Gdynia, 17 October 2025

Fundacja „To Co Najważniejsze” Gdynia
al. Zwycięstwa 96/98
81-451 Gdynia

1. Management Board of Energa SA
al. Grunwaldzka 472
80-309 Gdansk

2. Management Board of Orlen S.A.
ul. Chemików 7
09-411 Płock

I. Acting for and on behalf of a foundation incorporated under Polish law as „TO CO NAJWAŻNIEJSZE” Fundacja with its registered office in Gdynia, at al. Zwycięstwa 96/98, 81-451 Gdynia, entered in the Register of Entrepreneurs maintained by the District Court Gdańsk-Północ in Gdańsk, 8th Commercial Division of the National Court Register, under no. KRS 0000392120, representing the interests of more than 1,000 individual shareholders of the company under the business name ENERGA S.A. with its registered office in Gdańsk (hereinafter: “the Company”),

I strongly expect Energa SA and Energa Group to take into account the needs and expectations of minority shareholders as stakeholders of Energa SA and Energa Group, and not only the needs and expectations of ORLEN SA, the majority shareholder, in the determination or revision of its business strategy and in its business policies, as well as to reflect this in the Company’s Sustainability Reports, part of which provides information on the implementation of CSR principles.

II. Chapter 11 (beginning on page 141) of the Report of the Management Board of Energa SA on the activities of the Energa Group and Energa SA in 2024 contains the Sustainability Report (part of which provides information on the implementation of CSR principles) prepared in line with the requirements arising from the provisions of Chapter 6c “Sustainability Reporting” of the amended Accounting Act of 29 September 1994 (implementing the CSRD (Directive amending Directive 2013/34/EU as regards corporate sustainability reporting); this chapter contains information suggesting that:

firstly, the minority shareholders of Energa SA have not been recognised as stakeholders of the Company by the Management Board of Energa SA;

secondly, their needs and expectations have not been taken into account in any way at all in the determination of the business strategy of Energa SA and the Energa Group and their business policies.

1. Page 149 of the Report states that in August 2024 Energa Group adopted the Energa Group Sustainable Development Strategy 2024-2030, which is consistent with the ORLEN Group Sustainable Development Strategy 2024-2030. The main Strategy orientations cover five key pillars: Climate, Environment, Workers, Communities, Governance.

It also states that the Strategy “refers to the entire value chain, to all stakeholders of the Energa Group, its suppliers, employees and customers. The aim of the initiatives undertaken is responsible, but also transparent management that taps into the Group’s potential.”

2. Page 151 of the Report presents “Energa Group’s key stakeholders, examples of how the Group collaborates with them, and the impact this collaboration has on the Group’s business.”

Among the 13 stakeholders, and in addition to Energa Group companies, employees and trade union organisations, suppliers and business partners, customers and recipients, industry organisations, local communities, local government authorities, public administration bodies, media, banks, as well as scientific and research units, were the 'Key Shareholders (ORLEN SA).'

3. Minority shareholders were not included at all among the key shareholders.

A/ That is incomprehensible, especially in the context of the note on page 17 of the Report of the Management Board of Energa SA on the activities of the Energa Group and Energa SA in 2024, which indicates that on 21 March 2024 the Court of Appeals in Gdańsk, 1st Civil Division, issued a judgment in which it "dismissed in its entirety the appeal filed by the Company against the judgment of the court of first instance overturning Resolution no. 3 of the Company's EGM of 29 October 2020 on delisting 269,139,114 series AA ordinary bearer shares of the Company registered under the ISIN code PLENERG00022 in Krajowy Depozyt Papierów Wartościowych S.A. (KDPW SA) from the regulated market operated by the Warsaw Stock Exchange (WSE). [...] The judgment became final and non-appealable on the date it was pronounced."

Further, and also relevant, page 17 of the Report reads: "on 19 June 2025, the Company applied to the Polish Financial Supervision Authority (PFSA) to withdraw the application to delist the shares from the WSE and to discontinue the administrative proceedings initiated by this application concerning the authorisation to delist the shares from the WSE. The Company's application being granted, the proceedings were discontinued in their entirety under the decision of the PFSA dated 14 August 2024. On 27 September 2024, the Company's Management Board decided not to lodge a cassation appeal against the aforementioned verdict of the Court of Appeal in Gdańsk."

