

**Draft resolution**

**of the Extraordinary General Meeting of ENEA S.A. with its registered office in Poznań  
convened for 30 January 2024**

**Draft resolution to item 7 of the proposed agenda**

**D R A F T**

**Resolution No. ....**

**adopted by the Extraordinary General Meeting of the Company operating under the business  
name of  
ENEA Spółka Akcyjna with its registered office in Poznań  
on 30 January 2024**

**on claims to remedy damage caused in the performance of management or supervision duties**

Whereas:

1. The Extraordinary General Meeting of ENEA S.A. ("Company") has become aware of the Company's claims to remedy damage, under Article 483(1) of the Act of 15 September 2000 entitled the Commercial Company Code ("CCC"), caused in the performance of management or supervision duties, which the Company suffered in connection with its investment in the Ostrołęka C power unit, against the following natural and legal persons:
  - a) Mirosław Kowalik,
  - b) Piotr Adamczak,
  - c) Zbigniew Piętko,
  - d) Piotr Olejniczak,
  - e) Stanisław Hebda,
  - f) Roman Stryjski,
  - g) Paweł Korobłowski,
  - h) Ireneusz Kulka,
  - i) Paweł Jabłoński,
  - j) Towarzystwo Ubezpieczeń Wzajemnych Polski Zakład Ubezpieczeń Wzajemnych,
  - k) Towarzystwo Ubezpieczeń i Reasekuracji Allianz Polska S.A.,
  - l) Colonnade Insurance Société Anonyme (operating in Poland through Colonnade Insurance Societe Anonyme Branch in Poland),
  - m) Towarzystwo Ubezpieczeń i Reasekuracji Allianz Polska S.A.,
  - n) Chubb European Group SE (operating in Poland thorough Chubb European Group SE Societas Europaea Branch in Poland),
  - o) Powszechny Zakład Ubezpieczeń S.A.,
  - p) Lloyd's Insurance Company S.A.;
2. pursuant to Article 393(2) of the Commercial Company Code, a resolution of the General Meeting is required to make a decision on claims to remedy damage caused in the performance of management or supervision duties;

acting pursuant to Article 393(2) of the Commercial Company Code, the Company's Extraordinary General Meeting hereby resolves as follows:

§ 1

1. The Company's Extraordinary General Meeting consents to the pursuit of claims, in particular under Article 483(1) of the Commercial Company Code, caused in the performance of management or supervision duties, which the Company suffered in connection with its investment in the Ostrołęka C power unit, against the following natural and legal persons:
  - a) Mirosław Kowalik,

- b) Piotr Adamczak,
  - c) Zbigniew Piętka,
  - d) Piotr Olejniczak,
  - e) Stanisław Hebda,
  - f) Roman Stryjski,
  - g) Paweł Korobłowski,
  - h) Ireneusz Kulka,
  - i) Paweł Jabłoński,
  - j) Towarzystwo Ubezpieczeń Wzajemnych Polski Zakład Ubezpieczeń Wzajemnych,
  - k) Towarzystwo Ubezpieczeń i Reasekuracji Allianz Polska S.A.,
  - l) Colonnade Insurance Société Anonyme (operating in Poland through Colonnade Insurance Societe Anonyme Branch in Poland),
  - m) Towarzystwo Ubezpieczeń i Reasekuracji Allianz Polska S.A.,
  - n) Chubb European Group SE (operating in Poland through Chubb European Group SE Societas Europaea Branch in Poland),
  - o) Powszechny Zakład Ubezpieczeń S.A.,
  - p) Lloyd's Insurance Company S.A.;
- both jointly from all of the said persons and from each of them separately or from only some of them.

2. The consent to pursue the claims referred to in item 1 above includes, in particular:
- a) ex-post consent following the procedure of art. 17(2) of the Commercial Company Code to file a lawsuit for payment on 28 December 2023, against the natural and legal persons referred to in item 1(a)-(j) above and to file a lawsuit for payment on 31 December 2023 against the legal persons referred to in item 1(k)-(p) above;
  - b) seeking payment under D&O policies;
  - c) issuing a call for a settlement attempt;
  - d) initiating mediation;
  - e) entering into a settlement before a court or mediator;
  - f) taking any other action that may prove necessary or expedient for the purpose of pursuing, establishing, satisfying or securing the Company's claims, as referred to above.

