

This is a translation of the German original report on the audit of the spin-off. Only the German version of the report on the audit of the spin-off shall be legally binding and final.

Report on the audit of the
spin-off of parts of the assets
of

E.ON SE,
Düsseldorf,

to

Uniper SE, Düsseldorf,
pursuant to section 125 in conjunction with
sections 9 et seq. of the German
Conversion Act (*Umwandlungsgesetz –
UmwG*)

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(Allgemeine Auftragsbedingungen für Wirtschaftsprüfer und Wirtschaftsprüfungsgesellschaften) as of 1 January 2002

List of abbreviations*

| | |
|---------------|--|
| AG | stock corporation under German law (<i>Aktiengesellschaft</i>) |
| AktG | German Stock Corporation Act (<i>Aktiengesetz</i>) |
| art. | article |
| cf. | confer |
| e.V. | registered association under German law (<i>eingetragener Verein</i>) |
| EBITDA | earnings before interest, taxes, depreciation and amortisation |
| EC | European Community |
| et seq. | <i>et sequens</i> |
| € | euro |
| GmbH | company with limited liability under German law (<i>Gesellschaft mit beschränkter Haftung</i>) |
| HFA | Auditing and Accounting Board (<i>Hauptfachausschuss</i>) of the Institute of Public Auditors in Germany |
| HGB | German Commercial Code (<i>Handelsgesetzbuch</i>) |
| HRB | section B of the German commercial register |
| hrs | hours |
| i.e. | <i>id est</i> |
| IDW | Institute of Public Auditors in Germany (<i>Institut der Wirtschaftsprüfer in Deutschland e.V.</i>) |
| LTI | long term incentive |
| m | million |
| mn. | marginal note |
| no. | number |
| p. | page |
| para. | paragraph |
| ROACE | return on average capital employed |
| SE | Societas Europaea |
| SE Regulation | Council Regulation on the Statute for a European company (SE) |
| UmwG | German Conversion Act (<i>Umwandlungsgesetz</i>) |

* Translator's note: The English list of abbreviations differs substantially from the German one as there is no common English abbreviation for the English translation of some German terms and as the list has been sorted alphabetically.

A. Engagement and performance of the engagement

E.ON SE, Düsseldorf,

(hereinafter also referred to as “**Transferring Entity**”)

intends to transfer a part of its assets by way of a spin-off by absorption (*Abspaltung zur Aufnahme*) by transferring this part, as a whole, to

Uniper SE, Düsseldorf,

(hereinafter also referred to as “**Acquiring Entity**”)

against granting of shares in Uniper SE to the shareholders of E.ON SE pursuant to art. 9 para. 1 letter c) ii), art. 10 of the Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) (“SE Regulation”)¹ in conjunction with section 123 para. 2 no. 1 of the German Conversion Act.

At the joint request of the board of management of E.ON SE and the board of directors of E.ON Kraftwerke GmbH, Düsseldorf, as the legal predecessor of Uniper SE, Baker Tilly Roelfs AG Wirtschaftsprüfungsgesellschaft, Düsseldorf, was selected and appointed as the spin-off auditor by order dated 4 August 2015 of the 3rd Commercial Division of the Regional Court (*Landgericht*) of Düsseldorf pursuant to section 125 sentence 1 in conjunction with sections 9 para. 1, 10 of the German Conversion Act.

The boards of management of E.ON SE and Uniper SE entered into a Spin-off and Transfer Agreement on 18 April 2016 (roll of deeds no. H 904/2016 of the notary Dr Armin Hauschild, Düsseldorf). The general meeting of E.ON SE is supposed to resolve on the approval of the Spin-off and Transfer Agreement on 8 June 2016 in accordance with section 125 sentence 1 in conjunction with sections 13 para. 1, 65 para. 1 of the German Conversion Act. The general meeting of Uniper SE is supposed to resolve on the approval of the Spin-off and Transfer Agreement prior to the general meeting of E.ON SE.

¹ In the following, we refrain from separately referring to the references of art. 9 and art. 10 of the Council Regulation (EC) No 2157/2001 on the Statute for a European company (SE).

The spin-off comprises all shares of E.ON SE in Uniper Beteiligungs GmbH, Düsseldorf (“Spin-off Assets”).

The Spin-off Assets will be transferred with effect as between E.ON SE and Uniper SE from 1 January 2016, 0.00 hrs (“Spin-off Record Date”). In the relationship between E.ON SE and Uniper SE, all actions relating to the Spin-off Assets are deemed to have been made for the account of Uniper SE from this point in time onwards. In the event that the spin-off has not been registered in the commercial register of E.ON SE at the Local Court (*Amtsgericht*) of Düsseldorf by the expiry of 28 February 2017, then, in deviation from the above, 1 January 2017, 0.00 hrs, will be the Spin-off Record Date. In the case of a further delay in registration beyond 28 February of the following year, the Spin-off Record Date will be postponed by another year in each case.

The following documents were available to us when conducting our audit, in particular:

- Spin-off and Transfer Agreement including annexes dated 18 April 2016 (roll of deeds no. H 904/2016 of the notary Dr Armin Hauschild, Düsseldorf) and the previous drafts thereof;
- Joint Spin-off Report of the boards of management of E.ON SE, Düsseldorf, and Uniper SE, Düsseldorf, regarding the spin-off of a majority stake in the Uniper-Group dated 18 April 2016 (hereinafter also referred to as “Joint Spin-off Report”) and the previous drafts thereof;
- annual balance sheet of E.ON SE as at 31 December 2015 audited by PricewaterhouseCoopers Aktiengesellschaft Wirtschaftsprüfungsgesellschaft, Düsseldorf, who issued an unqualified audit certificate (hereinafter also referred to as “Closing Balance Sheet” pursuant to section 125 sentence 1 in conjunction with section 17 para. 2 of the German Conversion Act);
- reports by PricewaterhouseCoopers Aktiengesellschaft Wirtschaftsprüfungsgesellschaft, Düsseldorf, on the audit of the financial statements for the year ended 31 December 2015 relating to Uniper Holding GmbH, Düsseldorf, Uniper AG (formerly E.ON Kraftwerke GmbH), Düsseldorf, and Uniper Beteiligungs GmbH, Düsseldorf, each issued with an unqualified audit certificate;

- report by PricewaterhouseCoopers Aktiengesellschaft Wirtschaftsprüfungsgesellschaft, Düsseldorf, on the audit of the financial statement for the year ended 31 December 2015 and the combined group management report for the 2015 financial year of E.ON SE, Düsseldorf, issued with an unqualified audit certificate;
- spin-off balance sheet as of 1 January 2016;
- securities account statements of E.ON SE in respect of the treasury shares held at the time of conclusion of the Spin-off and Transfer Agreement;
- excerpts from the commercial registers of Uniper SE and E.ON SE;
- articles of association of Uniper SE and E.ON SE.

Information was provided to us in particular by the employees designated by the boards of management of E.ON SE and Uniper SE and by the designated advisors. We were provided with all requested information.

E.ON SE and Uniper SE each issued to us a declaration of completeness (*Vollständigkeitserklärung*) in which they assured in writing, respectively, that all information and documents which they considered to be relevant for our audit had been completely provided and that, to the best of their knowledge and belief, the information and documents provided were correct.

In our audit, we have taken into account the statement of the Auditing and Accounting Board (*Hauptfachausschuss – HFA*) of the Institute of Public Auditors in Germany “Merger audit pursuant to section 340b para. 4 of the German Stock Corporation Act (*Aktiengesetz – AktG*)” (statement no. HFA 6/1988) which applies *mutatis mutandis* in the case of a spin-off. The former sections 339 et seq. of the German Stock Corporation Act were replaced by the corresponding provisions of the German Conversion Act in 1995.

We conducted our work – with interruptions – from 12 August 2015 through 20 April 2016 in the premises of E.ON SE in Düsseldorf and Essen as well as in our office in Düsseldorf. In this context, we refer to Annex 1 hereto.

We expressly point out that we have not audited the keeping of accounts, the financial statements or the managements of the companies involved. Such audits are not part of a contract audit.

