

National Contact Point of Latvia

Initial assessment on the request for a review process submitted by an individual regarding the activities of SIA OMNIVA

Riga, 14 April 2022

On the National Contact point and its role

In 2004, Latvia acceded to the Organization for Economic Co-operation and Development (*henceforth referred to as – “OECD”*) Guidelines for multinational enterprises (*henceforth referred to as – “Guidelines”*). The Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide voluntary principles and standards for responsible business conduct (in areas such as employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation) in a global context consistent with applicable laws and internationally recognized standards.

The Guidelines apply to multinationals operating or registered in countries that are signatories to the OECD Declaration on International Investment and Multinational Enterprises.

All 38 OECD Member States and 13 other non-Member countries have joined the Guidelines. In all these countries, a National Contact point (*henceforth referred to as – “NCP”*) has been established for the implementation of the Guidelines.

The role of NCPs is twofold:

- Promotion of the Guidelines and policy coherence;
- Handling cases related to the Guidelines.

The OECD Guidelines are not laws and NCPs are not law enforcement agencies or courts. Following the receipt of a request for review, the NCP conducts an initial assessment with an aim to determine whether the issue raised merit for further examination. The primary value-added of NCPs is the facilitation of dialogue for purposes of resolving disputes in case the issue raised in the complaint merits further examination.

Summary

On 9 July 2021, the Estonian NCP received a submission from a private individual (*henceforth referred to as “submitter”*), residing in Latvia, alleging that SIA OMNIVA (*henceforth referred to as “SIA OMNIVA” or “the Company”*), a logistics subsidiary Latvian company owned by an Estonian parent company, is not observing OECD Guidelines. The submitter stated that the Company fails to conform with responsible business conduct standards pointing to repeated instances where courier van drivers had parked their vehicle in a mixed residential and offices based commercial area next to children`s play area at the ‘no parking’ yellow line and leave it unattended with engine running while delivering parcels to OMNIVA customers. According to the submitter such practice poses threat to public health, safety and the environment, including both air and noise pollution.

The submitter first voiced his concerns in a correspondence with SIA OMNIVA but due to company's inconclusive approach to the matter, partly based on the incomplete citation to the Traffic Law, the submitter addressed his grievances to the Estonian NCP. Later, given the fact that the actions of SIA OMNIVA originated in Riga, the review process was taken over by the Latvian NCP.

Factual circumstances and arguments of the parties

In the initial correspondence with SIA OMNIVA, the submitter drew the company's attention to situations where courier van drivers often leave the delivery van with the engine running while delivering parcels to OMNIVA customers. This practice is particularly dangerous when the unattended vehicle with a key in the ignition is left next to a children's play area. From a public safety standpoint such behavior is not acceptable. According to the submitter such practice poses threat to public health, safety and the environment, including both air and noise pollution. The submitter asked the company to stop the practice by instructing drivers to switch off the engine when the vehicle is stationary and also when the driver leaves the vehicle; and to lock the vehicle when the driver leaves it.

In correspondence with the submitter SIA OMNIVA indicated that this particular case is justified by the hot summer weather. In addition, there is no "Residential area" sign installed in the courtyard of the submitter's residence, which would make it necessary to limit the length of time a car can be parked in front of a residence with an engine running.

Considering that correspondence with SIA OMNIVA did not give the submitter the desired result, he addressed a filled-out submission form to the Estonian NCP, alleging that OMNIVA fails to conform with responsible business conduct standards, causing harm to the environment (CO₂) and residents (noise and public safety).

Estonian NCP contacted OMNIVA Estonia.

At the same time, the Estonian NCP contacted the Latvian NCP, informing about the received complaint and requesting to be involved, noting that the complaint relates to a possible non-observance of the Guidelines provisions in Latvia.

SIA OMNIVA`s view of the situation

In 13.09.2021. the Latvian NCP held a virtual meeting with representatives of SIA OMNIVA, inviting them to share company`s take on the situation described by the submitter and possible measures to prevent similar complaints.