## § 2

The Company's Management Board is hereby authorized to take all actions necessary in connection with the pursuit of the claims referred to in § 1.

## § 3

This resolution shall enter into force when adopted.

Number of shares from which valid votes were cast	: ...
Percentage of these shares in the share capital	: ...
Total number of votes cast	: ...
Number of votes in favor	: ...
Number of votes against	: ...
Number of votes abstaining	: ...

This resolution will be adopted by secret ballot.

## Justification:

### 1. Investment in the Ostrołęka C power unit

On 8 December 2016, ENEA S.A. (hereinafter: "Company"), Energa S.A. (hereinafter: "Energa") and Elektrownia Ostrołęka S.A. (hereinafter: "SPV") entered into an Investment Agreement (hereinafter: "Investment Agreement"), the subject matter of which was to lay down the rules of execution of a project involving the Company's investment in the Ostrołęka C power unit (hereinafter: Project). The Investment Agreement governed, without limitation, issues concerning: (i) ENEA's acquisition of shares in the SPV and transformation of the SPV into a limited liability company, (ii) increase in the SPV's share capital to finance the Project, (iii) stages of investment in the Project, (iv) corporate governance of the SPV, and (v) possibility of ENEA or Energa's exit from the Project. The Investment Agreement did not specify the detailed terms of financing for the whole Project. This issue was supposed to be agreed upon at a later date.

In order to execute the Project, on 12 July 2018, the SPV and the consortium of GE Power sp. z o.o. and ALSTOM Power Systems S.A.S. (hereinafter: EPC Contractor) entered into the "Contract for the Construction of the Ostrołęka C Power Plant with a capacity of approx. 1000 MW" (hereinafter: Contract) the net value of which was PLN 5,049,729,000.00 (gross value: PLN 6,023,035,000.00).

On 28 December 2018, the Company's Management Board adopted Resolution No. 500/2018 (i) to consent to the Company's representative voting at the General Meeting of the SPV in favor of the resolution to consent to the issuance of a notice to proceed to the EPC Contractor (hereinafter: NTP); and (ii) to enter into agreement with Energa and the SPV terminating the Investment Agreement and laying down the principles of the parties' cooperation in the Project (including, without limitation, by partially addressing the issue of its financing structure – hereinafter: December Agreement). The resolution was adopted subject to obtaining the consent of the ENEA Supervisory Board for the said actions. It was adopted unanimously.

On the same date, the Company's Management Board requested the Supervisory Board to adopt a resolution to consent to voting at the General Meeting of the SPV in favor of the resolution to consent to the issuance of the NTP and to consent to the execution, by the Company's Management Board, of the said agreement with Energa and the SPV.

By Resolution No. 94/IX/2018 of 28 December 2018, the Company's Supervisory Board consented to the following:

- (i) voting by the Company's representative at the Extraordinary General Meeting of the SPV in favor of the resolution to consent to the issuance of the NTP, subject to the prior execution of the said December Agreement;
- (ii) execution, by the ENEA Management Board, of the December Agreement with Energa and the SPV, laying down the principles of the parties' cooperation in the Project, including the termination of the Investment Agreement.

On the same date, that is on 28 December 2018, an Extraordinary General Meeting of the SPV was held, during which a resolution was adopted to consent to the issuance of the NTP to the EPC Contractor. As a result, the SPV's Management Board issued the NTP to the EPC Contractor on 28 December 2018.

ENEA and Energa, in view of the need to establish a framework for cooperation in the Project and to provide the SPV with financing (until obtaining financing for the Project from an external source), entered into an agreement on 30 April 2019 (hereinafter: April Agreement). The decision to enter into the April Agreement was made by Resolution No. 184/2019 of the Management Board of 30 April 2019 (all members of the Management Board voted in favor of the resolution). It confirmed that the Shareholders recognized the need to obtain partial external financing for the Project and were holding discussions on the target structure and form of financing for the Project, while declaring their willingness to provide the SPV with the necessary funds to execute the Project, in an amount consistent with the provisions of the December Agreement. It was also decided that in order to execute the Project in accordance with the approved schedule and to avoid any breach of the Contract with the EPC Contractor, it was necessary

to promptly provide the SPV with funds for the execution of the Project, with the understanding that in 2019–2020 the funds for the execution of the Project will be provided by Energa, and then, starting from 2021, also by the Company.

