

**Resolution No. 5**

**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 8 April 2022**

**in the matter of increasing the Company's share capital by issuing Series D ordinary bearer  
shares, waiving all preemptive rights of all existing shareholders to all Series D Shares,  
amending the Company's Statute, applying for admission and introduction to trading of  
Series D Shares and/or rights to Series D Shares on the regulated market operated by the  
Warsaw Stock Exchange and dematerialization of Series D Shares and/or rights to Series D  
Shares**

The Extraordinary Shareholder Meeting of ENEA S.A. with its registered office in Poznań (“**Company**”), acting pursuant to Articles 430, 431 §§ 1 and 2 item 1, Article 432, Article 433 § 2 and Article 310 § 2 in conjunction with Article 431 § 7 of the Act of 15 September 2000 entitled Commercial Company Code (“**CCC**”) hereby resolves as follows:

**§ 1.**

- 1.** The Company's share capital is hereby increased by an amount not smaller than PLN 1.00 (one Polish zloty) and not greater than **PLN 88,288,515** (eighty eight million two hundred eighty eight thousand five hundred fifteen Polish zloty), i.e. to the amount not smaller than **PLN 441,442,579** (four hundred forty one million four hundred forty two thousand five hundred seventy nine Polish zloty) and not greater than PLN 529,731,093 (five hundred twenty nine million seven hundred thirty one thousand ninety three Polish zloty), through the issue of not fewer than 1 (one) and not more than 88,288,515 (eighty eight million two hundred eighty eight thousand five hundred fifteen) series D ordinary bearer shares with a par value of PLN 1.00 (one Polish zloty) each (“**Series D Shares**”).
- 2.** The issue of Series D Shares will be a private subscription (within the meaning of Article 431 § 2 item 1 CCC) conducted by way of a public offering (“**Offering**”) addressed solely to selected investors on the terms and conditions specified in § 3 sec. 2 of this resolution, which will be exempt from the obligation to publish a prospectus within the meaning of the

applicable law or another information or offering document for the purpose of the Offering under Article 3(1) in conjunction with Article 1(4)(a) and 1(4)(d) of Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (“**Prospectus Regulation**”).

3. The Eligible Investors selected for participation in the bookbuilding process for Series D Shares (“**Bookbuilding Process**”) should submit declaration of being interested in subscribing for Series D Shares at a price that will not be lower than the issue price of Series D Shares, set by the Company's Management Board, based on the rules set forth in this resolution, following completion of the Bookbuilding Process.
4. Series D Shares will participate in dividends on the following terms and conditions:
  - 4.1 if Series D Shares are registered for the first time in the shareholders' securities accounts by (and including) the dividend record date set in the resolution on the distribution of profit adopted by the Company's General Meeting then Series D Shares will participate in profit distribution starting with the profit for the previous financial year, i.e. from 1 January of the financial year immediately preceding the year in which Series D Shares were first registered in the shareholders' securities accounts, on par with other Company shares; and
  - 4.2 if Series D Shares are registered for the first time in the shareholders' securities accounts on a date falling after the dividend record date set in the resolution on the distribution of profit adopted by the Company's General Meeting then Series D Shares will participate in profit distribution starting with the profit for the financial year, in which they were first registered in the shareholders' securities accounts, i.e. from 1 January of that financial year, on par with other Company shares.
5. Series D Shares may be paid for with cash contributions only.
6. The purpose of Series D Shares is to finance investment projects aimed at developing and modernizing medium- and high-voltage transmission grids and installing remote reading

meters. Proceeds from the Series D Shares Issue may not be used to finance coal assets in the Company's group.

## § 2.

1. In the interests of the Company, all existing shareholders are deprived of all preemptive rights to all Series D Shares.
2. Written opinion issued by the Company's Management Board ("**Management Board**") providing the rationale for the waiver of all preemptive rights of all shareholders to Series D Shares and the method of setting the issue price of Series D Shares, is attached to this resolution.

