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## CONVERSION PLAN

for the conversion with a change of the legal form

of Fresenius Aktiengesellschaft, Else-Kröner-Straße 1,  
D-61352 Bad Homburg v.d.H., Germany  
– hereinafter also referred to as "Fresenius AG" –

into the

legal form of a *Societas Europaea* (SE)

– hereinafter also referred to as "Fresenius SE" –

### Preamble

Fresenius AG is a German stock corporation (*Aktiengesellschaft*) registered in the commercial register of the local court in Bad Homburg v.d.H. under the registration number HRB 2617 with its registered office in Bad Homburg v.d.H., Germany. Its business address is Else-Kröner-Straße 1, 61352 Bad Homburg v.d.H., Germany. Fresenius AG is the operating holding of Fresenius Group ("Fresenius Group") which offers products as well as services in the health care sector.

The subscribed capital of Fresenius AG currently amounts to Euro 130,752,921.60 (including the capital increase from authorised capital against contribution in kind in the amount of Euro 903,884.80 in the course of the acquisition of HUMAINE Kliniken GmbH ("HUMAINE") which yet has to be registered in the commercial register, but not taking into account the capital increases from the conditional capitals (Section 4 para. 5 and para. 6 of the articles of association of Fresenius AG) in the amount of Euro 771,968.00 in the course of the year 2006) and is divided into 25,537,680 ordinary bearer shares ("Ordinary Shares") and

25,537,680 non-voting preference bearer shares ("Preference Shares") (not taking into account any Ordinary or Preference Shares issued in 2006 because of the exercising of options and convertible bonds). Pursuant to Section 5 para. 1 of the articles of association of Fresenius AG, the shares are no-par value shares and are issued to the bearer. It is intended to propose to the extraordinary general meeting of shareholders on December 4, 2006 to increase the subscribed capital of the company by means of a capital increase from the company's funds without the issuance of new shares (Sections 207 et seqq. of the German Stock Corporation Act – *Aktiengesetz* – "AktG") (the "Capital Increase From The Company's Funds") and subsequently to conduct a new division of the subscribed capital in such manner that the number of Ordinary Shares and Preference Shares issued is being tripled (share split at a ratio of 1 (previously) : 3 (in the future), the "Share Split").

It is intended to convert Fresenius AG into a European Company (*Societas Europaea*, SE) pursuant to Art. 2 para. 4 in connection with Art. 37 of Council Regulation (EC) No. 2157/2001 of October 8, 2001, on the Statute for a European company (SE) ("SE Regulation"). The legal form of an SE is the only supranational legal form based on European law currently available to a listed company with its registered office in Germany. As such, it particularly facilitates the development of an open and international corporate culture.

The legal form of an SE facilitates, while maintaining the current level of employee participation at Fresenius AG, the continuation of the good and efficient corporate governance exercised with evident success in the past by stipulating the size of the supervisory board to be twelve members in the statutes of Fresenius SE. On the supervisory board, which would continue to be composed on a parity basis, there would not only be employee representatives from Germany, but also representatives of the employees of Fresenius Group in the other member states of the European Union ("EU") and the signatory states to the European Economic Area ("EEA"). Considering the fact that while 22% of the sales of Fresenius Group are generated in Germany, but also 18% in the other member states of the EU and the signatory states to the EEA, the management board regards a more intensive participation of the other European employees on the level of the holding company of Fresenius Group as appropriate. This facilitates a higher level of identification of the employees with Fresenius.

In the view of the management board, the change of the legal form is a further consistent step in the development of the company, following the successful expansion of the international business and the strong growth of the recent years. The registered office of the company is to remain in Germany. The legal form of the company is to reflect its international orientation.

The management board of Fresenius AG therefore prepares the following conversion plan:

## **Section 1**

### **Conversion of Fresenius AG into Fresenius SE**

Fresenius AG is being converted into a European Company (*Societas Europaea*, SE) pursuant to Art. 2 para. 4 in connection with Art. 37 SE Regulation. With Fresenius Finance B.V. with its registered office in 's-Hertogenbosch, the Netherlands, established on September 24, 1998, by Fresenius AG and registered in the commercial register at the registered office of the company on September 29, 1998, Fresenius AG has had a subsidiary company governed by the law of another member state of the EU, namely the Netherlands. The condition precedent for the conversion of Fresenius AG into Fresenius SE is thereby fulfilled.

The conversion of Fresenius AG into an SE does neither lead to a liquidation of the company nor to the formation of a new legal entity. The interests of the shareholders in the company continue to exist unchanged because of the identity of the legal entity.

## **Section 2**

### **Effectiveness of the Conversion**

The conversion becomes effective upon the registration in the commercial register of Fresenius AG.