The General Engagement Terms for German Public Auditors and Public Audit Firms in the version as of 1 January 2002, attached hereto as Annex 2, are decisive for the conduct of our engagement and our responsibility, also in relation to third parties. Our liability is governed by no. 9 of the General Engagement Terms. No. 1 para. 2 and no. 9 of the General Engagement Terms apply vis-à-vis third parties. Our responsibility to the companies involved in the spin-off and their shareholders is governed by sections 125 sentence 1, 11 para. 2 of the German Conversion Act in conjunction with section 323 of the German Commercial Code (*Handelsgesetzbuch – HGB*).

B. Subject matter, type and scope of the spin-off audit

Pursuant to section 125 sentence 1 in conjunction with sections 9, 60 of the German Conversion Act, the subject of the spin-off audit is the Spin-off and Transfer Agreement. The latter is to be audited in respect of the completeness and correctness of the information contained therein.

The general minimum requirements and, as regards the legal form, the specific minimum requirements under German Conversion law are decisive for the audit activities in respect of the **completeness** of the Spin-off and Transfer Agreement.

In the present case, according to the information required under section 126 para. 1 of the German Conversion Act, the Spin-off and Transfer Agreement has to contain the following information as a minimum:

- the company name and the registered office of the legal entities involved in the spin-off;
- the agreement on the transfer of parts of the assets of the transferring legal entity as a whole against granting of shares in the acquiring legal entity;
- the share exchange ratio and, if applicable, the amount of the additional cash payment of the acquiring legal entity;
- the details for the transfer of the shares of the acquiring legal entity;
- the time as of which these shares will grant an entitlement to a share in the balance-sheet profits as well as all special conditions relating to such entitlement;
- the time as of which all actions of the transferring legal entity will be deemed as taken for the account of the acquiring legal entity (Spin-Off Record Date);
- the rights conferred by the acquiring legal entity on individual shareholders and on holders of special rights, such as non-voting shares, preference shares, multiple voting shares, bonds and participation rights, or the measures envisaged for these persons;

- any special benefit granted to a member of a representative body or a supervisory body of the legal entities involved in the spin-off, a managing shareholder, a partner, an auditor or a spin-off auditor;
- the exact specification and allocation of the items in assets and liabilities that are transferred to the acquiring legal entity as well as the businesses (*Betriebe*) and parts of businesses to be transferred;
- the allocation of the shares in the acquiring legal entity to the shareholders of the transferring legal entity as well as the measure applying to their allocation;
- the consequences of the spin-off for the employees and their representative bodies as well as the measures intended to be taken in this context.

Optional parts of the Spin-off and Transfer Agreement cannot be audited in respect of their completeness as there is no respective statutory requirement; however, as parts of the agreement they are to be reviewed in respect of their correctness.

The audit of the **correctness** of the (statutory and optional) information contained in the Spin-off and Transfer Agreement deals with the question of whether such information is factually correct and consistent. The decisive factor is that the circumstances on which the Spin-off and Transfer Agreement is based are in line with the actual facts and, if applicable, that the forecasts and estimates are plausible. The general validity and legality of the provisions contained in the Spin-off and Transfer Agreement are not to be audited. Should the audit activities give rise to any objections or doubts in respect of the correctness and/or validity of individual provisions agreed, a corresponding reference is to be included in the audit report.

The main focus of the spin-off audit is on the **exchange ratio** specified in the Spin-off and Transfer Agreement in accordance with section 126 para. 1 no. 3 of the German Conversion Act as well as on the adequacy of such ratio.

In this context, pursuant to section 125 sentence 1 in conjunction with section 12 para. 2 of the German Conversion Act the audit report must contain information

- pursuant to which methods the proposed exchange ratio was determined,
- for what reasons the application of these methods is appropriate,

- which exchange ratio or which counter-value would in each case result from an application of different methods, provided that several methods were applied; at the same time it shall be argued which importance was attached to the different methods in the determination of the proposed exchange ratio or the counter-value and their underlying values and which particular difficulties occurred in the valuation of the legal entities.

The method for determining the exchange ratio is not explicitly regulated by law. However, the provisions of section 12 para. 2 of the German Conversion Act contain the general assumption that business valuations are necessary.

As explained in detail in section D.I.3. of our audit report, a comparative business valuation of the transferred assets and the Acquiring Entity in the proper sense of the word is not required to determine the exchange ratio in the present case as the proportion of the business values can be directly derived from the proportion of the participation quotas in Uniper Holding GmbH, Düsseldorf.

Against this background, our audit report does not contain any information on valuations conducted, their methodological consistency and factual assumptions, data underlying the determination, the plausibility of forecasts and information on particular difficulties in the valuation.

Accordingly, no statements are made on facts directly related to a business valuation based on a method for calculating a net present value (*Zukunftserfolgswertverfahren*) such as the discounted earnings method (*Ertragswertverfahren*) and on the stock exchange price.

In the case of the present spin-off, the shareholding ratio at the Transferring Entity will remain unchanged and, consequently, the shareholders of the Transferring Entity will not lose or give away any shares.² Against this background, in the following we will also use the term **allocation ratio** instead of exchange ratio.

The order issued by the Regional Court (*Landgericht*) of Düsseldorf on 4 August 2015 (reference number 33 O 73/15 [AktE]) to appoint the spin-off auditor contains instructions to the spin-off auditor based on the German Act on the Peaceful Utilisation of Atomic Energy and the Protection against its Hazards (*Gesetz über die friedliche Verwendung*

² Gehling in Semler/Stengel, German Conversion Act, 3rd edition 2012 regarding section 127, mn, 33; Müller in Kallmeyer, German Conversion Act, 5th edition regarding section 126, mn. 9.

der Kernenergie und den Schutz gegen ihre Gefahren) (German Atomic Energy Act (*Atomgesetz – AtG*)). The order of the Higher Regional Court (*Oberlandesgericht*) of Düsseldorf dated 24 September 2015 (reference number I-26W 17/15 [AktE]) set aside the order of the Regional Court (*Landgericht*) of Düsseldorf dated 4 August 2015 to the extent that content-related instructions are given to the appointed spin-off auditor in this context. In addition, E.ON SE announced on 9 September 2015 that the German nuclear energy business and all associated activities would remain with the future E.ON SE. Against this background, our report does not contain any statements thereon.

Pursuant to section 127 sentence 1 of the German Conversion Act, the boards of management of the legal entities involved in the spin-off must submit a comprehensive written report justifying and explaining, in legal and economic terms, the division (*Spaltung*), the details of the agreement or of its draft and, in the case of a spin-off, especially the share exchange ratio or the information regarding the memberships in the acquiring legal entity, the measure applying to the allocation as well as, if applicable, the amount of any cash compensation to be offered (“Spin-off Report”). The boards of management of the legal entities involved may also submit a joint Spin-off Report.

Our audit neither covers the completeness and correctness of the Joint Spin-off Report dated 18 April 2016 prepared by the boards of management of E.ON SE and Uniper SE nor the expediency of the Spin-off and Transfer Agreement. In the context of our audit, we have dealt with the Joint Spin-off Report only to the extent it contains material information on the subject of the audit.

We recorded the type and scope of our audit activities in our working papers. The audit report reflects the results of our audit of the spin-off.

C. Description of the indented structural measure

E.ON SE, Düsseldorf, registered in the commercial register at the Local Court (*Amtsgericht*) of Düsseldorf under HRB 69043, intends to spin off its 100% stake in Uniper Beteiligungs GmbH, Düsseldorf, registered in the commercial register at the Local Court (*Amtsgericht*) of Düsseldorf under HRB 60308, to Uniper SE, Düsseldorf, registered in the commercial register at the Local Court (*Amtsgericht*) of Düsseldorf under HRB 77425.

For this purpose, E.ON SE and Uniper SE entered into a Spin-off and Transfer Agreement dated 18 April 2016.

