

Joint contract report

pursuant to section 293a of the German Stock Corporation Act (AktG)

by the Management Board of

Uniper SE

and

the management of

Uniper Beteiligungs GmbH

on the conclusion and content of a profit and loss transfer agreement (profit and loss transfer agreement within the meaning of section 291 (1) sentence 1 AktG)

1. General

The Management Board of Uniper SE (hereinafter referred to as the "**Controlling Entity**" or "**USE**") and the management of Uniper Beteiligungs GmbH (hereinafter referred to as the "**Controlled Entity**" or "**UBG**") hereby issue the following report pursuant to section 293a AktG regarding a profit and loss transfer agreement within the meaning of section 291 (1) sentence 1 AktG (hereinafter referred to as the "**PLTA**") to be concluded between the Controlling Entity and the Controlled Entity.

This PLTA shall be submitted in draft form to the Extraordinary General Meeting of USE on 8 December 2023 for approval. The shareholders' meeting of UBG is expected to be held after the approval by the Extraordinary General Meeting of USE has been granted.

In order to inform the shareholders of both companies and to prepare the respective resolutions of the General Meeting of USE and the shareholders' meeting of UBG, the Management Board of USE and the management of UBG jointly prepare the following report in accordance with section 293a AktG. In this report, the conclusion of the PLTA and the agreement are explained in detail from a legal and economic point of view.

2. Conclusion of the PLTA

USE plans to conclude the PLTA as Controlling Entity with UBG as Controlled Entity. The PLTA constitutes a profit and loss transfer agreement pursuant to section 291 (1) sentence 1 AktG. In order to become effective, the PLTA requires the approval of both the general meeting of the Controlling Entity and the shareholders' meeting of the Controlled Entity. The Management Board and the Supervisory Board of the Controlling Entity will propose to the Extraordinary (Virtual) General Meeting of the Controlling Entity convened for 8 December 2023 to approve the conclusion of the PLTA. The shareholders' meeting of the Controlled Entity has not yet approved the conclusion of the PLTA. This is expected to take place after the General Meeting of the Controlling Entity has granted its approval. The PLTA will only become effective upon registration with the commercial register at the registered office of the Controlled Entity and will apply retroactively as of the beginning of the Controlled Entity's financial year in which it becomes effective.

3. Parties

a) Controlling Entity

The Controlling Entity is a European Company (*Societas Europaea* – "**SE**") under German law with registered office in Düsseldorf. It is registered with the commercial register of the local court of Düsseldorf under HRB 77425. The financial year of the Controlling Entity is the calendar year.

The object of the company is the supply of energy (primarily electricity and gas). The activity may extend to the generation or extraction, transmission or transport, acquisition, distribution and trading of energy. Plants of all kinds may be erected, acquired and operated and services and cooperations of all kinds may be undertaken. The company may be active in the aforementioned or related business areas itself or through subsidiaries or associated companies. It shall be entitled to take all actions and measures which are connected with the object of the company, or which are directly or indirectly suited to serve it.

Pursuant to § 6 (1) of the Articles of Association of the Controlling Entity, the Management Board consists of at least two members. Otherwise, the number of members is determined by the Supervisory Board. The Management Board of the Controlling Entity currently has four members:

Mr Michael David Lewis (Chief Executive Officer),
Dr. Jutta A. Dönges,
Mr Holger Kreetz, and
Dr Carsten Poppinga.

The Controlling Entity is legally represented by two members of the Management Board or by one member of the Management Board and one authorized signatory (§ 7 of the Articles of Association).

The Controlling Entity is the parent company of the Uniper group and, in this capacity, holds direct or indirect participations in numerous other companies in Germany and abroad in addition to its direct participation in the Controlled Entity.

b) Controlled Entity

The Controlled Entity is a limited liability company under German law with registered office in Düsseldorf. It is registered with the commercial register of the local court of Düsseldorf under HRB 60308. The financial year of the Controlled Entity is the calendar year. The fully paid-up share capital of the Controlled Entity amounts to EUR 26,000.00.

The object of the company is the acquisition, holding, management and disposal of participations and assets as well as the assumption of management activities.

The Controlling Entity is the sole shareholder of the Controlled Entity.

In accordance with the Articles of Association, the Controlled Entity shall have one or more managing directors. If only one managing director has been appointed, he shall represent the company alone. If more than one managing director has been appointed, the company shall be represented by two managing directors or by one managing director together with an authorized signatory. Currently, Mr Marc Merrill and Ms Benedicte Stenvaag are appointed as managing directors.

4. Legal and economic reasons for the conclusion of the PLTA

The conclusion of the PLTA is part of the intended harmonisation and optimisation of the Uniper group.

Pursuant to sections 14 (1) and 17 of the German Corporate Income Tax Act (hereinafter "**KStG**"), the agreement is a mandatory prerequisite for an income tax group between the Controlling Entity and the Controlled Entity. This income tax group allows for a combined taxation of the aforementioned companies. This creates a tax group within which positive and negative results of the Controlled Entity can be offset against positive and negative results of the Controlling Entity at the same time. Depending on the tax situation of the companies involved, this can lead to tax advantages. In addition, within the framework of an income tax group, profits of the Controlled Entity can be transferred to the Controlling Entity without any additional tax burden. Without a tax group, profits could at best be distributed to the Controlling Entity by way of a profit distribution; in this case, however, they would be subject to corporate income tax and trade tax at the Controlling Entity level to a limited extent.

After thorough and careful examination, the Management Board of USE and the management of UBG have come to the conclusion that only the conclusion of the PLTA forms a sufficient legal basis for the intended harmonisation between USE and UBG and that only through the conclusion of the PLTA the income tax group between USE as the controlling entity and UBG as the controlled entity can be established.

