

Articles of Incorporation

of

innogy SE

as of May 15, 2017

I.  
**General Provisions**

**Article 1**  
**Legal Form, Company Name, Domicile**

- (1) The Company shall have the legal form of a European stock corporation (societas Europaea-SE).
- (2) The Company's name shall be
- innogy SE.**
- (3) The Company shall be domiciled in Essen, Germany.

**Article 2**  
**Object of the Company**

- (1) The Company shall manage a group of enterprises in Germany and abroad, operating in particular in the following business fields:
- a) generation of electricity and heat primarily from renewable sources of energy, including the production, operation and sale of energy assets in this field;
  - b) procurement, sale, supply and trading of energy;
  - c) construction, operation and usage of transportation and storage systems primarily for energy;
  - d) water supply and wastewater management;
  - e) provision of services in the aforementioned fields, including energy efficiency services.
- (2) The Company shall be authorised to conclude business transactions relating to the purpose of the Company and are directly or indirectly suitable for serving it. It may become active in the business fields set out in Paragraph 1 itself.

- (3) The Company may establish or acquire other enterprises and purchase stakes in them, above all in enterprises whose purpose covers the aforementioned business fields in part or in full. It may group enterprises in which it holds stakes and place them under its uniform management or limit itself to administering the shareholdings. It may outsource their operation to affiliated companies in part or in full or transfer their operation to affiliated companies.

**Article 3**  
**Fiscal Year, Announcements and**  
**Information, Place of Jurisdiction**

- (1) The fiscal year of the Company shall be the calendar year.
- (2) The announcements of the Company shall be made in the German Federal Gazette unless otherwise required by law. Information may be conveyed to shareholders via remote data transmission insofar as legally permissible.
- (3) For all disputes arising between the Company and its shareholders, the place of jurisdiction shall be at the Company's domicile. Non-German courts may not rule on such disputes.

**II.**  
**Capital Stock and Shares**

**Article 4**  
**Capital Stock**

- (1) The capital stock of the Company amounts to EUR 1,111,110,000.00 and is divided into 555,555,000 no-par bearer shares.
- (2) The Company's capital stock of EUR 120,000.00 was paid in upon the Company's establishment as a result of the change in form of RWE Downstream Aktiengesellschaft, Essen, Germany, to the Company by way of the folding of Essent SPV N.V., 's-Hertogenbosch, Netherlands, into RWE Downstream Aktiengesellschaft in accordance with Article 2 in conjunction with Article 17 et seqq., of the Regulation (EC) No. 2157/2001 of the Council of 8 October 2011 (SE Regulation). Within the scope of the fold, all of the assets and liabilities of Essent SPV N.V. were transferred to RWE Down-

stream Aktiengesellschaft and RWE Downstream Aktiengesellschaft assumed the legal form of an SE.

- (3) The dividend of new shares in the event of an increase in the capital stock may be determined in deviation from Section 60 of the German Stock Corporation Act.
- (4) Subject to the approval of the Supervisory Board, the Executive Board shall be authorised to increase the Company's capital stock by a maximum of EUR 333,333,000.00 through the issuance of no-par-value bearer shares in return for contributions in cash or in kind until 29 August 2021 (authorised capital). This authorisation may be exercised in part or in full and one or several times. The shareholders shall generally be awarded subscription rights. In the event of a capital increase in exchange for cash, the shares may be transferred to financial institutions or companies as defined by Section 186, Paragraph 5, Sentence 1 of the German Stock Corporation Act chosen by the Executive Board with the obligation to offer them for subscription by the shareholders.

