

**Joint report of the Management Board of BioNTech SE, Mainz, and the management of JPT Peptide Technologies GmbH, Berlin, on the conclusion of a domination and profit and loss transfer agreement between BioNTech SE and JPT Peptide Technologies GmbH pursuant to Sec. 293a German Stock Corporation Act (*Aktiengesetz – AktG*)**

The Management Board of BioNTech SE (*BioNTech*) and the management of JPT Peptide Technologies GmbH (*JPT Peptide*) submit the following joint report on the intended conclusion of a domination and profit and loss transfer agreement between BioNTech and JPT Peptide pursuant to Sec. 293a para. 1 AktG.

**1. Conclusion and effectiveness of the domination and profit and loss transfer agreement**

The Management Board of BioNTech and the management of JPT Peptide intend to conclude a domination and profit and loss transfer agreement between the two companies. Under this domination and profit and loss transfer agreement, BioNTech would be the controlling company and JPT Peptide would be the controlled company.

The domination and profit and loss transfer agreement must first be in writing. Furthermore, the Annual General Meeting of BioNTech must approve it with a majority of three-quarters of the share capital represented at the time the resolution is adopted. The shareholders' meeting of JPT Peptide must also approve the conclusion of the agreement by notarized shareholders' resolution, also with a majority of three-quarters of the share capital represented when the resolution is adopted. Upon entry in the Commercial Register of JPT Peptide, the domination and profit and loss transfer agreement will then become effective under civil law.

The next Annual General Meeting of BioNTech will take place on June 22, 2021 and will vote on the conclusion of the domination and profit and loss transfer agreement. After the Annual General Meeting of BioNTech, the shareholders' meeting of JPT Peptide will approve the conclusion of the domination and profit and loss transfer agreement in the short term.

At the time of reporting, JPT Peptide is a sole subsidiary of BioNTech Diagnostics GmbH, Mainz, whose shares are in turn fully held by BioNTech. There are no outside shareholders of BioNTech Diagnostics GmbH or JPT Peptide. Therefore, payments to outside shareholders are not required. BioNTech intends to hold a shareholders' meeting of BioNTech Diagnostics GmbH shortly after the Annual General Meeting scheduled for June 22, 2021, which will approve the conclusion of the domination and profit and loss transfer agreement between BioNTech and JPT Peptide.

The Management Board of BioNTech and the management of JPT Peptide intend to conclude the draft domination and profit and loss transfer agreement only after the Annual General Meeting of BioNTech and the shareholders' meetings of BioNTech Diagnostics GmbH and JPT Peptide have given their respective approvals.

## **2. Contracting parties**

### **2.1 BioNTech**

BioNTech was established as a stock corporation by Articles of Association dated June 2, 2008 and entered in the Commercial Register (formerly Bonn Local Court, HRB 16295) on June 9, 2008. On January 16, 2009, it was resolved to transfer the Company's registered office from Bonn to Mainz. As of February 16, 2009, the Company was registered under HRB 41865 in the Commercial Register of the Local Court of Mainz. After the change of legal form into an SE, BioNTech is registered in the Commercial Register of the Local Court of Mainz under HRB 48720. The share capital of BioNTech currently amounts to EUR 246,310,081.00 and is divided into 246,310,081 no-par value shares. The shares are registered. The fiscal year is the calendar year.

According to the Articles of Association of BioNTech, the object of the company is the research and development, production and marketing of immunological and RNA-based drugs and test methods for the diagnosis, prevention and therapy of cancer, infectious diseases and other serious illnesses. BioNTech is authorized to engage in all transactions and take all measures that serve the purpose of the company. BioNTech is also entitled to establish other companies, to acquire them, to participate in other companies and to manage such companies or to limit itself to the management of the participation.

Members of the Management Board of BioNTech are

- Prof. Dr. Uğur Şahin (Chief Executive Officer),
- Dr. Sierk Poetting (Chief Financial Officer and Chief Operating Officer),
- Mr. Sean Marett (Chief Business and Chief Commercial Officer),
- Dr. Özlem Türeci (Chief Medical Officer), and
- Mr. Ryan Richardson (Chief Strategy Officer).

In accordance with the Articles of Association, the Supervisory Board of BioNTech consists of four members, all of whom were elected by the shareholders. The Chairman of the Supervisory Board is Mr. Helmut Jeggel.

On average, BioNTech had 537 employees in 2020.

BioNTech's annual financial statements under commercial law for the 2020 fiscal year show a net profit of EUR 128,895,577.82 on total assets of EUR 1,956,330,001.54. For further information on the business development and the earnings situation of BioNTech, please refer to the annual financial statements and the management report of BioNTech for the 2020 fiscal year.