## § 3.

1. The Management Board is hereby authorized to take any and all actions associated with the share capital increase discussed in this resolution, take any action in order to offer Series D Shares following the private subscription procedure within the meaning of Article 431 § 2 item 1 CCC and to define the detailed terms of subscription and allotment of Series D Shares, including to:
  - 1.1 set the issue price of Series D Shares taking into account the outcome of the Bookbuilding Process and assuming the maximization of proceeds from the issue of Series D Shares;
  - 1.2 set the date for submitting offers to subscribe to Series D Shares and for the Company to execute Series D Shares subscription agreements, while Series D Shares subscription agreements should be executed immediately after the naming of the investors, who are to receive offers of subscription for Series D Shares, but no later than within 6 (six) months of the date of this resolution;
  - 1.3 specify the final number of Series D Shares being offered;
  - 1.4 define the detailed rules for offering Series D Shares, including the rules for selecting the investors who are to receive offers of allotment of Series D Shares and with whom Series D Shares subscription agreements are to be executed ("**Subscription Rules**");
  - 1.5 submit offers to subscribe for Series D Shares based on the rules set forth in this resolution and in accordance with the Subscription Rules;

- 1.6 decide on the wording of the Series D Shares subscription agreement and to execute Series D Shares subscription agreements;
  - 1.7 take any steps aimed at registering, in the Register of Commercial Undertakings of the National Court Register, the share capital increase effected by way of issuing Series D Shares and the change of the Company's Statute related to the share capital increase; and
  - 1.8 undertake any other activities associated with the performance of the provisions of this resolution.
2. The Subscription Rules will entail the following general rules:
- 2.1 Series D Shares may be offered to investors who meet the following conditions ("**Eligible Investors**"):ol style="list-style-type: none;">  - 2.1.1 they are qualified investors within the meaning of Article 1(4)(a) of the Prospectus Regulation; or
  - 2.1.2 they acquire securities for a total consideration of at least EUR 100,000 (one hundred thousand Euro) per investor, as referred to in Article 1(4)(d) of the Prospectus Regulation.
- 2.2 The Eligible Investors participating in the Bookbuilding Process, who: (i) hold a stake greater than 0.1% of the overall number of shares in the Company's share capital as at 22 February 2022, i.e. on the date of registration for participation in today's Extraordinary General Meeting ("**Reference Date**"); (ii) confirm their shareholding as at the Reference Date in the Bookbuilding Process (or another process aimed at acquiring investors for Series D Shares), by: (a) submitting a certificate or certificates confirming their shareholding issued by an investment firm keeping the securities account for the Eligible Investor, or (b) registering the required number of shares for today's Extraordinary General Meeting; and (ii) express their intention to subscribe to Series D Shares for a price no lower than the issue price of Series D Shares set by the Management Board, will have the priority, before other Eligible Investors, to obtain such allotment of Series D Shares that will allow such investors, after the issue of Series D Shares, to maintain their percentage stake in the Company's share capital at a level that is no lower than the stake held by them at the end of the Reference Date; and

- 2.3 in the event that, after offering Series D Shares to all the Eligible Investors holding the priority allotment right referred to in §3 sec. 2.2 hereof, there will be unallotted Series D Shares, the Management Board will have the right to offer such Series D Shares to other investors eligible for participation in the Offering, who are Eligible Investors, selected by the Management Board at its discretion, as long as the offering does not require publication of a prospectus within the meaning of the applicable law or other information document for the purpose of such offering.
3. The Company's Management Board is hereby authorized to take all necessary steps to offer Series D Shares by way of a public offering within the meaning of the Act of 29 July 2005 on Public Offering and the Terms and Conditions for Introducing Financial Instruments to an Organized Trading System and on Public Companies exempt from the obligation to publish a prospectus within the meaning of the applicable law or other information document for the purpose of such offering.
4. It is hereby resolved that the Company will apply for admission of Series D Shares and, if the conditions arising from the relevant regulations are satisfied, for admission and introduction of rights to Series D Shares, to trading on the regulated market operated by the Warsaw Stock Exchange, where:
- 4.1 Series D Shares, in the maximum number that may be issued by the Company, represent less than 20% of the Company's shares admitted to trading on this regulated market, are identical with them, and together with the shares admitted to trading on this regulated market in the prior 12-month period will not reach or exceed this value; therefore, by the power of Article 1(5)(a) of the Prospectus Regulation, the admission of Series D Shares to trading on the regulated market does not require a prospectus to be prepared and published; and
- 4.2 the Company's Management Board is hereby authorized to take any and all necessary actions related to the performance of the mandate in § 3 sec. 4.
5. Series D Shares will be dematerialized within the meaning of the Act of 29 July 2005 on Trading Financial Instruments. The Company's Management Board is hereby authorized and obliged to enter into an agreement with the Central Securities Depository of Poland to register Series D Shares, and if the conditions for such registration are satisfied, also rights

to Series D Shares, in the securities depository, and to take any necessary actions related to their dematerialization.

