



## **Rationale for resolutions to amend the Articles of Association of PKN ORLEN S.A.**

### **To the Extraordinary General Meeting of Polski Koncern Naftowy ORLEN S.A.**

*Dear Shareholders,*

This is to inform you that, in compliance with generally applicable laws and regulations, the Management Board has convened an Extraordinary General Meeting of the Company (the “General Meeting” or “Meeting”) pursuant to Article 399.1 of the Commercial Companies Code. The agenda of the Meeting includes consideration of and voting on resolutions to amend the Articles of Association of Polski Koncern Naftowy ORLEN S.A. (the “Company”), as prior consent of the General Meeting is required for such amendments by the law.

It should be pointed out that the proposed amendments to the Company’s Articles of Association are unrelated to the other key matter on the agenda of the General Meeting, i.e. the Company’s merger with LOTOS SPV 5 Spółka z ograniczoną odpowiedzialnością of Gdańsk. Despite their coincidence with the merger, none of the proposed amendments as presented below and included in the draft resolutions of the General Meeting applies to the merger process in any way.

PKN ORLEN S.A.’s Articles of Association are proposed to be amended in several areas:

- 1) Some of the amendments follow from the amendments made to the Commercial Companies Code under the amendment law of February 9th 2022 (Dz U. of 2022, item 807), which came into effect in October 2022 (the “**Code**”). These concern:

- a) provisions of the Company’s Articles of Association referring to the conclusion of a parent/subsidiary agreement as defined in Art. 7 of the Commercial Companies Code, which requires prior consent of the General Meeting. The amended Commercial Companies Code no longer contains Art. 7, which has been struck out, but contains newly added Art. 4.1.4(f). The Articles of Association need to be amended accordingly to ensure their consistency with the statute. The proposed amendments to the Articles of Association will not change the existing division of powers and responsibilities between the Company’s governing bodies but merely will update references in the Articles of Association to reflect the legislative changes.



(b) the definition of the Parent as included in Art. 1.4 of the Articles of Association. The proposed amendment to that definition reflects the definition included in Art. 4.1.4(f) of the amended Commercial Companies Code, which provides that a parent is also an entity which has a decisive influence on a subsidiary corporation or cooperative, including, without limitation, under an agreement between the parent and the subsidiary for the management of the latter or for the transfer of its earnings to the former.

The proposed amendment will align the definition in the Articles of Association with that in the said statutory provision.

c) expansion of the General Meeting's powers under Art. 7.7 of the Articles of Association to include the power to pass a resolution to set the aggregate cap on fees that the Company may pay to all advisers to the Supervisory Board over a financial year. This amendment is proposed in view of the addition to the Commercial Companies Code of Art. 382<sup>1</sup>, which governs matters related to appointment of advisers to the Supervisory Board and entering into agreements therewith, including providing for an option to disapply or limit the Supervisory Board's right to enter into such agreements, in particular by vesting in the General Meeting the power to set the aggregate cap on fees that the Company may pay to all advisers to the Supervisory Board over a financial year. Accordingly, a proposal has been put forward to add such power to the existing powers of the General Meeting under the Articles of Association.

d) provisions of the Articles of Association governing meetings of the Supervisory Board (Art. 8.6 of the Articles of Association). The proposed amendments are intended to ensure compliance of those provisions with the requirements of Art. 389.4 of the amended Commercial Companies Code, which stipulates that the chair of the supervisory board must, upon request, convene a supervisory board meeting within no later than two weeks from the date of receipt of the request, and that the agenda of such meeting must include the matters indicated in the request. Since the existing Articles of Association prescribe a three-week time limit for convening a meeting of the Supervisory Board upon request, they must be amended so as to ensure their compliance with the applicable statute.

e) addition of Art. 8.8a to the Articles of Association to allow the Supervisory Board to consider and vote on matters not included in the agenda of its meeting if all Supervisory Board members agree to such voting. This amendment reflects amended Art. 389.3 of the Commercial Companies Code.

