

Agreement in respect of the transfer of certain shares  
in Západoslovenská energetika, a.s.

made between

the Ministry of Economy of the Slovak Republic, acting on behalf of the Slovak  
Republic

and

E.ON Group  
represented by E.ON Slovensko, a.s. and E.ON Energie AG

This Agreement in respect of the transfer of certain shares in Západoslovenská energetika, a.s. (the “**Agreement**”) is made on below stated date by and among the following parties:

1. **The Ministry of Economy of the Slovak Republic**, acting on behalf of the Slovak Republic (“**Ministry**”); and
2. **E.ON Energie AG**, registered office at Arnulfstrasse 203, 806 34 Munich, Germany, registered in the Commercial Register maintained by the Municipal Court in Munich, HRB 132000 (“**E.ON Energie**”); and
3. **E.ON Slovensko, a.s.**, registered office at Čulenova 6, 811 09 Bratislava, identification number 36 837 318, registered in the Commercial Register maintained by the Bratislava I District Court, Section: Sa, Insertion No: 4243/B, as 100% subsidiary of E.ON Energie (“**E.ON Slovensko**”).

each of the foregoing also referred to as a “Party” and, collectively, the “Parties” and E.ON Energie AG and E.ON Slovensko, a.s. as “E.ON”.

### **RECITALS**

- A. The Parties are parties to an amended and restated shareholders’ agreement entered into between the National Property Fund of the Slovak Republic, a Slovak legal entity established pursuant to Act No. 253/1991 Coll., having its registered office at Trnavská cesta 100, Bratislava 821 01, identification number 17 333 768 (“**Fund**”), the Ministry, E.ON Energie AG and European Bank for Reconstruction and Development, an international financial institution formed under the Agreement Establishing the European Bank for Reconstruction and Development signed in Paris on 29 May 1990, having its headquarters at One Exchange Square, London EC2A 2JN, United Kingdom on [●] in respect of Západoslovenská energetika, a.s., joint stock company registered under the laws of the Slovak Republic with the identification number 35823551, and its registered seat at Čulenova 6, Bratislava 81647, the Slovak Republic (“**Company**”) (the “**Shareholders’ Agreement**”).
- B. According to the Act No. 197/2014 Coll. by which the Act No. 92/1991 Coll. on transfer conditions of state property to another person as amended is amending, on 1 August 2014 all the Shares (as defined below), held by the Fund in the Company, were assigned to the state on behalf of which the Ministry is acting.
- C. The Ministry intends to transfer all the Shares (as defined below) held by the state in the Company to a Wholly-Owned Subsidiary (as defined below) of a Public Institution (as defined below) (the “**Intended Transfer**”).
- D. E.ON agrees to the Intended Transfer subject to the terms and conditions set out in this Agreement.

Therefore, the Parties have agreed as follows:

## **1. DEFINITIONS AND INTERPRETATIONS**

### **1.1 Definitions**

Capitalized terms used herein but not otherwise defined or unless the context suggests otherwise shall have the following meanings:

**“Articles of Association”** shall mean the statutes (“Stanovy”) of the Company.

**“Associate”** shall mean with respect to any person, any other person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under common Control with, the person first mentioned. For purposes of this Agreement, the term “Control” as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management of that person, whether through ownership of shares, voting securities, partnership or other ownership interests, agreement or otherwise. If one person owns, directly or indirectly, 50% or more of the share capital, voting securities, partnership or other ownership interests of another person, that person shall be deemed to Control that other person.

**“Business Day”** shall mean any day except for Saturdays, Sundays, and the official holidays and non-working days in the Slovak Republic.

**“Confidential Information”** is defined in Sub-Clause 4.1.

**“E.ON Energie”** is defined in the heading on page 2 of this Agreement.

**“E.ON Slovensko”** is defined in the heading on page 2 of this Agreement.

**“E.ON”** is defined in the heading on page 2 of this Agreement.

**“Former Wholly-Owned Subsidiary”** is defined in Sub-Clause 2.2. a).

**“General Meeting”** shall mean the general meeting (valné zhromaždenie) of the Company.

**“Ministry”** is defined the heading on page 2 of this Agreement.

**“Public Institutions”** shall mean the Government of the Slovak Republic, and ministries and administrative bodies of the Slovak Republic.

**“Receiving Party”** is defined in Sub-Clause 3.1. b).

**“Rules”** is defined in Sub-Clause 6.2.

**“Shareholders’ Agreement”** is defined in Recital A.

**“Shares”** shall mean (name) registered shares of the Company.

**“Wholly-Owned Subsidiary”** means, in respect of a person, any person in which such person, directly or indirectly, beneficially owns one hundred per cent. (100%) of both the ownership interest (determined by equity or economic interests) in, and the voting control of, such person.