## **Section 3**

### **Company Name, Registered Office, Subscribed Capital and Statutes of Fresenius SE, Cash Exit Offer**

- 3.1 The company name of the SE is "Fresenius SE".
- 3.2 The registered office of Fresenius SE is in Bad Homburg vor der Höhe, Germany.
- 3.3 The entire subscribed capital of Fresenius AG in the amount existing at the point in time of the registration of the conversion in the commercial register (the current amount being Euro 130,752,921.60 (including the capital increase from authorised capital against contribution in kind in the amount of Euro 903,884.80 in the course of the acquisition of HUMAINE Kliniken GmbH ("HUMAINE") which yet has to be registered in the commercial register, but not taking into account the capital increases from the conditional capitals (Section 4 para. 5 and para. 6 of the articles of association of Fresenius AG) in the amount of Euro 771,968.00 in the course of the year 2006) and in the division into Ordinary Shares and Preference Shares existing at the point in time of the registration of the conversion in the commercial register (there currently being 25,537,680 each of the Ordinary Shares and the Preference Shares, not taking into account any Ordinary or Preference Shares issued in 2006 because of

the exercising of options and convertible bonds) becomes the subscribed capital of Fresenius SE, with those individuals and companies who are shareholders of Fresenius AG at the point in time of the registration of the conversion in the commercial register becoming shareholders of Fresenius SE. They will hold an interest in the subscribed capital of Fresenius SE in the same extent and with the same number of no-par value shares as they did in respect of the subscribed capital of Fresenius AG prior to the conversion becoming effective. The ordinary shareholders receive the same number of Ordinary Shares they held in Fresenius AG prior to the conversion becoming effective and the preference shareholders receive the same number of Preference Shares they held in Fresenius AG prior to the conversion becoming effective. The arithmetic portion of each no-par value share in the subscribed capital is maintained in exactly the way it existed immediately prior to the conversion becoming effective. If the Share Split is entered into the commercial register prior to the conversion becoming effective, the shareholders will receive shares with a proportionate amount of the subscribed capital of Euro 1.00 per share.

- 3.4 Fresenius SE shall have the statutes enclosed as **Annex I** which forms part of this conversion plan. In this regard, at the point in time of the conversion of Fresenius AG into an SE the following applies:
- (i) the amount of the subscribed capital with its division and the allocation to Ordinary and Preference Shares stipulated in Section 4 para. 1 of the statutes of Fresenius SE corresponds to the amount of the subscribed capital with its division and the allocation to Ordinary and Preference Shares stipulated in Section 4 para. 1 of the articles of association of Fresenius AG,
  - (ii) the amounts of the authorised capitals pursuant to Section 4 para. 4 and para. 5, respectively, of the statutes of Fresenius SE correspond, in each case, to the amounts of the authorised capitals still existing pursuant to Section 4 para. 3 and para. 4 of the articles of association of Fresenius AG,
  - (iii) the amounts and the number of shares of the conditional capitals pursuant to Section 4 para. 6 and para. 7 of the statutes of Fresenius SE correspond, in each case, to the conditional capitals still existing pursuant to Section 4 para. 5 and para. 6 of the articles of association of Fresenius AG and
  - (iv) the preference dividend is either Euro 0.03 and the minimum dividend Euro 0.06 (Section 20 paras. 2 to 4 of the statutes of Fresenius SE) in the case of a proportionate amount of the subscribed capital of Euro 2.56 per Preference Share, or Euro 0.01 (preference dividend) and Euro 0.02 (minimum

dividend) in the case of a proportionate amount of the subscribed capital of Euro 1.00 per Preference Share (after the Capital Increase From The Company's Funds and the Share Split have been implemented).

In this regard, the supervisory board is authorised and instructed to make any amendments to the wording of the enclosed statutes of Fresenius SE which result from the preceding sentence before the registration of the conversion.

- 3.5 Shareholders who object to the conversion are not being offered a cash compensation, since no such cash exit offer is provided for by statutory law.

#### **Section 4 Holders of Special Rights and Holders of Other Securities**

- 4.1 As a special right, the holders of Preference Shares in Fresenius AG will continue to receive in Fresenius SE for each of the Preference Shares held by them a dividend from the annual balance sheet profits which is higher by Euro 0.03 than the dividend for the Ordinary Shares, provided that they receive at least a dividend in the amount of Euro 0.06 per Preference Share. The minimum dividend in an amount of Euro 0.06 per Preference Share prevails over the distribution of a dividend to Ordinary Shares. If the balance sheet profits of one or more financial years are not sufficient to distribute Euro 0.06 per Preference Share, the lacking amounts excluding interest shall be paid subsequently from the balance sheet profits of the following financial years, in each case after distribution of the minimum dividend to the Preference Shares for these financial years and before distributing a dividend to the Ordinary Shares. The right to the payment of arrears is part of the share in profits for the financial year from the balance sheet profits of which the payment of arrears on the Preference Shares is made.