During the meeting, representatives of the Company reported that SIA OMNIVA had exchanged correspondence with the person who initially complained to the company, but later turned to the Estonian NCP. In dealing with this specific case, SIA OMNIVA asked the courier, who usually makes deliveries to the customer at the relevant address, to change his practice and not to leave the delivery van with the engine running. Repeated cases may result due to a "human error" - in case when the parcel delivery was made by another or new employee of the company who was not adequately instructed.

According to SIA OMNIVA, it is up to each employee whether a vehicle with engine running can be left in the residential area during delivery. By forcing company

employees to change existing practices, the company risks losing them. The convenience and comfort of drivers in warming or cooling the cabin depending on the weather is important. The practice of not turning the engine off while the driver is delivering the items is, according to the company, more environmentally friendly than when the engine is switched off but restarted again after a brief moment

According to SIA OMNIVA, the company attaches great importance to sustainability and circular economy issues. SIA OMNIVA has made an agreement with SIA Neste Latvia on the use of renewable diesel fuel for its delivery services. The transition only to SIA Neste's "MY fuel programme" is planned to be implemented gradually and it will allow the Company to reduce greenhouse gas emissions from the Company's fleet to up to 90% in the long term.

The submitter's view of the situation

In correspondence with the Estonian and Latvian NCP, the submitter expressed incomprehension, regarding the very different position expressed by OMNIVA's parent company in Tallinn and representatives of its subsidiary company SIA OMNIVA in Riga. The submitter notes that the Estonian NCP stated in an e-mail dated 06.08.2021. that the following clarification regarding the procedure was received from OMNIVA Estonia: *Under the [company's] procedure, the driver-courier has to drive politely and set a good example for others, in line with road rules and good practice. The driver must do everything to prevent the theft of the delivery vehicle, including locking the doors and windows of the car when it is departed, and making sure the alarm is on.*

In view of the situation described by the submitter, OMNIVA Estonia indicated that *it was prepared to make the internal procedures stricter by adding a provision that the driver switches off the engine when leaving the vehicle. According to OMNIVA Estonia, the current procedure already determines this type of behavior and the courier should have followed it, but OMNIVA Estonia is prepared to formulate these requirements in more detail and explain them to the employees of the company.*

The submitter also expressed uncertainty as to why, a couple of months later, OMNIVA Estonia changed its position regarding switching off the engine when leaving the car. In particular, on 15.10.2021., he was informed via the Estonian NCP *that SIA OMNIVA and the parent company confirmed that it was mandatory to turn off the engine and lock the car door when the courier has left the vehicle. When delivering packages, the engine may not be switched off or the door locked only if the delivery takes place in the immediate vicinity of the vehicle.* According to the submitter, such change of position is linked to the desire to justify the previous practice of SIA OMNIVA, which gave rise to the initial complaint. Moreover, such an explanation does not provide an answer which is understood by being "in close proximity".

According to the submitter, SIA OMNIVA has also not provided an answer as to why, in its initial correspondence with the submitter, it inconclusively referred to the Road Traffic Regulation of Latvia – namely, it stated that Paragraph 142.2 of the Road Traffic Regulation, which prohibits the parking of motor vehicles for more than five minutes, was not applicable, since the sign of the residential area had not been installed on the site, but it did not mention that, in accordance with Paragraph 144 of the Regulation, the same requirement also applies to the courtyards of apartment buildings.

