

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) HGB and explains this in accordance with section 176 (1) sentence 1 AktG.

Composition of the subscribed capital and shares in capital

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 that 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 sections 33 ff. German Securities Trading Act (WpHG)” and the notes to the consolidated financial statements in section “Related parties (entities).” Information and explanations about the company’s treasury shares are presented below and can be found in note 19 of the notes to the consolidated financial statements (p. 207⁷).

Restrictions relating to voting rights or transferability of shares

Agreements were reached on 22 December 2015 between, on the one hand, Zweckverband Ober-schwäbische 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 authorization 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 MitbestG, responsibility for the appointment and dismissal of members of the Board of Management rests with the Supervisory Board. This competence is stipulated in article 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. 6 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 article 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 to the purpose of the company can only be higher. Pursuant to article 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 authorized or conditional capital nor any authorization 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 2021, the company holds 5,749,677 treasury shares which were purchased on the basis of earlier authorizations 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:

EnBW concluded a new sustainability-linked syndicated credit line ⁸ with a volume of €1.5 billion on 24 June 2020. A one-year extension was agreed with the bank consortium in June 2021 and the credit line is now available until 24 June 2026. The sustainability-linked syndicated credit line remained undrawn as of 31 December 2021. The credit line 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 bond of JPY 20 billion issued on 12 December 2008 under the Debt Issuance Program ⁸ 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 has been the Federal State of Baden-Württemberg since February 2011) or Zweckverband OEW or another German state-owned public law corporation.

Two bilateral long-term bank loans, drawn to the value of €300 million and around €227 million as of 31 December 2021, 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 has been the Federal State of Baden-Württemberg since February 2011) or Zweckverband OEW.

Stadtwerke Düsseldorf AG (SWD AG) has a promissory note loan drawn to the value of €200 million and two bilateral bank loans together drawn to the value of around €35 million as of 31 December 2021 for the financing of its CCGT power plant. These can each be terminated and become due for repayment given a change of control at SWD AG, including an indirect change of control. This does not apply if, after the change of control, the majority of shares in SWD AG are held directly or indirectly by German government entities and the City of Düsseldorf holds at least 25.05% of the shares in SWD AG.

SWD AG took out a syndicated credit line ⁸ with a volume of €350 million on 16 December 2020, of which €196 million was drawn as of 31 December 2021. The credit line can be terminated and become due for repayment given a change of control at SWD AG, including an indirect change of control. This does not apply if, after the change of control, the majority of shares in SWD AG are held directly by German legal entities under public law or indirectly by these shareholders via controlled legal entities and the City of Düsseldorf holds at least 25.05% of the shares in SWD AG.

A syndicated credit line with a volume of €700 million agreed with VNG AG, of which around €139 million was drawn as of 31 December 2021, can become due for repayment given a change of control at VNG AG, including an indirect change of control. This does not apply if, after the change of control, the majority of shares in VNG AG continue to be held directly by German public sector shareholders or indirectly by these shareholders via controlled legal entities.

In the event of a change of control, the financing instruments described above can become due for repayment at the aforementioned conditions. The corresponding debt instruments may have to be refinanced as a result – possibly at less favorable conditions.

Compensation agreements pursuant to sections 289a (1) no. 9 and 315a (1) no. 9 HGB

In the event of the premature termination of service on the Board of Management due to a change of control, the possibility of a severance payment for the member of the Board of Management is limited to the pro rata share of annual remuneration(s) for the residual term of the contract. However, the severance payment must not exceed three times the annual remuneration.

Note

Nos. 4 and 5 of sections 289a (1) and 315a (1) HGB were not relevant for EnBW in the 2021 financial year.