At the end of 2019 and in the first quarter of 2020, several independent circumstances arose that ultimately, in the opinion of the Company, Energa and the SPV, justified the suspension of the Project, as a consequence of which, on 13 February 2020, the Company and Energa entered into an agreement to suspend the financing of the Project. In connection with the execution of the said agreement, the SPV, in accordance with Article 39 of the Contract, on 14 February 2020, issued an order to the EPC Contractor to suspend the performance of all obligations under the Contract.

On 2 June 2020, the Company, Energa and PKN Orlen S.A. entered into an agreement laying down the key principles for the continued construction of the Ostrołęka generating unit, taking into account the change of power source to gaseous fuel. On 22 December 2020, the Company, Energa and the SPV entered into an agreement on cooperation in the demerger of the SPV. Under the agreement, the Company confirmed its decision to refrain from participating in the gas-fired project, and the other parties agreed to such a decision by the Company. It was agreed that the issue of mutual settlements between the parties would be resolved in a separate agreement.

On the same date, the Company and Energa entered into an agreement on cooperation in settling the Ostrołęka C Power Plant construction project, dated 22 December 2020, which confirmed the Company's decision to refrain from participating in the Project to be executed by following the gas-fired concept. In the agreement, the parties agreed that the Investment Costs (as defined in the Settlement Agreement) would be borne equally by ENEA and Energa, with no more than PLN 620,000,000.00 by each of them.

In 2021, the Supreme Audit Office (hereinafter: Supreme Audit Office or NIK) conducted an audit at the Company on the performance of tasks by Energa and the Company in connection with the execution of the Project. The audit ended with the issuance of a report by the Supreme Audit Office. The Supreme Audit Office's audit report entitled "I/21/001/KST – Performance of tasks by Energa SA and ENEA SA in the process of investment in the Ostrołęka C power unit," is available on the Supreme Audit Office's website (link to download the document: [https://www.nik.gov.pl/kontrol/wyniki-kontroli-nik/pobierz.kst-i\\_21\\_001\\_202202091559361644418776~id1~01.typ.kj.pdf](https://www.nik.gov.pl/kontrol/wyniki-kontroli-nik/pobierz.kst-i_21_001_202202091559361644418776~id1~01.typ.kj.pdf)).

The report of the Supreme Audit Office pointed to two major areas of irregularity in the actions taken by the Company in connection with the Project. Specifically:

- (i) first, it was pointed out that the Company's corporate bodies consented to the issuance of the NTP by the SPV in a situation where full financing of the Project was not assured, and the Company's Management Board was aware of the existing gap in financing the Project, caused by the limited participation of the SPV's shareholders in the Project's budget and the difficulties in attracting an external investor;
- (ii) second, it was indicated that the Company had improperly managed the risks associated with the Project, including in particular the risk of failure to achieve the economic objective of the planned construction of the Ostrołęka C power plant; the probability of materialization of this risk was originally estimated at less than 50% (with no indicators defined to assess whether the solutions adopted by the Company served to minimize it), and this estimate was not changed either after 28 December 2018, that is after the Company reduced its participation in the financing of the Project to PLN 1,000,000,000.00 (with the concurrent failure to obtain external financing for the Project), or after 28 January 2019 when the conditions set forth in the December Agreement became unfulfilled (including through the failure to enter into a new investment agreement), or even after 13 February 2020 when the Project was suspended.

In view of the deficiencies described above, the Supreme Audit Office recommended, without limitation, that the Company "take action to pursue liability for damage against the members of the ENEA Management Board who presented to the Company's Supervisory Board, on 28 December 2018, untrue information regarding the Project's financing structure, as a consequence of which the Company's Supervisory Board consented to the issuance of the NTP, which led to the commencement of work resulting in the Company's further involvement and spending of PLN 180.7 million (PLN 180,691,050) to increase the SPV's share capital and PLN 210.9 million (PLN 210,905,700) to grant two loans to the SPV and pay interest to Energa on the acquired receivables arising therefrom.