According to the submitter, SIA OMNIVA claim "that a more environmentally friendly solution is not to turn off the engine if the vehicle is briefly left" has no basis. On the

contrary, the *Royal Automobile Club (RAC)*, the largest UK NGO in transport, which brings together 12.7 million members and is a key non-governmental partner on transport and road travel, announced in autumn 2021 that a stationary car produces emissions of CO₂ and other harmful gases twice as much as a moving car.¹

According to the submitter, SIA OMNIVA's statement regarding Company's gradual transition to SIA Neste's use of renewable diesel fuel is without relevance to the issues raised in his complaint. The submitter refers to the health and especially lung-damaging nitrogen dioxide (NO₂) emissions from diesel fuel and the policy of cities such as London to create low-emission zones to limit this pollution.²

The submitter states that his only requirement is a change of practice of the Company – for drivers-couriers, before leaving the car, to switch off the engine and lock the vehicle; and for OMNIVA management to perform control that such action protocol is observed throughout the company in Estonia and Latvia.

Cooperation with Estonian NCP

The Latvian NCP received information regarding the submitter's claim regarding SIA OMNIVA's activities from the Estonian NCP, to which the submitter first addressed the issue due to the location of OMNIVA's parent company in Estonia. In November 2021, the Latvian NCP agreed to the request of the Estonian NCP to take over the review process of the complaint in its competence. The request was based on the fact that the case concerns the activities of the Company in Latvia. The parent company in Estonia has expressed the view that SIA OMNIVA Latvia is responsible to the local competent authorities.

Expert opinions

During the evaluation, at the request of the Latvian NCP, expert opinions were received from three organizations – the Road traffic Safety Directorate (CSDD), the Ministry of Environmental Protection and Regional Development (VARAM), as well as from the Free Trade Union Confederation of Latvia (LBAS), of which the representatives are also members of the NCP.

Ministry of Environmental Protection and Regional Development (VARAM)

¹ The RAC recommends that the engine be switched off if the parking time exceeds 2 minutes. According to Estonian NCP, in Estonia a vehicle can be stationary with an engine running for only two minutes. Under UK road rules, the penalty for leaving the engine on in a stationary vehicle (*engine idling*) is £20. If the penalty is not paid within the time limit, it is doubled.

² It should be noted that, due to sunlight, nitrogen dioxide reacts with hydrocarbons and produces ozone and contributes to the formation of *Particulate matter*. Particle pollution is particularly dangerous for children and older people, leading to respiratory and cardiac illnesses as well as oncological illnesses. Pollution from diesel is on the agenda of several major European cities, both by introducing a levy regime and by banning diesel cars from entering certain areas in <https://phys.org/news/2018-10-european-cities-diesel-polluted-air.html>

VARAM answered the questions asked by the NCP as follows:

1) Have authoritative studies been conducted in Latvia (or abroad) confirming SIA OMNIVA claim that “not turning off the engine for a stationary vehicle” is environmentally friendly?

VARAM notes that it does not have information on whether authoritative studies have been conducted in Latvia where the emissions from cars produced by engine idling, and emissions produced by restarting the car (turning off and restarting the car engine) have been compared. However, VARAM points out that such studies have been conducted abroad. In the United States, for example, the organization “*Environmental Defence Fund*” has published a review paper that specifies, among other things, that in general, a car will consume more fuel when idling for more than 10 seconds and therefore produce higher emissions (in exhaust gases) than when a car is restarted. Such observation is supported by the results of an experimental study conducted by “*Argonne National Laboratory*”. It should also be noted that this argument is supported by the fact that modern cars are equipped with special devices to prevent the engine from running during a standstill, for example when the car approaches the intersection and stops, the car engine is automatically turned off, thus contributing to the reduction of emissions.

In addition to the paragraph above, several countries provide penalties for idling cars. For example, for engine idling while the car is parked a fine can be imposed at £20 in municipalities in the United Kingdom [3]. The United States also has similar regulations in many states, such as the U.S. city of Colorado State Winter Park – for engine idling a fine can be imposed up to \$300 or imprisonment of up to 90 days [4]. The purpose of such penalties is to ensure public safety and to prevent health risks. In addition, it should be noted that in Latvia, in accordance with Paragraph 142.2 of Cabinet Regulation No. 279 of 2 June 2015, Road traffic Regulation, it is prohibited to park in residential areas for vehicles with an engine on for more than five minutes.

