

**Polish OECD NCP Final Statement of alleged non-observance
of the *OECD Guidelines for Multinational Enterprises*
Warsaw, 26 July 2019**

1. On 6 August 2018, the OECD National Contact Point (OECD NCP) received a notification of an alleged breach of the *OECD Guidelines for Multinational Enterprises*, hereinafter referred to as the “*OECD Guidelines*”.
2. The notification was submitted by the Foundation “Development YES – Open-Pit Mines NO” (<https://rozwojtak-odkrywkinie.pl/en/>) with its registered office in Legnica, which promotes the development of energy based on renewable energy sources and acts for environmental protection, hereinafter referred to as the “Notifier”.
3. The notification referred to the activities of multinational enterprise Group PZU S.A. with its registered office in Warsaw, operating in the financial sector (insurance and banking), hereinafter referred to as 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 III, Disclosure, A, point 4**, which states that: *Enterprises should apply high quality standards for accounting, and financial as well as non-financial disclosure, including environmental and social reporting where they exist. (...);*
- **Chapter IV, Human Rights**, which states that: *Enterprises should:*
 - point 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;*
 - point 2** *Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur;*
 - point 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;*
 - (...)
 - point 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**, which states that: *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:

point 6b *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 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**, 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, enterprises should (...):*

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 16 August 2018, the OECD NCP confirmed with the Notifier that it has received the notification by electronic mail;
- 2) By letter of 20 August 2018, the OECD NCP notified the Company that it has received the notification and requested its position on the matter;
- 3) The Company responded to the letter of the OECD NCP and conveyed its position on the matter by official letter dated 17 September 2018;
- 4) In October 2018, members of the OECD NCP held individual meetings with representatives of the Company and representatives of the Notifier;
- 5) On 8 November 2018, the OECD NCP accepted the case for further consideration and formulated an Initial Assessment. The content of the Initial Assessment was agreed with the Parties to the proceeding. For the cause, the Initial Assessment was classified by the OECD NCP and was directed only to the Parties to the proceeding and taken to the case file by the OECD NCP and was neither published on the Internet website of the OECD NCP, nor made available to the Secretariat of the OECD. An information note (in Polish and English) on accepting the case for further consideration by the OECD NCP was placed on the Internet website of the OECD NCP;
- 6) The OECD NCP proposed the Parties its *good offices* (joint talks with active support of the OECD NCP);
- 7) On 18 January 2019, 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. The meeting resulted in agreeing a substantive scope of the Notifier's expectations towards the Company;

- 8) By letter of 26 February 2019, the Company submitted its position to the Notifier's expectations and informed that the major part of the relevant information would be included in a non-financial statement of the Company for 2018;
- 9) After the Company had published its non-financial statement for 2018, the OECD NCP proposed the Parties to hold another meeting with members of the OECD NCP;
- 10) On 17 April 2019, representatives of the Company and of the Notifier held a meeting in the presence of the OECD NCP during which the Parties reached an agreement;
- 11) On 27 May 2019, the OECD NCP submitted to the Parties the draft Final Statement for acceptance.
- 12) The Parties to the proceeding accepted the Final Statement on 26 July 2019.

SUMMARY OF THE NOTIFICATION

The Notifier pointed out to the following chapters of the OECD Guidelines: Chapter II "General Policies", Chapter III "Disclosure", Chapter IV "Human Rights", Chapter VI "Environment" and Chapter VIII "Consumer Interests", which had been violated, in the opinion of the Notifier, through the omission of certain information in the Company's non-financial statement for 2017.

The Notifier believes that the Company did not include any information about the effects of the activities of the entities the Company insures, including their environmental impacts and climate-related matters, in its non-financial statement for 2017. The non-financial information provided by the Company on environmental matters and on respecting human rights were not sufficient in the opinion of the Notifier.

The Notifier argues that although the Company fulfilled legal requirements, it did not fulfil its obligations in terms of complete reporting and ensuring transparency as to the environmental impacts of its activities and of its services. The Company's non-financial statement mentions that the Company carried out an engineering risk assessment by the valuation of the insurance premium, but it does neither contain any details on the assessment, nor specifies risks which may be related to insuring entities emitting significant volumes of greenhouse gases.

Based on the Company's non-financial statement for 2017, the Notifier concluded that the environmental matters were not a key criterion for capital investments and the statement lacked information on the emissions of CO₂ to the atmosphere and on the Company's role in insuring the coal mining sector in Poland.

The Notifier also emphasized in its notification that one of the human rights is the right to live in a clean environment. The judicature of the European Court of Human Rights created the basis for understanding that complaints for environmental pollution are based on Article 8 of the European Convention on Human Rights (the right to respect for private and family life). On the other hand,

the OECD Guidelines encourage enterprises to perform an analysis in terms of respecting human rights by covering the assessment of real and potential forms of impacting human rights, integrating, reacting and informing about the way of reacting to the results of the analysis. Insuring or investing in the activities of entities which extract or burn coal may, in the opinion of the Notifier, limit the right to live in a clean environment.