## **1.2 Interpretations**

- a) References to Clauses and Sub-Clauses are to clauses and sub-clauses of this Agreement.

## **2. INTENDED TRANSFER**

### **2.1 Agreement to the Intended Transfer**

2.1.1 E.ON hereby agrees to the Intended Transfer and confirms that

- (i) the Intended Transfer shall be considered a “Permitted Transfer” pursuant to sub-clause 4.3. a) (iv) of the Shareholders’ Agreement;
- (ii) the provisions on pre-emptive rights pursuant to sub-clauses 4.2. d) – 4.2. o) (inclusive) of the Shareholders’ Agreement shall not apply to the Intended Transfer, provided that the provisions of sub – clause 4.2. l) shall apply to the Intended Transfer, as though the reference to “Transfer Shares” therein were a reference to the Shares to be transferred under the Intended Transfer; and
- (iii) E.ON will vote in favour of the Intended Transfer at the General Meeting at which the resolution of such transfer will be adopted pursuant to the relevant provisions under the Articles of Association (as envisaged pursuant to sub-clause 4.1. b) of the Shareholders’ Agreement).

2.1.2 The Ministry hereby agrees and confirms that

- (i) the Intended Transfer shall be executed fully in accordance with the Shareholders’ Agreement and based on the Intended Transfer the Wholly-Owned Subsidiary of a Public Institution will become a shareholder of the Company instead of the state;
- (ii) the Wholly-Owned Subsidiary will be the Wholly-Owned Subsidiary (one hundred per cent, i.e. 100%) of a Public Institution during all the time of being the shareholder of the Company and the exercise of the Wholly-Owned Subsidiary rights and duties as a shareholder of the Company shall be exercised by the Ministry or by the Wholly-Owned Subsidiary;
- (iii) in case the Wholly-Owned Subsidiary of a Public Institution ceases to be a Wholly-Owned Subsidiary of a Public Institution the Ministry is obliged to ensure the Reverse Transfer as defined in Sub-Clause 2.2 below;

- (iv) the Shareholders' Agreement remains in full force and the Ministry secures the validity and effectiveness of the Shareholders' Agreement also after the Intended Transfer;
- (v) the Ministry is obliged to prove trustworthily that the Wholly-Owned Subsidiary of a Public Institution is the Wholly-Owned Subsidiary of a Public Institution anytime upon the request of the E.ON, no later than ten (10) Business Days after the delivery of such written request;
- (vi) the Ministry is obliged to inform E.ON about intended transfer of the shares (all or part of them) in the Wholly-Owned Subsidiary of a Public Institution from the Public Institution to the third person according to which the Wholly-Owned Subsidiary will become the Former Wholly-Owned Subsidiary (as defined below in Sub-Clause 2.2).

## 2.2 Reverse Transfer

- a) If the state on behalf of which the Ministry is acting, transfers Shares to a Wholly-Owned Subsidiary of a Public Institution that subsequently to such transfer ceases to be a Wholly-Owned Subsidiary of a Public Institution (the "**Former Wholly-Owned Subsidiary**"), then both parties to such transfer shall be obliged to ensure that a transfer of all the Shares, originally transferred to the Former Wholly-Owned Subsidiary, from the Former Wholly-Owned Subsidiary to the state, to a Public Institution or to a Wholly-Owned Subsidiary of a Public Institution is executed no later than within sixty (60) days after the Former Wholly-Owned Subsidiary ceased to be a Wholly-Owned Subsidiary of a Public Institution. Along with such transfer of the Shares, all rights and obligations under the Shareholders' Agreement shall be assigned and transferred to the state, the Public Institution or the Wholly-Owned Subsidiary of a Public Institution, as the case may be, to which the Shares are to be transferred to which assignment and transfer the Parties give their explicit advance consent.
- b) If the state transfers all its Shares to a Wholly-Owned Subsidiary of a Public Institution, the Ministry is obliged to ensure that the relevant Wholly-Owned Subsidiary of a Public Institution carries out the obligations imposed on the state and Ministry under the Shareholders' Agreement as though it was Ministry.

## 2.3 References to a Public Institution in the Shareholders' Agreement

The Parties agree that references to a "Public Institution" in sub-clauses 4.4 and 6.2 of the Shareholders' Agreement shall be deemed to include references to a Wholly-Owned Subsidiary of a Public Institution and the Shareholders' Agreement shall be hereby amended accordingly.