Uniper SE is currently, and until the spin-off takes effect, a 100% subsidiary of E.ON Beteiligungen GmbH, Düsseldorf, in which in turn E.ON SE holds a 100% stake. The registered share capital of Uniper SE amounts to €290,224,578 and is divided into 170,720,340 no-par-value registered shares (*nennwertlose auf den Namen lautende Stückaktien*).

The background of the intended spin-off is a strategic reorientation of the E.ON-Group.

It is intended that the Renewables, Energy Networks and Customer Solutions business areas and the activities in Turkey as well as the nuclear power business in Germany will be continued by E.ON SE and its subsidiaries after the spin-off.

It is intended that the current business areas conventional generation (including hydro, but excluding the German nuclear energy activities), global energy trading (in particular the distribution of electricity and gas) and electricity generation in Russia as well as the operation of the Yuzhno Russkoye gas field (hereinafter referred to as “Conventional Energy Business”) will be continued by Uniper SE as the ultimate parent company of the Uniper-Group in the future.

For this purpose, E.ON SE has legally and organisationally combined the activities pertaining to the Conventional Energy Business under the umbrella of Uniper Holding GmbH, Düsseldorf, registered in the commercial register at the Local Court (*Amtsgericht*) of Düsseldorf under HRB 74963, by means of intra-group restructuring measures prior to the spin-off.

The share capital of Uniper Holding GmbH in the amount of €21,150,000 is held by Uniper SE (46.65%) and by Uniper Beteiligungs GmbH (53.35%).

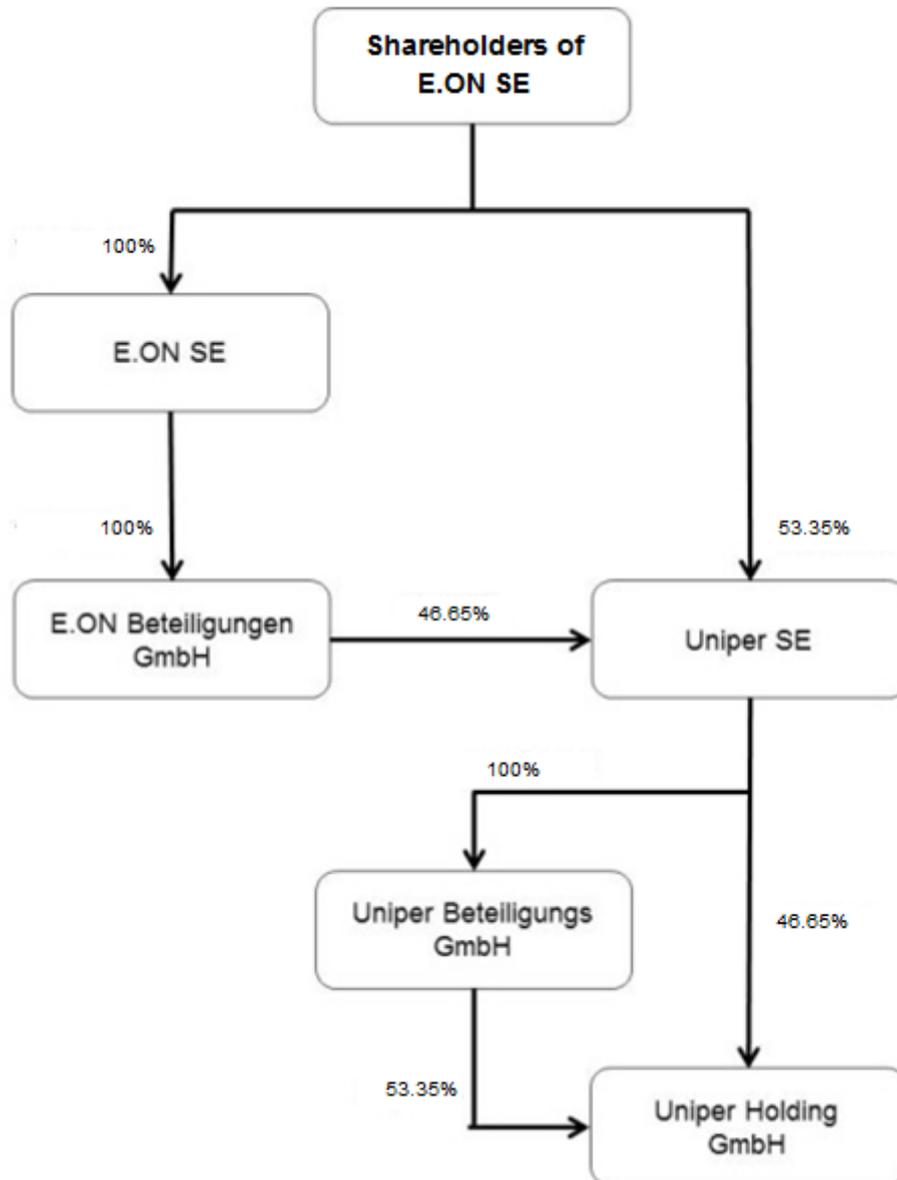
Upon the spin-off taking effect, Uniper SE will hold the entire share capital of Uniper Beteiligungs GmbH and, therefore, directly and indirectly the entire share capital of Uniper Holding GmbH as well.

In return for E.ON SE's assets transferred within the context of the spin-off – i.e. its stake in Uniper Beteiligungs GmbH – pursuant to the Spin-off and Transfer Agreement, the shareholders of E.ON SE will be granted 195,239,660 no-par-value registered shares in Uniper SE to be created by way of a capital increase at Uniper SE with the result that Uniper SE's share capital will amount to €622,132,000, divided into 365,960,000 no-par-value registered shares (*nennwertlose auf den Namen lautende Stückaktien*).

As a result, the Conventional Energy Business will then be operated by Uniper SE and its subsidiaries, in which the shareholders of E.ON SE hold a direct stake of 53.35% and an indirect stake of 46.65% through their participation in E.ON SE.

Immediately after the spin-off has taken effect, all shares in Uniper SE are intended to be admitted to trading on the regulated market of the Frankfurt Stock Exchange in the sub-segment of the regulated market with additional post-admission obligations (Prime Standard).

Upon the spin-off taking effect, the ownership structure will take the following form:



D. Audit of the Spin-off and Transfer Agreement

I. Completeness and correctness of the statutory minimum information

As regards the necessary minimum contents of the Spin-off and Transfer Agreement required pursuant to section 126 para. 1 nos. 1 to 11 of the German Conversion Act, we state the following:

**1. Company name and registered office of the legal entities involved
(section 126 para. 1 no. 1 of the German Conversion Act)**

The company name and the registered office of the legal entities involved in the spin-off are specified in the Spin-off and Transfer Agreement and correspond to the articles of association of E.ON SE and of Uniper SE, respectively, and to the entries in the commercial register at the Local Court (*Amtsgericht*) of Düsseldorf. Accordingly, the required information in respect of the companies involved in the spin-off is stated correctly in the Spin-off and Transfer Agreement.

2. Agreement on the transfer of parts of the assets (section 126 para. 1 no. 2 of the German Conversion Act)

Pursuant to clause 1 of the Spin-off and Transfer Agreement, E.ON SE will transfer the part of its assets as specified in detail in clause 5.1 of the Spin-off and Transfer Agreement with all rights and obligations (Spin-off Assets) as a whole to Uniper SE by way of spin-off by absorption pursuant to section 123 para. 2 no. 1 of the German Conversion Act against granting of shares in Uniper SE to the shareholders of E.ON SE pursuant to clause 10 of the Spin-off and Transfer Agreement (spin-off by absorption on a *pro rata* basis).

This agreement correctly specifies the transfer of a part of E.ON SE's assets to Uniper SE by way of spin-off by absorption.

Upon the spin-off taking effect by being registered in the commercial register of E.ON SE as Transferring Entity, the Spin-off Assets will be transferred with effect in rem.

The assets to be spun off pursuant to clause 5.1 of the Spin-off and Transfer Agreement consist of E.ON SE's total stake in Uniper Beteiligungs GmbH, comprising two shares – the share with the serial number 1 having a nominal value of €25,000 and the share with the serial number 2 having a nominal value of €1,000. The spin-off will comprise all related rights and duties, including the claim for a distribution of profits as from Spin-off Record Date.