Therefore, the Notifier believes that the Company's activities in 2017 should also have been analysed in terms of respecting human rights and of whether the Company took any actions to minimize air pollution with the use of available measures, e.g. by extending the Company's strategies to include environmental matters and investment risk. The Notifier claims that the public documents, including the Company's non-financial statement for 2017, did not confirm that such an analysis had been performed.

Furthermore, the Notifier believes that the omission of information about the scale of the Company's investment in the carbon-intensive sector and about the stake in the market for corporate insurance for the carbon-intensive sector in the Company's statements also caused that the majority of consumers could not gain a full picture of the nature and scope of the Company's activities, including of the effects of the activities of other enterprises related to the Company by investment or insurance decisions.

POSITION OF THE COMPANY

In its response to the OECD NCP of 17 September 2018, the Company found the allegations of the Notifier unjustified. The Company did emphasize that it was aware of the significance of environmental protection, which manifests itself, among other things, in the strategic document of the Company for the years 2016-2020 and in the set of the Company's best practices which are basic documents setting the directions for development and the principles for the Company's proceeding in business. Furthermore, the Company pointed out that it joins ecological projects by striving to minimize potential adverse environmental impacts of its activities.

The Company also confirmed its full responsibility for its actions in ecological terms, but it may exercise a limited impact on business strategies of its clients, including their activities for environmental protection. Because the activities of the Company cover insurance and reinsurance, its activities towards business clients make take the form of only recommendations concerning insurance risk and must not extend beyond the competences specified by law for the insurance holding.

As for the Company's non-financial statement of the 2017, the Company stated that starting from 2017 it was obliged to prepare non-financial statements in accordance with the Accounting Act (implementing Directive 2014/95/EU in the Polish law). The Company believes that the statement for 2017 contains reliable and complete information, including the information on environmental matters. The Company claims that the non-financial statements should concentrate more on the environmental impacts of its activities rather than on the activities of its clients.

Concerning the matter of respecting human rights, the Company assured that it continuously analysed its activities in terms of respecting human rights and the analysis was one of the components of the risk management system of the Company.

By referring to the matter of protecting consumers' rights, the Company emphasized that it did not conceal information, and it fulfils all its information obligations in terms of investments. The information is available in the public domain, excluding information protected by insurance secret and company secret.

Furthermore, the Company pointed out that starting from 2012 it had been part of RESPECT Index at the Warsaw Stock Exchange.

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?.

The OECD NCP assesses that the information provided in the notification about the Company's activities were deemed to be related to the implementation process of *the OECD Guidelines*.

The OECD NCP assessed that the case was significant and justified.

The content of the notification 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. It should be recalled in this context that under the actualisation of *the OECD Guidelines* in 2011 the OECD confirmed that *the OECD Guidelines* would apply to all sectors, including the financial sectors.

There were alternative paths of conduct in the case. However, it was concluded that the proceeding of the OECD NCP would contribute to strengthening the Company's awareness of responsible business conduct and of disclosing non-financial information which had recently appeared internationally. The Notifier believes that the submitting the notification to the OECD NCP would also

provide for greater possibility to work out a solution which would be acceptable to the Parties and could favourably impact the entire sector of the Company.

The OECD NCP did not learn about whether the case was examined by any other body.

After reviewing the proceedings conducted by the OECD NCP in other countries (based on their respective websites), it was concluded that similar cases had already been or were currently examined. This referred to two proceedings of the Dutch OECD NCP:

- 1) Case Friends of the Earth Europe and Friends of the Earth Netherlands vs. Milieudefensie – Rabobank, in which the Dutch OECD NCP issued the final statement on 15 January 2016;
- 2) Case Oxfam Novib, Greenpeace Netherlands, BankTrack and Friends of the Earth Netherlands (Milieudefensie) vs. ING (during the proceeding conducted by the Polish OECD NCP, only the details included in the Initial Assessment of this case were known because the Dutch OECD NCP issued the Final Statement on 19 April 2019).

The OECD NCP concluded based on the performed analysis that the criteria for accepting the case for further proceeding had been fulfilled.

On 8 November 2018, the OECD NCP accepted the case for further consideration and formulated an Initial Assessment. The content of the Initial Assessment was agreed with the Parties to the proceeding. For the cause, the Initial Assessment was classified by the OECD NCP and was directed only to the Parties to the proceeding and taken to the case file by the OECD NCP and was not published.