f) expansion of the powers of the Supervisory Board with regard to the preparation by the Supervisory Board of an annual written report for the previous fiscal year and its submission to the General Meeting. The existing Articles of Association only require that the report of the Supervisory Board include assessment by the Supervisory Board of the Company's financial statements, the

Directors' Report on the Company's Operations, and the Management Board's proposal on the distribution of net profit or coverage of net loss. Pursuant to Art. 382 of the amended Commercial Companies Code, the scope of the report of the Supervisory Board has been redefined by enumerating matters which must be covered by such report. In accordance with the amended statute, the Supervisory Board is required to include in its report an assessment of the performance by the Management Board of its obligations under Article 380<sup>1</sup> of the Commercial Companies Code and an assessment of the Management Board's practices with respect to the preparation and provision to the Supervisory Board of information, documents, reports and clarifications requested pursuant to Art. 382.4 of the Commercial Companies Code. Accordingly, in order to enable satisfaction of the requirements under the said statute, appropriate amendments have been proposed to the Articles of Association to explicitly expand the scope of the report that the Supervisory Board is required to prepare and submit to the General Meeting.

(g) addition of Art. 9.11a to the Articles of Association to reflect the addition of Art. 380<sup>1</sup> to the Commercial Companies Code. Under Art. 380<sup>1</sup> of the Commercial Companies Code, the Management Board is required to provide to the Supervisory Board, without any notice therefrom, certain information, including information on resolutions passed by the Management Board and the matters resolved on, the Company's condition, progress in the implementation by the Company of its business development directions, transactions and other events or circumstances which materially affect, or may materially affect, the Company's assets, including its profitability or liquidity, and any changes in any information that has been previously communicated to the Supervisory Board if such changes have, or are likely to have, a material effect on the Company's condition.

In accordance with Art. 380<sup>1.5</sup> of the Commercial Companies Code, the Management Board's notification obligations have been properly clarified, in particular with regard to the scope of information required to be provided and the timing of its provision, so as to ensure that information which is necessary for the Supervisory Board to duly supervise the Company is delivered to the Supervisory Board efficiently (in terms of both the form of such delivery and its timing). Also, the option to delay publication of inside information as provided for in Regulation (EU) No. 596/2014 of the European Parliament and of the Council of April 16th 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC is included in the proposed amendment on provision of information to the Supervisory Board. For the purposes of adding Art. 9.11a to the Articles of Association, it is also proposed that a definition of Regulation (EU) No. 596/2014 of the European Parliament and of the Council be also added thereto and that the Regulation be referred to as MAR across the Articles of Association.

2. Apart from the amendments following from the amendments adopted to the Commercial Companies Code, amendments are also proposed that reflect the various merger processes carried out at the Company in 2022. As a result of these processes, PKN ORLEN has transformed into a multi-utility group offering products and services which the Company previously did not offer or offered only to a limited extent. In view of the Company's current product and service offering, it is advisable to update the existing definition of Energy as included in Art. 1.4 of the Articles of Association and to adjust the scope of actions that are considered taken in the ordinary course of the Company's business as provided for in Art. 8.12.6 of the Articles of Association to the Company's current situation, its actual operations, and the current list of its business activities.

It is accordingly proposed that the Articles of Association be amended to include a new list of actions that are taken by the Company as part of its day-to-day operations and as such should not require prior consent of the Supervisory Board. In accordance with the proposed amendment, apart from actions related to Energy and Fuel trading, which are mentioned in the existing Articles of Association, the following actions would also be considered as taken in the ordinary course of business and not requiring prior consent of the Supervisory Board: provision of electricity grid ancillary services; handling switching by customers to a different electricity or heat supplier and provision, delivery and exercise of any related services, products and rights, including operating processes related to the supply, transmission and distribution of electricity or heat; certification of capacity market units, including for the purposes of participation in capacity auctions on the capacity market; trading in natural gas storage capacities and associated withdrawal and injections capacities, trading in network capacities, and trading in LNG regasification capacities; and actions related to hedging against movements in Fuel and/or Energy prices and to any financial instruments constituting hedging instruments against financial and/or commodity risks. The amendments proposed to Art. 1.4 and Art. 8.12.6 of the Articles of Association will allow the Company to respond flexibly to the evolving market situation and to efficiently secure its needs, including execution of its day-to-day transactions.