According to the documents made available to us, the information provided in respect of the Spin-off Assets is factually correct.

3. Share allocation ratio (section 126 para. 1 no. 3 of the German Conversion Act)

Pursuant to clause 10 of the Spin-off and Transfer Agreement, the shareholders of E.ON SE will be granted, free of charge, one no-par-value registered share in Uniper SE for ten no-par-value registered shares in E.ON SE based on their previous stake in E.ON SE (on a *pro rata* basis) as consideration for the transfer of the Spin-off Assets of E.ON SE to Uniper SE. No additional cash payment will be made.

The share allocation ratio pursuant to section 126 para. 1 no. 3 of the German Conversion Act determined as set out above will, in principle, be calculated on the basis of the ratio of the value of the Spin-off Assets, i.e. E.ON SE's shares in Uniper Beteiligungs GmbH, to the value of the Acquiring Entity, i.e. Uniper SE.

It is correct that in the present case it was not necessary to carry out a comparative business valuation of the Spin-off Assets and the Acquiring Entity in the proper sense of the word in order to determine the share allocation ratio. Both the assets spun off and the Acquiring Entity comprise, as the sole asset relevant to their value, 53.35%, respectively, 46.65% of the shares in Uniper Holding GmbH. For this to be ensured, balancing agreements have been entered into between each of E.ON SE and Uniper Beteiligungs GmbH, between E.ON Beteiligungen GmbH and Uniper SE as well as between Uniper SE, Uniper Beteiligungs GmbH and Uniper Holding GmbH. Under these agreements, ultimately any income and expenditure of Uniper SE and Uniper Beteiligungs GmbH will be constantly balanced in order to ensure that, until the spin-off takes effect, any other assets of Uniper SE and Uniper Beteiligungs GmbH, i.e. the assets excluding the stakes in Uniper Holding GmbH, will, in economic terms, have a value of zero at all times.

Therefore, there are individual participation quotas in the same valuation object. Consequently, the ratio of the value of the Spin-off Assets to the value of the Acquiring Entity can be determined independently of the actual valuation object on the basis of the relationship between the participation quotas of E.ON SE (indirectly through Uniper Beteiligungs GmbH) and Uniper SE in Uniper Holding GmbH and therefore is 53.35 to 46.65.

By means of the 195,239,660 new Uniper SE shares to be issued in order to implement the spin-off, it is ensured that, upon the spin-off taking effect, 53.35% of the shares in Uniper SE will be held by the shareholders of E.ON SE and 46.65% of the shares in Uniper SE will be held by E.ON Beteiligungen GmbH, in which E.ON SE holds a stake of 100%. As a result, the number of shares to be issued in order to implement the spin-off ensures that the shareholding ratio at Uniper SE will be exactly correspondent to the ratio between the value of the Spin-off Assets and the value of the Acquiring Entity.

In the present case, the shares in Uniper SE will be granted to the shareholders of E.ON SE in such a manner that the proportionate shareholdings are preserved, i.e., of the 195,239,660 new Uniper SE shares issued in order to implement the spin-off, each shareholder of E.ON SE will be granted a number of shares corresponding to his or her shareholding in E.ON SE in the same proportion. Thus, it is ensured that the shareholders of E.ON SE will not have to accept any change in their assets before and after the spin-off.³

Treasury shares of E.ON SE do not qualify for an allocation of shares in the context of the spin-off and will not be taken into account in the allocation of the new Uniper SE shares granted for the purposes of implementing the spin-off (section 131 para. 1 no. 3 sentence 1 of the German Conversion Act). Assuming a share capital of E.ON SE of €2,001,000,000, split into 2,001,000,000 no-par-value registered shares, and 48,603,400 treasury shares held by E.ON SE that do not qualify for an allocation of shares, 1,952,396,600 shares of E.ON SE remain that qualify for an allocation of shares. In the Spin-off and Transfer Agreement, E.ON SE undertook to ensure that, at the time the spin-off takes effect, the total number of E.ON SE shares issued and the number of treasury shares, which do not qualify for allocation, will be exactly equal to the numbers specified above.

³ Cf. Schwab in Lutter, German Conversion Act, 5th edition 2015 regarding section 127, mn. 30; Gehling in Semler/Stengel, German Conversion Act, 3rd edition 2012 regarding section 127, mn. 29.

The Spin-off and Transfer Agreement stipulates that, immediately after the spin-off has taken effect, all shares in Uniper SE will be admitted to trading on the regulated market of the Frankfurt Stock Exchange in the sub-segment of the regulated market with additional post-admission obligations (Prime Standard). Therefore and due to the fact that the legal entities involved have the identical legal form, it is correct that no compensation has to be offered to the shareholders of E.ON SE pursuant to section 125 sentence 1 in conjunction with section 29 of the German Conversion Act.⁴ Insofar, it is also not necessary to carry out a business valuation of the assets spun off or of the Acquiring Entity.

In summary, we state that the method of, the approach to and the result of the determination of the share allocation ratio are appropriate, plausible and adequate and that they result in the shares in Uniper SE being granted to the shareholders of E.ON SE in such a manner that the proportionate shareholdings are preserved.

According to the results of our audit, the information provided in the Spin-off and Transfer Agreement in respect of the share allocation ratio meets the requirements of section 126 para. 1 no. 3 of the German Conversion Act.

4. Details regarding the transfer of the shares (section 126 para. 1 no. 4 of the German Conversion Act)

The details regarding the transfer of the shares of the Acquiring Entity are stipulated in clause 10 of the Spin-off and Transfer Agreement as follows:

For the purposes of implementing the spin-off, Uniper SE will increase its share capital by €331,907,422 to €622,132,000 by issuing 195,239,660 no-par-value registered shares. In this context, it was correctly taken into account that the shares held by E.ON SE as treasury shares do not qualify for an allocation of shares pursuant to section 131 para. 1 no. 3 sentence 1 of the German Conversion Act. Each of these shares represents a notional proportionate amount of €1.70 in the share capital of Uniper SE. Pursuant to clause 10.5 of the Spin-off and Transfer Agreement, E.ON SE has appointed Morgan Stanley Bank AG, Frankfurt am Main, as trustee for the receipt of the shares in Uniper SE to be granted to the shareholders of E.ON SE and for distributing them to the shareholders of E.ON SE. The possession of the shares to be granted will be granted to the trustee prior to the registration of the spin-off and the trustee is instructed to deliver

⁴ Cf. Schröer in Semler/Stengel, German Conversion Act, 3rd edition 2012 regarding 126, mn. 92.

the shares to the shareholders of E.ON SE following the registration of the spin-off in the commercial register of E.ON SE.

The parties to the Spin-off and Transfer Agreement undertook to make all declarations, issue all documents and take all other actions that are additionally necessary or appropriate to ensure that all shares in Uniper SE will be admitted to trading on the regulated market of the Frankfurt Stock Exchange in the sub-segment of the regulated market with additional post-admission obligations (Prime Standard) immediately after the Spin-off has taken effect.

Pursuant to clause 17 of the Spin-off and Transfer Agreement, E.ON SE will bear the costs incurred upon notarisation of this Spin-off and Transfer Agreement and its implementation up to the closing date.

According to the results of our audit, the information provided in the Spin-off and Transfer Agreement in respect of the details regarding the transfer of the shares of the Acquiring Entity meets the requirements of section 126 para. 1 no. 4 of the German Conversion Act.

5. Time of participation in the balance sheet profits (section 126 para. 1 no. 5 of the German Conversion Act)

Pursuant to clause 10.2 of the Spin-off and Transfer Agreement, the shares to be granted by Uniper SE will be entitled to participate in profits in the entire financial year that started on 1 January 2016.