## **2.2 JPT Peptide**

JPT Peptide, with its registered office in Berlin (Amtsgericht Charlottenburg, HRB 92692 B), was founded on April 22, 2004 by way of cash incorporation with a share capital of EUR 25,000 and entered in the Commercial Register on May 11, 2004.

The object of JPT Peptide is the development, production and distribution of biochemical products, peptide technologies, tools and kits for research and diagnostic applications as well as related scientific services and publications of scientific information and the conduct of all other related business. JPT Peptide is authorized to acquire other companies, to participate in such companies, to assume their personal liability and representation, to establish branches in Germany or abroad, and to engage in all business activities that are suitable for promoting the Company's undertakings.

The annual financial statements of JPT Peptide under commercial law for the 2020 fiscal year show a net profit for the year of EUR 0 with total assets of EUR 31,498,517.71, as profits and losses already had to be transferred under the profit and loss transfer agreement between JPT Peptide and BioNTech Diagnostics GmbH dated July 22, 2009 (amended on June 28, 2016). For the 2020 fiscal year, JPT Peptide transferred a profit of EUR 3,290,218.80 to BioNTech Diagnostics GmbH. The profit and loss transfer agreement with BioNTech Diagnostics GmbH in Mainz, Germany, dated July 22, 2009 (amended on June 28, 2016), was terminated by a termination agreement dated December 10, 2020, as of the end of 2020.

For further information on the business development and the earnings situation of JPT Peptide, please refer to the annual financial statements of JPT Peptide and the group management report of BioNTech for the 2020 fiscal year.

The fiscal year of JPT Peptide corresponds to the calendar year. A short fiscal year was formed for the period from July 1, 2020 to December 31, 2020.

The managing directors of JPT Peptide are Dr. Sierk Poetting, Mr. Sean Marett and Dr. Holger Wenschuh.

JPT Peptide employed 110 employees on average in 2020.

## **3. Reasons for the conclusion of a domination and profit and loss transfer agreement**

The conclusion of the domination and profit and loss transfer agreement between BioNTech and JPT Peptide serves to establish a consolidated tax group for corporate income tax and trade tax purposes between BioNTech and JPT Peptide, which enables the offsetting of profits arising at the level of JPT Peptide against existing losses at the level of BioNTech.

The agreement of the domination and profit and loss transfer agreement is a prerequisite for the establishment of the consolidated tax group for corporate income tax and trade tax purposes between BioNTech and JPT Peptide pursuant to Sec. 14 para. 1 Sentence 1 No. 3, Sec. 17 para. 1 of the German Corporate Income Tax Act (*Körperschaftsteuergesetz - KStG*), Sec. 2 para.

2 Sentence 2 of the German Trade Tax Act (*Gewerbesteuer-gesetz – GewStG*). The consolidated tax group for corporate income tax and trade tax purposes results in a combined taxation of JPT Peptide as the controlled company (“**Controlled Company**”) and BioNTech as the controlling company (“**Controlling Company**”). This has the advantage that positive and negative results of the Controlled Company can be offset against negative or positive results of the Controlling Company.

In addition, it is avoided that profit distributions of JPT Peptide to BioNTech are to a certain extent subject to taxation as non-deductible operating expenses.

By establishing a consolidated tax group for corporate income tax and trade tax purposes between BioNTech and JPT Peptide, an optimal structure is thus achieved for corporate income tax and trade tax purposes.

The conclusion of a domination agreement pursuant to Sec. 291 AktG may serve to maintain the organizational integration as a prerequisite for the consolidated tax group for VAT purposes. The prerequisite for such a fiscal unity for VAT purposes is the so-called organizational integration of the Controlled Company into the Controlling Company. This can be achieved, among other things, through personal identity in the management bodies of the companies. However, organizational integration can also be achieved by concluding and implementing a domination and profit and loss transfer agreement. The domination and profit and loss transfer agreement to be concluded is therefore an additional means of ensuring fiscal unity for VAT purposes. The agreement ensures that the consolidated tax group for VAT purposes will continue to exist even in the event of personnel changes in the management bodies of BioNTech and JPT Peptide.

Fiscal unity does not result in the general tax obligations of JPT Peptide ceasing to apply. As before, JPT Peptide has to determine the income according to general regulations, separately from the Controlling Company. Under commercial law, the annual net profit generated by the Controlled Company must be transferred to the Controlling Company. This transfer obligation is shown in the annual financial statements of JPT Peptide as a liability to affiliated companies. Any net loss incurred is to be compensated by the Controlling Company.

The allocation of income for tax purposes must be distinguished from the allocation under commercial law. It is not the net profit or loss for the year that is allocated to the Controlling Company, but the income of the Controlled Company determined in accordance with tax regulations. For example, non-deductible expenses, tax-exempt income and permissible allocations to reserves therefore lead to differences between the income to be allocated and the commercial balance sheet result to be transferred.

