

## **Explanatory report by the Executive Board regarding the information pursuant to §§ 289a (1), 315a (1) of the German Commercial Code (HGB) for Fiscal Year 2017/18**

The following information reflects circumstances on the 30 September 2018 reporting date.

### **Composition of subscribed share capital (No. 1)**

The share capital of BRAIN AG amounts to € 18,055,782 on the reporting date. The share capital is divided into 18,055,782 ordinary shares, to each of which a proportional amount of the share capital of € 1.00 is attributable. The shares are fully paid-in registered shares. The company holds no treasury shares on the reporting date.

### **Restrictions affecting voting rights or transfer of shares (No. 2)**

The company's Management Board is not aware of any restrictions affecting voting rights or the transfer of shares, including those potentially deriving from agreements between shareholders.

### **Shareholdings with more than 10 % of the voting rights (No. 3)**

MP Beteiligungs-GmbH, Kaiserslautern, holds an approximate 36 % interest in the company's share capital as of 30 September 2018. As of 30 September 2018, no further shareholders existed with interests of more than 10 % in the voting rights.

### **Holders of shares with special rights (No. 4)**

No shares exist at BRAIN AG with special rights endowing control powers.

### **Voting rights control of employees who are shareholders (No. 5)**

No voting rights controls for employees who are shareholders exist for the instance of control rights that are not to be exercised directly.

### **Rules concerning the appointment and recall from office of Management Board members (No. 6)**

Pursuant to Section 84 of the German Stock Corporation Act (AktG) and the bylaws of BRAIN AG, the Supervisory Board appoints the members of the Management Board. Pursuant to Section 7 of the bylaws of BRAIN AG, the Management Board consists of one or several individuals. The Supervisory Board determines the number of Management Board members. It can appoint a Management Board Chair (CEO) and a Deputy Management Board Chair, as well as deputy Management Board members. If the Management Board consists of several members, Management Board resolutions are passed with a simple majority of votes. If the Supervisory Board has appointed a Management Board Chair, and if the Management Board consists of three members, the vote of the Management Board Chair decides given an equal number of votes.

### **Rules concerning amendments to the bylaws (No. 6)**

Pursuant to Section 179 of the German Stock Corporation Act (AktG) and the bylaws of BRAIN AG, amendments to the bylaws require an AGM resolution. AGM resolutions require a simple majority of votes, unless the law stipulates a greater majority.

### **Management Board authorizations concerning issuing and repurchasing shares (No. 7)**

BRAIN AG has the following authorized and conditional capital:

### **Authorized capital**

The authorized capital of € 6,565,740 as of 30 September 2017 (Authorized Capital 2017/I) was cancelled by AGM resolution on 8 March 2018.

With an AGM resolution on 8 March 2018, authorized capital of € 9,027,891 was created (Authorized Capital 2018/I). Authorized Capital 2018/I was entered in the commercial register on 23 March 2018. The Management Board was authorized, with Supervisory Board assent, to increase the company's share capital in the period until 7 March 2023, once or on several occasions, albeit by a maximum of up to a nominal amount of € 9,027,891 through issuing up to 9,027,891 new ordinary registered shares against cash or non-cash capital contributions, whereby shareholders' statutory subscription rights can be wholly or partly excluded. If the new shares are issued against cash capital contributions, shareholders' statutory subscription rights can be wholly or partially excluded if the new shares' issue price is not significantly less than the stock market price of the company's shares already listed on the date when the issue price is finally determined, and the total number of shares issued in this manner under exclusion of subscription rights does not exceed 10 % of the share capital.

Authorized capital of € 9,027,891 was, therefore, recorded on the 30 September 2018 reporting date.

### **Conditional capital**

Pursuant to Section 5 (3) and (4) of the company's bylaws, the share capital is conditionally increased by € 5,090,328 through issuing up to 5,090,328 new ordinary registered shares (Conditional Capital 2015/I) and by a further € 1,272,581 through issuing up to 1,272,581 new ordinary registered shares (Conditional Capital 2015/II).

Conditional Capital 2015/I serves exclusively to grant shares to the holders of bonds with warrants and convertible bonds that the company issues based on the authorization of the Management Board by way of AGM resolution passed on 8 July 2015. The conditional capital increase is to be implemented through issuing up to 5,090,328 new ordinary registered shares only to the extent that the holders of convertible bonds and/or bonds with warrants utilize their conversion rights or warrant rights, or the holders of convertible bonds that are obligated to convert satisfy their obligation to convert, and to the extent that other forms of satisfaction are not deployed to service the bonds. An increase in the share capital from Conditional Capital 2015/I had not been implemented as of the 30 September 2018 reporting date.

Conditional Capital 2015/II serves exclusively to service subscription rights arising from stock options that are granted – pursuant to the AGM resolution dated 8 July 2015 as part of a stock option plan comprising up to 1,272,581 stock options that carry subscription rights to shares of BRAIN AG with a term of up to eight years – to the members of the company's Management Board, members of affiliated companies' management boards, as well as managers and other company employees in senior positions. The conditional capital increase is to be implemented only to the extent that the holders of issued subscription rights utilize them, and the company does not grant treasury shares or cash settlement to satisfy these subscription rights. An increase in the share capital from Conditional Capital 2015/II had not been implemented as of the 30 September 2018 reporting date.

### **Stock options**

An AGM resolution dated 8 July 2015 authorized the Management Board, with Supervisory Board assent, to issue as part of a stock option plan until 30 September 2020 up to 1,272,581 stock options with subscription rights to shares of BRAIN AG with a term of up to eight years, with the condition that each stock option grant the right to subscribe for one share, and according to further provisions. As far as issuing shares to members of the Management Board of BRAIN is concerned, this authorization is

valid for the Supervisory Board alone. A total of 163,000 stock options had been issued as of the balance sheet date of 30 September 2018. Furthermore, it was already certain as of the reporting date that 40,000 stock options would be forfeited as one Management Board member had announced his intention to leave the company. As expected, this will result in a breach of non-exercise conditions in the foreseeable future. The AGM conditionally increased the share capital by € 1,272,581 to hedge and service the stock options (Conditional Capital 2015/II).

With a resolution dated 8 July 2015, the AGM authorized the Management Board pursuant to Section 71 (1) No. 8 AktG to purchase treasury shares for any permissible purpose in the context of statutory restrictions and according to more detailed provisions. This authorization is valid from the date on which the authorization resolution becomes effective until 7 July 2020, and is restricted to a total proportion of 10 % of the share capital existing on the date when the resolution is passed, or, if this amount is less, as of the date when the authorization is exercised. The resolution was entered in the commercial register on 1 October 2015. As in the previous year, in the 2017/18 financial year BRAIN made no utilization of this authorization to purchase treasury shares.

**Significant agreements for the instance of a change of control due to a takeover offer (Number 8) and compensation agreements in the case of a takeover offer (Number 9)**

The company has not entered into any arrangements in the meaning of Section 315 (4) Nos. 8 and 9 of the German Commercial Code (HGB).