3. In addition, it is proposed that the list of the Company's business activities in Art. 2 of the Articles of Association be expanded to include two new activities, namely retail sale via mail order houses or via Internet (Polish Classification of Business Activities: PKD 47.91.Z) and other retail sale not in stores, stalls or markets (Polish Classification of Business Activities: PKD 47.99.Z).

As part of the Company's strategic efforts to further grow its retail sales, a decision was made to replace the rewards catalogue of the VITAY loyalty scheme with a modern e-commerce solution. Since January 2022, a state-of-the-art online sales platform has been available at VITAY.pl, where both VITAY loyalty scheme members and non-members alike can purchase products from various categories, including automotive, electronics, sports, fashion and tourism, home appliances, and home and garden by either redeeming their VITAY loyalty credit or simply paying in cash.



According to the Polish Classification of Business Activities, PKN ORLEN S.A. must therefore be considered an entity conducting retail sales via Internet (online store), including, without limitation, retail sales of automotive accessories. Accordingly, it is necessary to include this classification in the Company's business activities as disclosed in its Articles of Association.

The proposed amendment will not result in any significant expansion or restriction of PKN ORLEN S.A.'s existing business activities. It will only complement the Company's business profile in line with its efforts to enhance the economic efficiency of the VITAY.pl retail online store.

4. It is also proposed that amendments be made to the provisions of the Articles of Association concerning real property transactions, including by introducing a new threshold triggering the need to secure the Supervisory Board's prior consent to disposal of a real property.

In accordance with the existing Articles of Association, no real property or perpetual usufruct rights to or other interest in real property can be disposed of without a relevant resolution of the Management Board and, for a real property, also without prior consent of the Supervisory Board. Where the net carrying amount of a real property exceeds the threshold of 1/20 of the Company's share capital, prior consent of the General Meeting is additionally required to the disposal of such real property.

The Articles of Association are proposed to be amended so as to maintain the powers of the Management Board with regard to decisions to dispose of real property but also to require that such decisions be made by the Management Board in the form of resolutions and that these be subject to the Supervisory Board's prior consent only where the net carrying amount of a real property exceeds the threshold of PLN 2 (two) million. The related powers of the General Meeting will remain unchanged. By introducing a materially threshold into the Articles of Association, the proposed amendment will ease the workload on the Supervisory Board in matters that do not exceed the threshold, while at the same time ensuring full control over related processes.

5. The amendment proposals presented also include amendments to the provisions of the Articles of Association concerning obtaining corporate consents to subscription, acquisition or disposal of shares in ORLEN Group companies which operate, under generally applicable laws, a natural gas distribution or storage system, which is also subject to the condition that any consent to such disposal must define its terms and conditions.

The existing Art. 7.7.15 of the Articles of Association provides that granting such consent is one of the General Meeting's powers. At the same time, pursuant to Art. 8.12.3 of the Articles of Association it is the Supervisory Board which has the authority to control subscription, acquisition and disposal of shares in other companies in general. It is therefore proposed that the related powers and responsibilities of the Company's governing bodies be consistently redefined with respect to all companies in compliance with the Act on State Property Management. Amending the Articles of

Association so as to designate the Supervisory Board as the body authorised to grant such consents as are referred to above will not only guarantee compliance and consistency with the pertinent provisions of the Act on State Property Management but will also ensure that an efficient decision-making process is in place at the Company with regard to transactions in shares, including equity investments within the ORLEN Group. In addition, a further clarification of Art. 8.12.3 of the Articles of Association is proposed, which is compliant with the Act on State Property Management.