#### **4. Explanation of the domination and profit and loss transfer agreement**

The following should be noted with regard to the individual provisions of the domination and profit and loss transfer agreement between BioNTech and JPT Peptide:

##### **4.1 Control (clause 1 of the agreement)**

By virtue of the provision in clause 1 of the agreement, the Controlled Company places its management under the control of the Controlling Company. Accordingly, the Controlling Company is entitled to issue instructions to the management of the Controlled Company with regard to the management of the Controlled Company. The agreement clarifies under clause 1.3 of the Agreement that, notwithstanding the fundamental right of the Controlling Company to issue instructions, the management and representation of the Controlled Company shall continue to be the responsibility of the management of the Controlled Company.

#### **4.2 Transfer of Profits (clause 2 of the agreement)**

By virtue of the provision in clause 2.1 of the agreement, the Controlled Company undertakes, subject to the formation and release of reserves pursuant to Clause 2.2 of the Agreement, to transfer to the Controlling Company its entire profit arising during the term of the agreement without the transfer of profit. For the extent of the profit to be transferred, reference is made to the statutory provision of Sec. 301 AktG as amended from time to time. This means that, in accordance with the currently valid version of Sec. 301 Sentence 1 AktG, the maximum profit to be transferred to BioNTech is the net income for the year arising without the profit transfer, less any loss carried forward from the previous year and the amount blocked from distribution pursuant to Sec. 268 para. 8 of the German Commercial Code (*Handelsgesetzbuch – HGB*).

Clause 2.2 of the agreement stipulates that the Controlled Company may, with the consent of the Controlling Company, transfer amounts from the net income to other revenue reserves (Sec. 272 para. 3 HGB) (only) to the extent that this is economically justified on the basis of a reasonable commercial assessment and permissible under commercial law. In this case, the profit to be transferred is reduced accordingly. Pursuant to clause 2.2 of the agreement, the Controlling Company may demand that other revenue reserves formed at the Controlled Company during the term of the agreement be dissolved and used to offset a net loss for the year or transferred as profit, unless Sec. 301 AktG, as amended, precludes this.

Clause 2.3 of the agreement clarifies that the transfer of amounts from the reversal of capital reserves (Sec. 272 para. 2 No. 4 HGB) and of revenue reserves formed prior to the commencement of this agreement is excluded. The same applies to any pre-contractual profit carried forward.

Pursuant to clause 2.4 of the agreement, the claim to profit transfer shall arise at the end of the fiscal year of the Controlled Company and shall become due at that time.

#### **4.3 Transfer of Losses (clause 3 of the agreement)**

Pursuant to clause 3.1 of the domination and profit and loss transfer agreement, BioNTech is obliged to assume the losses of JPT Peptide in accordance with the provisions of Sec. 302 AktG as amended. According to the currently valid version of Sec. 302 para. 1 AktG, BioNTech must compensate for any annual loss of the subsidiary otherwise incurred during the term of the agreement, i.e. without taking into account the loss compensation obligation. The loss to be

compensated can also be compensated to the extent permissible under commercial law by withdrawing amounts from other revenue reserves which are transferred to them during the term of the agreement.

If the domination and profit and loss transfer agreement does not end before the end of the fiscal year of the Controlled Company, the claim to the transfer of losses pursuant to clause 3.2 of the agreement shall arise at the end of its fiscal year and shall become due at that time.

#### **4.4 Effective date, duration and termination (clause 4 of the agreement)**

Clause 4 of the agreement regulates the effective date, the duration and the termination options of the domination and profit and loss transfer agreement.

Clauses 4.1 and 4.2 of the agreement describe that, at the time of the conclusion of the agreement the approvals of the general meeting of BioNTech and the shareholders' meeting of JPT Peptide have already been granted. Furthermore, in accordance with the legal situation (cf. Sec. 294 para. 2 AktG), the agreement stipulates that the agreement shall become effective upon entry in the Commercial Register of the Controlled Company. The agreement shall apply from the beginning of the fiscal year of the Controlled Company in which the entry is made in the Commercial Register of the Controlled Company, i.e. if this entry is made by December 31, 2021, retroactively from January 1, 2021 and, if this entry is made after December 31, 2021, from January 1, 2022. Something different applies with regard to clause 1 of the agreement (i.e. with regard to the right of the Controlling Company to issue instructions), which only applies from the date of entry of the agreement in the Commercial Register of the Controlled Company. Pursuant to Sec. 14 para. 1 Sentence 2 KStG, the income of the Controlled Company is attributable to the Controlling Company for the first time for the calendar year in which the fiscal year of the Controlled Company ends in which the domination and profit and loss transfer agreement becomes effective.