In a nutshell, the withdrawal by the Management Board of Energa SA of the application to authorise the delisting of the shares from the WSE – as a result of the Company's EGM resolution of 29 October 2020, challenged by the minority shareholders, being overturned – and the decision not to lodge a cassation appeal should mean that the governing bodies of Energa SA recognise that the minority shareholders, as owners of the shares, still have the same role in the Company as ORLEN SA, the majority shareholder (regardless of its rights as majority shareholder under the Code on Commercial Companies and Partnerships ("the Code")).

Therefore, guided by the Company's interests, by the justification for the final and non-appealable judgment of the Regional Court in Gdańsk, 9th Commercial Division, of 30 November 2022 in the case under the file number IX GC 1164/20, overturning Resolution no. 3 of the Company's EGM of 29 October 2020 on delisting 269,139,114 shares of the Company, and by the justification – mentioned in the Report – for the judgment of the Court of Appeal in Gdańsk of 21 March 2024 in the case under the file number I AGa 52/23, the Management Board of Energa SA should, within the framework of CSR, maintain a dialogue with minority shareholders as internal stakeholders of the Company.

B/ As a reminder, it should be pointed out that the Regional Court in Gdańsk, 9th Commercial Division, in the justification for its judgment of 30 November 2022 in the case under the file number IX GC 1164/20, stated that what is of material importance for assessing whether the resolution adopted by the Company complies with the principles of social co-existence and whether the purpose of its adoption is detrimental to minority shareholders, is the question related to the preferential purchase by PKN ORLEN (a company with the State Treasury holding the decisive vote at that time) of shares in Energa from, i.a., the State Treasury in 2020.

The court stated the following in the justification: "we are dealing with a situation where one company majority-owned by the State Treasury (ENERGA S.A.) has led with its unprofitable

investments, made contrary to the principles of economic calculation, to a decline of the share price on the WSE from 2015 and the persistence of that low price. [...] The second company, ORLEN SA (in which the State Treasury holds a minority stake, but has a decisive vote), decided, taking advantage of the low share price of the defendant ENERGA S.A. on the stock exchange, to acquire shares in that company and then to delist it.

Based on the circumstances presented, the Court became convinced that PKN ORLEN, taking advantage of the persistently low price of ENERGA shares, with the consent of the State Treasury – the Council of Ministers, made calls to buy back the shares in order to take this company over and then delist it."

The court emphasised that "stated-owned entities, but also those majority-owned by the State Treasury or in which the State Treasury holds the decisive vote (the so-called golden share), should create standards of economic activity in the Republic of Poland and constitute a point of reference as an honest entrepreneur and stock market participant, especially in terms of acquisitions of public companies. Investor confidence in companies in which the State Treasury is a shareholder is much higher, and is recognised by stock market participants and 'occasional' shareholders alike as a stable, secure long-term investment."

A certain part of the justification for the judgment of the Regional Court in Gdańsk contains direct complaints against the representatives of the State Treasury in the governing bodies of Orlen S.A. and Energa S.A. The Court stated that "given the importance of the delisting resolution and bearing in mind the extent to which minority shareholders were adversely affected by the dematerialisation of shares being annulled, the State Treasury, through its representatives (the Management Board at PKN ORLEN), should be guided by the need to ensure an appropriately high level of protection for minority shareholders against exploitation. This is because the fear that the effects associated with the dematerialisation of shares should come to life means that minority shareholders are subject to very strong economic pressure to sell their shares during the pre-delisting call, and in practice often find themselves in a forced position."

The Regional Court in Gdańsk indicated, at the end of the justification, that "adopting a resolution to delist the Company's shares from a regulated market under the conditions in which the shareholders' right to participate in the EGM was restricted shows that, in the realm of commercial transactions, the contested resolution adopted on 29 October 2020 must, in the opinion of the public, be considered unethical. The above has led the Court to conclude that the resolution challenged had violated the principle of commercial honesty, the principles of loyalty, damaged the sense of decency, violated good practice and was adopted with the aim of harming minority shareholders and, as such, should not be protected."

A final and non-appealable court judgment overturning a resolution has legal effects in the relationship between the company and the members of its governing bodies, as well as between the company and all its shareholders, and consequently also between the shareholders themselves. The scope in which the judgment is applicable in a final and non-appealable way is therefore extended.

A judgment overturning a resolution of a general meeting creates legal rights (is of a constitutive nature), as indicated by the Supreme Court in the Seven-Judge Resolution of the Civil Chamber of 18 September 2013 in the case under the file number III CZP 13/13, resolving the legal issue presented by the First President of the Supreme Court in the motion of 7 February 2013.

