

The EC conditionally approves state aid to Uniper and SEFE

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On 20 December 2022, the European Commission (EC) approved Germany's requests for state aid to be offered to the nationalised energy companies Uniper and Securing Energy for Europe (SEFE, until June 2022 known as Gazprom Germania). In 2022, both companies faced insolvency due to Moscow halting gas supplies to Germany which had been effected under long-term contracts. To be able to meet their obligations to their end customers, which mainly include utility companies and major industrial facilities, these two companies had to purchase gas at the hub at the current prices, which were many times higher than the price agreed in the contracts. This was generating multimillion-euro losses every day. In order to rescue the companies and prevent them going bankrupt, Berlin decided to nationalise them: in the case of Uniper, the nationalisation happened after an agreement with its main stakeholder, the Finnish-owned Fortum (see '[Germany: nationalisation of Uniper](#)'), and in the case of SEFE, this was done on the basis of an administrative decision, with no agreement being made with the company's former owner, the Russian Gazprom (see '[Germany: nationalisation of Gazprom's gas assets](#)').

To restore the companies' financial liquidity, Berlin submitted a request to the EC to approve a plan for their recapitalisation. In accordance with the EC's decision, Uniper will receive a total of up to €34.5 billion, including €8 billion to purchase a package of shares, as a result of which the German state will own nearly 99% of the company's stake. Berlin will be allowed to transfer the remaining amount (up to €26.5 billion) to these companies in quarterly instalments to offset the losses they expect in 2023 and 2024. In the case of SEFE, the EC approved a plan to recapitalise the company, which is based on injecting €6.3 billion into it by converting a portion of the loan it had received from the state-owned bank KfW (totalling €13.8 billion) into the company's equity.

The EC has made its approval to the companies' recapitalisation plan conditional upon the implementation of several remedial measures. The first requires the companies to divest some of their assets. For example, Uniper will need to sell the following assets by the end of 2026: 84% of its stake in the Unipro energy company (Russia); its entire heat generation business in Germany; its coal-fired power plant in Datteln (Germany) and gas-fired power plant in Gönyű (Hungary); its electricity generation business in North America, excluding the gas and LNG segments and hydrogen generation capabilities; 20% of its stake in the OPAL gas pipeline (Germany); 20% of its indirect stake in the BBL gas pipeline (the section connecting the Netherlands and the United Kingdom) and 18% of its stake in the Latvijas Gāze gas company (Latvia). SEFE, for its part, is required to divest all of its assets connected with its business activities in Switzerland, Romania, Bulgaria, the Czech Republic,

Slovakia, Hungary and Mexico, as well as the SEFE Mobility company, which owns a chain of filling stations.

In addition, Berlin has pledged to reduce the state-controlled stake in both companies by the end of 2028 to no more than 25% plus one share (the relevant plans are to be submitted to the EC by the end of 2023). Moreover, in 2023 the federal government will be required to present to the EC its long-term development strategies for these companies in the new circumstances: should these fail to include positive viability prospects, Germany will need to notify the EC of the specific restructuring plans. Furthermore, until the end of 2026 (or until the state has reduced its stake to 25% plus one share) Uniper and SEFE will not be allowed either to purchase stakes in other companies, unless it is demonstrated that such a move is indispensable from the point of view of their undisturbed operation, or to pay out bonuses to members of their executive bodies.

Both the nationalisation and recapitalisation processes were finalised at the end of December 2022. In the case of SEFE, the deadline for appealing the nationalisation decision has already expired: Gazprom decided not to challenge it in the German courts. As regards Uniper, on 19 December 2022 the company's general shareholders' meeting approved the changes to its structure. Three days later, the first instalment of aid was transferred to its account (€8 billion intended for the purchase of shares, and €5.5 billion to offset its current losses). The funds earmarked for the recapitalisation of Uniper and SEFE – a total of up to €40.8 billion – come from the Economic Stabilisation Fund (*Wirtschaftsstabilisierungsfonds*), whose total budget amounts to €200 billion. German initiatives to freeze energy, gas and heating prices are also financed from this fund (for more, see '[Germany is fighting an energy war: €200 billion will be spent on dealing with high energy prices](#)').