2) Will renewable diesel fuel make it possible to reduce not only CO2 emissions but also pollution from other diesel fuels (e.g. nitrogen oxides)?

We do not have information on the emission reductions achieved by replacing fossil diesel with renewable diesel from individual producers. Therefore, this question is answered only on the basis of the information available in the public sources. Based on SIA Neste`s website [5] and *Nylund et al.* study 2011 [6], compared to pure fossil diesel fuel, Neste`s diesel fuel, which is a mixture of fossil diesel and renewable diesel and which complies with EN 590 standards, has the following advantages: (1) nitrogen oxides (NOx) emissions to the exhaust are 0-10% lower; (2) the emissions of fine particulate matter (PM) in the exhaust are 0-10% lower; (3) emissions of carbon monoxide (CO) in exhaust gases decrease by 20-40%; (4) hydrocarbon (HC) emissions into the exhaust gas are less than 10-30%; (5) lower emissions of polyaromatic hydrocarbons (PAH) are observed in the exhaust gas.

Road Traffic Safety Directorate (CSDD)

The CSDD answered the questions raised by the NCP as follows:

1) On what occasions is the driver allowed to leave the motor car in Latvia?

In accordance with Paragraph 119 of Cabinet Regulation No. 279 “Road Traffic Regulations” (hereinafter – CSN), the driver of a vehicle may leave the driver's seat

only if all the necessary has been performed in order to prevent movement of the vehicle from its place, but leave the vehicle – if the possibility to use it without the driver's knowledge has also been prevented.

2) *What were the main reasons for imposing a statutory limit of not leaving the engine switched on for more than five minutes - (noise, CO2 and other harmful emissions)?*

The CSN does not contain a general prohibition on the vehicle from parking with the engine switched on, while point 142.2 of the CSN, which prevents vehicles with the engine on from parking for more than five minutes in residential areas, aims to limit pollution of CO2 and other harmful emissions in places primarily intended for human habitation rather than traffic and to ensure better quality of living and well-being. According to paragraph 144 of the CSN, that prohibition also applies to the courtyards of apartment blocks.

3) *What were the main considerations for stating in the CSN that the five-minute limit applies only to residential courtyards, but not to other public places (at the edges of street pavements, shopping mall parking areas, etc.)?*

The imposition of such a restriction in other public places is likely to disrupt the pursuit of various economic activities and could lead to cases where it is necessary to operate the vehicle's engine for more than five minutes.

4) *What in practice is considered to be a “courtyard of apartment buildings” – does it also classify territories where both residential houses and commercial and industrial buildings are located inseparably close to each other?*

In practice, the courtyard of an apartment building is an area where one or more apartment buildings are located, commercial buildings may be located in this territory, as well as in some cases industrial buildings – such territories are not primarily intended for driving vehicles.

At the same time, running a vehicle for more than five minutes near residential buildings to maintain a desirable temperature in a cabin where no one is in is not in line with today's understanding of “sustainable and green thinking” and common urban development trends. We inform that vehicle exhaust gases contain carbon monoxide, carbon dioxide and nitrogen oxides, which cause acid rain and smog in cities.

Free Trade Union Confederation of Latvia (LBAS)

LBAS experts have provided their views from the point of view of Labour Law of Latvia with regard to the situation set out in the complaint and the reaction of SIA OMNIVA, namely: “*it is up to each employee to leave a motor vehicle in the living area during delivery*”.

Section 28, Paragraph two of the Labour Law stipulates that with an employment contract an employee undertakes to perform a specific work subject to a specific agenda and orders of the employer, but the employer – to pay the agreed work remuneration and ensure fair, safe and healthy working conditions. On the other hand, Section 49 of the Labour Law provides that the type, amount, time and place of performance of an employee's obligation in the employment contract shall be determined by the employer, insofar as it is not in contradiction with the mandatory or prohibitive norms included in regulatory enactments or collective agreements.

