

Declaration of the Supervisory Board of Merck KGaA, Darmstadt, Germany on the independence of the candidates for election to the Supervisory Board

Independence of the candidates

The Supervisory Board has selected the most suitable candidates in line with the objectives it has set for itself with respect to its composition, the profile of skills and expertise it has developed for the Supervisory Board as a whole, as well as its diversity policy, and builds on the proposals of the Nomination Committee. In the selection of candidates, professional qualifications and personal competency were the main factors.

Apart from this, in the assessment of the Supervisory Board of Merck KGaA, Darmstadt, Germany all the proposed candidates are independent. In the Supervisory Board's assessment, neither membership of the Board of Partners of E. Merck KG, Darmstadt, Germany nor a mere equity interest in E. Merck KG, Darmstadt, Germany represent grounds for non-independence because:

- A congruence of interests exists between Merck KGaA, Darmstadt, Germany and E. Merck KG, Darmstadt, Germany,
- The Board of Partners of E. Merck KG, Darmstadt, Germany complements the Supervisory Board of Merck KGaA, Darmstadt, Germany,
- The Supervisory Board of Merck KGaA, Darmstadt, Germany has only a limited function,
- An (immaterial) interest as a limited partner does not equate to non-independence and
- E. Merck KG, Darmstadt, Germany does not have shareholder status.

In detail

The German Corporate Governance Code stipulates that a supervisory board shall have an appropriate number of independent members. Taking this and the special ownership structure of Merck KGaA, Darmstadt, Germany into account, the Supervisory Board considers four shareholder representatives to be an appropriate number of independent members.

According to the German Corporate Governance Code, Supervisory Board members are to be considered non-independent in particular if they have a personal or business relationship with the company, its governing bodies, a controlling shareholder or a company affiliated with the controlling shareholder that may cause a material and not merely temporary conflict of interest. In addition, no more than two former members of the Executive Board shall be members of the Supervisory Board. Members of the Supervisory Board shall not be members of governing bodies of, or exercise advisory functions at, significant competitors of the company.

In the assessment of the Supervisory Board of Merck KGaA, Darmstadt, Germany, the candidates proposed by the Supervisory Board for the election of the Supervisory Board by the Annual Meeting on April 26, 2019, namely

- Dr. Wolfgang Büchele,
- Michael Kleinemeier,
- Renate Koehler,
- Helene von Roeder,
- Prof. Dr. Helga Rübsamen-Schaeff and
- Dr. Daniel Thelen

are to be considered independent pursuant to the definition provided in the German Corporate Governance Code. Factors constituting grounds for non-independence are not apparent. In particular, the candidates are neither former members of the Executive Board nor do they exercise any board functions for significant competitors of the company or perform advisory activities at such companies.

As regards membership of the Board of Partners of E. Merck KG, Darmstadt, Germany and the interest held in E. Merck KG, Darmstadt, Germany in accordance with section 5.4.1 paragraph 6 of the German Corporate Governance Code, in the invitation to the Annual Meeting, Merck KGaA, Darmstadt, Germany disclosed the following information regarding the proposals for the election to the Supervisory Board:

“With reference to section 5.4.1 paragraph 6 of the German Corporate Governance Code, it is declared that with the exception of Ms. Renate Koehler, each of the proposed candidates is a member of the Board of Partners of E. Merck KG, Darmstadt, Germany. Ms. Renate Koehler and Dr. Daniel Thelen are limited partners of E. Merck KG, Darmstadt, Germany. Moreover, in the assessment of the Supervisory Board of Merck KGaA, Darmstadt, Germany, none of the proposed candidates has a personal or business relationship with Merck KGaA, Darmstadt, Germany or its group companies, the governing bodies of Merck KGaA, Darmstadt, Germany or any shareholders with a material interest in Merck KGaA, Darmstadt, Germany requiring disclosure pursuant to this recommendation.”

