

There were alternative paths of conduct in the case covered by the notification; however, the proceeding before the OECD NCP provided for a possibility to work out a compromise acceptable for the Parties to the proceeding. The OECD NCP did not receive information on whether the case was processed before another body.

Based on a review of cases dealt with the OECD National Contact Points of other countries (with the use of the information placed on their Internet websites), the OECD NCP did not learn anything about similar cases in other countries.

The OECD NCP assesses that in case an agreement is reached in the case, its result may also be of significant importance for other entities operating on the developing *e-commerce* market.

By accepting the case for further proceeding on 25 June 2018, the OECD NCP expressed its commitment to strengthen responsible business conduct standards by taking into account that a responsible enterprise should care for the natural environment, conduct a dialogue with stakeholders, participate in the economic, environmental and social development and minimize adverse impacts of its activities, and should commit to respecting human rights and inform about any actions it may take up.

Both before the formulation of the Initial Assessment of the case and after its acceptance for further proceeding, the OECD NCP consulted the respective matters mentioned in the notification with experts of the government administration and with independent experts. The OECD NCP found the consultations indispensable to gather knowledge about two separate matters in the case: 1) the responsibility of entities operating online advertisement portals, and 2) the responsibility of entities marketing products the use of which has an adverse impact on the natural environment.

DIALOGUE BETWEEN THE PARTIES

During individual meetings with representatives of the Parties, the OECD NCP explained in detail the principles formulated in the *OECD Guidelines for multinational enterprises* and the manner for conducting proceedings before the OECD NCP with regard to the potential violation of the *OECD Guidelines*.

The Parties consented with the proposal of the OECD NCP that the solution which will contribute to an agreement between the Parties involves the so-called *good offices* which are joint talks of the Parties with the participation and support of the OECD NCP to work out a solution which will be satisfactory for both Parties.

The OECD NCP organized a meeting of representatives of the Parties in the presence of the OECD NCP on 14 September 2018. The Parties to the proceeding confirmed that their intention was to engage in a dialogue to work out solutions which would be satisfactory for each of the Parties. The mode for conducting talks was determined in accordance with the following principles:

- the compliance with the conduct procedure before the OECD NCP;
- the confidentiality obligation binding both Parties and the OECD NCP. The Parties were not allowed to publish online or publically disseminate any details on the proceeding before the OECD NCP in any way;
- the voluntary principle: the OECD NCP assumes that the Parties act with willingness and in good faith in order to solve the problem;
- the neutrality principle: the OECD NCP remains neutral to the Parties to the proceeding and to the subject of the dispute, does not impose its solutions onto the Parties;
- the impartiality principle: the OECD NCP cares for equal treatment of both Parties during the proceeding.

During the talks, the Parties expressed their commitment and openness to dialogue by addressing potential solutions put forward during the meeting. The discussion between the Parties focused on three main areas:

- 1) the formulation of the content of advertisements in advertisement portals in a way which will not mislead buyers and the need to introduce a more effective mechanism to capture incorrect contents of the advertisements;
- 2) the potential amendment of the rules and regulations of the advertisement portal to increase the awareness of those placing the advertisement about the marketed products and services and their impact on the natural environment;
- 3) the possibility to use the promotional campaign conducted by the Company during the autumn period to increase the ecological awareness of consumers.

It was agreed during the meeting that working out an agreement will involve an analysis of possibilities and conditions of the Parties.

Furthermore,

- 1) the Company proposed to extend the planned marketing campaign for the autumn of 2018 on the heating-related advertisements onto matters of the environmental protection, and accepted the assistance offered by the Notifier;
- 2) the Notifier will concentrate on monitoring, while the Company will concentrate on deleting from the advertisement portal any advertisements the subject of which or the use of the advertised products could violate the provisions on the environmental protection;
- 3) the Parties also agreed the principles for future cooperation in the form of consultations by electronic means.

The Company is of the opinion that the cooperation of the Parties allowed to reach a satisfactory consensus. In the autumn of 2018, the Company conducted an advertising campaign in the social media to promote the purchase of fuels in the advertisement portal of the Company. The Notifier was engaged in the preparation of a list of products/goods for sale in the portal which complied with the respective energy effectiveness class and were environmentally friendly. Following the recommendations of the Notifier, the Company excluded, among other things, the word “coal” from the set of key words available in the advertisement portal.