It is also proposed that Art. 8.12.5 of the Articles of Association be amended to expand the list of companies whose shares cannot be disposed of or encumbered in any way without prior consent of the Supervisory Board. Apart from the companies that are already mentioned in the Articles of Association in this context, i.e. Naftoport Sp. z o.o., Inowrocławskie Kopalnie Soli Solino S.A., and any company to be established to engage in the pipeline transport of liquid fuels, the amended list will include companies which pursuant to generally applicable laws are natural gas distribution or storage system operators. Any consent to disposal or encumbrance of shares in such company would still be required to define the terms and conditions of such transaction. Accordingly, no disposal or encumbrance of shares in any of the companies enumerated in the Articles of Association could be carried out without supervision by the Supervisory Board or, as long as the State Treasury holds the right to appoint a member of the Supervisory Board pursuant to Art. 8.13 of the Articles of Association, without an affirmative vote of the Supervisory Board member appointed by the State Treasury. It is proposed that only if the State Treasury failed to appoint a member of the Supervisory Board, a resolution granting consent to an action referred to in amended Art. 8.12.5 of the Articles of Association would be passed in accordance with newly added Art. 8.9 thereof, which is not included in the existing Articles of Association. The introduction of the proposed clarifications, as described above, to the Articles of Association is reasonable and advisable so as to avoid any doubt that could otherwise arise as to the scope of the Supervisory Board's powers.

6. It is further proposed that Art. 8.12.7 of the Articles of Association, whereby prior consent of the Supervisory Board must be secured for making abroad any equity investment or investment in assets with a value exceeding 1/20 of the Company's share capital, be struck out. Given the current amount of the Company's share capital as well as the other powers of the Supervisory Board and existing materiality thresholds for decision making, the requirement to obtain consent for investments in excess of 1/20 of the Company's share capital in foreign countries seems too burdensome in relation to other provisions of the Articles of Association, which anyway require securing prior consent of the Supervisory Board (e.g., Art. 8.12.3, which requires such consent for equity investments in excess of PLN 100 million). Therefore, it is proposed that Art. 8.12.7 be removed from the Articles of Association.

7. Amendments are also proposed to the Articles of Association to update the powers reserved for the State Treasury as a shareholder in the Company. Existing Art. 9.13, which were added to the



Articles of Association of PKN ORLEN S.A. following its merger with Polskie Górnictwo Naftowe i Gazownictwo (from its articles of association), impose requirements on the Management Board to provide the State Treasury, as the majority shareholder in the Company, with certain additional information.

The proposed amendments are intended to ensure that the State Treasury maintains its special custody of critical infrastructure and its owners and operators, while limiting PKN ORLEN's reporting obligations towards the State Treasury to the scope of information expressly defined in the Articles of Association, which will allow the State Treasury, as the shareholder entitled to receive such information, to be updated in a clear and concise manner on key issues related to critical infrastructure and activities, as well as the Company's related parties and subsidiaries which own or operate such infrastructure or are engaged in such activities.

First and foremost, however, both the Management Board and Supervisory Board are obligated submit to shareholders at each Annual General Meeting all required reports. Being a public company, PKN ORLEN S.A. has to fulfil general disclosure obligations towards all shareholders and in this respect is subject to regulatory oversight by the Polish Financial Supervision Authority. Accordingly, the Company is also required to publish inside information in current and periodic reports, an obligation which is equivalent to the reporting requirements imposed by the provisions which are proposed to be removed from the Articles of Association.