In the event that, after the implementation of the Capital Increase From The Company's Funds and the Share Split, the proportion of the amount of the subscribed capital per Preference Share is Euro 1.00 (instead of previously Euro 2.56), the amount of the increased dividend is Euro 0.01 (instead of previously Euro 0.03) per Preference Share and the amount of the minimum dividend is Euro 0.02 (instead of previously Euro 0.06) per Preference Share. The amount of the claim for payment of arrears is changed accordingly.

- 4.2 On the basis of the resolution adopted by the general meeting of shareholders of June 18, 1998, the company has issued subscription rights for Ordinary Shares and Preference Shares, respectively, to members of the management board of the company, to members of the management of the German affiliated companies within

Fresenius Group, to executive employees (in accordance with the classification made by the company) of the company and of the German affiliated companies within Fresenius Group and to executives of foreign affiliated companies within Fresenius Group ("Stock Option Plan 1998") which carry subscription rights for a total of up to 450,000 Ordinary Shares and up to 450,000 Preference Shares. However, the following persons are excluded: members of the management and employees of Fresenius Medical Care AG (now Fresenius Medical Care AG & Co. KGaA) and of those affiliated companies which are only connected to the company through Fresenius Medical Care. Up to 200,000 options granting subscription rights for up to 100,000 each of the Ordinary Shares and Preference Shares are attributable to the group of the members of the management board. Up to 700,000 options granting subscription rights for up to 350,000 each of the Ordinary Shares and Preference Shares are attributable to the group of the executives. The stock options granted under the Stock Option Plan 1998 have a term of ten years. At the earliest, one third of them may be exercised, in each case, two, three or four years after the issuance date of the options. Each option grants the right to subscribe one Ordinary Share or Preference Share, respectively. As per December 31, 2005, 763,266 stock options had been issued. Of these, 676,724 may be exercised.

Pursuant to a resolution of the general meeting of shareholders of Fresenius AG of May 28, 2003, the management board, with the approval of the supervisory board is authorised to issue, under the Stock Option Plan 2003, convertible bonds in the overall nominal amount of Euro 4,608,000.00 to members of the management board of the company, to members of the management of affiliated companies of the company, to employees of the company and to employees of affiliated companies of the company which grant rights to subscribe to a total of up to 900,000 Ordinary Shares and up to 900,000 Preference Shares. However, the following persons are excluded: members of the management and employees of Fresenius Medical Care AG (now Fresenius Medical Care AG & Co. KGaA) and of those affiliated companies which are only connected to the company through Fresenius Medical Care. Up to 400,000 convertible bonds granting subscription rights to up to 200,000 each of the Ordinary Shares and Preference Shares are attributable to the group of the members of the management board. Up to 1,400,000 convertible bonds granting subscription rights for up to 700,000 each of the Ordinary Shares and Preference Shares are attributable to the group of the employees.

The beneficiaries are entitled to choose between convertible bonds which are subject to a performance objective (stock price target) and convertible bonds without a performance objective. The conversion price for convertible bonds which are subject

to a performance objective corresponds to the stock price of the Ordinary Shares or Preference Shares, respectively, at the point in time at which the increase of the stock price as compared to the initial value is at least 25% for the first time. The initial value is determined on the basis of the average stock price of the Ordinary Shares and Preference Shares, respectively, during the last 30 trading days at the Frankfurt Stock Exchange prior to the issuance date. The conversion price for convertible bonds without a performance objective corresponds to the initial value. Those beneficiaries who choose convertible bonds without a performance objective receive a number of stock options which is 15% less than if they would choose convertible bonds which are subject to a performance objective. Each convertible bond entitles its holder to subscribe, after payment of the respective conversion price, one Ordinary Share or Preference Share, respectively. Every year, up to 20% of the total number of convertible bonds available under the Fresenius AG Stock Option Plan 2003 may be issued. As per December 31, 2005, 767,324 convertible bonds had been issued. Of these, 47,236 may be exercised.

In the course of the conversion, the beneficiaries receive a subscription right for shares in Fresenius SE instead of shares in Fresenius AG. The number of shares does not change because of the conversion. Instead of shares in Fresenius AG, in the future shares in Fresenius SE are to be delivered. The conditional capitals which were created in order to secure the subscription rights under the Stock Option Plans 1998 and 2003 continue to exist accordingly at Fresenius SE (cf. Section 4 paras. 6 and 7 of the statutes of Fresenius SE, **Annex I**).

