

Response to the alert on “Orlen’s Takeover of PKN Orlen S.A.”
the CoE platform to promote the protection of journalism and safety of journalists under number
159/2020 on the 23rd of December 2020

1. On 7th December 2020, the joint stock company PKN Orlen S.A. (hereinafter referred to as PKN Orlen S.A) announced its plan to purchase the Polska Press media organization (Polska Press Group; Polska Press sp. z o.o.) from the German capital group Verlagsgruppe Passau GmbH.
2. Currently, Polska Press sp. z o.o. (limited liability company) includes 20 leading regional newspapers, 120 weekly magazines, and 500 online portals. It is noteworthy that an overwhelming majority (ca. 90 %) of regional/local media outlets in Poland is currently controlled by foreign capital.
3. It transpires from the alert nr 159/2020 that the planned purchase transaction attracted considerable attention and gave rise to numerous, often contradictory opinions. On the one hand, the alert has categorized it as a “*threat having a potentially chilling effect on the press*” referred to as “*a first step in bringing the press under foreign control*”. On the other hand, for under authors of the alert underline that “*some media have however described this as an opportunity to break the foreign domination of the Polish media*”.
4. PKN Orlen S.A. is one of the largest companies in Central and Eastern Europe and is listed in global rankings such as Fortune Global 500, Platts TOP250 and Thompson Reuters TOP100. As indicated on its website, the PKN Orlen S.A. is a leading player on the fuels and energy markets. The ORLEN Group operates in 6 home markets – Poland, the Czech Republic, Germany, Lithuania, Slovakia and Canada. State Treasury holds 27.52 % of shares in PKN Orlen S.A., while in the Netherlands OFE and Aviva OFE Aviva Santander with 7.34 % and 6.29 % shares respectively. Remaining 58.85 % shares are held by other stakeholders (reference: PKN ORLEN S.A. discloses the list of shareholders who had a right to exercise their voting rights at the General Meeting on 5 June 2020 (“OGM”) together with the name of each shareholder and percentage share in the votes represented at the OGM and in the total number of votes in its regulatory announcement at access at the following address: <https://www.orklen.pl/EN/InvestorRelations/RegulatoryAnnouncements/Pages/Regulatory-announcement-no-39-2020.aspx>).
5. PKN Orlen S.A., as a commercial law company is obliged to act in compliance with the Polish law, and respect the standards set by the EU in multiple fields of activities, including commercial law. Importantly, the provisions of law, as well as the apolitical nature of its Management Board. Portfolio of the company includes a wide spectrum of products and services such as refineries, petrochemical assets, energy production, retail, including fuel stations – the largest retail network of fuel stations in Central and Eastern Europe, 2,181 coffee corners, network of 1,300 newspaper kiosks, to name a few.
6. First and foremost, it needs to be emphasized that the planned purchase transaction between the two aforementioned companies, referred to as “Orlen’s Takeover of PKN Orlen S.A.” has not been finalized to date. While both seller and buyer seem to have agreed on the deal, the transaction will be now subject to an in-depth assessment in terms of competition rules by Poland’s competition authority – Office of Competition and Consumer Protection. President of the

Office underlined (<https://www.rpo.gov.pl/pl/content/uokik-oceni-kupno-polska-press-przez-orklen-pod-katem-zachowania-warunkow-konkurencji> ; in Polish). that the assessment shall be conducted based solely on substantive criteria and shall not be subject to any political or social pressures. The assessment will take into account in particular such factors as the share of concentration participants in the relevant market, the structure of this market after the concentration, entry barriers and the impact of concentration on the market (markets) in a horizontal, vertical and conglomerate system.

