

# Disclosures pursuant to sections 289a (1) and 315a (1) German Commercial Code (HGB) and explanatory report of the Board of Management

In the following, the Board of Management provides the information prescribed by sections 289a (1) and 315a (1) German Commercial Code (HGB) and explains this in accordance with section 176 (1) sentence 1 German Stock Corporations Act (AktG).

The composition of the subscribed capital is described and explained in the notes to the annual and consolidated financial statements in the section “Equity”. Direct or indirect shares in capital which exceed 10% of the voting rights are described and explained in the notes to the annual financial statements in the sections “Shareholder structure” and “Disclosures pursuant to section 21 German Securities Trading Act (WpHG)” and the notes to the consolidated financial statements in section “Related parties (entities)”.

Details on the treasury shares are presented in note 18 of the notes to the consolidated financial statements at [www.enbw.com/report2017-downloads](http://www.enbw.com/report2017-downloads).

## Restrictions relating to voting rights or transferability of shares

Agreements were reached on 22 December 2015 between, on the one hand, Zweckverband Oberschwäbische Elektrizitätswerke (Zweckverband OEW) and OEW Energie-Beteiligungs GmbH and, on the other, the Federal State of Baden-Württemberg, NECKARPRI GmbH and NECKARPRI-Beteiligungsgesellschaft mbH, which include clauses relating to restrictions of authorisation over EnBW shares held by these parties and a general mutual obligation of both main shareholders to maintain parity investment relationships in EnBW with respect to each other. Restrictions relating to voting rights no longer exist to the knowledge of the Board of Management since the aforementioned direct and indirect EnBW shareholders annulled a shareholder agreement on 22 December 2015 that had previously existed between them.

## Legal provisions and statutes on the appointment and dismissal of members of the Board of Management and amendments to the Articles of Association

Pursuant to section 84 AktG in conjunction with section 31 German Co-determination Act (MitbestG), responsibility for the appointment and dismissal of members of the Board of Management rests with the Supervisory Board. This competence is stipulated in section 7 (1) sentence 2 of the Articles of Association of EnBW. If, under exceptional circumstances, a necessary member of the Board of Management is missing, section 85 AktG requires that a

member of the Board of Management be appointed by the court in urgent cases.

The Annual General Meeting has the right to make changes to the Articles of Association in accordance with section 119 (1) No. 5 AktG. The specific rules of procedure are contained in sections 179 and 181 AktG. For practical reasons, the right to amend the Articles of Association was transferred to the Supervisory Board where such amendments affect the wording only. This option pursuant to section 179 (1) sentence 2 AktG is embodied in section 18 (2) of the Articles of Association.

Pursuant to section 179 (2) AktG, resolutions by the Annual General Meeting to amend the Articles of Association require a majority of at least three quarters of the capital stock represented when passing the resolution, unless the Articles of Association stipulate a different majority, which however for any amendment of the purpose of the company would require a higher majority of the capital stock. Pursuant to section 18 (1) of the Articles of Association, resolutions by the Annual General Meeting require a simple majority of the votes cast, unless legal regulations or the Articles of Association stipulate otherwise. If the law requires a larger majority of the votes cast or of the capital stock represented when passing the resolution, the simple majority suffices in those cases where the law leaves the determination of the required majority to the Articles of Association.

## Authority of the Board of Management regarding the possibility to issue or redeem shares

No authorised or conditional capital nor any authorisation of the Annual General Meeting pursuant to section 71 (1) No. 8 AktG for the purchase of treasury shares by the company currently exists at EnBW. Therefore, the company may only acquire treasury shares on the basis of other reasons justifying such purchases in accordance with section 71 (1) AktG. As of 31 December 2017, the company holds 5,749,677 treasury shares which were purchased on the basis of earlier authorisations in accordance with section 71 (1) No. 8 AktG. The company's treasury shares can be sold on the stock exchange or by public offer to all company shareholders. The use of treasury shares, in particular their sale, in any other way can only occur within the scope of the resolution issued by the Annual General Meeting on 29 April 2004. The treasury shares held by EnBW do not grant the company any rights in accordance with section 71b AktG.

## Material agreements of the company subject to the condition of a change of control as a result of a takeover bid and the resulting effects


The following EnBW agreements are subject to the condition of a change of control following a takeover bid as defined by sections 289a (1) No. 8 and 315a (1) No. 8 HGB:

A syndicated credit line of €1.5 billion, which had not been drawn as of 31 December 2017, can be terminated by the lenders and become due for repayment given a change of control at EnBW. This does not apply if the purchaser of the shares is the Federal State of Baden-Württemberg or Zweckverband OEW or another German state-owned public law legal entity.

A promissory note loan of €200 million, two bilateral bank loans together totalling €50 million and a syndicated loan, of which around €192 million was drawn as of 31 December 2017, taken out by Stadtwerke Düsseldorf AG (SWD) relating to the financing of their CCGT power plant could become due for repayment given a change of control at SWD, including an indirect change of control. This does not apply if, after the change of control, the majority of shares in SWD are held directly or indirectly by German government entities and the City of Düsseldorf holds at least 25.05% of the shares in SWD.

A promissory note loan of €80 million and a syndicated credit line of €1 billion, of which €44.2 million was drawn as of 31 December 2017, taken out by VNG-Verbundnetz Gas Aktiengesellschaft could each become due for repayment given a change of control at VNG, including an indirect change of

control. This does not apply if, after the change of control, the majority of shares in VNG continue to be held directly by German public sector shareholders or indirectly by these shareholders via controlled legal entities.

A bond of JPY 20 billion issued on 12 December 2008 under the  Debt Issuance Programme can be terminated by the lenders and become due for repayment given a change of control at EnBW. This does not apply if the purchaser of the shares is EDF (whose legal successor as shareholder is now the Federal State of Baden-Württemberg) or Zweckverband OEW or another German state-owned public law corporation.

Two bilateral long-term bank loans, drawn to the value of €400 million and €409 million as of 31 December 2017, can be terminated by the lender and become due for repayment given a change of control at EnBW, provided the change of control has a negative effect on repayment of the loan in future. This does not apply if the purchaser of the shares is EDF (whose legal successor as shareholder is now the Federal State of Baden-Württemberg) or Zweckverband OEW.

## Compensation agreements

Compensation agreements pursuant to sections 289a (1) No. 9 and 315a (1) No. 9 HGB concluded with members of the Board of Management to cover any case of a change of control are described and explained in the remuneration report.

Nos. 4 and 5 of sections 289a (1) and 315a (1) HGB were not relevant for EnBW in the 2017 financial year.