Draft resolution of the General Meeting of GRUPA AZOTY S.A. of Tarnów

Resolution No. ... ...
of the Annual General Meeting
of GRUPA AZOTY S.A. of Tarnów
dated June 30th 2017

concerning: amendments to the Articles of Association of Grupa Azoty S.A.

Acting pursuant to Art. 430 of the Commercial Companies Code and Art. 51.22 of the Company’s Articles of Association, the Annual General Meeting of Grupa Azoty S.A. of Tarnów resolves as follows:

Section 1

The General Meeting resolves to make the following amendments to the Articles of Association of Grupa Azoty S.A.:

I. Articles 1.4, 1.5., 1.6 and 1.7 shall be added, reading as follows:

4. When used in these Articles of Association, the terms defined in the Polish Accountancy Act of September 29th 1994 or any other act replacing the same (“Accountancy Act”), such as ‘non-current assets’, ‘assets’ or ‘contingent liabilities’, shall have the meanings given to them in the Accountancy Act.

5. When these Articles of Association refer to total assets, it shall be deemed a reference to total assets as disclosed in the most recent approved financial statements of the Company.

6. When these Articles of Association refer to the value of the subject matter of a legal transaction based of which the right to use a Company’s asset is granted to another entity, it shall be deemed the value of benefits to which the Company is or would be entitled for the period of one year – if the right is granted under an agreement concluded for an indefinite term, or for the entire term of agreement – if the right is granted under an agreement concluded for a definite term.

7. The terms used in singular shall have the same meaning when used in plural.

II. It is proposed that Art. 16.2, reading:

“The State Treasury of Poland, as a Shareholder, has an individual right to appoint and remove one member of the Supervisory Board. The Shareholder’s declaration of will shall be made in the form of a written statement addressed to the Company or in the form of a statement made for inclusion in the minutes of the General Meeting by a proxy appointed by the Minister of the State Treasury, with the powers of proxy containing an express authorisation to exercise that right”;

be amended to read as follows:

“The State Treasury of Poland, as a Shareholder, has an individual right to appoint and remove one member of the Supervisory Board. The Shareholder’s declaration of will shall be made in the form of a written statement addressed to the Company or in the form of a statement made for inclusion in the minutes of the General Meeting by the entity authorised to exercise rights attached to the shares held by the State Treasury.”.
III. It is proposed that Art. 23.3, reading:

“A member of the Management Board should hold a university degree and have at least five years of professional experience in a managerial position”,

be amended to read as follows:

“A Member of the Management Board:
1) shall meet all of the following criteria:
   a) he/she has a university degree obtained in Poland or a university degree obtained abroad and recognised in Poland under separate provisions,
   b) he/she has at least five years of employment under a contract of employment, election or appointment, an employment contract for cooperative members, other agreement for the provision of services, or as a business owner,
   c) he/she has at least three years of experience serving in managerial or senior positions or as a business owner,
   d) he/she meets other requirements stipulated in generally applicable laws and not listed in items a−d above; in particular, he/she is not in breach of any limitations or restrictions on serving on the management bodies of commercial-law companies;
2) may not be a person who meets at least one of the following criteria:
   a) he/she works at the office of a member of the Polish Parliament (Sejm or Senate) or of a member of the European Parliament as a volunteer or under an employment, temporary employment or similar contract,
   b) he/she is a member of a political party’s body representing the party before third parties and authorised to assume obligations,
   c) he/she works for a political party under an employment, temporary employment or similar contract,
   d) holds an elected position in a trade union operating at the Company or a company of its Group,
   e) his/her social or professional activities give rise to a conflict with the interests of the Company.”.
IV. It is proposed that Art. 24.1, reading:

“Any or all members of the Management Board are appointed and removed by the Supervisory Board, subject to the provisions of Art. 25 et seq. of the Articles of Association”,

be amended to read as follows:

“Subject to Art. 25 et seq. of the Articles of Association, members of the Management Board are appointed by the Supervisory Board following a recruitment process held to verify and evaluate qualifications of candidates and to select the best candidate. The General Meeting shall determine the rules and procedures for the recruitment process in a resolution”.