However, it has to be taken into account that in the course of the Capital Increase From The Company's Funds the conditional capitals of Fresenius AG will be increased in the same proportion as the subscribed capital by operation of law (cf. Section 218 sentence 1 AktG). In addition, in the course of the following Share Split of the extraordinary general meeting of December 4, 2006, the subscription rights are being adjusted accordingly with the consequence that, in the future, for one option or convertible bond, respectively, three Ordinary or Preference Shares, respectively, will be granted instead of one Ordinary or Preference Share, respectively, as before. However, the actual total nominal value of convertible bonds already issued or, respectively, yet to be issued in the future under the stock option plan 2003 will not exceed the authorisation in the amount of Euro 4,608,000.00 contained in the stock option plan 2003.

## **Section 5 Special Advantages**

For reasons of legal precaution, advice is being given in this context that notwithstanding the statutory competences of the supervisory board of Fresenius SE it is to be assumed that the acting members of the management board of Fresenius AG will also be appointed members of the management board of Fresenius SE. The acting members of the management board of Fresenius AG are Dr. Ulf M. Schneider (Chairman), Rainer Baule, Andreas Gaddum, Dr. Ben J. Lipps and Stephan Sturm.

In addition, members of the supervisory board of Fresenius AG are to be appointed as members of the supervisory board of Fresenius SE (see Section 9 para. 2 of the statutes of Fresenius SE which are enclosed with this conversion plan as **Annex I**).

The following persons are to be appointed as members of the supervisory board of Fresenius SE:

Dr. Gerd Krick, Dr. Gabriele Kröner, Dr. Gerhard Rupprecht, Dr. Dieter Schenk, Dr. Karl Schneider, Dr. Bernhard Wunderlin.

## **Section 6 Supervisory Board**

- 6.1 Pursuant to Section 9 para. 1 of the statutes of Fresenius SE (cf. **Annex I**), Fresenius SE is to have a supervisory board comprising – as is currently the case with Fresenius AG – of twelve members. Of the twelve members, six members are to be appointed upon proposal of the employees.
- 6.2 The terms of office of the shareholder representatives on the supervisory board of Fresenius AG terminate upon the effectiveness of the conversion. The terms of office of the employee representatives on the supervisory board of Fresenius AG also terminate upon the effectiveness of the conversion, since the employee representatives on the supervisory board of Fresenius SE will be appointed subject to the employee involvement procedure (cf. Section 7 of the conversion plan).

## **Section 7 Information on the Procedure for Arrangements for Employee Involvement**

- 7.1 In order to safeguard the rights to participate in entrepreneurial decisions acquired by the employees of Fresenius AG, in the course of the conversion into an SE a procedure for the involvement of the employees at Fresenius SE is to be conducted.



The objective is the conclusion of an agreement regarding the involvement of employees in the SE, i.e., in particular, regarding the participation of the employees in the supervisory board of Fresenius SE and the procedure for the information and consultation of employees either by establishment of an SE works council or in another way to be agreed upon with the management board of Fresenius AG.

The procedure for the involvement of employees is characterised by the principle of protecting the acquired rights of the employees of Fresenius AG. The extent of the involvement of the employees in the SE is determined by the definition in Section 2 para. 8 of the SE Employee Participation Act (*SE-Beteiligungsgesetz* – "SEBG") which, essentially, follows Art. 2 lit. h) of Council Directive 2001/86/EC of October 8, 2001 supplementing the Statute for a European company with regard to the involvement of employees. Involvement of employees is the collective term for any mechanism – including, in particular, information, consultation and participation – through which employees' representatives may exercise an influence on decisions to be taken within the company. Information in this context means the informing of the SE works council or other employees' representatives by the management of the SE on questions which concern the SE itself and any of its subsidiaries or establishments situated in another member state or which exceed the powers of the decision-making organs in a single member state. Consultation means, in addition to employees' representatives expressing an opinion on matters relevant for the decision-making process, the exchange of views between employees' representatives and management and a dialogue with the objective of reaching an agreement, however, with the company management remaining free in its decision. The most far-reaching influence is being conferred by participation; the term either refers to the right to appoint or elect members of the supervisory organ or, alternatively, to recommend such members for appointment or to oppose such recommendations made by a third party.

