

Response to questions submitted by a shareholder pursuant to Article 428 §6 of the Commercial Company Code

Shareholder's question - original spelling

1. In connection with the filing of a constitutional complaint on 28 December 2023, in which I accuse the State Treasury, which is the majority shareholder of Jastrzębska Spółka Węglowa S.A., of having no legal interest in paying dividends knowing that in the near future, as a legislator, it will tax JSW with a "solidarity contribution." In doing so, it deprived shareholders of other property rights and made it impossible to challenge the tax in the form of the "solidarity contribution" by violating Article 21(1) in conjunction with Article 64(1)-(3) in conjunction with Article 2, Article 2, Article 2 in conjunction with Article 31(3), Article 31(3) in conjunction with Article 32(1) of the Polish Constitution.

Does the Management Board support the refund of the monies in the form of the solidarity contribution to JSW S.A., or does the Management Board, in order to satisfy the rights of the shareholders under the Polish Constitution, lean towards the payment of dividends for 2022 also in connection with the challenged Resolution No. 7 of 16 June 2023 at the Ordinary Shareholder Meeting? Enclosed is the *petitium* of the constitutional complaint.

In accordance with generally applicable regulations, anyone whose constitutional freedoms or rights have been violated is entitled to file a complaint with the Constitutional Court if the prerequisites indicated in the Constitution of the Republic of Poland of 2 April 1997 are met in the given case (Journal of Laws No. 78, item 483, as amended) and the Act of 30 November 2016 on the organization and procedure before the Constitutional Court (consolidated version in Journal of Laws of 2019, item 2393). Please be informed that Jastrzębska Spółka Węglowa S.A. is not a party to the proceedings before the Constitutional Court initiated by you. In view of the above, Jastrzębska Spółka Węglowa S.A., as a commercial law company, is not authorized to present a position related to the proceedings you initiated.

2. In connection with the provisions of the liquidity loan agreement with the Polish Development Fund (PFR), Section 11.11 Obligation to not establish Security, Section 11.12 Financial Debt and Section 11.13 Loans or borrowings, has JSW S.A. requested an exemption from the contractual provisions in connection with the SLL financing agreement for PLN 1,650 million?

With the approval of the PFR given in the letter dated 29 March 2023, on 12 April 2023 the Company entered into an SLL financing agreement secured as provided therein.

3. Why didn't the company apply again in 2023 for an exemption from the contractual provisions on not recommending dividends in connection with the solidarity contribution and satisfaction of the rights of shareholders?

According to the statements, the management board presumed that it would be subject to the solidarity contribution, and according to the Undersecretary of State at the Ministry of the Environment Piotr Dziadzio: "The EU regulation came into force last October, but all companies, not just the ones listed verbatim, knew about this regulation, that it was there, and all companies could expect that this regulation would burden them. The entire industry is aware of this fact. In addition, the annual final reports were adopted by 30 June of this year, so by then everyone was already fully aware of the planned measures and could take this into account in their plans." Because pursuant to Article 14(3) of Council Regulation (EU) 2022/1854, the deadline for introducing an equivalent national measure for the solidarity contribution was 31 December 2022. On what basis could the company have known about the tax?

In accordance with the Act of 15 September 2000 entitled the Commercial Company Code (consolidated version in Journal of Laws of 2024, item 18, as amended), the decision to pay dividends is within the exclusive powers of the Shareholder Meeting. In assessing the appropriateness of maintaining the funding from the PFR, the Management Board of Jastrzębska Spółka Węglowa S.A. is guided by financial terms and the interests of the Company. The Management Board reported on the restrictions related to PFR's financing in Current Report no. 40/2020 and 41/2020 and during results conferences. At the same time, we would like to point out that the so-called solidarity contribution was introduced on the basis of the Act of 16 August 2023 on amendments to the act on special solutions for the protection of electricity consumers in 2023 in connection with the situation on the electricity market and amendments to certain other acts (Journal of Laws 2023 item 1785). Information on the effects of the above-mentioned Act on Jastrzębska Spółka Węglowa S.A. was the subject of Current Report No. 19/2023.

4. Is the management board aware that the solidarity contribution was paid on 17 November 2023 and could have been paid on 20 November 2023. According to the provisions of Article 29g (1), the obliged entrepreneur shall pay the solidarity contribution within 30 days of the last day of the deadline for submission of the report, established in accordance with Article 29d (5), to the bank account of the Fund designated by the settlement administrator. The Act of 27 October 2022 on extraordinary measures aimed to limit the electricity prices and to support certain customers in 2023 (Dz.U.2022.2243)

On 17 October 2023, the Management Board of JSW SA adopted a resolution to approve the Report containing the calculation of the solidarity contribution, grant a delegation to sign it and impose an obligation to submit the Report, as well as to approve the recognition of the solidarity contribution in the accounting ledgers, and the obligation to pay the solidarity contribution, as well as the necessary actions in the event that the Report needs to be adjusted as a result of any change in the tax income for 2022.

On 4 September 2023, the Act of 16 August 2023 on amendments to the act on special solutions for the protection of electricity consumers in 2023 in connection with the situation on the electricity market and amendments to certain other acts was promulgated (Journal of Laws of 2023, item 1785 hereinafter: the "Amendment Act"). The Act entered into force 14 days after its promulgation, i.e. on 19 September 2023.

Pursuant to Article 29d(5) of the Act, the Company was required to submit the report within 1 month of the effective date of the Amendment Act, i.e. no later than 19 October 2023.

Pursuant to the wording of Article 29g(1) introduced into the Act, JSW S.A. was required to pay the solidarity contribution within 30 days of the last day of the deadline for submission of the report. Accordingly, the Company was required to pay the contribution no later than 18 November 2023, with the deadline falling on a Saturday. The provisions of the Act do not explicitly provide for postponement of the deadlines to the first business day thereafter if the deadline for payment of the contribution falls on a non-business day (unlike Article 29d(5) of the Act setting the deadlines for filing the report, which explicitly provides that the deadline falling on a non-business day falls on the first business day thereafter). Due to the lack of explicit authorization to postpone the deadlines until the first business day thereafter, the solidarity contribution was due no later than 17 November 2023.