

Federal Ministry  
for Economic Affairs and Climate Action

Order in accordance with section 6 of the Foreign Trade and Payments Act  
concerning the shares in Gazprom Germania GmbH

of 4 April 2022

I hereby order the following, in consultation with the Federal Foreign Office, the Federal Ministry of Finance and the Deutsche Bundesbank, on the basis of section 6 (1) sentence 1 in conjunction with section 4 (1) no. 4 and section 13 (6) of the Foreign Trade and Payments Act:

1. With regard to all voting rights deriving from the shares in Gazprom Germania GmbH, fiduciary management by the Bundesnetzagentur (Federal Network Agency) is imposed until 30 September 2022 in line with the following nos. 2 to 4.
2. The exercise of the voting rights of the shareholders of Gazprom Germania GmbH is not permitted.
3. The voting rights deriving from the shares in Gazprom Germania GmbH are hereby transferred to the Bundesnetzagentur. In particular, the Bundesnetzagentur is authorised to remove members of the management and appoint new members and to issue instructions to the management.
4. The right to manage and dispose of the assets of Gazprom Germania GmbH is restricted and is made subject to the approval of the Bundesnetzagentur.

## Justification

### I. Background

#### 1. Gazprom Germania GmbH

Gazprom Germania GmbH ("**Gazprom Germania**"), based in Berlin, is a domestic company and operates critical infrastructure within the meaning of the Act on the Federal Office for Information Security in the field of the supply of gas in the energy sector in Germany itself and via its subsidiaries.

#### 2. Acquisition of all voting rights by Joint Stock Company Palmary

Until 25 March 2022, Gazprom Export LLC ("**GPE**"), based in Russia, was the sole shareholder of Gazprom Germania. GPE, in turn, is a 100 per cent subsidiary of Public Joint Stock Company Gazprom, based in Russia ("**PJSC Gazprom**").

The shares in Gazprom Germania, 100 per cent of which were held by GPE, were transferred to a company called Gazprom export business services LLC (“**GPEBS**”), based in Russia, on 25 March 2022. The Federal Ministry for Economic Affairs and Climate Action has a copy of a notarised confirmation in accordance with section 40 (2) of the Limited Liability Companies Act on the list of shareholders of Gazprom Germania GmbH of 25 March 2022. It is not clear who is behind GPEBS in commercial and legal terms. The name is suggestive of an affiliation with the Gazprom group.

According to an extract from the Russian company register of 1 April 2022, 0.1 per cent of the shares in GPEBS were transferred to Joint Stock Company Palmary (“**Palmary**”) on 31 March 2022. According to Gazprom Germania, the remaining 99.9 per cent of shares in GPEBS are held by GPEBS itself. This means that Palmary controls 100 per cent of the voting rights in GPEBS and thus also in Gazprom Germania, because the remaining shares in GPEBS are held in-house by GPEBS and therefore do not represent voting rights. It is not clear who is behind Palmary in commercial and legal terms.

The Russian Gazprom group has stated that it disposed of its shareholding in the German Gazprom group on 31 March 2022. It did not state who is supposed to be the new commercial and legal owner of this shareholding.

The acquisition by GPEBS and Palmary was not notified to the Federal Ministry for Economic Affairs and Climate Action, in violation of the obligation under section 55a (4) of the Foreign Trade and Payments Ordinance.

### **3. Shareholders’ decision to liquidate Gazprom Germania**

On 1 April 2022, in violation of the ban on the exercise of voting rights under section 15 (4) sentence 1 no. 1 of the Foreign Trade and Payments Act, GPEBS formulated a notarised resolution by the shareholders of Gazprom Germania, in which inter alia the decision on the voluntary liquidation of Gazprom Germania is announced and in which the management of Gazprom Germania is instructed to carry out the procedure of the voluntary liquidation.

## **II. Legal assessment**

In accordance with section 6 (1) sentence 1 in conjunction with section 4 subsection 1 no. 4 and section 13 (6) of the Foreign Trade and Payments Act, in the field of foreign trade and payments the Federal Ministry for Economic Affairs and Climate Action can issue an administrative act restricting transactions or actions or imposing obligations to act in order to avert a danger in a specific instance to the public order or security of the Federal Republic of Germany or of another Member State of the European Union.

Under section 15 (5) sentence 2 no. 3 of the Foreign Trade and Payments Act, an ordinance having the force of law can regulate the transfer of shares of voting rights to a fiduciary manager to the extent that this is necessary to ensure the orderly implementation of an assessment procedure or the effectiveness of a prohibition. No use has so far been made by the issuer of the authorisation to issue such ordinances, which was only introduced in June 2021, so that an approach based on a specific intervention is required in order to ensure an orderly execution of the assessment procedure.

The order of fiduciary management is necessary in order to guarantee the public order or the security of the Federal Republic of Germany within the meaning of section 4 (1) of the Foreign Trade and Payments Act. In the case of Gazprom Germania, the company is an operator of critical infrastructure within the meaning of the Act on the Federal Office for Information Security and is therefore of outstanding significance for the supply of gas in Germany. The acquiring party has not complied with the notification requirement under section 55a (4) sentence 1 of the Foreign Trade and Payments Ordinance and has also violated the ban on the exercise of voting rights under section 15 (4) sentence 1 no. 1 of the Foreign Trade and Payments Act and ordered a liquidation of the domestic company Gazprom Germania, which would have meant the end of the existence in legal terms of Gazprom Germania. In view of these violations, there is a specific and present danger to the orderly holding of the assessment procedure and thus the safeguarding of public order or security.

The order is proportionate. It is suitable to avert the danger to the public order or security because the danger derives specifically, as a result of the de facto execution of the acquisition, from the exercise of voting rights by non-EU parties acquiring the company like GPEBS and Palmary, parties about which further knowledge is lacking. It is also necessary. There are no less severe and equally suitable means. In particular, taking recourse to measures in the investment assessment procedure are not equally effective, since there is a substantial risk that the existing prohibition on the exercise of voting rights will continue to be disregarded. The order is appropriate. The severity of the intervention stands in an appropriate relationship to the purpose pursued, i.e. to ensure the orderly execution of the investment assessment procedure. This is particularly the case in view of the outstanding significance of Gazprom Germania as an operator of critical infrastructure for the supply of gas in Germany.

Due to the exigent circumstances, the order is made in accordance with section 13 (6) of the Foreign Trade and Payments Act in consultation with the Federal Foreign Office, the Federal Ministry of Finance and the Deutsche Bundesbank.

This administrative act becomes effective upon publication in the Federal Gazette (section 6 (1)a Foreign Trade and Payments Act) and is immediately enforceable by law (section 14 (2) Foreign Trade and Payments Act).

### **Information on legal remedies**

This decision can be challenged within a month of its publication at the Berlin Administrative Court, Kirchstraße 7, 10557 Berlin-Moabit.

Berlin, 4 April 2022

The Federal Minister  
for Economic Affairs and Climate Action

On behalf of the Federal Minister

Udo Philipp