

**Joint Report**  
**of the Executive Board of RWE Aktiengesellschaft ("RWE")**  
**and the Board of Directors**  
**of RWE Downstream Beteiligungs GmbH ("DBG")**  
**on the Control and Profit and Loss Pooling Agreement**  
**between**  
**RWE and DBG**  
**Pursuant to Section 293a of the German Stock Corporation Act**

For the information of RWE shareholders and in preparation of the passage of the resolution at the Annual General Meeting of RWE, the Executive Board of RWE and the Board of Directors of DBG hereby deliver the following report on the Control and Profit and Loss Pooling Agreement between RWE and DBG (also referred to as the "**Agreement**" hereinafter).

**1. Conclusion and Effective Date of the Agreement & Contracting Parties**

The Control and Profit and Loss Pooling Agreement between RWE and DBG was concluded on 12 December 2016. The Agreement has been signed by the Chairman of the Executive Board Dr. Rolf Martin Schmitz and the Executive Board member Dr. Markus Krebber as jointly authorised representatives on behalf of RWE and by the Managing Directors Dr. Christian Kuhn and Otger Wewers as jointly authorised representatives on behalf of DBG.

The Agreement shall be submitted to the Annual General Meeting of RE on 27 April 2017 in accordance with Section 293 of the German Stock Corporation Act. The Shareholders' Meeting of DBG approved the Agreement in accordance with Section 293 of the German Stock Corporation Act on 14 December 2016. The Agreement must be entered in the Commercial Register responsible for DBG in order to enter into force.

RWE is a listed German stock corporation headquartered in Essen and registered in the Commercial Register of the Essen District Court under HRB 14525. Its financial year is the calendar year. It is the parent company of the RWE Group. According to the company's Articles of Incorporation, its object is the management of a group of companies active in the following fields of business in particular: generation and procurement of energy, including renewable energy; extraction, procurement and processing of mineral resources and other raw materials; supply and trading of energy; construction, operation and use of energy transmission systems; supply of water and treatment of wastewater; provision of services in the aforementioned fields, including energy efficiency services.

DBG was established as a German limited liability company on 11 December 2015 and entered into the Commercial Register of the Essen District Court on 23 December 26, 2015 under HRB 26911. Its share capital amounts to €27,000.00. Its financial year is the calendar year. According to the Shareholder Agreement, the object of the company is the acquisition, management and sale of assets of all kinds, in particular of stakes in companies in Germany and abroad, as well as the provision of administrative, commercial and technical services for consideration, in particular to subsidiaries. Within the scope of the restructuring of the Group to establish Innogy SE, DBG was used in order to pool shareholdings previously held by various intermediate holding companies within the Group as a first step. Most of these shareholdings were then transferred to the current Innogy SE in a second step. Accordingly, under German company law, DBG primarily holds RWE's stake in Innogy SE, in which the Renewables, Grid & Infrastructure and Retail Divisions are pooled.

Since inception, RWE has held all of the shares in DBG and is thus its sole shareholder.

## **2. Commentary on the Control and Profit and Loss Pooling Agreement**

The Agreement's main contents are:

- DBG places the management of its company under RWE. Accordingly, RWE shall be entitled to issue the Board of Directors of DBG instructions pertaining to the management of the latter. RWE may not issue DBG the instruction to amend,

uphold or cancel the Agreement (Section 299 of the German Stock Corporation Act).

- DBG undertakes to transfer its entire profit to RWE. Subject to the accrual or reversal of provisions, net income, less any loss carryforward from the preceding year and any amounts barred from payment pursuant to Section 268, Paragraph 8 of the German Commercial Code, shall be transferred to RWE.

Subject to RWE's approval, DBG may transfer amounts from net income to other retained earnings to the extent permissible under German commercial law and economically justified based on a sound commercial assessment. Other retained earnings accrued during the term of the Agreement in accordance with Section 272, Paragraph 3 of the German Commercial Code shall be reversed on RWE's request and used to offset a net loss or transferred as profit. This shall not affect the transfer of amounts from the reversal of other retained earnings in accordance with Section 272, Paragraph 3 of the German Commercial Code accrued before the beginning of the term of the Agreement.

- The provisions of Section 301 of the valid version of the German Stock Corporation Act governing the maximum amount of profit transferred shall be applied accordingly.
- The profit transfer obligation shall take effect for the first time for the entire profit of DBG for the fiscal year starting on 1 January 2017. If the entry of this Agreement in the Commercial Register of DBG does not occur by the end of the day on 31 December 2017, the obligation shall take effect for the first time for the entire profit of DBG for the fiscal year starting in the year of entry in the Commercial Register.
- In compliance with the applicable provisions of Section 302 of the valid version of the German Stock Corporation Act, RWE is obligated to assume the losses of DBG.

The Agreement was concluded subject to the approval of the Shareholders' Meeting of DBG and the Annual General Meeting of RWE. The Shareholders' Meeting of DBG approved the Agreement on 14 December 2016.