A final and non-appealable court judgment overturning a resolution has *an ex tunc* effect, nullifying the effects of the resolution from the moment it was adopted. As indicated by the Civil Chamber of the Supreme Court in the justification for its judgment of 26 November 2021 in the case under the

file number II CSKP 94/21, "the essence of a judgment overturning a resolution is that it eliminates the resolution challenged from legal transactions, meaning that the shareholders and members of the company's governing bodies are bound by the judgment. Such a judgment overturning a resolution is of a constitutive nature (it creates legal rights) and has an *ex tunc* effect. This means that the (existing) shareholders' resolution is overturned by a court judgment with retroactive effect from the time it was adopted."

Doctrine says that "in the event that a resolution is overturned by a court, the company shall endeavour to remove the effects of that resolution, so as to introduce the state of affairs that would have existed if the general meeting had not adopted the resolution challenged and if the resolution had not been enforced (see S. Sołtysiński – Komentarz do art. 427 KSH [in:] Komentarz do KSH, Vol. 3, CH BECK 2013).

In their letters addressed through the Foundation, the minority shareholders specified their needs and expectations towards the Management Board of Energa SA and towards ORLEN SA, the majority shareholder. These letters remained without an adequate answer.

Energa SA made only one decision as a result of the final and non-appealable judgment of the Regional Court in Gdańsk, i.e., on 19 June 2024, it applied to the PFSA to withdraw the application to delist 269,139,114 series AA ordinary bearer shares of the Company registered under the ISIN code PLENERG00022 in the KDPW SA from the regulated market operated by the WSE and to discontinue the administrative proceedings initiated by the virtue of this application; of which it informed the foundation in its letter of 25 February 2025 (in response to the Foundation's letter of 20 February 2025), and included this information in the Report, as indicated above.

Unfortunately, the Management Board of Energa SA continues to ignore the needs and expectations of minority shareholders, as evidenced by the fact that it has not even recognised them as key stakeholders in the Company.

C/ The Management Board of Energa SA should be guided first and foremost by the broadly understood interests of the Company.

Interests of a company is a term found in the Code. It introduces this general clause in relation to public limited companies over five articles, but does not provide a definition of it. Therefore, it is necessary to refer in this respect to the views expressed in the case-law of the common courts and the Supreme Court as well as the in doctrine of commercial law.

The Supreme Court has held that interests of a company are the resultant of the interests of all groups of shareholders of the company who, in economic terms, are its 'owners.' The notion is thus a certain general formula defined by law, and its fulfilment requires that the resultant (function) of the beliefs, aspirations and behaviours of all groups of shareholders, achieved by way of compromise, be taken into account (Supreme Court judgment of 5 November 2009 in I CSK 158/09).

Based on this definition, it should be stated that interests of other groups of stakeholders in the company, as well as the interests of society or the public interest, may be taken into account by the company's officers only to the extent that which does not infringe on the interests of the shareholders as a whole (K. Oplustil, *Instrumenty nadzoru korporacyjnego (Corporate governance) w spółce akcyjnej*, Warszawa 2010, pp. 177-178).

The Constitutional Court has held that although the majority rule (primacy of the equity factor over the personal factor) is a fundamental principle of modern company law, it must always be linked to the rule of equitable treatment of shareholders and the rule of protection of the legitimate interests

of minority shareholders. The majority rule may be limited by a rational, i.e., proportional mechanism for the protection of the minority (see item 3 1.3 of the justification for the judgment of the Constitutional Court of 21 June 2005 (P25/02) OTK-A [*Journal of the Case-Law of the Constitutional Court, Series A*] 2005/6/65).

In turn, the Supreme Court has expressed the view that the assumption that the model for forming the 'will of the company' is based on the principle of majority rule does not, at the same time, mean that the interests of the company may be equated exclusively with those of the majority shareholder. This is because they represent a certain compromise achieved between the interests of majority and minority shareholders, often conflicting with each other, and should take into account the legitimate interests of both groups (Supreme Court judgment of 5 November 2009 in I CSK 158/09).

The Supreme Court has also emphasised the need for corporate cooperation between the shareholders of a commercial company, and considered resolutions of the general meeting leading to the domination of the company by a certain group of shareholders at the expense of others to be detrimental to the interests of the company (Supreme Court judgment of 16 October 2008 in III CSK 100/08).

The obligation to protect the interests of minority shareholders is also introduced by the general Principle III of the "OECD Principles of Corporate Governance 2004," which reads: "[*t*]he corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights."