In connection with the content of the Supreme Audit Office's audit report, a study was prepared at the Company's request to assess the legitimacy of the Company's claims against the members of its corporate bodies in connection with the damage suffered as a result of any actions or omissions of such persons during the term of the Project that were contrary to the law or the provisions of the Company's Statute.

Following an analysis of the case, the Company's legal counsel submitted to the Company a Memorandum of 21 December 2023 the key findings and recommendations of which are as follows:

- (i) The members of the Company's Management Board who voted in favor of issuing the NTP, executing the December Agreement, recapitalizing the SPV on 4 January 2019 and executing the April Agreement, as well as the members of the Company's Supervisory Board who voted in favor of Resolution No. 94/IX/2018 of the Supervisory Board of 28 December 2018 on the consent to issuing the NTP and executing the December Agreement and who voted in favor of recapitalizing the SPV on 4 January 2019, failed to exercise due diligence in the conduct of the Company's affairs or supervision, and therefore their acts or omissions in this regard were out of compliance with the law.
- (ii) The members of the Company's Management Board who voted in favor of executing the April Agreement acted at the same time in breach of the Company's Statute (specifically, § 20(3)(10) of the Company's Statute), as they did not obtain the consent of the Supervisory Board to execute it (see item 62 of the Memorandum).
- (iii) Liability to the Company for consenting to the issuance of the NTP, the execution of the December Agreement and the recapitalization of the SPV on 4 January 2019 is borne jointly and severally by all members of the Management Board and the Supervisory Board who: (i) voted in favor of the relevant resolutions of the Management Board and Supervisory Board enabling the taking of such actions; or (ii) despite having the relevant powers, failed to prevent or oppose the taking of such actions – namely: Mirosław Kowalik, Piotr Adamczak, Zbigniew Piętka, Piotr Olejniczak (members of the Company's Management Board) and Stanisław Hebda, Piotr Mirkowski, Roman Stryjski, Paweł Korobłowski, Paweł Jabłoński and Ireneusz Kulka (members of the Company's Supervisory Board). In turn, such liability will not be borne by the members of the Company's Supervisory Board who voted against Resolution No. 94/IX/2018 of the Supervisory Board of 28 December 2018 on the consent to issuing the NTP and executing the December Agreement and who voted against the recapitalization of the SPV on 4 January 2019.
- (iv) Liability to the Company related to the execution of the April Agreement is borne jointly and severally by all members of the Company's Management Board who voted in favor of the adoption of Resolution No. 184/2019 of 30 April 2019, which consented to the execution of the April Agreement – that is all members of the Company's Management Board as at the date of the Resolution, specifically: Mirosław Kowalik, Piotr Adamczak, Zbigniew Piętka and Piotr Olejniczak. At the same time, in the opinion of the Law Firm, such liability may not be attributed to the Supervisory Board members.
- (v) It does not follow from the collected information and documents that there are any circumstances indicating the absence of guilt on the part of those members of the Company's Management Board and Supervisory Board who consented to the issuance of the NTP, the execution of the December Agreement, the recapitalization of the SPV on 4 January 2019 and the execution of the April Agreement.

In accordance with the assessment of the Company's legal counsel, in order to determine the value of damage that the Company may pursue, it is necessary to compare its current financial standing with the hypothetical financial standing that may have occurred if, instead of issuing the NTP, executing the December Agreement, recapitalizing the SPV on 4 January 2019 and executing the December Agreement, a decision had been made to discontinue the Project carried out under the coal-fired concept.