However, subject to Supervisory Board approval, the Executive Board shall be authorised to exclude shareholders' subscription rights in the following cases:

- to smooth fractional amounts;
- capital increases in return for contributions in kind for the purposes of business combinations or acquisitions of companies, company assets, operations or shares in companies as long as the total sum accounted for by the new shares for which subscription rights are waived does not exceed 20% of the capital stock either at the point in time at which this authorisation enters into effect or at the point in time at which this authorisation is exercised;
- to the extent necessary in order to grant to those who are entitled to option or conversion rights or on whom option or conversion obligations have been imposed subscription rights of a scope to which they would be entitled as shareholders after exercising the option or conversion right or fulfilling the option or conversion obligation;
- capital increases in return for cash as long as the value of the new shares for which subscription rights are waived does not exceed 10% of the capital stock either at the point in time at which this authorisation enters into effect or at the point in time at which this authorisation is exercised and the issue price of the new shares is not significantly below the stock market quotation of the shares of the same class that are already listed at the point in time at which the final issue

price is determined. The prorated share of the capital stock (i) attributable to the shares of the Company sold as treasury stock during the term of the authorised capital under exclusion of shareholder subscription rights in accordance with Section 186, Paragraph 3, Sentence 4 of the German Stock Corporation Act and (ii) attributable to the shares of the Company issued during the term of the authorised capital or to be issued from conditional capital in order to redeem option or conversion bonds, which in turn were issued under exclusion of subscription rights in accordance with Section 186, Paragraph 3, Sentence 4 of the German Stock Corporation Act during the term of the authorised capital until it is used under exclusion of subscription rights in accordance with Section 186, Paragraph 3, Sentence 4 of the German Stock Corporation Act shall be added to this cap of 10% of the capital stock.

- (5) The capital stock has been conditionally increased by a maximum of EUR 111,111,000.00, divided into a maximum of 55,555,500 bearer shares (conditional capital). The conditional capital increase shall only be performed to the extent that the holders or creditors of option or conversion rights or those obliged to perform a conversion as a result of holding option or conversion bonds issued in return for cash or guaranteed by the Company or a subordinated Group company until 29 August 2021 based on the authorisation of the Executive Board granted by the resolution of the Annual General Meeting of 30 August 2016 make use of their option or conversion rights or, insofar as they are obliged to perform a conversion, meet their obligation to perform a conversion, or insofar as the Company exercises its discretionary power to fully or partially replace the cash payment due with shares in the Company unless a cash settlement is granted or treasury stock or shares in another listed company are used. The new shares shall be issued at the option or conversion price determined on the basis of the aforementioned authorisation resolution. The new shares shall grant entitlements to the Company's profits from the beginning of the financial year in which they are established. To the extent permitted by the law, deviating from Section 60, Paragraph 2 of the German Stock Corporation Act, subject to Supervisory Board approval, the Executive Board may establish that the entitlement to profits granted by new shares may also apply to a financial year that has already ended. The Executive Board shall be authorised, subject to the consent of the Supervisory Board, to determine further details of implementing conditional capital increases.

**Article 5**  
**Share Certificates**

- (1) The Executive Board shall determine the form of the share certificates as well as the dividend and renewal coupons as agreed with the Supervisory Board.
- (2) The right of shareholders to securitise their shares shall be ruled out.

**Article 6**  
**The Company's Corporate Bodies**

The Company's corporate bodies shall be the Executive Board, the Supervisory Board and the Annual General Meeting.

**III.**  
**Executive Board**

**Article 7**  
**Composition and Tenure**

- (1) The Executive Board shall consist of at least two members. The number of additional Executive Board members shall be determined by the Supervisory Board.
- (2) The members of the Executive Board shall be appointed by the Supervisory Board for a maximum tenure of five years. Reappointments shall be permissible for the period set out in Sentence 1.

**Article 8**  
**Passage of Resolutions**

- (1) The Executive Board shall be considered to have a quorum if at least half its members participate in the passage of the resolution in person or via electronic media. Executive Board members who have dialled in via a conference call or video conferencing shall be deemed present. Absent members may cast their votes in writing, via facsimile or via electronic media and have them submitted at the meeting by another Executive Board member.

- (2) Executive Board resolutions shall be passed by a majority of the votes cast by the Executive Board members participating in the passage of the resolution unless otherwise stipulated by the Articles of Incorporation or statutory regulations. If a Chairman of the Executive Board has been appointed, he or she shall have the decisive vote in the event of a tie.