## 2.4 Adaptations of the Shareholders' Agreement

The Parties agree that after the Intended Transfer, no later than ninety (90) Business Days after the effectiveness of the Intended Transfer, the Parties are obliged to amend the Shareholders' Agreement and adapt it according to the current status corresponding

with reality of shareholders' relationships in the Company and according to this Agreement.

### **3. CONFIDENTIALITY**

#### **3.1 Confidential Information**

- a) For the purposes of this Agreement, the term "Confidential Information" shall mean any information in relation to the business of the Company, any Subsidiary or any of the Parties, disclosed by the Company, any Subsidiary or a Party, to any Party when negotiating, executing or performing the transactions contemplated by this Agreement, and furthermore during the continuance of this Agreement, unless such information is expressly identified by the person so disclosing it as information that is neither protected nor confidential, unless Clause The Confidential Information shall also include the details of the negotiations of this Agreement.
- b) The Confidential Information shall not include information that is generally known to the public or is known to the Party receiving it (the "**Receiving Party**") (which fact must be supported by written records) at the time when first obtained by the Receiving Party.
- c) The Confidential Information shall lose its confidential character if it becomes part of the public domain from the time when it enters the public domain or when such information is lawfully delivered to the Receiving Party without any restrictions from any third person, or when the Receiving Party discloses or develops such information independently of any other disclosure made under this Agreement.

#### **3.2 Confidentiality Undertaking**

- a) The Parties agree and acknowledge that the Confidential Information constitutes or contains the subject-matter of the commercial secrecy of one or more of the Parties, or the Company or the relevant Subsidiary, is meant to be kept confidential and should be protected against any unauthorized disclosure or dissemination.
- b) Each Party hereto shall maintain the confidentiality of the Confidential Information, use such Confidential Information exclusively for the purposes of the performance of this Agreement, take all necessary steps aimed at protecting and securing the Confidential Information and not disclose such information to any other person, except for Associates, directors, employees or other representatives of such Party, including its attorneys, accountants, consultants and financial advisers who are committed to protect the Confidential Information under conditions at least as stringent as those contained in this Agreement.
- c) The confidentiality undertaking of the Parties contained in the preceding paragraph shall not apply to the cases when
  - (i) the Confidential Information is disclosed, communicated, disseminated or used by a Receiving Party with the prior written consent of the disclosing person; or

- (ii) the Confidential Information is disclosed or communicated as may be required by applicable legal regulations, or stock market or similar disclosure rules, or order of a court or administrative authority of competent jurisdiction; or
- (iii) the Confidential Information is disclosed to a court or arbitral tribunal as evidence.

### **3.3 Publication of this Agreement**

The Ministry shall publish this Agreement pursuant to and in accordance with the requirements of Section 5a of Act No. 211/2000 Coll., on Free Access to Information, as amended. For the avoidance of doubt, this provision is without prejudice to the right of E.ON, under and in accordance with Slovak law, to take all the necessary steps to proceed with the publication of this Agreement should the Ministry fail to comply with such undertaking.

## **4. TERMINATION AND REVISION**

### **4.1 Term of Agreement**

- a) This Agreement is concluded for an indefinite period of time.
- b) Except for the cases mentioned in Sub-Clause 4.2., this Agreement is not terminable by any Party's unilateral notice. This Agreement, however, may be terminated at any time upon the Parties' unanimous consent in writing.

### **4.2 Termination by Notice**

- a) This Agreement may be terminated upon one (1) month written notice by E.ON delivered to the Ministry in the case that the combined aggregate holding of Shares by the state and any Public Institution and any Wholly-Owned Subsidiary of a Public Institution falls to a level representing less than one third of the registered capital of the Company.
- b) This Agreement may be terminated upon one (1) month written notice served by the Ministry and delivered to E.ON in the case that the combined aggregate holding of Shares by E.ON and any Associate of E.ON falls to a level representing less than one third of the registered capital of the Company.

## **5. NOTICES**

### **5.1 Addresses**

All notices and other communications that are required or permitted to be given under this Agreement shall be in writing and shall be considered to have been duly given if delivered personally (including via courier) or by registered mail (return receipt requested) to the following address:

- a) **if to the Ministry:**

Ministry of the Economy of the Slovak Republic  
Mierová 19  
827 15 Bratislava, Slovak Republic  
Attention: Minister of the Economy of the Slovak Republic  
Fax number: +421243423949  
Telephone number: +421248547003

**b) if to E.ON:**

E.ON  
Čulenova 6  
811 09 Bratislava, Slovak Republic  
Attention: JUDr. Peter Olajoš  
Fax number: +421250614956  
Telephone number: +421250612244/+421905718845  
E mail: peter.olajos@zse.sk

and/or to any such other addressee and/or address as any of the Parties have specified by notice delivered in accordance with this Clause 5 to the other Parties.