The first step in pursuing the claims in question was the preparation and filing on 28 December 2023 of a lawsuit against the following persons:

- (i) Mr. Mirosław Kowalik,
- (ii) Mr. Piotr Adamczak,
- (iii) Mr. Zbigniew Piętka,
- (iv) Mr. Piotr Olejniczak,

- (v) Mr. Stanisław Hebda,
- (vi) Mr. Roman Stryjski,
- (vii) Mr. Paweł Koroblowski,
- (viii) Mr. Ireneusz Kulka,
- (ix) Mr. Paweł Jabłoński,
- (x) Towarzystwo Ubezpieczeń Wzajemnych Polski Zakład Ubezpieczeń Wzajemnych (hereinafter: "**TUW PZUW**").

According to the information available to the Company, Mr. Piotr Mirkowski, who was also a member of the Supervisory Board involved in the adoption of the resolutions that form the basis for the attribution of the said liability, has died.

As at the date of filing of the lawsuit of 28 December 2023, the total amount of damage suffered by the Company was estimated at PLN 656,165,462.00.

In the course of further analysis, the possibility of filing lawsuits for payment of compensation also against insurers other than TUW PZUW was identified. This is due to the fact that ENEA S.A. signed an insurance agreement with Towarzystwo Ubezpieczeń i Reasekuracji Allianz Polska S.A., confirmed by policy No. 000-19-444-05947728, issued on 31 December 2019, under which the insurer assumed civil liability for damages resulting from the actions and omissions of, among others, all former members of the Management Board and Supervisory Board of ENEA S.A., which occurred during their mandates.

The amount of cover, understood as the upper limit of liability of Towarzystwo Ubezpieczeń i Reasekuracji Allianz Polska S.A. under the insurance agreement mentioned above, was set at PLN 100,000,000.00. This amount, however, was extended through the conclusion of excess insurance agreements (triggered after the amount of cover is exhausted under the agreement or under the preceding insurance agreements), confirmed by the following policies:

- (i) excess directors and officers liability insurance policy no. 4236101918 issued by Colonnade Insurance Société Anonyme (operating in Poland through Colonnade Insurance Societe Anonyme Branch in Poland) and Towarzystwo Ubezpieczeń i Reasekuracji Warta S.A. on 13 January 2020 for the amount of cover of PLN 200,000,000.00;
- (ii) excess insurance policy for losses arising as a result of claims under corporate directors and officers liability no. PLDRNA05782 issued by Chubb European Group SE (operating in Poland through Chubb European Group SE Societas Europaea Branch in Poland) on 13 January 2020 for the cover amount of PLN 100,000,000.00;
- (iii) excess insurance policy for corporate directors and officers no. 1046209072 issued by Powszechny Zakład Ubezpieczeń S.A. on 13 January 2020 for the cover amount of PLN 50,000,000.00;
- (iv) policy No. B0509FINMN2000104 issued by Lloyd's Insurance Company S.A. on 23 January 2020 for the amount of cover of PLN 50,000,000.00.

Accordingly, the total amount of cover under which the insurers are liable in this case is PLN 500,000,000.00.

Accordingly, based on recommendations from the Legal Advisor, on 31 December 2023 a lawsuit for payment was filed before the Regional Court in Poznań against:

- 1) Towarzystwo Ubezpieczeń i Reasekuracji Allianz Polska S.A.,
- 2) Colonnade Insurance Société Anonyme (operating in Poland through Colonnade Insurance Societe Anonyme Branch in Poland),
- 3) Towarzystwo Ubezpieczeń i Reasekuracji Allianz Polska S.A.,
- 4) Chubb European Group SE (operating in Poland through Chubb European Group SE Societas Europaea Branch in Poland),
- 5) Powszechny Zakład Ubezpieczeń S.A.,
- 6) Lloyd's Insurance Company S.A.

The value of the dispute was set at PLN 500,000,000.00 (equivalent to the total value of the cover amounts under the policies listed above), and the lawsuit is addressed to the individual insurers up to

the cover amounts under the policies listed above under *in solidum* liability with the defendants of the lawsuit of 28 December 2023. In other respects, the lawsuit against the insurers listed above is fully identical (in terms of facts of the case and legal basis for the claim for damages) to the lawsuit of 28 December 2023 filed against the then members of the Management Board and Supervisory Board of ENEA S.A. and TUW PZUW. In addition, the lawsuit of 31 December 2023 contained a request to combine this case for joint examination with the case covered by the lawsuit of 28 December 2023.