### **Article 9 Representation of the Company**

- (1) The Company shall be represented by two members of the Executive Board or by a member of the Executive Board together with an officer vested with power of attorney.
- (2) The Supervisory Board may waive the ban on multiple representation as defined by Section 181, 2<sup>nd</sup> alternative of the German Civil Code for all or certain Executive Board members and for officers vested with power of attorney authorised to represent the Company legally together with an Executive Board member either generally or on a case-by-case basis.

### **Article 10 Transactions Requiring Approval**

- (1) The Executive Board shall require the Supervisory Board's approval
- a) for the purchase, sale and encumbrance of land and leaseholds, for the purchase and sale of stakes held in companies as well as for providing warranties or guarantees or assuming similar liabilities for transactions exceeding EUR 125,000,000.00, and for providing warranties or guarantees or assuming similar liabilities beyond what is customary for business transactions;
  - b) for the issuance of bonds.
- (2) The approvals pursuant to Paragraph 1 a) shall not be required for transactions with affiliated companies.

**IV.**  
**Supervisory Board and Advisory Board**

**Article 11**  
**Composition, Tenure and Resignation**

- (1) The Supervisory Board shall consist of twenty members, which shall be appointed by the Annual General Meeting. Ten of the twenty members shall be appointed at the suggestion of the employees. The Annual General Meeting shall be bound by the proposed appointments of the employee representatives.
- (2) The tenure of the Supervisory Board members shall end on conclusion of the Annual General Meeting that passes a resolution on the approval of the acts of the Supervisory Board for the fourth fiscal year after the beginning of their tenure, excluding the fiscal year in which their tenure begins, and shall last no longer than six years. The Annual General Meeting may establish a shorter tenure for Supervisory Board members representing the shareholders when they are elected.
- (3) Substitute members may be elected together with the Supervisory Board members representing the shareholders. They shall replace Supervisory Board members leaving the Supervisory Board early until a new Supervisory Board member is elected, which shall take place at the next Annual General Meeting, in the order established when they are elected.
- (4) A successor to a Supervisory Board member leaving the Supervisory Board before the end of his or her tenure shall be elected for the remaining term of the existing member, unless a tenure pursuant to Paragraph (2) is established at the election.
- (5) Any member of the Supervisory Board may resign from office subject to two weeks' written notice submitted to the Chairman of the Supervisory Board or to the Executive Board. Deviations from this notice period shall be permissible with the consent of the Chairman of the Supervisory Board.

**Article 12**  
**Chairman and Deputy**

- (1) The Supervisory Board shall elect its Chairman and Deputy from within its own ranks. The election shall be held at a Supervisory Board meeting that does not require a special convocation, following the Annual General Meeting at which the Supervisory Board members



representing the shareholders are elected. In the election of the Chairman of the Supervisory Board, the shareholder representative on the Supervisory Board of the oldest age shall assume chairmanship. Article 13, Paragraph (5), Sentence 2 shall apply analogously.

- (2) If the Chairman or Deputy Chairman resigns from the Supervisory Board prior to the end of his or her tenure, on request from any Supervisory Board member, a new Chairman or Deputy Chairman shall be elected at a Supervisory Board meeting that must be held immediately, before any further resolution is passed by the Supervisory Board. Paragraph (1), Sentences 3 and 4 shall apply analogously.
- (3) The Deputy shall have the rights and duties of the Chairman only if the latter is unable to exercise his or her rights or fulfil his or her duties unless otherwise stipulated by the law or Articles of Incorporation.