- 7.2 As parent company of Fresenius Group, Fresenius AG currently has a supervisory board with 12 members which is composed on a parity basis in accordance with the German Co-determination Act 1976 (*Mitbestimmungsgesetz* – "MitBestG 1976"). With regard to the six employee representatives on the supervisory board of Fresenius AG, presently only the domestic employees of the group companies have the active and passive voting right in accordance with the MitbestG 1976. Upon the effectiveness of the conversion of Fresenius AG into an SE, the terms of office of the employee representatives as well as the terms of office of the shareholder representatives on the supervisory board of Fresenius AG terminate (see Section 6 of the conversion plan). The provisions of the MitbestG 1976 regarding the representation of employees on the supervisory board of Fresenius AG are being

replaced by the provisions of the SEBG and its provisions (with regard to the other consequences of the change of the legal form for the employees and their representative bodies, see below Section 8 of the conversion plan). The shareholder representatives on the new supervisory board of Fresenius SE are already being appointed in the statutes of Fresenius SE. The first employee representatives on the supervisory board of Fresenius SE will be appointed after the completion of the procedure for the involvement of employees. It is to be expected that the appointment of the first employee representatives will be made by the local court of Bad Homburg v.d.H. (*Amtsgericht* Bad Homburg v.d.H.) as the registration court competent for Fresenius SE.

On December 15, 2005, the management board of Fresenius AG, the management board of Fresenius Medical Care AG (now Fresenius Medical Care AG & Co. KGaA), the management board of Fresenius Kabi AG, the management of Fresenius ProServe GmbH and the general works council (*Gesamtbetriebsrat*) of Fresenius AG as well as the industrial union *Industriegewerkschaft Bergbau, Chemie, Energie* ("IGBCE"), represented by its principal management body, have entered into an Agreement Regarding the Works Council Structure and have refrained from the establishment of a central works council (*Konzernbetriebsrat*) for the Group while maintaining the general works council structure. The Agreement stipulates that at locations of joint establishments of more than one enterprise of Fresenius Group in Germany uniform works councils for the entire location, so called location works councils (*Standortbetriebsräte*), are to be established. The employee representative bodies of the Wittgensteiner Kliniken as well as of the HELIOS Kliniken are not governed by this agreement. In each case, they have central works councils of their own.

On November 8, 2005, the management board of Fresenius AG has entered into an agreement with the steering committee of the so-called European Forum regarding the Fresenius European Employee Forum ("European Forum"). The agreement lays down rules for the notification and consultation procedure pursuant to Art. 6/13 of the European Works Council Directive (*Europäische Betriebsratsrichtlinie* – "EBR-RL"). The scope of application of the agreement includes Fresenius AG and all subsidiaries within the European Union. Participants in the European Forum are delegates of the employees and the employers. Pursuant to Section 3 para. 1 of the agreement, a person is only eligible to be a delegate if he/she is in an employment relationship with Fresenius AG or its subsidiary companies. Pursuant to Section 3 para. 7 of the agreement, it is a requirement for delegating an employee representative that there has been an average number of employees of at least 150 in a member state of the

European Union. If the average number of employees is 701 or more in a member state of the European Union, an additional employee representative can be delegated; if the average number of employees is 10,000 or more, the respective country is entitled to delegate a third, if it is 20,000 or more, a fourth and if it is 30,000 or more, a fifth representative to the European Forum.

7.3 The initiation of the procedure for the involvement of the employees is conducted in accordance with the provisions of the SEBG. The latter requires that the management body of the participating company, i.e. the management board of Fresenius AG, requests the employees to establish a Special Negotiating Body and that it notifies the employees or their representative bodies involved, respectively, about the conversion project. The procedure is to be initiated – by means of the notification required by law – unrequested and without undue delay after the management board of Fresenius AG has published the prepared conversion plan. As a company governed by German law, Fresenius AG is required in this regard to file the publication with the competent commercial register in Bad Homburg v.d.H. and to include in the filing the conversion plan attested by a notary public (cf. Section 12 para. 1 German Commercial Code – *Handelsgesetzbuch* – "HGB"). The required notification of the employees or their representative bodies, respectively, includes, in particular, (i) the names and structure of Fresenius AG, concerned subsidiaries and concerned establishments, and their distribution among the Member States; (ii) the bodies representing employees existing within these companies and establishments; (iii) the number of persons employed in these companies and establishments, and the total number of persons employed in a given Member State determined on the basis thereof, and (iv) the number of employees enjoying participation rights in the corporate bodies of these companies.

7.4 It is provided by statutory law that the employees or their representative bodies, respectively, elect or appoint within a period of ten weeks after the initiation of the procedure by the required notification of the employees or their representative bodies, respectively, the members of the Special Negotiating Body, which is composed of employee representatives from all member states of the EU and from all signatory states of the EEA involved.