There is no alternative to the conclusion of a profit and loss transfer agreement which would be economically equivalent or superior.

5. Explanation of the PLTA

We explain the individual provisions contained in the PLTA as follows:

- a) § 1 of the PLTA stipulates the transfer of profits. The Controlled Entity undertakes to transfer its entire profit to USE in accordance with all provisions of section 301 AktG as amended from time to time (§ 1 (1) of the PLTA). Based on section 301 AktG, the Controlled Entity may, regardless of what agreements have otherwise been made on the calculation of the profit to be transferred, transfer to the Controlling Entity as profit at maximum the annual net income arising without the profit transfer, reduced by any loss carried forward from the previous year, by the amount to be allocated to the statutory reserves pursuant to section 300 AktG and the amount blocked from distribution pursuant to section 268 (8) of the German Commercial Code (“HGB”), see section 301 sentence 1 AktG. If amounts have been allocated to other revenue reserves during the term of the agreement, these amounts may be withdrawn from the other revenue reserves and transferred as profit, see section 301 sentence 2 AktG.

Other revenue reserves created during the term of this agreement (section 272 (3) HGB) shall be dissolved by the Controlled Entity at the request of the Controlling Entity and transferred as profit (§ 1 (2) of the PLTA).

The Controlled Entity may, with the consent of the Controlling Entity, allocate amounts from the annual net income to other revenue reserves (section 272 (3) HGB) to the extent permissible under commercial law and economically justified based on a reasonable commercial assessment (§ 1 (3) of the PLTA).

Any profit carried forward from the time before the effectiveness of the agreement must not be transferred to the Controlling Entity as profit and must also not be used to offset a net loss for the year. The same shall apply to revenue reserves (section 272 (3) HGB) created prior to the commencement of the agreement and to capital reserves (section 272 (2) HGB).

The claim for profit transfer arises at the end of each financial year of the Controlled Entity and is due with value date at that time (§ 1 (4) of the PLTA).

The Controlling Entity can demand an advance transfer of profits – as far as legally permissible.

The provisions contained under § 1 of the PLTA correspond to the provisions on profit transfer typically contained in profit and loss transfer agreements and closely follow the statutory provisions.

- b) § 2 of the PLTA stipulates, to a certain extent as a counterpart to the profit transfer, the balancing of losses by the Controlling Entity. This follows the provisions of section 302 AktG as amended from time to time. The latter provision, i.e. the dynamic reference to section 302 AktG, takes into account the current legal situation, according to which a static reference to section 302 AktG is no longer sufficient. Pursuant to section 302 (1) AktG, the Controlling Entity is obliged to balance any net loss of the Controlled Entity arising during the term of the agreement, insofar as this is not offset by withdrawing amounts from the other revenue reserves which were transferred to them during the term of the agreement. § 1 (4) of the PLTA shall apply analogously.

- c) § 3 of the PLTA contains provisions on the effectiveness, duration, and termination of the PLTA. By law, the PLTA becomes effective upon registration with the commercial register of the Controlled Entity. Pursuant to § 3 (1) of the PLTA, the agreement shall apply retroactively from 1 January 2023, 0:00 hours.

Provisions on the term of the agreement follow. The agreement is concluded until the end of 31 December 2027 and is extended unamended for one year at a time if not terminated by a party at least three months prior to the end of the financial year. This provision ensures the minimum term for the tax recognition of the PLTA.

Pursuant to § 3 (2) of the PLTA, the PLTA shall terminate at the latest at the end of the financial year in which an outside shareholder within the meaning of section 304 AktG holds a participation in the Controlled Entity. Section 307 AktG is declared to be applicable analogously in this respect.

Any notice of termination of the PLTA must be in writing (§ 3 (3) of the PLTA).

The PLTA can also be terminated for cause – in writing – without observing a notice period, even during the financial year. Cause shall in particular be given if USE transfers all shares in UBG to a group company or a third party.

In the event of termination of the agreement during a financial year of UBG, UBG shall be obliged to transfer its profit in accordance with § 1 of the PLTA or USE shall be obliged to balance any losses of UBG in accordance with § 2 of the PLTA until the time of termination of the agreement.

- d) § 4 of the PLTA contains various provisions. First, it is stated that the invalidity of one or more provisions of this agreement shall not affect the validity of the remaining provisions (severability clause). Instead of the invalid or unenforceable provision, the valid and enforceable provision that comes closest to the economic intention and purpose of the invalid or unenforceable provision shall be deemed agreed, to the extent permitted by law. This applies accordingly to ineffective gaps in the agreement (§ 4 (1) of the PLTA). Amendments and supplements to the agreement including § 4 (2) must be made in writing. Section 295 AktG remains unaffected (§ 4 (2) of the PLTA).
- e) In general, the content of the PLTA fully corresponds to what is usually provided for in a profit and loss transfer agreement.

6. No guaranteed dividend and no cash compensation pursuant to sections 304, 305 AktG; no audit of the agreement according to section 293b AktG

The Controlling Entity directly holds 100% of the shares in the Controlled Entity. As the Controlled Entity does not have any outside shareholder, no guaranteed dividend pursuant to section 304 AktG is to be determined in the PLTA. For the same reason, no cash compensation is to be determined, nor is an enterprise valuation of the companies involved required to determine an appropriate guaranteed dividend and an appropriate cash compensation. Lastly, as the Controlling Entity directly holds all shares in the Controlled Entity, no audit of the agreement by an expert auditor (contract auditor) pursuant to section 293b (1) AktG and thus also no audit report pursuant to section 293e AktG is required.

Düsseldorf, _____ 2023

Uniper SE

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Düsseldorf, _____ 2023

Uniper Beteiligungs GmbH

Marc Merrill

Benedicte Stenvaag