6. The Management Board is hereby authorized to make a decision to refrain from or suspend the performance of this Resolution, refrain from or suspend the execution of the private subscription within the meaning of Article 431 § 2 item 1 CCC. When deciding on the suspension of the private subscription within the meaning of Article 431 § 2 item 1 CCC, the Management Board may refrain from setting its new date; such a date may be set later, subject to the time limit referred to in § 3 sec. 1.2 of this resolution.

#### § 4.

1. In connection with the increase of the Company's share capital by way of issuing Series D Shares referred to in § 1 hereof, § 6 sec. 1 of the Statute shall be amended and read as follows:

“1. The Company's share capital shall not be less than PLN 441,442,579 (four hundred forty one million four hundred forty two thousand five hundred seventy nine Polish zloty) but no more than PLN 529,731,093 (five hundred twenty nine million seven hundred thirty one thousand ninety three Polish zloty) and shall be divided into no less than 441,442,579 (four hundred forty one million four hundred forty two thousand five hundred seventy nine) and no more than 529,731,093 (five hundred twenty nine million seven hundred thirty one thousand ninety three) shares with a par value of PLN 1.00 (one Polish zloty) each, including:

- 1) 295,987,473 (two hundred ninety five million nine hundred eighty seven thousand four hundred seventy three) series “A” ordinary bearer shares;
- 2) 41,638,955 (forty one million six hundred thirty eight thousand nine hundred fifty five) series “B” ordinary bearer shares;
- 3) 103,816,150 (one hundred three million eight hundred sixteen thousand one hundred fifty) series “C” ordinary bearer shares; and
- 4) no fewer than 1 (one) and no more than 88,288,515 (eighty eight million two hundred eighty eight thousand five hundred fifteen) series “D” ordinary bearer shares.”

2. The Management Board is hereby authorized to set the final amount, by which the Company's share capital is to be increased in connection with the issue of Series D Shares.
3. The wording of § 6 of the Statute (the specific amount of the Company's share capital) shall be determined by the Management Board pursuant to Article 431 § 7 in conjunction with Article 310 CCC, by making a representation in the form of a notary deed on the amount of share capital subscribed following the allotment of Series D Shares.
4. The Company's Supervisory Board is hereby authorized to adopt the consolidated text of the Company's Statute.
5. The amendment to the Statute referred to in sec. 1 above shall become effective upon its registration in the Register of Commercial Undertakings of the National Court Register.

#### § 5.

This resolution shall come into force upon adoption and with respect to the amendments to the Company's Statute on the date these amendments are registered by the court of registration.

Number of shares from which valid votes were cast: 345,044,535,

Percentage of these shares in the share capital: 78.16%,

Total number of votes cast: 345,044,535,

Number of votes in favor: 303,893,424,

Number of votes against: 41,151,111,

Number of votes abstaining: 0.

This resolution was adopted by open ballot.

## ATTACHMENT

to resolution no. 5 of the Extraordinary General Meeting of the Company operating under the business name of:

ENE A Spółka Akcyjna with its registered office in Poznań

of 8 April 2022

OPINION OF THE ENE A S.A. MANAGEMENT BOARD

of 19 January 2022

### **with the rationale for the waiver of all preemptive rights of all shareholders to all Series D Shares in connection with the planned increase of the Company's share capital by way of issuing Series D Shares, and the method of setting the issue price of Series D Shares**

Pursuant to Article 433 § 2 of the Commercial Company Code Act of 15 September 2000 ("**Commercial Company Code**"), the Management Board of ENE A S.A. with its registered office in Poznań ("**Company**") prepared this opinion on 19 January 2022 in connection with the planned adoption, by the General Meeting of the Company, of a resolution in the matter of increasing the Company's share capital by issuing series D ordinary bearer shares ("**Series D Shares**"), waiving all preemptive rights of all existing shareholders to all Series D Shares, amending the Company's Statute, applying for admission and introduction to trading of Series D Shares and/or rights to Series D Shares on the regulated market operated by the Warsaw Stock Exchange and dematerialization of Series D Shares and/or rights to Series D Shares ("**Issue Resolution**").