The date from which the shares to be granted by Uniper SE will be entitled to profit participation is the Spin-off Record Date (see the following section D.I.6). If the spin-off has not been registered in the commercial register of E.ON SE at the Local Court (*Amtsgericht*) of Düsseldorf by the expiry of 28 February 2017, the Spin-off Record Date will be postponed (clause 4 of the Spin-off and Transfer Agreement) and, therefore, the beginning of the entitlement to profit participation will be postponed to the beginning of that financial year of Uniper SE in which the spin-off takes effect.

According to the results of our audit, the information provided in the Spin-off and Transfer Agreement in respect of the time of participation in the balance sheet profits meets the requirements of section 126 para. 1 no. 5 of the German Conversion Act.

6. Spin-off Record Date (section 126 para. 1 no. 6 of the German Conversion Act)

The Spin-off Assets will be transferred as between E.ON SE and Uniper SE with effect from 1 January 2016, 0.00 hrs (“Spin-off Record Date”). From this point in time, the actions of E.ON SE relating to the Spin-off Assets will, in the relationship between E.ON SE and Uniper SE, be deemed to have been made for the account of Uniper SE (clause 2.1 of the Spin-off and Transfer Agreement).

The Spin-off Record Date directly follows the balance sheet date for the closing balance sheet of E.ON SE as Transferring Entity as at 31 December 2015 (clause 3.2 of the Spin-off and Transfer Agreement), which is factually correct.

In the event that the spin-off has not been registered in the commercial register of E.ON SE (as the Transferring Entity) at the Local Court (*Amtsgericht*) of Düsseldorf by the expiry of 28 February 2017, the Spin-off Record Date will be postponed to 1 January 2017, 0.00 hrs. In the case of any further delay in the registration beyond 28 February of the subsequent year, the Spin-off Record Date will be postponed accordingly by one subsequent year (clause 4 of the Spin-off and Transfer Agreement).

According to the results of our audit, the information provided in the Spin-off and Transfer Agreement in respect of the Spin-off Record Date meets the requirements of section 126 para. 1 no. 6 of the German Conversion Act.

7. Granting of special rights to individual shareholders or to holders of special rights (section 126 para. 1 no. 7 of the German Conversion Act)

In Clause 11 of the Spin-off and Transfer Agreement it is stated by way of a negative declaration that no special rights within the meaning of section 126 para. 1 no. 7 of the German Conversion Act have been granted to individual shareholders or holders of special rights by the Acquiring Entity, and no measures pursuant to the aforementioned provision are provided for to the benefit of such persons.

In the course of our audit, we did not find any indication that special rights within the meaning of section 126 para. 1 no. 7 of the German Conversion Act have been granted.

According to the results of our audit, the information provided in the Spin-off and Transfer Agreement in respect of special rights meets the requirements of section 126 para. 1 no. 7 of the German Conversion Act.

8. Granting of special benefits (section 126 para. 1 no. 8 of the German Conversion Act)

The special benefits granted to a member of a representative body or a supervisory body of the legal entities involved in the spin-off, to a managing shareholder, to a partner, to an auditor or to a spin-off auditor, which are to be indicated pursuant to section 126 para. 1 no. 8 of the German Conversion Act, are set out in clause 12 of the Spin-off and Transfer Agreement.

Pursuant to clause 12.1 of the Spin-off and Transfer Agreement, in March 2016 the supervisory board of Uniper SE agreed to grant the members of Uniper SE's board of management – Mr Klaus Schäfer, Mr Christopher Delbrück, Mr Keith Martin and Mr Eckhardt Rümmler – a special incentive, the payment and amount of which are subject to the spin-off taking effect. The prerequisites for these special incentives to be paid out is the approval of the spin-off by the general meeting of E.ON SE in June 2016 as well as the registration of the spin-off in E.ON SE's commercial register until end of March 2017 at the latest. The amount of the payment will depend, among others, on the market capitalisation, the credit rating and the enterprise value/EBITDA of Uniper SE as compared to a defined peer group. The supervisory board of Uniper SE will assess these success criteria also taking into account the general market conditions. In addition, the supervisory board will consider the individual contributions of the members of the board of management by way of a discretionary judgement. For Mr Klaus Schäfer the target value is €1.24m and for Mr Christopher Delbrück, Mr Keith Martin and Mr Eckhardt Rümmler the target value is €700,000 each. The amount paid out may be between 50% and 150% of the target value, taking into account the above-mentioned success criteria. The special incentive will be granted on condition that the members of the board of management have expressed their willingness to set up a portfolio in Uniper-shares within the scope of shares holding obligations. Thereunder, the members of the board of management must hold Uniper-shares at the value 100% of their annual basic remuneration during their term of office. The period for the set-up of the respective portfolio of shares amounts to a maximum of four years from the time of the registration of the spin-off in the commercial register of E.ON SE.

Clause 12.2 of the Spin-off and Transfer Agreement contains information in respect of the current and mid-term composition of the supervisory board and board of management of Uniper SE. Pursuant to this clause, the chairman of E.ON SE's board of management, Mr Dr Johannes Teysen, as well as the members of E.ON SE's board of management, Mr Dr Bernhard Reutersberg and Mr Michael Sen, were elected into Uniper SE's supervisory board as shareholder representatives on 23 March 2016. In addition, Mr Dr Bernhard Reutersberg, who will resign from his office as a member of E.ON SE's board of management with effect from 30 June 2016, was elected chairman of the supervisory board of Uniper SE on 4 April 2016. In agreement with E.ON SE's supervisory board, Mr Klaus Schäfer resigned from his office as member of E.ON SE's board of management with effect from 31 December 2015 and was appointed chairman of Uniper AG's board of management with effect from 30 December 2015 on 22 December 2015 as well as chairman of Uniper SE's board of management on 4 April 2016.

Pursuant to clause 12.3 of the Spin-off and Transfer Agreement, the Long Term Incentive Programme of E.ON SE (LTI) will be settled prematurely with regard to Mr Klaus Schäfer, Mr Christopher Delbrück and Mr Eckhardt Rümmler upon the spin-off taking effect, and the LTI tranches ongoing insofar will be paid out. As a result thereof, the virtual E.ON shares assigned to Mr Klaus Schäfer, Mr Christopher Delbrück and Mr Eckhard Rümmler will be settled on the basis of the closing price of the E.ON share at the premature maturity date and of a dividend equivalent calculated prematurely:

| Name | Number of virtual E.ON shares | Value when granted |
|-------------|--------------------------------------|---------------------------|
| Schäfer | 118,820 | €1,354,046 |
| Delbrück | 57,436 | €638,933 |
| Rümmler | 54,130 | €595,056 |

The pay-out amounts will substantially depend on the E.ON share price performance, the average return on capital adjusted for special effects (ROACE) of E.ON SE, and the dividend payments, and may therefore deviate from the figures presented, under certain circumstances even substantially.

In connection with the listing of the shares in Uniper SE, the parties to the agreement intend to take out insurance that is customary in the market regarding the risks typically associated with listing. The insurance cover shall include, *inter alia*, the members of E.ON SE's and Uniper SE's board of management and supervisory board. The parties to the

agreement will agree the insurance cover in relation to the persons and events to be covered, the amount of cover, the insurance premium and its internal distribution (clause 12.4 of the Spin-off and Transfer Agreement).

Apart from the aforementioned special benefits, we did not become aware of any special benefits within the meaning of section 126 para. 1 no. 8 of the German Conversion Act in the course of our audit.

According to the results of our audit, the information provided in the Spin-off and Transfer Agreement in respect of special benefits meets the requirements of section 126 para. 1 no. 8 of the German Conversion Act.

9. Specification of the assets to be transferred (section 126 para. 1 no. 9 of the German Conversion Act)

Pursuant to section 126 para. 1 no. 9 of the German Conversion Act, the Spin-off and Transfer Agreement must contain the exact specification and allocation of the items of assets and liabilities that are transferred to the Acquiring Entity as well as of the businesses (*Betriebe*) and parts of businesses to be transferred, assigning such items to the Acquiring Entity.