It is the task of this Special Negotiating Body to negotiate with the management of the company the procedural details of the involvement procedure and the determination of the participation right of the employees within the SE.

The establishment and composition of the Special Negotiating Body are, in principle, subject to German law (Sections 4 to 7 SEBG). The allocation of the seats in the Special Negotiating Body to the individual member states of the EU and the signatory

states to the EEA in which Fresenius Group has employees is governed, in respect of the formation of an SE with its registered office in Germany, in Section 5 para. 1 SEBG. The allocation of the seats follows the following basic principle:

Each member state of the EU and signatory state to the EEA in which Fresenius Group has employees is allocated at least one seat. The number of seats allocated to a member state of the EU or a signatory state to the EEA is increased by 1 in each case where the number of employees employed in this member state of the EU or signatory state to the EEA exceeds the thresholds of 10%, 20%, 30% etc. of all European employees of Fresenius Group. The relevant point in time for the determination of the allocation of seats is, in principle, the time of the notification (cf. Section 4 para. 4 SEBG).

On the basis of the employee figures of Fresenius Group in the individual member states of the EU and the signatory states to the EEA as of June 30, 2006, the following allocation of seats applies:

Country	Number of employees	% (rounded)	Delegates in the Special Negotiating Body
Belgium	108	0.2	1
Denmark	16	0.0	1
Germany	29,288	64.0	7
Estonia	24	0.1	1
Finland	17	0.0	1
France	2,269	5.0	1
Greece	37	0.1	1
Ireland	7	0.0	1
Italy	1,223	2.7	1
Luxemburg	11	0.0	1
Netherlands	709	1.5	1
Norway	403	0.9	1
Austria	2,301	5.0	1
Poland	2,040	4.5	1
Portugal	1,037	2.3	1
Sweden	889	1.9	1
Slovakia	348	0.8	1
Slovenia	100	0.2	1
Spain	1,808	3.9	1
Czech Republic	1,397	3.1	1

Country	Number of employees	% (rounded)	Delegates in the Special Negotiating Body
Hungary	770	1.7	1
United Kingdom	975	2.1	1
<b>Total</b>	<b>45,777</b>	<b>100</b>	<b>28</b>

It is to be expected that at the likely point in time of the constitution of the Special Negotiating Body Romania will have joined the EU as a new member. In Romania, Fresenius Group has 328 employees (as of June 30, 2006) with the consequence that the latter have to be integrated into the employee involvement procedure and will receive one seat in the Special Negotiating Body. Fresenius Group has therefore decided to inform the employees in Romania, on a voluntary basis and without prejudice, already at the same time as the other employees of Fresenius Group in the EU and the EEA.

With regard to the election or appointment, respectively, of the members of the Special Negotiating Body from the individual EU member states and EEA signatory states the relevant national provisions of law apply. The election or, respectively, appointment of the members as well as the establishment of the Special Negotiating Body is, in principle, the responsibility of the employees and their representative bodies involved and of the relevant unions, respectively.

Pursuant to Section 8 para. 1 sentence 1 SEBG, the members of the Special Negotiating Body attributable to the employees employed in Germany by the companies participating in the formation of the SE and the subsidiaries as well as the establishments involved are to be elected by an election body in a secret and direct election. Pursuant to Section 8 para. 2 sentence 2 SEBG, the representation by the election body also includes, in principle, those employees who have not elected a works council in their establishment or company.

The manner in which the composition of the election body is determined depends on which employee representative bodies already exist at the establishing company or a subsidiary or an establishment involved. In principle, those employee representative bodies which, in each case, exist at the highest level of works councils are to assume the task of the election. If, as is the case with the conversion of Fresenius AG into an SE, only one domestic company group participates in the formation of the SE, the election body comprises of the members of the central works council or, if there is no such council, of the members of the general works councils or, if there is no such council, of the members of the works council or the works councils, respectively.

On December 15, 2005, the management board of Fresenius AG, the management board of Fresenius Medical Care AG (now Fresenius Medical Care AG & Co. KGaA), the management board of Fresenius Kabi AG, the management of Fresenius ProServe GmbH and the general works council (*Gesamtbetriebsrat*) of Fresenius AG as well as the industrial union Industriegewerkschaft Bergbau, Chemie, Energie ("IGBCE"), represented by its principal management body, have entered into an Agreement Regarding the Works Council Structure and have refrained from the establishment of a central works council (*Konzernbetriebsrat*) for the Group while maintaining the general works council structure. The employee representative bodies of the Wittgensteiner Kliniken as well as of the HELIOS Kliniken are not governed by this agreement. In each case, they have central works councils of their own.