V. It is proposed that Art. 25.3, reading:

“A candidate for an employee-elected member of the Management Board shall not be required to meet the qualification requirements specified in Art. 23.3.”,

be amended to read as follows:

“A candidate for an employee-elected member of the Management Board may be a person meeting the requirements specified in Art. 23.3.”.

VI. It is proposed that Art. 26.3, reading:

“A by-election or vote on removal from office shall be ordered by the Supervisory Board within one month from the date on which the Supervisory Board becomes aware of an event justifying the by-election or vote. The by-election or vote shall be held within one month from the date it is ordered by the Supervisory Board”,

be amended to read as follows:

“A by-election or vote on removal from office of an employee-elected member of the Management Board shall be ordered by the Supervisory Board within one month from the date on which the Supervisory Board becomes aware of an event justifying the by-election or vote. The by-election or vote shall be held within one month from the date it is ordered by the Supervisory Board”,

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VII. It is proposed that Art. 28, reading:

“1. Following appointment to the Management Board, the Management Board member elected by employees who is employed by the Company under an employment contract:
   1) may enter into an agreement with the Company for the provision of services as a Management Board member in addition to his/her employment contract, which shall continue in force;
   2) shall retain all acquired employee rights;
   3) may continue to serve in the position specified in his/her employment contract and shall participate in the work of the Management Board on the terms specified in the Commercial Companies Code, these Articles of Association and the agreement referred to in Art. 28.1.1 above.

2. If an additional service agreement is concluded, the aggregate remuneration of an employee-elected Management Board member under the employment contract and the service agreement may not exceed the limit defined by the governing body authorised to determine remuneration for Management Board members nor the statutory limit defined in the laws and regulations applicable to the Company”,

be amended to read as follows:

“If a Management Board member elected by employees continues to be employed in a non-managerial position, the Company shall enter into an agreement for the provision of management services with that Management Board member after his/her appointment to the Management Board. At his/her request, the member shall be granted unpaid leave under the existing employment contract for the time of serving on the Management Board”.

VIII. It is proposed that Art. 29, reading:

“The rules and amounts of remuneration for the Management Board members shall be determined by the Supervisory Board unless detailed provisions of law state otherwise”,

be amended to read as follows:

“Remuneration for the Management Board members shall be determined by the Supervisory Board pursuant to the rules stipulated in the General Meeting’s resolution on the rules for determining remuneration for members of the Company’s Management Board”.

IX. It is proposed that Art. 30.2, reading:

“Any acts falling within the scope of labour law shall be performed by a person designated by the Management Board, subject to Art. 41.1.”,

be amended to read as follows:
“Any acts falling within the scope of labour law shall be performed by a person designated by the Management Board”,

X. Art. 31, reading as follows, shall be deleted:

“The power to grant leave to the President of the Management Board shall rest with the Chairperson or Deputy Chairperson of the Supervisory Board, and the power to grant leave to Members of the Management Board shall rest with the President of the Management Board”.

It is proposed that Art. 33.1.4 be added in Art. 33.1, which shall read as follows:

“Determining the remuneration for a Supervisory Board member delegated to temporarily perform the duties of a Management Board member not exceeding the fixed component of the monthly remuneration of the Management Board member whose duties are delegated to the Supervisory Board member, in accordance with the rules for determining remuneration for members of the Company’s Management Board approved by the General Meeting”.

XI. It is proposed that Art. 33.2, reading:

“2. The powers and responsibilities of the Supervisory Board include granting consent to the Management Board for:

1) acquisition of real property, perpetual usufruct right or interest in real property, with a market value of up to PLN 10,000,000 (ten million złoty),
2) disposal or encumbrance with limited property rights of real property, perpetual usufruct right or interest in real property,
3) acquisition of non-current assets other than real property, perpetual usufruct right or interest in real property, with a market value of more than PLN 2,000,000 (two million złoty),
4) disposal or encumbrance with limited property rights of non-current assets other than real property, perpetual usufruct right or interest in real property, with a market value of more than PLN 2,000,000 (two million złoty),
5) assumption of contingent liabilities, including issuance by the Company of financial guarantees and sureties, or assumption of liability for third-party debt, with a value exceeding PLN 2,000,000 (two million złoty),
6) issue, acceptance, and grant of avals, and endorsement of promissory notes, with a value exceeding PLN 2,000,000 (two million złoty),
7) contracting a loan and/or credit facility or issue of bonds, where the Company’s outstanding debt under loans and borrowings including the proposed loan and/or credit facility would exceed PLN 40,000,000 (forty million złoty),
8) assumption of any other liability or disposal of an asset, where the value of such liability or asset, either in a single transaction or a series of related transactions, excluding transactions falling within the scope of current operations or maintenance and investments included in the annual budgets for the current year, exceeds PLN 6,000,000 (six million złoty),
9) execution by the Company of an agreement concerning a donation or cancellation of debt with a value exceeding PLN 30,000 (thirty thousand złoty). If the total amount of donations granted or debts cancelled by the Company in a year exceeds PLN 500,000 (five
hundred thousand złoty), any further donation or cancellation of debt above PLN 20,000 (twenty thousand złoty) requires approval of the Supervisory Board,
10) formation or co-financing by the Company of foundations or other organisations other than commercial-law companies,
11) formation of the Company’s establishments, offices, branches or representative offices abroad,
12) exercising voting rights at the general meetings of companies in which the Company holds at least a 50% interest where the voting concerns any of the following issues:
   a) amendments to the company’s articles of association,
   b) increase in or reduction of the company’s share capital,
   c) merger, transformation or demerger of the company,
   d) disposal of the company shares,
   e) disposal or lease of the company’s business or its organised part, or establishment of limited property rights in the company’s business or its organised part, or acquisition or disposal of real property, perpetual usufruct right or interest in real property, if the market value of the asset exceeds PLN 200,000 (two hundred thousand złoty),
   f) dissolution and liquidation of the company,
13) establishment of another company or joining of another company by the Company,
14) execution of a material agreement with a related party, excluding standard agreements concluded on an arm’s length basis in the ordinary course of business”,

be amended to read as follows:

“2. The powers and responsibilities of the Supervisory Board include granting consent to the Management Board for:

1) acquisition or disposal of real property or perpetual usufruct right, or of an interest in real property or perpetual usufruct right,
2) a legal transaction if the value of the subject matter of the transaction exceeds PLN 6,000,000 (six million złoty), excluding:
   a) transactions included in the approved annual budgets,
   b) contracts concluded in the ordinary course of the Company’s business, i.e. contracts for the sale of products manufactured by the Company and for the purchase of raw materials and feedstocks,
3) the Company’s entering into a donation agreement or an arrangement having a similar effect, as well as a debt cancellation agreement or another legal arrangement having a similar effect, in both cases if the value of the subject matter of such transaction exceeds PLN 20,000 (twenty thousand złoty) or 0.1% of the Company’s total assets,
4) execution of a material related-party agreement, excluding contracts concluded in the ordinary course of the Company’s business, i.e. contracts for the sale of products manufactured by the Company and for the purchase of raw materials and feedstocks concluded on an arm’s length basis,
5) execution or amendment of an agreement for the provision of legal services, marketing services, public relations and social communication services, or management consultancy services, if the total fees for the services to be provided under such agreement exceed PLN 500,000 (five hundred thousand złoty), VAT exclusive, per year, or if the lump-sum or maximum amount of the fees is not provided for in the agreement,
6) establishment of another company or joining of another company by the Company,
7) formation or co-financing by the Company of foundations or other organisations other than commercial-law companies,
8) formation of the Company’s establishments, offices, branches or representative offices abroad,
9) approval of periodic risk management policies with respect to specific risks,
10) exercising voting rights at the general meetings of companies in which the Company holds at least a 50% interest where the voting concerns any of the following issues:
   a) amendments to the company’s articles of association,
   b) increase in or reduction of the company’s share capital,
   c) merger, transformation or demerger of the company,
   d) disposal of the company shares,
   e) disposal or lease of the company’s business or its organised part, or establishment of limited property rights in the company’s business or its organised part, or acquisition or disposal of ownership rights to real property or perpetual usufruct right to real property or of an interest in ownership rights to real property or perpetual usufruct right to real property,
   f) dissolution and liquidation of the company.”.