Pursuant to clause 5.1 of the Spin-off and Transfer Agreement, E.ON SE will transfer its total stake in Uniper Beteiligungs GmbH, comprising two shares – the share with the serial number 1 having a nominal value of €25,000 as well as the share with the serial number 2 having a nominal value of €1,000 – (“Transferred Shares”), to Uniper SE.

The spin-off will comprise all related rights and duties, including the claim for a distribution of profits as from Spin-off Record Date.

E.ON SE as the current sole shareholder of Uniper Beteiligungs GmbH undertakes not to adopt any shareholders’ resolutions that would change Uniper Beteiligungs GmbH’s share capital existing at the date of this Spin-off and Transfer Agreement. It further undertakes to work until the closing date towards Uniper Beteiligungs GmbH neither disposing of its shares in Uniper Holding GmbH nor adopting, as a majority shareholder of Uniper Holding GmbH, any shareholders’ resolutions as a result of which Uniper Holding GmbH’s share capital existing at the date of this Spin-off and Transfer Agreement

would be changed, nor participating in any such shareholders' resolutions. E.ON SE further undertakes to ensure that, until the closing date, withdrawals from Uniper Holding GmbH's capital reserve will only be made in proportion to the stakes of Uniper Beteiligungs GmbH (53.35%) and Uniper SE (46.65%) in Uniper Holding GmbH (clause 6.2 of the Spin-off and Transfer Agreement).

Pursuant to clause 5.3 of the Spin-off and Transfer Agreement, the parties to the agreement undertake to make all declarations, issue all documents and take all other actions that might additionally be necessary or appropriate in connection with the transfer of the Spin-off Assets.

The items of assets and liabilities attributable to the Spin-off Assets will be determined on the basis of the spin-off balance sheet as at 1 January 2016, 0.00 hrs included in the Spin-off and Transfer Agreement in Annex 3.1 ("Spin-off Balance Sheet"). The Spin-off Balance Sheet was derived from E.ON SE's annual balance sheet prepared as at 31 December 2015, which is part of E.ON SE's annual financial statements, which were audited and approved without qualification by its auditor, PricewaterhouseCoopers Aktiengesellschaft Wirtschaftsprüfungsgesellschaft, Düsseldorf, and approved on 8 March 2016 by E.ON SE's supervisory board (clause 3.1 of the Spin-off and Transfer Agreement).

Pursuant to clause 1.2 of the Spin-off and Transfer Agreement, other items of assets and liabilities and other rights and obligations or legal positions of E.ON SE, which are not attributable to the Spin-off Assets under the Spin-off and Transfer Agreement or are expressly excluded from the transfer in the Spin-off and Transfer Agreement, will not be transferred to Uniper SE.

According to the results of our audit, the information provided in the Spin-off and Transfer Agreement in respect of the stake in Uniper Beteiligungs GmbH to be transferred and the type and amount of such stake is complete and correct.

10. Allocation of the shares in the Acquiring Entity (section 126 para. 1 no. 10 of the German Conversion Act)

Pursuant to section 126 para. 1 no. 10 of the German Conversion Act, the Spin-off and Transfer Agreement must contain the allocation of the shares in the Acquiring Entity to the shareholders of the Transferring Entity as well as the measure applying to their allocation.

Pursuant to clause 10.1 of the Spin-off and Transfer Agreement, the shareholders of E.ON SE will be granted, free of charge, one no-par-value registered share in Uniper SE for ten no-par-value registered shares in E.ON SE based on their previous stake in E.ON SE (on a *pro rata* basis) as consideration for the transfer of the Spin-off Assets to Uniper SE. Treasury shares of E.ON SE will not be taken into account in the allocation of shares in Uniper SE. Accordingly, the shares will be allocated on the basis of the previous participation quota of the shareholders of E.ON SE.

According to our findings, the Spin-off and Transfer Agreement therefore contains the information required in this respect.

11. Consequences for the employees and their representative bodies (section 126 para. 1 no. 11 of the German Conversion Act)

In respect of the consequences of the spin-off for the employees and their representative bodies as well as the measures which are intended to be taken in this context, we refer to clauses 15 and 16 of the Spin-off and Transfer Agreement.

Apart from the aforementioned consequences, we did not become aware of any consequences in the course of our audit. In the course of our audit, we did not find any indications that are in contradiction to the information provided in the Spin-off and Transfer Agreement in this respect, either. According to our findings, the Spin-off and Transfer Agreement is therefore complete and correct in this respect.

II. Correctness of the optional provisions of the Spin-off and Transfer Agreement

In the course of our audit, we did not become aware of any indications that the optional information included in the Spin-off and Transfer Agreement and the annexes thereto is not correct.

E. Result of the audit and final declaration on the adequacy of the share allocation ratio

On the basis of our appointment by the Regional Court (*Landgericht*) of Düsseldorf on 4 August 2015, we carried out the audit of the Spin-off and Transfer Agreement between E.ON SE as Transferring Entity and Uniper SE as Acquiring Entity, which was notarised on 18 April 2016.

As the result of our audit, we state that the minimum components required by section 126 para. 1 of the German Conversion Act are completely and correctly included in the Spin-off and Transfer Agreement and that the Spin-off and Transfer Agreement therefore is in accordance with the statutory provisions.

In the course of the spin-off audit, we did not become aware of any indications that the optional information contained in the Spin-off and Transfer Agreement is not correct.

As described in sections B. and D.I.3. of our audit report, in the present case it is not necessary to carry out business valuations of the assets transferred and the Acquiring Entity in order to determine the share allocation ratio; therefore, it is neither necessary to include information in the audit report relating to the methods applied in the context of the valuation, nor their adequacy nor particular difficulties in connection with the valuation.

In summary, it has to be stated that the method chosen in the present case for determining the share allocation ratio preserves the proportions both with regard to the consideration to be granted to the E.ON shareholders on the basis of their stake in E.ON SE and with regard to the ratio between the value of the Spin-off Assets and the value of the Acquiring Entity. Thus, it is ensured that the shareholders of E.ON SE will not have to accept any change in their assets before and after the spin-off.

According to the results of our audit and on the basis of the clarifications and evidence provided to us as well as on the basis of the disclosures, explanations and information provided to us, we issue the following final declaration on the adequacy of the share allocation ratio (section 126 para. 1 no. 3 of the German Conversion Act) pursuant to section 125 sentence 1 in conjunction with section 12 para. 2 of the German Conversion Act:

“According to our findings and for the reasons set out above, the proposed share allocation ratio, according to which the shareholders of E.ON SE, Düsseldorf, will be granted one no-par-value registered share in Uniper SE, Düsseldorf, for ten no-par-value registered shares in E.ON SE, Düsseldorf, is adequate. No additional cash payments will be granted.”

Düsseldorf, 20 April 2016

Baker Tilly Roelfs AG
Wirtschaftsprüfungsgesellschaft

[*sea*]

[*signature*]

Jochen Reinke
- Auditor (*Wirtschaftsprüfer*) -

[*signature*]