### **Article 13**

#### **Convocation and Passage of Resolutions**

- (1) The Chairman of the Supervisory Board shall convene and chair the meetings of the Supervisory Board.
- (2) The Supervisory Board shall be considered to have a quorum if at least half of the members constituting it participate in the passage of the resolution. A member shall also be deemed to have participated in the passage of a resolution if he or she abstains. Absent Supervisory Board members may participate in the passage of a Supervisory Board resolution by casting votes in writing and having them submitted by other Supervisory Board members. A vote cast via facsimile or electronic means shall also be deemed a written vote cast.
- (3) If an unequal number of Supervisory Board members representing the shareholders and Supervisory Board members representing the employees participates in the passage of a resolution, or if the Chairman of the Supervisory Board does not participate in the passage of a resolution, the passage of the resolution shall be adjourned on request from two Supervisory Board members. In the event of an adjournment, the passage of the resolution shall take place at the next regular meeting unless an extraordinary Supervisory Board meeting is convened. No further minority request shall be permissible for the next passage of the resolution.
- (4) At the Chairman's instigation, Supervisory Board resolutions may also be passed by votes cast verbally, by phone, in writing, via facsimile or via electronic media. Such resolutions

shall be confirmed in writing by the Chairman and taken to the minutes of the debate of the following meeting.

- (5) Supervisory Board resolutions shall be passed by a majority of the votes cast unless otherwise stipulated by the Articles of Incorporation or statutory regulations. The Chairman shall have the deciding vote in the event of a tie. The Deputy Chairman shall not have the right to break a tie vote.
- (6) Minutes of debates and resolutions of the Supervisory Board shall be taken and archived. The minutes shall be signed by the Chairman.
- (7) The Chairman shall prepare and implement the resolutions of the Supervisory Board.
- (8) Declarations of intent by the Supervisory Board and its committees shall be made by its Chairman on behalf of the Supervisory Board.
- (9) The Supervisory Board may decide by resolution on amendments to the Articles of Association that affect only their wording.

#### **Article 14**

##### **Rules of procedure and Committees**

- (1) The Supervisory Board may adopt its own Rules of procedure.
- (2) The Supervisory Board may form committees and staff them from within its own ranks. Insofar as legally permissible, the decision-making powers of the Supervisory Board may be transferred to the committees.
- (3) The provisions of Article 13 shall apply accordingly to the procedures of the committees. Committees may elect their chairman from within their own ranks unless their chairman is determined by the Supervisory Board.

#### **Article 15**

##### **Remuneration**

- (1) Every Supervisory Board member shall receive a fixed annual remuneration of EUR 100,000.00. Supervisory Board members shall receive additional annual remuneration for their work on the committees of the Supervisory Board.

- (2) Instead of the remuneration set out in Paragraph 1, Sentences 1 and 2, the Chairman of the Supervisory Board shall receive fixed annual remuneration of EUR 300,000.00 and his or her Deputy shall receive fixed annual remuneration of EUR 200,000.00.
- (3) The additional remuneration in accordance with Paragraph 1 shall amount to EUR 80,000.00 for the Chairman of the Audit Committee and to EUR 40,000.00 for every other member of the Audit Committee. If a committee has been active at least once in a fiscal year, the additional remuneration shall amount to EUR 40,000.00 for the chairman of another committee and to EUR 20,000.00 for every member of another committee. Membership of the Nomination Committee shall not be considered. If a member of the Supervisory Board holds several offices concurrently, he or she shall receive remuneration only for the highest-paid position.
- (4) Supervisory Board members who sit on the Supervisory Board or on a committee or assume chairmanship or deputy chairmanship of the Supervisory Board or a committee for only part of a fiscal year shall receive remuneration which is reduced pro-rata.
- (5) Supervisory Board members shall be reimbursed out-of-pocket expenses—including any sales tax applicable to the remuneration and reimbursement of the out-of-pocket expenses—incurred by exercising their mandate. Unless a claim is filed for the reimbursement of out-of-pocket expenses against proof, every member attending a meeting of the Supervisory Board or of one of its committees shall receive a lump sum reimbursement of out-of-pocket expenses of EUR 1,000.00 for every day of the meeting.
- (6) The Company may take out a liability insurance policy covering the statutory liability arising from Supervisory Board work for Supervisory Board members.

**Article 16**  
**Advisory Board**

- (1) The Executive Board may form one or several advisory boards for the Company and adopt Rules for procedure for each of them.
- (2) Advisory board members shall be sworn to secrecy regarding the information to which they become privy in this capacity. The remuneration of the advisory board members shall be determined by the Executive Board.