Therefore, the election body responsible for the election of the domestic members of the Special Negotiating Body will comprise of the members of the general works council of Fresenius AG, the members of the central works council of the Wittgensteiner Kliniken as well as the members of the central works council of the HELIOS Kliniken. Since the maximum number of members of the election body is 40 (cf. Section 8 para. 6 sentence 1 SEBG) and the general works council of Fresenius AG, the central works council of the Wittgensteiner Kliniken and the central works council of the HELIOS Kliniken have a combined total of more than 40 members, the number of members in the election body is to be reduced in accordance to their proportion pursuant to the d'Hondt highest averages method (cf. Section 8 para. 6 sentence 2 SEBG).

In Germany, employees of the companies and establishments as well as union representatives are eligible for the Special Negotiating Body. For each member, a substitute member is to be elected. In the event that more than two members of the Special Negotiating Body are from Germany, every third member is to be elected upon the proposal of a union which is represented within Fresenius Group (cf. Section 6 para. 3 in connection with Section 8 para. 1 sentence 2 SEBG). In the event that more than six members of the Special Negotiating Body are from Germany, upon a respective proposal from the spokesmen's committee (*Sprecherausschuss*) at least every seventh member is an executive employee (*leitender Angestellter*) (cf. Section 6 para. 4 in connection with Section 8 para. 1 sentence 5 SEBG).

Statute law in this regard refrains from laying down detailed provisions and confines itself to describing general principles. Thus, at least two thirds of the members of the election body who represent at least two thirds of the employees have to be present for the election. The members of the election body have as many votes as they

represent employees. The members of the election body have to adhere to the principles of secret and direct election (cf. Section 8 para. 1 sentence 1 SEBG).

- 7.5 The procedure for the establishment of the Special Negotiating Body ends with its constituent meeting. In this regard, the management board of Fresenius AG has to issue an invitation without undue delay after all members have been appointed, but no later than ten weeks after the notification pursuant to Section 4 para. 2 and para. 3 SEBG was issued (cf. Sections 12 para. 1, 11 para. 1 SEBG).

The negotiations begin on the day for which the management board of Fresenius AG has issued the invitation for the constituent meeting of the Special Negotiating Body. Statutory law provides for a maximum duration of the negotiations of up to six months which, however, the parties to the negotiation may extend by mutual consent to a period of up to one year.

The negotiation procedure takes place also if the period for the election or appointment of individual or all members of the Special Negotiating Body is exceeded for reasons within the responsibility of the employees (Section 11 para. 2 sentence 1 SEBG). It is in the interest of the employees to complete the election or appointment of the members of the Special Negotiating Body within the ten-week period.

Members who are being elected or appointed during the course of the negotiations are not finally excluded; they may, at any time, participate in the negotiation procedure (Section 11 para. 2 sentence 2 SEBG). However, a member joining the negotiations belatedly has to accept the current status of the negotiations at that time. There is no claim for an extension of the six-months negotiation period (Section 20 SEBG).

The objective of the negotiations is the conclusion of an agreement regarding the involvement of employees in Fresenius SE. The subject matter of the negotiations is the participation of the employees in the supervisory board of Fresenius SE and the determination of the procedure for the information and consultation of employees either by establishment of an SE works council or in another way.

- 7.6 Agreements regarding the involvement of the employees on the entrepreneurial level at least have to contain information regarding the number of employee representatives on the supervisory board, the procedure according to which these employee representatives are determined and the rights of such representatives. As required by Art. 40 para. 3 SE Regulation, Section 17 para. 1 SE Implementation Act (*SE-Ausführungsgesetz* – "SEAG"), the size of the supervisory board will be determined in the statutes of Fresenius SE. The respective provision of the statutes provides for a

supervisory board of twelve members. In this regard, the principle of composition on a parity basis is to be maintained. Accordingly, the statutes of Fresenius SE provide that six of the members of the supervisory board are to be appointed by the general meeting of shareholders upon the proposal of the employees. In the agreement, only the geographical allocation and the procedure for the appointment have to be determined. With regard to the rights of the employee representatives on the supervisory board, the framework for negotiations is restricted by the right of the supervisory board to organise its own affairs (*Selbstorganisationsrecht*). In the event that such agreement regarding employee involvement is not concluded, the geographical allocation and the appointment are made in accordance with the subsidiary regulation by operation of law which is explained in Section 7.9 below.

- 7.7 Furthermore, it is to be stipulated in the agreement between the management board and the Special Negotiating Body whether an SE works council is to be established for the purpose of the information and consultation of the employees. In the case of its establishment, the following has to be stipulated: its scope of application (including, if applicable, the inclusion of non-member states of the EU or, respectively, of countries which are not signatory states to the EEA), the number of its members and the allocation of seats, the functions and the procedure for its information and consultation, the frequency of meetings, the financial and material resources to be made available, the date of entry into force and the duration of the agreement as well as the circumstances in which the agreement is to be renegotiated and the procedure to be used in this regard.