8. The remainder of the proposed amendments to the Articles of Association are warranted by various considerations, as detailed below:

a) The proposed amendment to Art. 7.9.1 is aimed at enhancing the stability of the Articles of Association in areas that are of key importance to Company shareholders. Compared with the safeguards in place under the existing Articles of Association, the amended provisions will afford greater protection to the personal rights held by the State Treasury in the Company as its shareholder as well as to the rules for determining the composition of the Company's governing bodies. The quorum provided for in the amendment is analogous to other similar solutions included in the Articles of Association, e.g. the quorum required under Art. 7.9.2, and is intended to serve the same purpose as the latter.

b) Art. 7.9.2.9 is proposed to be struck out as its provisions will be included in Art. 7.9.1.

c) Art. 7.9.3 is proposed to be amended so as to ensure that any changes made by the General Meeting to the composition of the Management Board are preceded by careful deliberations. It is thus deemed reasonable and advisable that prior to taking an ultimate decision on such changes, shareholders have the opportunity to learn the Supervisory Board's opinion on the matter, as it is the



latter body that on an ongoing basis monitors the management of the Company by the Management Board (cf. Art. 382.1 of the Code). Such opinion is likely to provide shareholders with information which in principle is not available in the public domain, and, what is also important, it will be co-authored by Supervisory Board members meeting the independence criteria (cf. Art. 8.5 of the Articles of Association) and as such should be objective and reliable.

d) Art. 8.1. is proposed to be reworded in its entirety, whereby pursuant to new Art. 8.1.1 the maximum number of Supervisory Board members will be increased to 16. The proposed strengthening of the Supervisory Board is justified by the Company's recent M&A transactions, which transformed it into a multi-utility group engaged in many various lines of business and carrying out a wide range of activities, as well as by the need to ensure adequate proportions between the size of the Management Board and that of the Supervisory Board. Also, in order to avoid the risk of a stalemate, it is proposed that Art. 8.9.1 be modified so as to grant the Chair of the Supervisory Board the casting vote in the event of a tied vote on a resolution (cf. Art. 391.1 of the Code). As proposed Art. 8.1.1 only indicates the minimum and maximum number of Supervisory Board members, it also provides that a General Meeting resolution will be required to set the exact number of members that the Supervisory Board will be composed of.

e) New Art. 8.1.2 is intended to clarify whether the Supervisory Board has the capacity to pass resolution if the number of its members falls below the number determined by the General Meeting. The proposed amendment also imposes a requirement on the Management Board to take action in order to ensure that the composition of the Supervisory Board reflects the General Meeting's will.

f) In view of the existing and proposed provisions of the Articles of Association which define the rules of appointment of Supervisory Board members, in particular with respect to the personal rights held in the Company by the State Treasury, it is deemed reasonable and advisable that new Art. 8.1.3 should unequivocally stipulate that if the Supervisory Board is elected by block voting (cf. Art. 385.3–7 of the Code), it should consist of no more than the minimum number of members as provided for in proposed Art. 8.1.1. As a result, only a major shareholder in the Company will be entitled to form a block referred to in Art. 385.5 of the Code.

g) Existing Art. 8.2.1 provides that the State Treasury "shall have the right to appoint and remove one member of the Supervisory Board", while existing Art. 8.4 that "the Chair of the Supervisory Board shall be appointed by the General Meeting" and "the Deputy Chair and the Secretary shall be elected by the Supervisory Board from among other Supervisory Board members". These provisions may be construed to mean that only a candidate elected by the General Meeting may be appointed as the Chair of the Supervisory Board and that that position cannot be held by a person



appointed to the Supervisory Board in the exercise by the State Treasury of its personal rights in the Company. The proposed amendment to Art. 8.4. is intended to enable the Supervisory Board member appointed by the State Treasury pursuant to Art. 8.2.1 to serve as the Chair of the Supervisory Board. As the proposed amendment to Art. 8.9.2 stipulates that the Supervisory Board cannot pass any resolution concerning filling the position of the Deputy Chairperson or Secretary of the Supervisory Board otherwise than at a meeting, it is only reasonable to complement that provision by also requiring, in line with Art. 389.3 of the Code, that voting on such matter be announced adequately early by including it in the proposed agenda of the Supervisory Board meeting.

h) The proposed addition to Art. 8.5 is intended to unequivocally clarify the General Meeting's obligation to appoint to the Supervisory Board persons meeting the independence criteria under the Articles of Association also if the Supervisory Board is elected by block voting (i.e. pursuant to Art. 385.3–7 of the Code). The amendment is technical in nature.

i) The proposed amendment to Art. 8.7.1, which is organisational in nature, is required pursuant to the amended Commercial Companies Code, which entered into force on October 13th 2022.