Jochen Breithaupt
- Auditor (*Wirtschaftsprüfer*) -

ANNEXES

| E.ON SE Held Conversations | | | |
|----------------------------|---|---|--|
| Audit Process | | | |
| Date | Business Partner | Matter | Place |
| 25/08/2015 | E.ON SE Baker Tilly Roelfs AG Wirtschaftsprüfungsgesellschaft | Kick-off meeting | Düsseldorf (E.ON SE) |
| 31/08/2015 | E.ON SE Baker Tilly Roelfs AG Wirtschaftsprüfungsgesellschaft | Introduction to the legal step plan | Düsseldorf (E.ON SE) |
| 15/09/2015 | E.ON SE Linklaters LLP Baker Tilly Roelfs AG Wirtschaftsprüfungsgesellschaft | Change transaction structure | Düsseldorf (E.ON SE) |
| 02/10/2015 | E.ON SE Baker Tilly Roelfs AG Wirtschaftsprüfungsgesellschaft | Project organisation, data request | Telephone conference |
| 27/11/2015 | E.ON SE KPMG AG Wirtschaftsprüfungsgesellschaft Baker Tilly Roelfs AG Wirtschaftsprüfungsgesellschaft | Analysis determination share allocation ratio | Düsseldorf (E.ON SE) |
| 17/12/2015 | E.ON SE KPMG AG Wirtschaftsprüfungsgesellschaft Baker Tilly Roelfs AG Wirtschaftsprüfungsgesellschaft | Analysis determination share allocation ratio; balancing agreements; multiple voting rights | Düsseldorf (E.ON SE) |
| 21/01/2016 | E.ON SE KPMG AG Wirtschaftsprüfungsgesellschaft Linklaters LLP Baker Tilly Roelfs AG Wirtschaftsprüfungsgesellschaft | Project status and time table | Telephone conference |
| 04/02/2016 | E.ON SE resp. Uniper SE KPMG AG Wirtschaftsprüfungsgesellschaft Linklaters LLP Baker Tilly Roelfs AG Wirtschaftsprüfungsgesellschaft | Project status and time table; discussion audit evidences; spin-off report | Telephone conference |
| 15/02/2016 | KPMG AG Wirtschaftsprüfungsgesellschaft Baker Tilly Roelfs AG Wirtschaftsprüfungsgesellschaft | Explanation of model for determination of share allocation ratio | Düsseldorf (KPMG AG Wirtschaftsprüfungsgesellschaft) |
| 18/02/2016 | E.ON SE KPMG AG Wirtschaftsprüfungsgesellschaft Linklaters LLP Baker Tilly Roelfs AG | Data request list; model for determination of share allocation ratio | Essen (E.ON SE) |

| E.ON SE Held Conversations | | | |
|----------------------------|---|---|--|
| Audit Process | | | |
| Date | Business Partner | Matter | Place |
| | Wirtschaftsprüfungsgesellschaft | | |
| 31/03/2016 | E.ON SE KPMG AG Wirtschaftsprüfungsgesellschaft Linklaters LLP Baker Tilly Roelfs AG Wirtschaftsprüfungsgesellschaft | Status update; update model for determination of share allocation ratio; payments to the capital reserves; data request list; coordination regarding further appointments | Telephone conference |
| 07/04/2016 | E.ON SE Baker Tilly Roelfs AG Wirtschaftsprüfungsgesellschaft | Accounting option right: explanation "Einsatzwechsler" and adjustment framework agreement and interpretation agreement | Telephone conference |
| 07/04/2016 | E.ON SE KPMG AG Wirtschaftsprüfungsgesellschaft Linklaters LLP Baker Tilly Roelfs AG Wirtschaftsprüfungsgesellschaft | Project status and time table | Telephone conference |
| 14/04/2016 | E.ON SE Linklaters LLP Baker Tilly Roelfs AG Wirtschaftsprüfungsgesellschaft | Spin-off documentation; SE conversion; data delivery; declarations of completeness; time table | Telephone conference |
| 14/04/2016 | E.ON SE PricewaterhouseCoopers Aktiengesellschaft Wirtschaftsprüfungsgesellschaft Baker Tilly Roelfs AG Wirtschaftsprüfungsgesellschaft | Accounting of Uniper Beteiligungs GmbH and Uniper Holding GmbH; audit of capital increase by means of non-cash contribution | Düsseldorf (PricewaterhouseCoopers Aktiengesellschaft Wirtschaftsprüfungsgesellschaft) |
| 15/04/2016 | Uniper SE KPMG AG Wirtschaftsprüfungsgesellschaft Baker Tilly Roelfs AG Wirtschaftsprüfungsgesellschaft | Explanation on model for determination of share allocation ratio; current status | Düsseldorf (Baker Tilly Roelfs AG Wirtschaftsprüfungsgesellschaft) |

[Translator's notes are in square brackets]

General Engagement Terms for Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften [German Public Auditors and Public Audit Firms] as of January 1, 2002

This is an English translation of the German text, which is the sole authoritative version

1. Scope

(1) These engagement terms are applicable to contracts between Wirtschaftsprüfer [German Public Auditors] or Wirtschaftsprüfungsgesellschaften [German Public Audit Firms] (hereinafter collectively referred to as the "Wirtschaftsprüfer") and their clients for audits, consulting and other engagements to the extent that something else has not been expressly agreed to in writing or is not compulsory due to legal requirements.

(2) If, in an individual case, as an exception contractual relations have also been established between the Wirtschaftsprüfer and persons other than the client, the provisions of No. 9 below also apply to such third parties.

2. Scope and performance of the engagement

(1) Subject of the Wirtschaftsprüfer's engagement is the performance of agreed services – not a particular economic result. The engagement is performed in accordance with the Grundsätze ordnungsmäßiger Berufeausübung [Standards of Proper Professional Conduct]. The Wirtschaftsprüfer is entitled to use qualified persons to conduct the engagement.

(2) The application of foreign law requires – except for financial attestation engagements – an express written agreement.

(3) The engagement does not extend – to the extent it is not directed thereto – to an examination of the issue of whether the requirements of tax law or special regulations, such as, for example, laws on price controls, laws limiting competition and Bewirtschaftungsrecht [laws controlling certain aspects of specific business operations] were observed; the same applies to the determination as to whether subsidies, allowances or other benefits may be claimed. The performance of an engagement encompasses auditing procedures aimed at the detection of the defalcation of books and records and other irregularities only if during the conduct of audits grounds therefor arise or if this has been expressly agreed to in writing.

(4) If the legal position changes subsequent to the issuance of the final professional statement, the Wirtschaftsprüfer is not obliged to inform the client of changes or any consequences resulting therefrom.

3. The client's duty to inform

(1) The client must ensure that the Wirtschaftsprüfer – even without his special request – is provided, on a timely basis, with all supporting documents and records required for and is informed of all events and circumstances which may be significant to the performance of the engagement. This also applies to those supporting documents and records, events and circumstances which first become known during the Wirtschaftsprüfer's work.

(2) Upon the Wirtschaftsprüfer's request, the client must confirm in a written statement drafted by the Wirtschaftsprüfer that the supporting documents and records and the information and explanations provided are complete.

4. Ensuring independence

The client guarantees to refrain from everything which may endanger the independence of the Wirtschaftsprüfer's staff. This particularly applies to offers of employment and offers to undertake engagements on one's own account.

5. Reporting and verbal information

If the Wirtschaftsprüfer is required to present the results of his work in writing, only that written presentation is authoritative. For audit engagements the long-form report should be submitted in writing to the extent that nothing else has been agreed to. Verbal statements and information provided by the Wirtschaftsprüfer's staff beyond the engagement agreed to are never binding.

6. Protection of the Wirtschaftsprüfer's intellectual property

The client guarantees that expert opinions, organizational charts, drafts, sketches, schedules and calculations – especially quantity and cost computations – prepared by the Wirtschaftsprüfer within the scope of the engagement will be used only for his own purposes.

7. Transmission of the Wirtschaftsprüfer's professional statement

(1) The transmission of a Wirtschaftsprüfer's professional statements (long-form reports, expert opinions and the like) to a third party requires the Wirtschaftsprüfer's written consent to the extent that the permission to transmit to a certain third party does not result from the engagement terms.

The Wirtschaftsprüfer is liable (within the limits of No. 9) towards third parties only if the prerequisites of the first sentence are given.

(2) The use of the Wirtschaftsprüfer's professional statements for promotional purposes is not permitted; an infringement entitles the Wirtschaftsprüfer to immediately cancel all engagements not yet conducted for the client.

8. Correction of deficiencies

(1) Where there are deficiencies, the client is entitled to subsequent fulfillment [of the contract]. The client may demand a reduction in fees or the cancellation of the contract only for the failure to subsequently fulfill [the contract]; if the engagement was awarded by a person carrying on a commercial business as part of that commercial business, a government-owned legal person under public law or a special government-owned fund under public law, the client may demand the cancellation of the contract only if the services rendered are of no interest to him due to the failure to subsequently fulfill [the contract]. No. 9 applies to the extent that claims for damages exist beyond this.

(2) The client must assert his claim for the correction of deficiencies in writing without delay. Claims pursuant to the first paragraph not arising from an intentional tort cease to be enforceable one year after the commencement of the statutory time limit for enforcement.