This means that the employer is obliged to provide drivers with safe and comfortable working conditions, while employees are obliged to honour their contractual obligations and comply with the employer's legal orders.

Whether or not the driver is entitled to leave the car with the engine switched on relates to the type, extent, time and place of performance of the employee's commitment.

Under Article 2347 of the Civil Code of Latvia, driving a vehicle is an activity involving an increased danger to the public. Although the fourth paragraph of Article 86 of the Labour Law stipulates that an employee whose work entails an increased risk of damage is to be liable only if the damage is caused to the employer by bad intentions or gross negligence, the LBAS considers that leaving the car unattended with the engine on could be regarded by the employer as gross negligence, so that the choice – leaving the car with the engine switched on or turning it off – cannot be left to the employee.

It cannot be accepted that the performance of an employee, which is recognized by the employer as being good and correct, also tacitly, may give rise to liability on the part of the employee. In this regard, it should be indicated that in accordance with Section 87 of the Labour Law an employee shall be released from civil liability (or partially) for the losses caused to the employer, if also the employer himself or herself – by his or her orders or without ensuring adequate working conditions or work equipment – has been guilty of causing losses.

In the light of the foregoing, according to the LBAS, socially responsible business conduct entails an obligation for the employer to define, as clearly as possible, the type, amount, time and place of performance of the employee and to prevent the employee's conduct, which the employer itself recognizes as a good and correct practice, from giving rise to liability on the part of the employee.

Conclusion and recommendation of the NCP

The NCP invites the company to implement an analysis of the risks or negative impacts of its activities and measures to prevent or mitigate them in accordance with the principles of due diligence laid down in the OECD Guidelines and the OECD Due Diligence Guidance for Responsible Business Conduct.

It is recalled that, according to the Guidelines, due diligence involves the following five steps:

- 1) review and update the company's responsible business policy, aligning it with the principles and standards of the Guidelines and integrating it into management systems; inform employees of the company about the company's responsible business policy, including in staff training courses and briefings; develop policies or due diligence plans in areas where the company poses particularly high risks of negative impacts.
- 2) identify the negative effects that the company creates in its own activities or facilitates/relates to supply chains.
- 3) take steps to stop, prevent or mitigate these negative effects.
- 4) to monitor the effectiveness of the due diligence measures and internal responsible business policy. Provide accurate guidance to the company's employees on how to proceed to implement the company's due diligence policies and measures.

5) to make public information regarding the due diligence policy and measures used to identify existing or potential negative effects, including the results of such measures.

It is also recalled that, in accordance with the OECD Due diligence Guidance for Responsible Business Conduct, the first step mentioned above also includes laying down the procedures for handling complaints from employees of the company and other stakeholders about non-compliance with the principles of responsible business conduct.

According to the European Environment Agency, there are no significant reductions in carbon emissions in the transport sector and they are now even prone to increase despite a joint commitment by the European Union and the Member States to a significant reduction in emissions. We therefore call for particular attention to be paid to the environmental aspect in the assessment of the negative effects of SIA OMNIVA. At the same time, considering that companies are mostly active in densely populated urban environments, we also urge not to forget about possible adverse effects related to public safety and noise as pollution.

In view of the NCP, the initiative expressed by SIA OMNIVA to clarify in its internal procedures the rules for the driver to switch off the engine when leaving the car and the determination to explain the purpose of this requirement to the employees of the company, as well as to raise their awareness of responsible business in general, is welcomed. As a starting point for awareness-raising, the company could adopt a notion that the company it is not only exposed to external risks, but is itself, or may be, a source of risks or negative impacts. Without the principles of responsible business conduct, it is not possible to achieve the environmental and social sustainability objectives set by the countries and societies.

The NCP has decided that the issues raised in the complaint merit further examination. Since SIA OMNIVA considers that the conclusions and recommendations of this Initial Assessment are to be considered and discussed, the NCP offers its support in communication/ mediation (good offices) with the submitter.