Furthermore, in relation to the application of the provisions of the Act on the provision of services by electronic means (Journal of Laws of 2002 No. 144, item 1204) and to the limited technological capacities of the Company, in cooperation with the Notifier the Company specified a procedure for monitoring and reporting advertisements the subject or the use of which could potentially violate the provisions of the Act on the environmental protection (Journal of Laws of 2001 No. 62, item 627).

The Notifier assessed the cooperation with the Company as satisfactory. During the direct cooperation of the Parties, the Company reacted to the Notifier’s reports concerning the sale of prohibited products, and amended the rules and regulations of the advertisement portal, as agreed with the Notifier, concerning the sale of solid-fuel boilers.

A representative of the Company notified the OECD NCP about the fact that the Parties had signed a letter of intent on 25 April 2019. The Parties emphasized among others the significance of the issue of air pollution in Poland and the necessity to take up various actions to increase the ecological awareness and promote attitudes compliant with the principles of the environmental protection and of sustainable development. By expressing their consent for the cooperation in this area, the Parties obliged themselves that the Notifier would monitor the content of the advertisements placed in the advertisement portal of the Company, while the Company would delete the advertisements violating the provisions on the environmental protection as indicated by the Notifier.

Furthermore, the Notifier would support the Company in the actions aimed at protecting air against pollution, promoting ecological attitudes and a consumption model compliant with the principles of the environmental protection and of sustainable development.

THE OECD NCP CONCLUSIONS

By accepting the case for further consideration on 25 June 2018, the OECD NCP emphasized that the acceptance of the case for further examination did not mean a confirmation of the OECD NCP that the *OECD Guidelines* had been violated.

It should be pointed out that thanks to the *good offices* proposed by the OECD NCP the Parties worked out a satisfactory agreement. The OECD NCP appreciates the Parties' openness to dialogue and their commitment to working out the agreement.

Therefore, it should be concluded in the context of the OECD Guidelines that the Company did follow the recommendation specified in Chapter II "General principles", in particular point 13 which states: *In addition to addressing adverse impacts in relation to matters covered by the Guidelines, enterprises should encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the Guidelines.*

Furthermore, it should be noted that the Company did recognize the significance of the provisions of Chapter VI "Environment" and of Chapter VIII "Consumer interests", and took up appropriate actions to carry out its activities, among other things, *"in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the quality and reliability of the goods and services that they provide"*.

The fact that the Parties agreed that the Notifier would monitor the advertisements published in the advertisement portal of the Company to eliminate those concerning products and services which might have an adverse impact on the natural environment by violating the provisions on the environmental protection also reflects the deep commitment of both Parties to acting for the environmental protection. The actions are aimed, among other things, at ensuring that the provisions of the broadly understood law on the environmental protection will be followed (in particular the protection of air against pollution), and at promoting attitudes compliant with the principles of the environmental protection and of sustainable development.

To sum up, the OEC NCP assesses that the conducted proceeding brought a solution which is satisfactory for the Parties thereto. The recommendation which may be derived from the proceeding for other potential proceedings in Poland and in other countries in future refers to the parties' openness to dialogue and to the correct understanding of the recommendations formulated in the *OECD Guidelines for multinational enterprises* which are an international standard of responsible business conduct.

Poland is one of 48 countries which implement the OECD Guidelines and recommends the multinational enterprises operating in the country to minimize adverse impacts which may occur in relation to the enterprises' activities.

The OECD NCP believes that the results of the proceeding may contributed to the effective implementation of responsible business conduct standards, including the care for the natural environment, and to ensuring the quality and reliability of provided services. The solution worked out by the Parties to the proceeding may have a positive impact on the Company's activities, and is also an example of best practices in the sector of online advertisement portals.

MONITORING

The OECD NCP recommends the Parties to continue actions by following the concluded agreement.

In April 2020, the OECD NCP will ask the Parties to submit information on the cooperation and to respect the provisions of the agreement.

Additional information

1. This Final Statement will be published in Polish and English on the Internet website of the Polish OECD NCP.
2. The Final Statement in English will be submitted to the Secretariat of the OECD and to the Dutch OECD NCP for information.