

## **Declaration by the Management Board and Supervisory Board of *aap* Implantate AG**

### **on the recommendations of the**

### **“Government Commission on the German Corporate Governance Code”**

### **in accordance with Article 161 of the German Stock Corporation Act (Aktiengesetz/AktG)**

The Management Board and Supervisory Board of *aap* Implantate AG issued their last annual declaration of conformity to the German Corporate Governance Code pursuant to Article 161 of the German Stock Corporation Act (Aktiengesetz/AktG) on January 26, 2016. That declaration was amended by the Management Board and Supervisory Board on April 29, 2016. The following declaration relates to the Code’s recommendations in its May 5, 2015 version, published in the Federal Gazette on June 12, 2015.

The Management Board and Supervisory Board of *aap* Implantate AG hereby declare that, subject to the exceptions stated, the Company has complied with the recommendations of the Government Commission on the German Corporate Governance Code since issuing its last annual declaration of conformity on January 26, 2016, as amended on April 29, 2016, and will continue to do so subject to the exceptions stated below.

#### **D&O Policy Deductible (Section 3.8 para. 3)**

*aap* Implantate AG has taken out D&O insurance cover for its Supervisory Board members. The policies do not include a deductible for Supervisory Board members. In the opinion of the Management Board and Supervisory Board, a deductible has no effect on the sense of responsibility and loyalty which Supervisory Board members perform their tasks and functions with. Furthermore, a deductible is not customary in other countries. Besides, every Supervisory Board member would be free to take out insurance cover to the amount of the deductible, so the deductible would no longer have the intended effect. For the reasons stated there it will continue to be no deductible for members of the Supervisory Board.

#### **Presentation of the Compensation of Management Board members (Section 4.2.5 sentence 5 and sentence 6)**

*aap* Implantate AG will continue to present the Management Board compensation as part of the remuneration report in the previous form with the corresponding qualitative and quantitative details. The Management Board and the Supervisory Board are of the opinion that due to the Company’s existing remuneration structure the remuneration report in the previous form offers a sufficient degree of general clarity and transparency and the way in which information is prepared in the model tables recommended pursuant to Section 4.2.5 sentence 6 GCGC would not provide any added informational value. According to the Management Board’s and Supervisory Board’s assessment, it appears also doubtful whether the largely repetitive statement of identical information in two additional tables contributes toward the transparency and general clarity of the remuneration report as envisaged. As a consequence *aap* Implantate AG does not use the model tables intended for this purpose pursuant to Section 4.2.5 sentence 6 GCGC in the remuneration report and therefore also does not state certain details of Management Board compensation.

#### **Age Limit for Management Board and Supervisory Board Members (Section 5.1.2 para. 2; Section 5.4.1 para. 2)**

*aap* Implantate AG has set no age limit for Management Board and Supervisory Board members. Setting an age limit would restrict shareholders in their right to elect their representatives to the Supervisory Board; it would also limit the Supervisory Board’s ability to appoint the best-qualified candidate to the Management Board. As a matter of principle, the Company should also be able to

call on the expertise of experienced candidates. Setting a very high limit which does not limit the choice of candidates in order to comply with the Code's recommendations is not considered appropriate.

#### **No Formation of Committees by the Supervisory Board (Section 5.3.1; Section 5.3.2; Section 5.3.3)**

*aap* Implantate AG's Supervisory Board consists of three members. In the Company's circumstances and in view of the low number of Supervisory Board members no committees are formed. The efficiency of the Supervisory Board work is considered to be sufficient in the existing organizational structure.

#### **Diversity in the Composition of the Supervisory Board and Regular Limit of Length of Membership in the Supervisory Board (Section 5.4.1 para. 2 and para. 3)**

The Supervisory Board of *aap* Implantate AG has in the past already taken into consideration aspects of diversity, professional qualification and independence with regard to its own composition and to that of the Management Board. Given the small number of Supervisory Board members, the Supervisory Board is of the opinion that the main criteria for its membership should continue to be professional qualification and experience. The Supervisory Board is further of the opinion that a formal written statement of specific objectives for its composition is inappropriate, especially with regard to diversity, because the flexibility that the Supervisory Board would otherwise enjoy in nominating candidates for vacancies on the Supervisory Board would be inappropriately impaired. The Supervisory Board has therefore not drawn up a written catalogue of criteria on its composition pursuant to Section 5.4.1 of the German Corporate Governance Code. No such statement can thus be included in the Corporate Governance Report. Furthermore the Supervisory Board considers a specification of a regular limit of length of membership in the Supervisory Board as not appropriate. If a Supervisory Board member is the most suitable candidate for a Supervisory Board position due to her/his professional qualification and experience, her/his length of membership in the Board should not be limited.

#### **Training and Further Education Measures (Section 5.4.5 para. 2)**

The Company supports members of the Supervisory Board as a matter of principle in taking the training and further education measures required for their tasks but has not adopted any formal procedure or guidelines in this respect. Furthermore, it is not clear which conditions must be fulfilled pursuant to Section 5.4.5 para. 2 of the German Corporate Governance Code for the Company to be able to deem support for training and further education measures for Supervisory Board members to be appropriate. We therefore take the precaution of declaring a deviation from Section 5.4.5 para. 2 of the German Corporate Governance Code.

#### **Compensation of Supervisory Board Members (Section 5.4.6 para. 1 sentence 2)**

No special consideration is given in setting Supervisory Board compensation to the exercise of the Chair and Deputy Chair positions. The Management Board and Supervisory Board of *aap* Implantate AG are of the opinion that given the size of the Supervisory Board and the allocation of tasks within the Board a differentiation in the compensation paid to Supervisory Board members is inappropriate.

#### **Reporting and Audit of the Annual Accounts (Section 7.1.2 sentence 4)**

Contrary to the recommendation made in Section 7.1.2 sentence 4 of the German Corporate Governance Code the complete consolidated financial statements of *aap* Implantate AG for the financial year 2015 were not made publicly accessible within 90 days of the end of the financial year. The reason for the delay in the publication is the sale of *aap* Biomaterials GmbH, which had already to be stated as a so-called discontinued operation in the consolidated financial statements for 2015. This led to extensive adjustments in the notes and the management report as well as in various

presentations of results in the consolidated financial statements. In view of this special situation the Company was unable to comply with the recommendation made in Section 7.1.2 sentence 4 of the German Corporate Governance Code in 2016. The Management Board and Supervisory Board do, however, intend to comply with the recommendation in Section 7.1.2 Sentence 4 of the German Corporate Governance Code in the future and to publish the consolidated financial statements for the financial year 2016 within 90 days of the end of the financial year.

To increase transparency and state comprehensively the importance of the Corporate Governance Code for *aap* Implantate AG, the Management Board and Supervisory Board also include a statement on compliance with the Code's suggestions in this declaration of conformity. The following declaration relates to the Code's recommendations in its May 5, 2015 version, published in the Federal Gazette on June 12, 2015. With the exception of the following suggestion, all suggestions made in the Code are complied with already respectively will be complied with in the financial year 2017:

**Transmission of the Annual General Meeting on the Internet (Section 2.3.3)**

Use was not made of the provision in the Articles of Association for transmitting the 2016 Annual General Meeting on the internet. There are no plans to transmit the 2017 Annual General Meeting on the internet or by any other modern means of communication.

Berlin, January 25, 2017

For the Supervisory Board



Biense Visser  
Supervisory Board Chairman

For the Management Board



Bruke Seyoum Alemu  
Management Board Chairman