Commentary

- The EC giving the green light to the nationalisation and recapitalisation of Uniper and SEFE marks the final stage in the process of changing the ownership of both companies which was triggered by the crisis; averts the risk of their potential bankruptcy or the paralysis of their operations; and enables them to stabilise their financial standing. Given these companies' importance to the German energy sector, in particular gas, this move will most likely have a positive impact on the market in the context of containing the energy crisis. Moreover, transferring Uniper and SEFE to state ownership expands Berlin's set of instruments to counteract the effects of the crisis and to respond to possible further shocks. This is because both companies not only hold strategically important energy infrastructure assets in their portfolio (e.g. gas storage facilities, transmission networks, power plants), but also account for a significant proportion of retail trade in gas, their customers including hundreds of utility companies and large industrial facilities. In addition, Uniper and SEFE are Germany's two biggest gas importers, which is why their nationalisation marks a major shift in the German gas market. Until recently this market was dominated by private companies, while German state-controlled companies did not operate there.
- Although Germany did expect the EC to make its approval of the nationalised companies' recapitalisation conditional on the implementation of remedial measures, some of these – in particular those concerning the divestment of specific assets – came as a surprise

to the German government, and were considered too far-reaching. Particularly in the case of Uniper, it was with little enthusiasm that the company's executive bodies and government representatives announced the plan to sell the company's entire heat generation business in Germany, its stake in the OPAL gas pipeline, as well as Germany's state-of-the-art coal-fired heat and power plant in Datteln, which had been commissioned in 2020. While most of the assets intended for sale will most likely meet major interest from other market players, which spells high profits from the sale, the Datteln IV power plant is considered 'difficult to divest'. This is due to its unclear legal situation (a court has cancelled the zoning plan that was adopted in connection with its construction), and to the German and EU climate policies (according to which the prospects for the plant's profitable operation have been reduced). It is estimated that around 50% of the €1.5 billion invested in it can be recovered. In contrast, the decision according to which Uniper's assets in the Netherlands (mainly the profitable Maasvlakte coal-fired heat and power plant in Rotterdam) will not be offered for sale, came as a relief. According to the *Handelsblatt* daily newspaper, the EC had initially insisted on the sale of these assets. However, the German company will be required to withdraw its application filed with the Arbitration Institute of the Stockholm Chamber of Commerce against the Netherlands over its statutory obligation to turn off its coal-fired power plants by 2030 without compensation. Representatives of SEFE, for their part, officially view the conditions formulated by the EC as satisfactory, as these do not affect any of the company's key strategic German assets, especially in the sphere of critical energy infrastructure (e.g. gas storage facilities).

- The cases of Uniper and SEFE are glaring examples of the failure of Berlin's former policy of building a multi-faceted energy alliance with Russia. Both companies largely based their business models on this policy. Uniper used to buy more than half of its imported gas from Russia on the basis of favourably priced long-term contracts. Moreover, it was among the investors in the Nord Stream 2 gas pipeline. SEFE, for its part, served to concentrate Gazprom's assets in Germany (and in many other European countries) which included companies trading in Russian gas on the one hand, and various elements of critical energy infrastructure that Gazprom Germania had bought from German companies, for example in exchange for stakes in Russian gas fields, on the other. As a result of the political crisis triggered by the Russian aggression against Ukraine, the failure of the business model based on Germany's energy alliance with Moscow brought both companies on the brink of bankruptcy. This posed a serious risk to the stability of Germany's energy system, and forced the state to establish multi-billion euro aid packages (each German citizen is contributing €500 per capita to rescuing Uniper and SEFE).
- Both Uniper and SEFE will need to devise new long-term operating strategies in consultation with the German government. In the short term, efforts to diversify the sources of gas imports in both companies' portfolios should be expected, in particular including increased involvement in LNG trade in an attempt to replace the lost volumes of gas which had been imported to date under the long-term contracts with Gazprom. In recent months, these two companies have mainly been active on the spot market, buying gas at inflated prices to fill gas storage facilities in Germany. However, ultimately they will probably seek to develop their portfolio of long-term contracts (for example, Uniper is

one of the companies involved in negotiations regarding LNG supplies from Qatar). In the longer term, we should expect Uniper and SEFE to make more politically motivated investments as part of the German energy transition model. Based on both companies' operational experience to date, these investments will likely involve the use of natural gas as transitional fuel during the *Energiewende* (such as the construction of gas-fired power plants to replace coal-fired and nuclear power plants) and the import and/or production of low-emission hydrogen (Uniper, alongside TES, plans to build a hydrogen hub in Wilhelmshaven).