XII. The current wording of Art. 33.3, reading:

A refusal by the Supervisory Board to grant approval regarding the matters referred to in Art. 33.2.1–11 above shall require a justification.

is proposed to be replaced with the following provisions:

“A refusal by the Supervisory Board to grant approval regarding the matters referred to in Art. 33.2 above shall require a justification.”

XIII. The current wording of Art. 33.4, reading:

The Management Board shall submit to the Supervisory Board copies of information submitted to the Minister of Finance, concerning sureties and guarantees issued, in accordance with Art. 34 of the Act on Sureties and Guarantees Issued by the State Treasury and Certain Legal Persons of May 8th 1997 (consolidated text in Dz.U. of 2003, No. 174, item 1689, as amended).

is proposed to be replaced with the following provisions:

The Supervisory Board’s approval regarding the matters referred to in Art. 33.2 shall not be required with respect to any activities whose performance requires approval by the General Meeting in accordance with the applicable statutory provisions or these Articles of Association.
XIV. The current wording of Art. 34.3, reading:

The Company may appoint, from among members of the Supervisory Board, the (Supervisory Board’s) Audit Committee. The appointment shall be made by delegating members to perform specific supervisory tasks. A resolution appointing members of the Supervisory Board to independently perform supervisory tasks on the Audit Committee shall define the scope of the tasks and the manner of their performance. The powers exercised jointly by the delegated members of the Supervisory Board appointed to the Audit Committee should be determined in compliance with the provisions of Section 4 (The Audit Committee) of Annex I to the European Commission Recommendation of February 15th 2005 of the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board (Official Journal of the European Union 52/52 of 2005). The members of the Supervisory Board delegated to independently perform supervisory tasks on the Audit Committee shall meet the criteria of independence stipulated in Annex II to the EC Recommendation, with the proviso that as long as the State Treasury and Nafta Polska S.A. hold in aggregate more than 50% of the Company shares, the criterion stipulated in Section 1(d) of Annex II shall not apply.

is proposed to be replaced with the following provisions:

The Supervisory Board shall appoint the Audit Committee from among its members. The tasks of the Audit Committee should be defined in compliance with applicable laws. A majority of the Audit Committee members, including its chairperson, should meet the independence criteria defined in applicable laws, and at least one member of the Audit Committee should have expertise and competence in accounting or auditing of financial statements. The Audit Committee members should also have the knowledge of and the skills required in the industry in which the Company operates.

XV. The current wording of Art. 35.3, reading:

A member of the Supervisory Board appointed by the General Meeting may be removed by the General Meeting at any time, subject to the provisions of Art. 16.2 of these Articles of Association.

is proposed to be replaced with the following provisions:

A member of the Supervisory Board appointed by the General Meeting may be removed by the General Meeting at any time.

XVI. The current wording of Art. 35.4, reading:

At least two members of the Supervisory Board should be independent members that meet all of the independence criteria set out in Annex II to the Commission Recommendation referred to in Art. 34.3.

is proposed to be replaced with the following provisions:

At least two members of the Supervisory Board should be independent members that meet all of the independence criteria set out in Annex II to the Commission Recommendation on the role of non-executive or supervisory directors of listed companies and members of the (supervisory) board’s committees (EU OJ L 52/52 of 2005).
XVII. The current wording of Art. 36.1, reading:

In the composition of the Supervisory Board there are members appointed by the Company employees, pursuant to Art. 14 of the Act on Commercialisation and Privatisation.

is proposed to be replaced with the following provisions:

In the composition of the Supervisory Board there are members appointed by the Company employees, pursuant to Art. 14 of the Act on Commercialisation and Certain Employee Rights.

XVIII. The current wording of Art. 41.3, reading:

The Supervisory Board may authorise its Chairperson or Deputy Chairperson to perform the activities related to the employment relationships of Management Board members. The Chairperson and Deputy Chairperson of the Supervisory Board shall inform the Supervisory Board, at its next meeting, about all activities performed by them in the exercise of the authority granted to them by the Supervisory Board.

is proposed to be amended as follows:

The Supervisory Board may authorise its Chairperson or Deputy Chairperson to perform certain activities falling within the scope of the legal relationship between the Company and a Management Board member. The Chairperson and Deputy Chairperson of the Supervisory Board, as appropriate, shall inform the Supervisory Board, at its next meeting, about all activities performed by them in the exercise of the authority granted to them by the Supervisory Board.