**V.**  
**Annual General Meeting**

**Article 17**  
**Venue and Convocation of Meeting**

- (1) The Annual General Meeting shall be held at the domicile of the Company or in another German city whose population exceeds 100,000.
- (2) Unless any other individuals are entitled thereto by law or the Articles of Incorporation, the Annual General Meeting shall be convened by the Executive Board. The convocation must be published at least thirty-six days prior to the day of the Annual General Meeting.

**Article 18**  
**Attendance at the Annual General Meeting**

- (1) Shareholders intending to attend the Annual General Meeting or exercise their voting rights must register prior to the Annual General Meeting. Registration must be in writing, either in German or in English.
- (2) Furthermore, shareholders must provide proof of their entitlement to attend the Annual General Meeting or to exercise their voting rights. To meet this requirement, proof of the shareholder's shareholding must be furnished in writing by the commercial bank or financial institution which manages the shareholder's securities account. This proof must be in writing, either in German or in English.

- (3) The Executive Board may arrange for shareholders to optionally attend the Annual General Meeting without being present physically or having appointed a proxy and to exercise all or some of their rights in full or in part by means of electronic communication.

## **Article 19 Resolutions**

- (1) Each share shall carry one vote at the Annual General Meeting.
- (2) Voting rights may be exercised by proxy. Authorisations may be issued, revoked and proven to the Company in writing if the convocation of the Annual General Meeting does not provide for a simplified procedure.
- (3) The Executive Board may arrange for shareholders to optionally cast their votes in writing or by means of electronic communication without attending the Annual General Meeting.
- (4) Every year, within the first six months following the end of a fiscal year, the Annual General Meeting shall resolve on the ratification of the acts of the members of the Executive Board and of the Supervisory Board, the appropriation of profits, and on the election of the independent auditors (Ordinary General Meeting).
- (5) Unless otherwise provided for by law or the Articles of Incorporation, the Annual General Meeting shall adopt all resolutions with a simple majority of the votes cast. Unless otherwise provided for by law, amendments to the Articles of Incorporation shall require a two-thirds majority of the votes cast or, if at least half of the capital stock is represented, the simple majority of the votes cast. If a majority of the capital stock is required for a resolution to be adopted, a simple majority of the capital stock represented shall suffice.

## **Article 20 Chairing the Annual General Meeting**

- (1) The Annual General Meeting shall be chaired by the Chairman of the Supervisory Board or, if he or she is unable to do so, by another Supervisory Board member to be designated by him or her. In the event that neither the Chairman of the Supervisory Board nor a Supervisory Board member designated by him or her takes the chair, the Chairman shall be elected by the shareholder representatives of the Supervisory Board present at the Annual General Meeting by a simple majority of the votes cast.

- (2) The Chairman shall preside over the deliberations and determine the order in which the agenda items are discussed, as well as how and in which form the votes are to be cast. He or she may permit the audio-visual transmission of the Annual General Meeting.
- (3) Within reason, the Chairman may limit the shareholders' time to speak and ask questions. More importantly, he or she shall be authorised to allot an appropriate timeframe to the entire Annual General Meeting, individual items on the agenda, or individual speakers either at the beginning of, or during, the Annual General Meeting.

## VI.

### **Appropriation of Profits**

#### **Article 21**

### **Appropriation of Profits**

- (1) The Annual General Meeting shall decide by resolution on the appropriation of the distributable profit resulting from the adopted financial statements for the fiscal year.
- (2) It may resolve to pay a dividend in kind instead of, or in addition to, a cash dividend.

## VII.

### **Miscellaneous**

#### **Article 22**

### **Foundation Expenses**

- (1) The following apportionment of costs was agreed when the Company was established as a stock corporation.

"The Company shall bear the foundation costs (in particular notary fees, legal and tax consulting fees, the cost of auditing the foundation, the cost of the entry into the Commercial Register and of the announcement) capped at EUR 10,000.00."

- (2) The foundation costs associated with the merger and the adoption of the legal form of an SE shall be borne by the Company, capped at EUR 10,000.00.