DIALOGUE OF THE PARTIES WITH SUPPORT OF THE OECD NCP

After accepting the case for further consideration and formulating the Initial Assessment, the OECD NCP proposed the Parties its *good offices* (joint talks with active support of the OECD NCP).

On 18 January 2019, 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.

During the meeting, the representatives of the Company stated, among others, that the Company was aware of ongoing climate change and was actively engaged in actions for combating climate change, which manifested itself, to give an example, through the Company's involvement in the organization of the COP24 Climate Summit which took place on 2-16 December 2018 in Katowice.

The meeting resulted in agreeing the substantive scope of the Notifier's expectations towards the Company which covered the following matters:

- 1) the Company's disclosure – in the following non-financial statement of the Company for 2018 or by publishing on the website of the Company and publically announcing by a press statement – of information on whether it possessed a policy on respecting human rights and an environmental policy;

- 2) in case the Company does not possess such policies – announcing publically when the Company would prepare and implement the policies;
- 3) discussing the Company’s approach to the emissions of greenhouse gases in the non-financial statement, including the data on the Company’s emissions and on its actions to minimize the emissions of greenhouse gases;
- 4) discussing the matters of climate change and global warning in the Company’s non-financial statement in the context of its activities and of those of its clients.

The Company submitted its position on the Notifier’s expectations by letter to the OECD NCP of 26 February 2019 by answering directly the questions and informing that the major part of the relevant information covered by the scope of its expectations would be included in the non-financial statement of the Company for 2018.

On 17 April 2019, the representatives of the Company and of the Notifier held a meeting in the presence of the OECD NCP during which the Parties reached an agreement.

The representatives of the Company explained that a three-stage process of identifying important matters for the non-financial statement had been carried out, thanks to which the statement contained more information on individual matters. Furthermore, it was emphasized that the Company’s non-financial statement for 2018 fulfilled the relevant requirements specified in the Accounting Act (implementing Directive 2014/95/EU in the Polish law) and was prepared in accordance with GRI Standards.

The Notifier expressed its satisfaction with the fact that the majority of its expectations had been included by the Company in the non-financial statement for 2018 which was published on its website on 13 March 2019. The Notifier assesses that the description of the policies on respecting human rights and on environmental protection was not perfect yet (particularly with regard to the Company’s responsibility for the activities of the entities the Company insures or with regard to the emissions caused by the Company’s investment), but it provided for a much better illustration of the Company’s approach to these matters, if compared with the non-financial statement for 2017.

CONCLUSIONS FROM THE PROCEEDING

By accepting the case for further proceeding on 8 November 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.

By accepting the case for further proceeding, the OECD NCP expressed its commitment to strengthen responsible business conduct standards by taking into account that a responsible enterprise should, among other things, 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 diligently about any actions it may take up.

During the talks of the Parties, the OECD NCP kept emphasizing that the proceeding it conducts is specific, based on *the OECD Guidelines* which are the international soft law and constitute an international standard of responsible business conduct. Poland is one of 48 countries which implement *the OECD Guidelines* and recommends so the multinational enterprises operating in the country to follow *the OECD Guidelines*, among other things, by minimizing adverse impacts which may occur in relation to the enterprises' activities.

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", A, in particular point 1 which states that: "*Enterprises should contribute to economic, environmental and social progress with a view to achieving sustainable development*", and in Chapter III "Disclosure, A, point 4 which states that: "*Enterprises should apply high quality standards for accounting, and financial as well as non-financial disclosure, including environmental and social reporting where they exist. (...)*".

Furthermore, it should be noted that the Company did recognize the significance of the provisions of Chapter IV "Human Rights" and took actions to 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.

It should also be pointed to the change in the Company's approach to the matters discussed in Chapter VI "Environment" 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: 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*".

The result of the Parties' dialogue which was achieved in this proceeding, in particular on the disclosure of non-financial information, may also have a significant educational value for other Polish insurance holdings or financial enterprises in a broader sense. This is significant mainly in the light of recommendations and regulations on responsible business conduct in the financial sector, which are elaborated internationally. In particular, this refers to the regulations of the European Union on sustainable finance which will introduce new requirements concerning the approach of financial enterprises to consider environmental matters, in particular the impact on climate change.

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.

MONITORING

The OECD NCP recommends the Company to continue actions covered by the substantive scope of the Notifier's expectations, in particular to implement policies on respecting human rights and on environmental protection and on making relevant disclosures in its following non-financial statements.

Upon the lapse of one year from the publication of the Final Statement, however not earlier than the publication of the non-financial statement of the Company for 2019, the OECD NCP will invite the Parties to a meeting to assess the Company's progress in the area covered by the notification.

Additional information

1. This Final Statement will be published in Polish and English on the Polish OECD NCP's website.
2. The Final Statement in English will be submitted to the Secretariat of the OECD.