Neither membership of the Board of Partners of E. Merck KG, Darmstadt, Germany nor an interest as a limited partner in E. Merck KG, Darmstadt, Germany cause non-independence:

- Congruence of interests between Merck KGaA, Darmstadt, Germany and E. Merck KG, Darmstadt, Germany

E. Merck KG, Darmstadt, Germany holds around 70% of the total capital of Merck KGaA, Darmstadt, Germany and as the general partner of Merck KGaA, Darmstadt, Germany, it has unlimited personal liability for the obligations of Merck KGaA, Darmstadt, Germany. As a result, E. Merck, Darmstadt, Germany has a strong interest in the businesses of Merck KGaA, Darmstadt, Germany operating efficiently and in compliance with procedures, counteracting conflicts of interest between E. Merck KG, Darmstadt, Germany and Merck KGaA, Darmstadt,

Germany and thus also counteracting corresponding conflicts of interest between the members of the respective corporate boards. The participation of Merck KGaA, Darmstadt, Germany in the profit/loss of E. Merck KG, Darmstadt, Germany pursuant to articles 26 et seq. of the Articles of Association of Merck KGaA, Darmstadt, Germany ensures a further harmonization of interests. Ultimately, E. Merck KG, Darmstadt, Germany operates its business exclusively via Merck KGaA, Darmstadt, Germany, from which a congruence of interests is also derived.

- Board of Partners of E. Merck KG, Darmstadt, Germany complements the Supervisory Board of Merck KGaA, Darmstadt, Germany

The Board of Partners exists at the level of E. Merck KG, Darmstadt, Germany complementary to the competencies and the activities of the Supervisory Board of Merck KGaA, Darmstadt, Germany. It is not to be expected that this will cause material and not merely temporary conflicts of interest.

- Limited role of the Supervisory Board of Merck KGaA, Darmstadt, Germany

Moreover, in comparison with the supervisory board of a German stock corporation, the role of the Supervisory Board of Merck KGaA, Darmstadt, Germany is limited. This is due to the fact that the members of the Executive Board are personally liable general partners and therefore are themselves responsible for the management of the company. In particular, the Supervisory Board is not responsible for appointing and dismissing members of the Executive Board or for regulating the terms and conditions of their contracts. This is the responsibility of E. Merck KG, Darmstadt, Germany, as is the task of issuing a catalogue of business transactions requiring approval. If the non-independence of a Supervisory Board member were to be assumed, then the limited responsibilities of the Supervisory Board of Merck KGaA, Darmstadt, Germany would have to be taken into consideration.

- Independence despite interest in E. Merck KG, Darmstadt, Germany

If individual Supervisory Board members are also limited partners of E. Merck KG, Darmstadt, Germany, this circumstance does not conflict with independence per se. A pure equity interest in a company does not constitute grounds for non-independence without the occurrence of further factors. Ms. Renate Koehler and Dr. Daniel Thelen neither hold a material interest in E. Merck KG, Darmstadt, Germany nor can they exert in another way a significant influence on the company and the management of the businesses. Moreover, owing to the congruence of interests presented in the foregoing, the occurrence of material and lasting conflicts of interest need not be feared. The equity interests of Ms. Renate Koehler and Dr. Daniel Thelen have therefore been disclosed in order to provide shareholders with the greatest possible transparency for the elections to the Supervisory Board.

- E. Merck KG, Darmstadt, Germany does not have shareholder status

The independence of Ms. Renate Koehler and Dr. Daniel Thelen also results from the fact that E. Merck KG, Darmstadt, Germany does not hold any shares in Merck KGaA, Darmstadt, Germany. Therefore, E. Merck KG, Darmstadt, Germany does not vote at the Annual Meeting of Merck KGaA, Darmstadt, Germany and cannot actively facilitate resolutions by the Annual Meeting. Consequently, it cannot exert any influence on the Supervisory Board via the Annual

Meeting, which decides on the election and the approval of the actions of Supervisory Board members.