In accordance with Art. 389.1 of the Code, the supervisory board is presided over by its chair, whose powers include, but are not limited to, convening supervisory board meetings, and the grant of any powers and authority related to managing the activities of the supervisory board and performance by it of its duties to other supervisory board members requires unambiguous definition of such powers and authority in the company's articles of association.

Accordingly, it is proposed that Art. 8.7.1 be amended so as to clarify the conditions under which Supervisory Board meetings may be convened by the Deputy Chairperson or Secretary of the Supervisory Board.

Also, Art. 389.2 of the Code, effective as of October 13th 2022, provides that the manner and timing of convening supervisory board meetings must be specified in the company's articles of association, and not in the rules of procedure for the supervisory board. Therefore, it is deemed reasonable and advisable to add the said clarification to Art. 8.7.1.

j) Given the organisational powers held by the Deputy Chairperson and Secretary of the Supervisory Board, it is deemed reasonable to require, under new Art. 8.9.1, that the Supervisory Board have an adequate quorum when deciding on key issues relating to filling those positions.

(k) Pursuant to Art. 388.3 of the Code, effective as of March 31st 2020, no restrictions apply to matters that can be resolved on by the supervisory board of a joint-stock company by written ballot or by means of remote communication unless the company's articles of association provide otherwise.

Given the weight of the Supervisory Board's decisions on filling the positions of its Deputy Chair and Secretary or on the composition of the Management Board, it is deemed reasonable and advisable to propose that Art. 8.9.2 require that such decisions cannot be taken otherwise than at a Supervisory Board meeting.

It is further proposed that Art. 8.9.2 unequivocally clarify who is authorised to order a vote by written ballot or by means of remote communication. The existing Articles of Association lack such provision, and its introduction is required pursuant to Art. 389.1 of the Code (effective as of October 13th 2022).

l) In accordance with Art. 391.1 of the Code, the articles of association of a company may provide that in the event of a tied vote of the company's supervisory board, its chair shall have the casting vote. In order to avoid a situation where the Supervisory Board is unable to make a decision, it seems advisable that the said statute be implemented into the Articles of Association in the form of new Art. 8.9.3.

m) In accordance with Art. 389.3 of the Code (effective as of October 13th 2022), which reads: *"Unless the articles of association provide otherwise, the supervisory board may at its meeting also resolve on matters not included in the proposed agenda for the meeting if none of the supervisory board members in attendance objects to voting on such resolution. The articles of association may also specify matters that must be announced beforehand in the invitation to a supervisory board meeting in order for the supervisory board to have the capacity to resolve on them."*

As the proposed amendment to Art. 8.9.2 stipulates that the Supervisory Board cannot pass any resolution concerning changes in the composition of the Management Board otherwise than at a meeting, it is only reasonable to complement that provision by modifying Art. 8.9.3 in line with Art. 389.3 of the Code to require that voting on such matter be announced adequately early by including it in the proposed agenda for the Supervisory Board meeting.

n) It is also proposed that Art. 8.11.22 be added, which is technical in nature. The purpose of this provision is to include in the enumeration of the Supervisory Board's powers and responsibilities the power to issue such opinion as is referred to in proposed Art. 7.9.3.

In view of the foregoing, we hereby submit to you draft resolutions of the Extraordinary General Meeting to amend the Company's Articles of Association and to restate the same, respectfully requesting that they be passed.