(3) Obvious deficiencies, such as typing and arithmetical errors and formelle Mängel [deficiencies associated with technicalities] contained in a Wirtschaftsprüfer's professional statements (long-form reports, expert opinions and the like) may be corrected – and also be applicable versus third parties – by the Wirtschaftsprüfer at any time. Errors which may call into question the conclusions contained in the Wirtschaftsprüfer's professional statements entitle the Wirtschaftsprüfer to withdraw – also versus third parties – such statements. In the cases noted the Wirtschaftsprüfer should first hear the client, if possible.

9. Liability

(1) The liability limitation of § ["Article"] 323 (2) ["paragraph 2"] HGB ["Handelsgesetzbuch": German Commercial Code] applies to statutory audits required by law.

(2) Liability for negligence: An individual case of damages.

If neither No. 1 is applicable nor a regulation exists in an individual case, pursuant to § 54a (1) no. 2 WPO ["Wirtschaftsprüferordnung": Law regulating the Profession of Wirtschaftsprüfer] the liability of the Wirtschaftsprüfer for claims of compensatory damages of any kind – except for damages resulting from injury to life, body or health – for an individual case of damages resulting from negligence is limited to € 4 million; this also applies if liability to a person other than the client should be established. An individual case of damages also exists in relation to a uniform damage arising from a number of breaches of duty. The individual case of damages encompasses all consequences from a breach of duty without taking into account whether the damages occurred in one year or in a number of successive years. In this case multiple acts or omissions of acts based on a similar source of error or on a source of error of an equivalent nature are deemed to be a uniform breach of duty if the matters in question are legally or economically connected to one another. In this event the claim against the Wirtschaftsprüfer is limited to € 5 million. The limitation to the fivefold of the minimum amount insured does not apply to compulsory audits required by law.

(3) Preclusive deadlines

A compensatory damages claim may only be lodged within a preclusive deadline of one year of the rightful claimant having become aware of the damage and of the event giving rise to the claim – at the very latest, however, within 5 years subsequent to the event giving rise to the claim. The claim expires if legal action is not taken within a six month deadline subsequent to the written refusal of acceptance of the indemnity and the client was informed of this consequence.

The right to assert the bar of the preclusive deadline remains unaffected. Sentences 1 to 3 also apply to legally required audits with statutory liability limits.

10. Supplementary provisions for audit engagements

- (1) A subsequent amendment or abridgement of the financial statements or management report audited by a Wirtschaftsprüfer and accompanied by an auditor's report requires the written consent of the Wirtschaftsprüfer even if these documents are not published. If the Wirtschaftsprüfer has not issued an auditor's report, a reference to the audit conducted by the Wirtschaftsprüfer in the management report or elsewhere specified for the general public is permitted only with the Wirtschaftsprüfer's written consent and using the wording authorized by him.
- (2) If the Wirtschaftsprüfer revokes the auditor's report, it may no longer be used. If the client has already made use of the auditor's report, he must announce its revocation upon the Wirtschaftsprüfer's request.
- (3) The client has a right to 5 copies of the long-form report. Additional copies will be charged for separately.

11. Supplementary provisions for assistance with tax matters

- (1) When advising on an individual tax issue as well as when furnishing continuous tax advice, the Wirtschaftsprüfer is entitled to assume that the facts provided by the client – especially numerical disclosures – are correct and complete; this also applies to bookkeeping engagements. Nevertheless, he is obliged to inform the client of any errors he has discovered.
- (2) The tax consulting engagement does not encompass procedures required to meet deadlines, unless the Wirtschaftsprüfer has explicitly accepted the engagement for this. In this event the client must provide the Wirtschaftsprüfer, on a timely basis, all supporting documents and records – especially tax assessments – material to meeting the deadlines, so that the Wirtschaftsprüfer has an appropriate time period available to work therewith.
- (3) In the absence of other written agreements, continuous tax advice encompasses the following work during the contract period:
- preparation of annual tax returns for income tax, corporation tax and business tax, as well as net worth tax returns on the basis of the annual financial statements and other schedules and evidence required for tax purposes to be submitted by the client
 - examination of tax assessments in relation to the taxes mentioned in (a)
 - negotiations with tax authorities in connection with the returns and assessments mentioned in (a) and (b)
 - participation in tax audits and evaluation of the results of tax audits with respect to the taxes mentioned in (a)
 - participation in Einspruchs- und Beschwerdeverfahren [appeals and complaint procedures] with respect to the taxes mentioned in (a).

In the afore-mentioned work the Wirtschaftsprüfer takes material published legal decisions and administrative interpretations into account.

- (4) If the Wirtschaftsprüfer receives a fixed fee for continuous tax advice, in the absence of other written agreements the work mentioned under paragraph 3 (d) and (e) will be charged separately.
- (5) Services with respect to special individual issues for income tax, corporate tax, business tax, valuation procedures for property and net worth taxation, and net worth tax as well as all issues in relation to sales tax, wages tax, other taxes and dues require a special engagement. This also applies to:
- the treatment of nonrecurring tax matters, e. g. in the field of estate tax, capital transactions tax, real estate acquisition tax
 - participation and representation in proceedings before tax and administrative courts and in criminal proceedings with respect to taxes, and
 - the granting of advice and work with respect to expert opinions in connection with conversions of legal form, mergers, capital increases and reductions, financial reorganizations, admission and retirement of partners or shareholders, sale of a business, liquidations and the like.

- (6) To the extent that the annual sales tax return is accepted as additional work, this does not include the review of any special accounting prerequisites nor of the issue as to whether all potential legal sales tax reductions have been claimed. No guarantee is assumed for the completeness of the supporting documents and records to validate the deduction of the input tax credit.

12. Confidentiality towards third parties and data security

- (1) Pursuant to the law the Wirtschaftsprüfer is obliged to treat all facts that he comes to know in connection with his work as confidential, irrespective of whether these concern the client himself or his business associations, unless the client releases him from this obligation.
- (2) The Wirtschaftsprüfer may only release long-form reports, expert opinions and other written statements on the results of his work to third parties with the consent of his client.
- (3) The Wirtschaftsprüfer is entitled – within the purposes stipulated by the client – to process personal data entrusted to him or allow them to be processed by third parties.

13. Default of acceptance and lack of cooperation on the part of the client

If the client defaults in accepting the services offered by the Wirtschaftsprüfer or if the client does not provide the assistance incumbent on him pursuant to No. 3 or otherwise, the Wirtschaftsprüfer is entitled to cancel the contract immediately. The Wirtschaftsprüfer's right to compensation for additional expenses as well as for damages caused by the default or the lack of assistance is not affected, even if the Wirtschaftsprüfer does not exercise his right to cancel.

14. Remuneration

- (1) In addition to his claims for fees or remuneration, the Wirtschaftsprüfer is entitled to reimbursement of his outlays: sales tax will be billed separately. He may claim appropriate advances for remuneration and reimbursement of outlays and make the rendering of his services dependent upon the complete satisfaction of his claims. Multiple clients awarding engagements are jointly and severally liable.
- (2) Any set off against the Wirtschaftsprüfer's claims for remuneration and reimbursement of outlays is permitted only for undisputed claims or claims determined to be legally valid.

15. Retention and return of supporting documentation and records

- (1) The Wirtschaftsprüfer retains, for ten years, the supporting documents and records in connection with the completion of the engagement – that had been provided to him and that he has prepared himself – as well as the correspondence with respect to the engagement.
- (2) After the settlement of his claims arising from the engagement, the Wirtschaftsprüfer, upon the request of the client, must return all supporting documents and records obtained from him or for him by reason of his work on the engagement. This does not, however, apply to correspondence exchanged between the Wirtschaftsprüfer and his client and to any documents of which the client already has the original or a copy. The Wirtschaftsprüfer may prepare and retain copies or photocopies of supporting documents and records which he returns to the client.

16. Applicable law

Only German law applies to the engagement, its conduct and any claims arising therefrom.