XIX. The current wording of Art. 51, reading:

“In particular, the powers of the General Meeting shall include:
1) examination and approval of the financial statements for the previous financial year and the directors’ report on the company’s operations,
2) granting discharge to members of the Company’s governing bodies in respect of performance of their duties,
3) distribution of profit or coverage of loss,
4) setting the dividend record date and the dividend payment date, as well as decision on payment of dividend in instalments,
5) review and approval of the consolidated financial statements of the Group for the previous financial year and of the directors’ report on the Group’s operations if their preparation is required under the Accountancy Act,
6) appointment and removal of Supervisory Board members appointed by the General Meeting, including the Chairperson of the Supervisory Board, subject to the provisions of Art. 16.2 and Art. 36,
7) determination of the rules and amounts of remuneration for Supervisory Board members,
8) granting consent to disposal or lease of the Company’s business or its organised part, and establishment of limited property rights in the Company’s business or its organised part,
9) granting consent to acquisition of real property, perpetual usufruct right or interest in real property, with a market value exceeding PLN 10,000,000 (ten million zloty),

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10) disposal of real property, perpetual usufruct right or interest in real property, with a market value exceeding PLN 10,000,000 (ten million złoty),
11) (deleted)
12) execution of loan, credit facility, surety or any other similar agreement by the Company with or for the benefit of a member of the Management Board, member of the Supervisory Board, proxy, or liquidator,
13) increase or reduction of the Company’s share capital,
14) issue of convertible bonds, bonds with pre-emptive rights and subscription warrants,
15) acquisition of the Company own shares in the situation specified in Art. 362.1.2 of the Commercial Companies Code,
16) squeeze-out carried out in compliance with Art. 418 of the Commercial Companies Code,
17) creation, use and release of capital reserves,
18) use of statutory reserve funds,
19) decisions with respect to claims for redress of damage inflicted in the course of establishing the Company, its management or supervision,
20) merger, transformation or demerger of the Company,
21) (deleted)
22) amendments to the Articles of Association and change of the Company’s business profile,
23) dissolution and liquidation of the Company,
24) disposal of shares, including definition of the terms and procedure for the disposal, except for:
   a) disposal of shares traded on the public market,
   b) disposal of shares held by the Company if the holding does not exceed 10% of the share capital of a given company,
   c) disposal of shares acquired in exchange for the Company’s claims as part of settlement or arrangement proceedings,
25) giving consent to granting of licences or other disposition of intellectual property rights originally attributable to the Company,
26) review of the Supervisory Board’s reports referred to in Art. 33.1.8 and 33.1.20−22,
27) (deleted)”

is proposed to be replaced with the following provisions:

“In particular, the powers of the General Meeting shall include:

1) examination and approval of the financial statements for the previous financial year and the directors’ report on the company’s operations,
2) grant of discharge to members of the Company’s governing bodies in respect of performance of their duties,
3) distribution of profit or coverage of loss,
4) setting the dividend record date and the dividend payment date, as well as decision on payment of dividend in instalments,
5) review and approval of the consolidated financial statements of the Group for the previous financial year and of the directors’ report on the Group’s operations if their preparation is required under the Accountancy Act,
6) appointment and removal of Supervisory Board members appointed by the General Meeting, including the Chairperson of the Supervisory Board, subject to the provisions of Art. 16.2,
7) determination of the rules and amounts of remuneration for Supervisory Board members,
8) granting consent to disposal or lease of the Company’s business or its organised part, and establishment of limited property rights in the Company’s business or its organised part,
9) granting consent for the following legal transactions, if the market value of the subject matter of such legal transaction exceeds PLN 100,000,000 (one hundred million złoty) or 5% of the Company’s total assets:
   a) acquisition or disposal of real property, perpetual usufruct right or interest in real property,
   b) acquisition or disposal of non-current assets, as well as granting to another entity the right to use such assets for a period longer than 180 days in a calendar year,
   c) acquisition, purchase or sale of shares in another company,
   10) execution of loan, credit facility, surety or any other similar agreement by the Company with or for the benefit of a member of the Management Board, member of the Supervisory Board, proxy, or liquidator,
   11) increase or reduction of the Company’s share capital,
   12) issue of convertible bonds, bonds with pre-emptive rights and subscription warrants,
   13) acquisition of the Company own shares in the situation specified in Art. 362.1.2 of the Commercial Companies Code,
   14) squeeze-out carried out in compliance with Art. 418 of the Commercial Companies Code,
   15) creation, use and release of capital reserves,
   16) use of statutory reserve funds,
   17) decisions with respect to claims for redress of damage inflicted in the course of establishing the Company, its management or supervision,
   18) merger, transformation or demerger of the Company,
   19) amendments to the Articles of Association and change of the Company’s business profile,
   20) dissolution and liquidation of the Company,
   21) review of the Supervisory Board’s reports referred to in Art. 33.1.8 and 33.1.20–22,
   22) determination of rules for disposal of non-current assets whose value exceeds 0.1% of the Company’s total assets,
   23) determination of detailed recruitment rules and selection procedure for members of the Company’s Management Board,
   24) determination of the rules of remuneration for members of the Company’s Management Board.”

XX. The current wording of Art. 57.1, reading:

“prepare financial statements for the previous financial year together with the Directors’ Report on the Company’s operations, within three months from the reporting date,”,

is proposed to be supplemented to read as follows:

“within three months from the reporting date, prepare financial statements for the previous financial year together with the Directors’ Report on the Company’s operations, including report on entertainment expenses, legal costs, marketing costs, public relations and social communication expenses, and management consultancy fees.”.

XXI. New Art. 60 is proposed to be added after Art. 59, reading as follows:

“Disposal of a non-current asset whose value exceeds 0.1% of the Company’s total assets shall be effected through an auction, unless the value does not exceed PLN 20,000.00 (twenty thousand złoty). Detailed rules for conducting such
auctions and situations in which holding an auction is not required shall be defined in a resolution of the General Meeting.”

XXII. Existing Art. 60 is proposed to become Art. 61 and existing Art. 61 shall now be Art. 62.

XXIII. The existing wording of Art. 60.2 (which is of historical value only) reading as follows is proposed to be deleted:

“Within 15 days from the date of approval of the Company’s financial statements by the General Meeting, the Company’s Management Board shall submit documents referred to in Art. 70 of the Accountancy Act for publication in Monitor Polski B.”

Section 2

The General Meeting authorises the Company’s Supervisory Board to prepare the consolidated text of the Company’s Articles of Association, incorporating the amendments introduced hereunder, as well as to introduce the following editorial changes to the consolidated text of the Articles of Association:

1) changes in numbering of individual units in order to eliminate deleted items which have not been given new wording,
2) changes (caused by the deletions referred to above) in numbering of units that other provisions of the Articles of Association refer to,
3) changes in punctuation which are necessary after adding new items in enumerations (lists) contained in the amended Articles of Association.

Section 3

The General Meeting hereby obliges the Company’s Management Board to amend the articles of association of the companies for which the Company is the parent within the meaning of Art. 4.3 of the Competition and Consumer Protection Act of February 16th 2007 (Dz.U. of 2017, item 229) so that the amended texts fulfil the requirements stipulated in Art. 17.1–6, Art. 18.1, Art. 19.1–5 and Art. 22 of the Act on State Property Management of December 16th 2016 (Dz.U., item 2259).

Section 4

This Resolution shall come into force as of its date, with effect as of the date of registration of the amendments to the Articles of Association in the Business Register of the National Court Register.

Grounds:
The draft amendments to the Articles of Association are designed in particular to bring the text of the Articles of Association in compliance with the requirements stipulated in the Act on State Property Management of December 16th 2016 (Dz.U. of 2016, item 2259), the Act on Rules of Remunerating Persons Who Manage Certain Companies of June 9th 2016 (Dz.U. of 2016, Item 1202, as amended), and the new Act on Statutory Auditors, Audit Firms, and Public Oversight.