Clause 4.3 of the agreement provides that the agreement is concluded with a fixed term of five time years from the beginning of the fiscal year of the Controlled Company in which the agreement is entered in the Commercial Register of the Controlled Company. The agreement shall be extended unchanged and with the same right of termination by one year in each case if it is not terminated by the Controlled Company or the Controlling Company at least six months prior to its expiry. If the end of the term or an extension does not fall at the end of a fiscal year of the Controlled Company, the term shall be extended until the end of the then current fiscal year. The provisions on the minimum term of five years have been included with a view to the intended fiscal unity (cf. Sec. 14 para. 1 Sentence 1 No. 3 Sentence 1 KStG). They also show that a long-term concept is being pursued with the conclusion of the domination and profit and loss transfer agreement.

Clause 4.4 of the agreement clarifies that termination without notice for good cause remains unaffected. Good cause shall be deemed to be, in particular, those reasons which are recognized as important reasons which are harmless for tax purposes. Good cause, which entitles both the Controlling Company and the Controlled Company to terminate the agreement, lies in particular - but not conclusively - in the sale of the shares in the Controlled Company or the contribution of the

shareholding by the Controlling Company, the merger, demerger or liquidation of the Controlling Company or the Controlled company or, if the Controlling Company is no longer entitled to the majority of the voting rights from the shares in the Controlled Company (cf. R 14.5 para. 6 sentence 2 KStR).

The written form requirement for termination provided for in clause 4.5 of the agreement corresponds to the statutory provision in Sec. 297 (3) AktG.

According to clause 4.6 of the agreement, the option to terminate the agreement by mutual consent instead of giving notice of termination remains unaffected (cf. Sec. 296 AktG).

If the effectiveness of the agreement or its proper execution is not or not fully recognized for tax purposes during the five-year period, the five-year period pursuant to clause 4.7 of the agreement shall not begin until the first day of the fiscal year of the Controlled Company following the year in which the conditions for the recognition for tax purposes of the effectiveness of the agreement or its proper execution have not yet been met.

#### **4.5 General (clause 5 of the agreement)**

Pursuant to clause 5.1 of the agreement, the domination and profit and loss transfer agreement contains all agreements made between BioNTech and JPT Peptide relating to the control and transfer of profits. There are no ancillary agreements in this respect.

Pursuant to clause 5.2 of the agreement, the respective tax provisions of the consolidated tax group are to be taken into account in the interpretation of the agreement in the sense that an effective (corporate) tax group is desired. This provision is intended in particular to take account of possible future changes in the statutory framework conditions governing the fiscal unity.

Clause 5.3 of the agreement provides that amendments and supplements to this agreement must be in writing in order to be effective. This also applies to any amendment to the written form requirement.

Clause 5.4 of the agreement also contains a severability clause. Accordingly, any invalidity of one or more provisions of the agreement shall not affect the validity of the remaining provisions of the agreement. This provision corresponds to the usual provisions in contractual practice and has been included for reasons of legal precaution. There are no indications that any of the contractual provisions could be invalid.

#### **4.6 Compensation and settlement**

BioNTech holds all shares in BioNTech Diagnostics GmbH. BioNTech Diagnostics GmbH in turn holds all shares in JPT Peptide. Consequently, JPT Peptide is the second-tier subsidiary of BioNTech at the time of the conclusion of the domination and profit and loss transfer agreement. The shares held by BioNTech Diagnostics GmbH in JPT Peptide are not attributed pursuant to Sec. 16 AktG. The shares in JPT Peptide are therefore not in the hands of BioNTech

within the meaning of Sec. 293b para. 1 AktG, so that the exception does not apply. Therefore, pursuant to Sec. 293b para. 1 AktG, the domination and profit and loss transfer agreement to be concluded must be examined by an expert auditor.

At the same time, BioNTech Diagnostics GmbH will be the sole shareholder of JPT Peptide at the time the agreement is concluded. There are no outside shareholders, and consequently no compensation payments are to be made. Therefore, the domination and profit and loss transfer agreement does not have to provide for any compensation payments and settlement provisions for outside shareholders of JPT Peptide.

## **5. Alternatives**

There is no economically reasonable alternative to the conclusion of the domination and profit and loss transfer agreement between BioNTech and JPT Peptide with which the objectives described above could be achieved equally or better. The objectives pursued with the conclusion of the domination and profit and loss transfer agreement could not be realized to the same extent by means of other tax or legal arrangements. For example, in the event of a merger of JPT Peptide into BioNTech, the legal identity of JPT Peptide would be relinquished. This, however, is not desired.

*[Signature pages follow]*

Mainz, May\_\_\_\_ 2021

BioNTech SE

The Management Board

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Prof. Dr. Uęur Őahin

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Dr. Sierk Poetting

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Sean Marett

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Dr. zlem Türeci

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Ryan Richardson

Berlin, den \_\_\_\_ Mai 2021

JPT Peptide Technologies GmbH

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