7. During the session of the Parliamentary Committee on Energy, Climate and State Assets and Culture and Media Committee which took place on the 8th of January 2021 (reference: <https://www.sejm.gov.pl/sejm9.nsf/transmisje.xsp?unid=957F358E345B5225C125864D00493177>; in Polish) the President of the PKN Orlen S.A. company Mr Daniel Obajtek confirmed that the planned purchase of Polska Press Group has been proceeded by extensive analyses against its profitability, a l i g n m e n t w i t h t h e c o m p a n y ' s s t r a t e g i c g o planned transaction are subject to confidentiality agreement between the Parties thereto.
8. With regards to the reservation expressed in the alert concerning bringing the sector under government control and potentially tightening up journalistic freedom, it needs to be highlighted that Polish media law conforms with binding EU regulations concerning press and media sectors. Therefore freedom of expression, the right to reliable information, transparency in public life, social control and criticism remain under the protection of law in Poland. State authorities create the conditions necessary for the press to perform its functions and tasks, including enabling the activities of editorial offices of newspapers and magazines, which differ in terms of the program, thematic scope and attitudes presented. Polish law provides mechanisms granting social protection to journalists in cases where editorial independence is endangered. What is more, the provisions relating to the rights of journalists in the Act of 26 January 1984 Press Law (Journal of Laws of 2018 section 1914) have been tightened up in 2017 to ensure even stronger protection of journalistic freedom. According to Article 10 section 2 of the Press Law “ a j o u r n a l i s t h a s to refuse to carry out an official order if he or she is expected to publish a publication that violates the principles of honesty, objectivity and professional care” . F u r t h e r j o u r n a l i s t m a y a l s o “ object to the publication of a press material if changes have been made to distort the meaning and p r o n u n c i a t i o n a s p r o v i d e d f o r i n A r t i c l e 4 0 s e c t i o n 3 o f t h e a f o r e m e n t i o n e d L a w .
9. The planned transaction of purchasing a media publisher company by another company of commercial law constitutes an act of exercising freedom of economic activity and will belong to one of many deals, which are regularly concluded on the media markets globally, where ownership of a media company changes. It is quite unusual to indicate a threat to journalistic freedom before the purchase transaction is even concluded. Noteworthy, no infringements of the binding media law in Poland with respect to the said transaction have been legally established so far. While a shift in the ownership structure of the Polska Press sp. z o.o. is rather unlikely to go unnoticed, it can be argued that any assumption as to the limitation of journalistic freedom in the portfolio of media publisher Polska Press sp. z o.o. cannot be currently supported by any evidence. Notwithstanding the latter, a sole risk of a potential threat can be hardly seen as sufficient to protest against the transaction. One could argue that such action could be perceived as going against freedom of economic activity or even being discriminatory towards a company with a state treasury shareholder.

10. Bearing in mind that the overwhelming majority of local media outlets covered by the purchase agreement have been owned for many years by one commercial entity already, it seems likely that the concentration level in the said media outlets will most probably remain unchanged as it will be passed on to another single owner, the major change being a shift from dominant foreign capital group to a Polish company.
11. Equally important is the specificity of local media outlets and inherent diversity they represent owing to limited geographical coverage and their closer links with regional/local communities. The odds are that regional heterogeneity will continue to be reflected in local media outlets. Moreover, it cannot be excluded that the planned transaction of purchasing Polska Press company by PKN Orlen S.A. – one of the largest companies in Central and Eastern Europe might actually have a positive impact on the condition of local information industry, which is considered to witness a general declining trend observed in whole Europe (reference: <https://cadmus.eui.eu/bitstream/handle/1814/67828/MPM2020-PolicyReport.pdf?sequence=5&isAllowed=y> Monitoring Media Pluralism in the Digital Era Report 2020, European University Institute, 2020) . It was already in April 2015 during the Extraordinary Congress of Delegates of Association of Polish Journalists that the Association observed *"a very difficult, and in some respects even catastrophic, situation"* of Polish local media outlets, evidenced by the systematically decreasing number of both titles and their recipients and diminished role of these media in the public life of Polish regions and provinces (reference: full statement: <https://sdp.pl/protest-zg-sdp-przeciwko-apelowi-niemieckiego-stowarzyszenia-dziennikarzy-o-zajecie-sie-przez-ke-rynkiem-prasy-w-polsce/>; in Polish). The aforementioned assumption is also supported by the official position of the Association of Polish Journalists, the oldest journalistic organization in Poland, who remains confident about the positive impact of the planned purchase transaction of the Polska Press sp. z o.o. on the local media.