#### **1. Rationale for waiving pre-emptive rights to Series D Shares**

The purpose of increasing the Company's share capital by issuing Series D Shares is allowing the Company to achieve its strategic goals and facilitating further development of the Company's activity. The purpose of Series D Shares is to raise the financing that the Company needs to finance investment projects to develop and modernize medium- and high-voltage transmission grids and install remote reading meters. Proceeds from the Series D Shares Issue may not be used to finance coal assets in the Company's group. The Management Board of the Company believes that, due to the reasons stated below, the waiver of all pre-emptive rights of the existing Company shareholders to all Series D Shares is fully justified and is in the Company's best interest due to the fact that the issue of shares by way of private subscription is the fastest and most convenient way of raising capital.

The waiver of pre-emptive rights of all existing Company shareholders to all Series D Shares will allow the Company to offer Series D Shares to both existing and new investors who meet the criteria specified below, and consequently to attract long-term investors.

The increase of the Company's share capital through an issue of Series D Shares with a waiver of all pre-emptive rights of all existing Company shareholders to these shares and the issue of Series D Shares by way of private subscription directed to investors selected by the Company's Management Board that meet the following criteria: (a) are qualified investors within the meaning of Article 1(4)(a) of Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC; and/or (ii) they acquire securities for a total consideration of at least EUR 100,000 per investor, as referred to in Article 1(4)(d) of the Prospectus Regulation ("**Eligible Investors**"), will allow the Company to carry out a

share capital increase in a relatively short period and will allow it to reduce the costs of issuing Series D Shares.

If the pre-emptive rights of the shareholders are not waived and Series D Shares have to be offered to all shareholders, the Company would be obligated to prepare a prospectus and apply to the Polish Financial Supervision Authority (“KNF”) for its approval. In such a case, the rights issue would have to be carried out in accordance with the requirements of the Commercial Company Code and the Act of 29 July 2005 on Public Offering and the Terms and Conditions for Introducing Financial Instruments to an Organized Trading System and on Public Companies; in particular, the shareholders would need time to exercise their pre-emptive right. The preparation and publication of a prospectus and the timing requirements for a rights issue would entail considerable additional costs to the Company and would adversely affect flexibility with respect to the timing of the offering on the part of the Company’s Management Board.

The waiver of pre-emptive rights of the existing shareholders, combined with the ability to issue Series D Shares by way of an offering addressed to Eligible Investors only, will allow the Company to increase its share capital and issue Series D Shares without the need to draw up a prospectus and have it approved by the KNF.

Considering the above, the Company’s Management Board concludes that the issue of Series D Shares with a waiver of all pre-emptive rights of the existing shareholders is in the Company’s interest.

Accordingly, the Company’s Management Board recommends that Series D Shares be issued with a waiver of all pre-emptive rights of the existing shareholders.

The ability to take advantage of the priority of subscription to Series D Shares will depend on the prerequisites specified in the Issue Resolution.

Additionally, the draft Issue Resolution provides for a mechanism to prevent the dilution of shareholdings of the Eligible Investors taking part in the Bookbuilding Process holding a stake greater than 0.1% of all shares in the Company’s share capital at the end of 22 February 2022, i.e. on the date of registration of participation in the Extraordinary General Meeting when the Issue Resolution is to be adopted (“**Reference Date**”), because it stipulates that such shareholders will have the priority, before other Eligible Investors, to obtain such an allotment of Series D Shares that will allow such investors, after the issue of Series D Shares, to maintain their stake in the Company’s share capital at a level no lower than the stake held by them at the end of the Reference Date.

## **2. Method of setting the issue price of Series D Shares**

The issue price of Series D Shares will be set by the Company’s Management Board after consultation

with the offering managers involved in the offering of Series D Shares, taking into account the outcome of the bookbuilding process among the Eligible Investors and the economic conditions on the capital markets during the bookbuilding process for Series D Shares as well as the financial standing of the Company in the subscription period, current events and the outlook for the Company’s development.

The issue price of Series D Shares will be set by the Company's Management Board also with the assumption of maximizing proceeds from the issue of Series D Shares.

Given the volatility of capital markets and the period between the date of the Issue Resolution adopted by the Extraordinary General Meeting and the date of setting the issue price for Series D Shares, the authorization given to the Management Board in this respect is justified and in the Company's interest.

### **3. Conclusions**

Considering the rationale provided above, the Management Board recommends that the Extraordinary General Meeting adopt the Issue Resolution.