The governing bodies are obliged to take into account the interests of minority shareholders within the limits set by the principle of equitable treatment of shareholders (Article 20 of the Code) and by the prohibition against taking action that is detrimental to them. If the actions detrimental to the minority do not directly violate the provisions of the Code, one may invoke abuse of rights (Article 5 of the Civil Code) or the principles of social co-existence or good commercial practice (Article 354 § 1 of the Civil Code) (A. Opalski, O *pojęciu interesu spółki handlowej*, PPH 11/2008, p. 18).

The management of a company should be guided by the interests of shareholders, but take into account the legitimate interests of other groups in the company's environment as well. Corporate social responsibility, in turn, is the need to see the interests of the company's environment as an integral part of the interests of the company itself. The governance framework should recognise that the interests of the corporation are served by recognising the interests of stakeholders and their contribution to the long-term success of the corporation. (Organisation for Economic Co-operation and Development, *OECD Principles of Corporate Governance 2004*, Paris 2004, p. 46).

The duty of the governing bodies to act in the interests of the company, viewed through the lens of the interests of shareholders as a whole, accounting for the legitimate interests of the company's environment, is a prerequisite for the proper functioning of the company. This is the only way to avoid abuses that turn the company from a tool for achieving a common objective into a field for the pursuit of particular interests, taking advantage of the position of weaker actors. The Organisation for European Co-operation and Development takes the view that "[*i*]n addition to disclosure, a key to protecting minority shareholders is a clearly articulated duty of loyalty by board members to the company and to all shareholders" (*OECD Principles of Corporate Governance 2004*, Paris 2004, p. 42).

Therefore, also for this reason, the needs and expectations of minority shareholders should be taken into account by the Company's Management Board, and the minority shareholders should be named alongside ORLEN SA among the most important stakeholders of Energa SA and the Energa Group.

4. Unfortunately, and as confirmed in the Management Report of Energa SA, the Management Board cooperates only with Orlen as a key shareholder which, at the same time, is the only shareholder to be named a key stakeholder.

A/ Page 151 of the Sustainability Report – part of the Report of the Management Board of Energa SA on the activities of Energa SA and the Energa Group in 2024, as indicated above, lists the key stakeholders of the Energa Group, provides examples of how the Group collaborates with them, and illustrates the impact that this collaboration has on the Group's activities. Regarding the key shareholder ORLEN SA, it indicates that the Energa Group cooperates with Orlen through such forms as "reports, correspondence, direct communication, electronic communication, meetings, workshops and training."

B/ The 'interest and purpose' of this stakeholder is "to ensure that the Company's activities are in line **with the owner's expectations** and business strategy." "Engagement outcomes" are defined as "management decisions consistent with **the owner's** interests."

It follows from the above that Orlen, as the majority shareholder of Energa SA (holding 90.92% of the share capital and 93.28% of the total number of votes) was deemed by the Management Board of Energa SA in Energa Group's 2024 Sustainability Report as the sole (100%) owner of the shares. Orlen's expectations and business strategy are fully implemented by the governing bodies of Energa SA. Management decisions made at Energa SA are in line with Orlen's interests.

C/ This management practice is confirmed by information on page 154 of the Report that "sustainability issues, including those related to climate, are included in the remuneration of the members of the Management Board of Energa SA and at director and executive officer level through the achievement of bonus targets." The sustainability and climate issues included in the bonus targets of the Management Board of Energa SA are: "the implementation of the Orlen Group's strategy."

Such an approach to managing Energa SA and the Energa Group is inconsistent with the views of the Constitutional Court and the Supreme Court invoked hereinabove, as well as with those of the members of the academia on the proper understanding of the interests of a company, including CSR-inclusive interests.

D/ The above approach to understanding Energa SA's interests is not altered by its location within the structure of the ORLEN Group.

The definition of the interests of a company, as indicated above, should assume that the interests of a public limited company are primarily the interests of the shareholders as a whole, supplemented by the interests of those in the company's environment in order to build the long-term prosperity of the business. Such a definition, as pointed out in the literature, corresponds to the *enlightened shareholder value* approach adopted in the UK.

Members of corporate governing bodies, irrespective of their appointment, should be guided in the performance of their duties by the interests of their company, as they owe their loyalty to it alone. In turn, in a group of companies, the interests of the companies involved should be balanced; in particular, the interest of the subsidiary should not be subordinated to the interest of the group.