## **5.2 Date of delivery**

Each notice or other communication which shall be delivered personally or mailed, shall be deemed sufficiently given, served, sent, received or delivered for all purposes on the first Business Day following the date that it is delivered to the addressee (while the return receipt, the delivery receipt, or the affidavit of courier shall be deemed conclusive, but not exclusive evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

## **6. GOVERNING LAW AND DISPUTE RESOLUTION**

### **6.1 Governing Law**

This Agreement and the legal relations of the Parties hereunder shall be construed and interpreted in accordance with the laws of the Slovak Republic without reference to conflict of laws provisions.

### **6.2 Dispute Resolution**

- a) Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity hereof, shall be settled by arbitration under the Rules of Arbitration of the International Chamber of Commerce as at present in force (the “Rules”). There shall be one (1) arbitrator appointed by the International Court of Arbitration of the International Chamber of Commerce in accordance with the Rules. The place of arbitration shall be Vienna, Austria and the English language shall be used throughout the arbitral proceedings. To the extent to which the Rules do not provide otherwise, the Austrian law of procedure governing international arbitration shall apply. Any rights under applicable law to appeal any arbitration award to, or to



seek determination of a preliminary point of law by, the courts of any jurisdiction are hereby waived. The arbitral tribunal shall not be authorized to take or provide, and no Party may or shall be authorized to seek from any judicial authority any interim or conservatory measures of protection or pre-award relief against any other Party, any provision of applicable law and/or the Rules notwithstanding.

### **6.3. Waiver of Sovereign Immunity**

The Parties recognize and acknowledge that this Agreement constitutes a commercial transaction. Each of the Parties hereby waives irrevocably, to the fullest extent permitted by law, any immunity from jurisdiction to which it might otherwise be entitled in any action arising out of or based on this Agreement which may be instituted as provided in this Agreement. Such waiver constitutes only a limited and specific waiver for the purpose of this Agreement and under no circumstances shall it be interpreted as a general waiver by any Party or a waiver with respect to proceedings unrelated to this Agreement. Further, this waiver shall not be interpreted to include the waiver of any immunity with respect to: (i) present or future “premises of the mission” as defined in the Vienna Convention on Diplomatic Relations signed in 1961, (ii) “consular premises” as defined in the Vienna Convention on Consular Relations signed in 1963, (iii) any other property or assets used solely or mainly for official state purposes in the Slovak Republic or elsewhere, (iv) military property or military assets or property or assets of the Slovak Republic related thereto, or (v) assets which may under applicable law be owned solely by the Slovak Republic.

## **7. FINAL PROVISIONS**

### **7.1 Amendments**

This Agreement may only be modified or amended in writing upon the unanimous consent of all the Parties.

### **7.2 Assignment**

No Party hereto may assign and transfer the rights and obligations under this Agreement, in whole or in part, without the prior written consent of the other Parties.

### **7.3 Surviving Provisions**

- a) The confidentiality undertaking in Clause 3 shall survive the termination of this Agreement or the discontinuation of its applicability in respect of one or more of the applicable Parties for two (2) years.

### **7.4 Original Copies and Language Versions**

- a) This Agreement has been executed in six original copies in the Slovak language version and six original copies in the English language version.
- b) In the case of any discrepancy or conflict between the Slovak and English language versions of this Agreement, the English language version shall prevail.

## **7.5 Breach of the obligation**

The Parties agree that any breach of the obligation according to this Agreement means a Material Breach of the Shareholders' Agreement with all consequences and sanctions stated in the Shareholders' Agreement.

**The Ministry of Economy of the Slovak Republic acting on behalf of the Slovak Republic**

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Name: Ing. Pavol Pavlis  
Title: Minister of the Economy of the Slovak Republic  
Place: Bratislava  
Date:.....

**E.ON Energie AG**

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Name: JUDr. Peter Olajoš  
Title: on the basis of attorney  
Place: Bratislava  
Date:.....

**E.ON Slovensko, a.s.**

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Name: Jochen Kley  
Title: Chairman of the Board of Directors  
Place: Bratislava  
Date:.....

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Name: Marian Rusko  
Title: Member of the Board of Directors  
Place: Bratislava  
Date:.....