- The Agreement shall enter into force upon its entry into the Commercial Register of DBG and shall be valid retroactively – with the exception of the aforementioned right to issue instructions – from the beginning of the fiscal year of DBG to which the profit transfer obligation applies for the first time in accordance with the preceding provisions.
- The Agreement shall be firmly concluded for the period ending five years after the beginning of the fiscal year of DBG to which the profit transfer obligation applies for the first time in accordance with the provisions of the Agreement. If DBG introduces a fiscal year that deviates from the calendar year, the term of the Agreement shall be extended until the end of the fiscal year running at the end of the fixed term. The Agreement shall be extended in unamended form by a year unless it is terminated by one of the contracting parties no later than six months before its expiry.
- This shall not affect the right of termination for good cause. RWE shall be entitled to terminate the Agreement for good cause especially if it ceases to hold a majority stake in DBG or has undertaken to relinquish its majority stake. The termination may be made without giving notice, effective from any point in time between the assumption of the obligation and transfer, or effective from the end of the fiscal year of DBG running when the transfer obligation is assumed, or upon transfer.

The Agreement had to be concluded for the duration of at least five calendar years in order for the income tax group to be recognised. The parties agreed on the aforementioned retroactive effect of the Agreement in order to take advantage of the tax group from the first year of entry onwards.

The Agreement does not envisage a compensatory payment or settlement for outside shareholders as RWE is the sole shareholder of DBG. Therefore, there was no need to perform a valuation of the companies concluding the Agreement to determine an appropriate compensation or an appropriate settlement, either.

Since RWE holds all of the business interests in DBG, pursuant to Section 293b, Paragraph 1 of the German Stock Corporation Act, there is no need to have the Agreement audited by an expert auditor or to prepare a corresponding audit report in accordance with Section 293e of the German Stock Corporation Act.

### **3. Commercial Significance and Object of the Profit and Loss Pooling Agreement**

The prime objective of the Agreement is to establish a corporate tax group for RWE and DBG in accordance with Section 14 of the German Corporate Tax Act. It also serves the purpose of establishing a trade tax group including RWE and DBG in accordance with Section 2, Paragraph 2 of the German Trade Tax Act. Accordingly, the Agreement contains the customary provisions of a control and profit and loss pooling agreement concluded to establish a tax group within a group. The corporate and trade tax group enables the combined income taxation of DBG (Controlled Company) and RWE (Controlling Company). Profits and losses of the Controlled Company occurring during the existence of the tax group shall be directly assigned to the Controlling Company as defined by German tax law. Within the scope of the corporate and trade tax group, positive and negative earnings can thus be offset against each other and considered optimally from a tax perspective at the level of the Controlling Company RWE.

Furthermore, within the scope of the tax group, profits of DBG may be transferred to RWE without an additional tax burden. Without a tax group, profits could only be transferred to RWE via a payment of profits to RWE. Based on currently applicable German tax law, 5% of the profits paid to RWE would be subject to corporate and trade tax, although they would already have been taxed at the DBG level.

The contractual control element ensures the uniform management of DBG and its integration into the RWE Group. To this end, the Agreement ensures that RWE may issue instructions to the Board of Directors of DBG on the management of DBG. The Board of Directors of DBG is obligated to comply with the instructions. The Agreement is thus a customary Group management tool.

### **4. Alternatives to the Conclusion of the Profit and Loss Pooling Agreement**

There was no commercially reasonable alternative to the conclusion of the Agreement between RWE and DBG which could have provided an equal or better contractual basis for achieving the aforementioned objectives. Pursuant to Sections 14 and 17 of the German Corporate Tax Act, the conclusion of this Agreement is an

indispensable prerequisite for the desired establishment of a corporate and trade tax group.

In particular, this joint taxation of RWE and DBG could not have been achieved by concluding a different type of inter-company agreement as defined by Section 292 of the German Stock Corporation Act (business lease, partial business transfer agreement, profit pool or partial profit pool) or by an operating agreement.

## **5. Consequences for the Shareholders' Stakes**

Pursuant to the Agreement, DBG shall place the management of its company under RWE, which shall be entitled to issue instructions to the Board of Directors of DBG. As a result of the Agreement, DBG undertakes to transfer its profits to RWE in accordance with the valid version of Section 301 of the German Stock Corporation Act. This is contrasted by RWE's obligation to DBG to assume losses in accordance with the valid version of Section 302 of the German Stock Corporation Act. Apart from this, there are no particular consequences for RWE shareholders, especially because no compensation or settlement pursuant to Sections 304 and 305 of the German Stock Corporation Act are due since there are no outside shareholders in DBG.

A summary assessment of the Agreement reveals that it is beneficial to both RWE and DBG.

Essen, 27 January 2017

**RWE Aktiengesellschaft**

The Executive Board

Dr. Rolf Martin Schmitz

Dr. Markus Krebber

Uwe Tigges

Essen, 27 January 2017

**RWE Downstream Beteiligungs GmbH**

The Board of Directors

Dr. Rolf Uwe Becker

Dr. Christian Kuhn

Otger Wewers