In a group of companies, as indicated in the doctrine, there should be a balancing of the interest of the entire group with the interest of its participants, i.e., of both the subsidiary and the parent company (A. Szumański, *Spór wokół roli interesu grupy spółek i jego relacji w szczególności do interesu własnego spółki uczestniczącej w grupie*, PPH 5/2010, pp. 9 et seq.).

The achievement of the objective within a group of companies is only possible if the relationship between the companies is based on loyalty. Members of the parent company's governing bodies should therefore be guided not only by the interests of the parent company, but also by the interests of the entire group which the parent company does not determine, but merely co-creates (D. Wajda, *Obowiązek lojalności w spółkach handlowych*, Warszawa 2009, p. 379.).

The general principle that a relationship of dominance and dependence cannot be used to the detriment of subsidiaries is derived primarily from the concept of a relationship of subordination as a relationship of special trust, which is derived by German case-law from the general duty of mutual loyalty of shareholders *(Treuepflicht*), and in France from the theory of abuse of majority power *(abus de majorité*). Related to this concept are: the principle of rational influence of the parent company on the subsidiary, the obligation of the parent company to take into account the interest of the subsidiary in addition to the interest of the holding as a whole, and the obligation to provide guidance, advice, and economic assistance to the subsidiary when necessary (S. Włodyka, *Prawo koncernowe*, Kraków 2003, pp. 66-67).

5. According to the applicable rules, one of the elements of the Sustainability Report should be information on the company's corporate governance. Chapter 11 of the Report of the Management Board of Energa SA on the activities of Energa SA and the Energa Group in 2024 includes Section 4 'Information related to corporate governance' (G1 Business conduct) (starting from page 303).

A/ Page 306 of the Report reads: "standards of conduct in relations between employees and stakeholders, promoting the principles of integrity, respect and responsibility are set by the ORLEN Group Code of Ethics."

"The ORLEN Group Code of Ethics governs ethical issues related to the functioning of the Group, and thus governs the principles of conduct both in relations with the external environment and within the Group." "We understand ethical action to mean adherence to the guidelines of the ORLEN Group Code of Ethics. In practice, this means respecting other employees and stakeholders, working together in a spirit of open dialogue, understanding, tolerance and support, and creating a good and friendly working environment" (page 304 of the Report).

Since "the Code of Ethics applies to both employees and stakeholders and the environment of the ORLEN Group, including the Energa Group," then "anyone who believes that a Group company does not comply with the principles set out in the Code may report a violation or submit a complaint to the Ethics Officer." ORLEN SA, "through the Ethics Officer, monitors whether complaints submitted have been examined correctly and in a timely manner" (page 306 of the Report).

B/ The first page of the Code published on ORLEN's website reads: "[t]he ORLEN Group Code of Ethics constitutes a set of clear, practical and up-to-date principles of conduct, which set the ethical standards applicable to all ORLEN Group employees, based on a revised approach to understanding ORLEN's values: Responsibility, Development, People, Energy, Reliability, as well as the current scale and strategy of operations, the range of requirements of the Group's environment and best practice in business ethics."

Under the Code's value of 'Responsibility' are the concepts of business, society and the environment. The Business section says: "We feel a sense of responsibility for future generations and ensure that our business and social objectives are consistent. By our own example, we demonstrate the importance of responsible development and ethical leadership. We are an industry leader and our success and day-to-day work is based on ethical and responsible attitudes towards **stakeholders**, including employees, consumers, business partners and local communities. We see importance in

building lasting relationships. We shape business attitudes and lead change. We set industry standards and contribute to the economic development of our country. We are growing the business sustainably and resiliently to what might happen in the future."

The only complaint procedure provided for in the ORLEN Group Code of Ethics is the aforementioned option to report a violation or submit a complaint to the Ethics Officer. It is therefore not a procedure that adequately ensures the protection of minority shareholders' rights.

III. Since the Sustainability Report contained in the Report of the Management Board of Energa SA on the activities of Energa SA and the Energa Group in 2024 does not list minority shareholders among the key stakeholders and clearly indicates that only the interests of the majority shareholder, ORLEN SA, are taken into account, it should be concluded that the business model and business strategy of Energa SA and the Energa Group only take into account the needs and expectations of ORLEN SA and do not take into account the needs and expectations of Energa SA's minority shareholders.

Therefore, the minority shareholders' demand specified at the beginning of the letter is justified.

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Jan Trzciński, President of the Management Board