Since the parties to the negotiations are under no obligation to establish an SE works council, they may also agree on another procedure by which the information and consultation of the employees is ensured.

Further, it is to be stipulated in the agreement that negotiations concerning the involvement of employees in the SE shall also be opened prior to structural changes to the SE.

- 7.8 The conclusion of an agreement regarding the involvement of employees requires a resolution adopted by the Special Negotiating Body which, generally, adopts resolutions by a majority of its appointed members, provided that this majority also represents a majority of the employees. No resolution may be adopted which results in a reduction of the employee participation rights (cf. Section 15 para. 5 SEBG). Further, no resolution may be adopted to the effect that no negotiations should be entered into or that negotiations already entered into should be broken off (cf. Section 16 para. 3 SEBG).



- 7.9 If no agreement regarding the involvement of employees is being reached within the negotiation period, a subsidiary regulation by operation of law applies; the latter may also be agreed upon from the outset as the content of the agreement.

In the case of Fresenius SE, the subsidiary regulation by operation of law would have the consequence with regard to employee participation on the supervisory board that the principle of employee participation on a parity basis existing at the supervisory board of Fresenius AG would be continued for Fresenius SE, so that half of the members of the supervisory board of Fresenius SE would be employee representatives. However, the employee representatives would no longer be exclusively appointed by the employees in Germany, but by all employees in the member states of the EU and the signatory states to the EEA. The employees would have to appoint, in accordance with the respective provisions applicable in these countries their employee representatives who are to be elected by the general meeting of Fresenius SE. If no appointment were made, the SE works council would have to make it.

On the basis of the current number of employees and their distribution by countries, in a supervisory board with twelve members composed on a parity basis there would be four seats for employees of Fresenius SE from Germany, one seat for employees from France and one seat for employees from Austria.

With regard to the protection of the right to information and consultation of the employees of Fresenius SE, the subsidiary regulation by operation of law would have the consequence that an SE works council would have to be established, the function of which would be to safeguard the right to information and consultation of the employees in the SE. The council would be responsible for matters which affect the SE itself, one of its subsidiaries or one of its establishments in another member state or which go beyond the powers of the competent bodies at the level of the individual member states. The SE works council would have to be notified and consulted annually with regard to the development of the business situation and the future prospects of the SE. It would have to be notified and consulted with regard to extraordinary circumstances. The composition of the SE works council as well as the election of its members would be determined, in principle, in accordance with the provisions applicable to the composition and appointment of the members of the Special Negotiating Body.

- 7.10 In case the subsidiary regulation by operation of law applies, it is to be reviewed every two years during the existence of the SE by the management of the SE whether changes within the SE, its subsidiaries or its establishments require an alteration of the

composition of the SE works council. Besides, in case the subsidiary regulation by operation of law applies, four years after its establishment the SE works council has to resolve with the majority of its members whether negotiations shall be re-opened with regard to an agreement for the involvement of employees within the SE or whether the existing regulations are to remain in place. If a resolution is adopted to enter into negotiations for an agreement regarding the involvement of employees, for the purpose of these negotiations the SE works council replaces the Special Negotiating Body.

- 7.11 The necessary costs arising from the establishment and operation of the Special Negotiating Body will be borne by Fresenius AG and, after its formation, by Fresenius SE. The obligation to bear the costs includes the material and personal expenses incurred in connection with the activities of the Special Negotiating Body, including the negotiations. In particular, premises, material resources (e.g. telephone, telefax, required literature), interpreters and clerical staff required for meetings are to be provided and the travel and subsistence expenses of the members of the Special Negotiating Body are to be met.

### **Section 8 Other Consequences of the Conversion for the Employees and their Representative Bodies**

- 8.1 As a general rule, the conversion of Fresenius AG into an SE does not have any consequences for the employees of Fresenius Group. Their employment contracts are being continued as before with the respective group company; in the case of the employees of Fresenius AG, their employment contracts are being continued unchanged with Fresenius SE.
- 8.2 The existing operating agreements (*Betriebsvereinbarungen*) and collective labour agreements (*Tarifverträge*) remain in force in accordance with the provisions of the respective agreement.
- 8.3 For the members of bodies representing employees at the operational level at Fresenius AG and within Fresenius Group there will be no changes resulting from the conversion into an SE. The existing bodies representing employees at the operational level continue to exist (cf. also in this regard the statements in Section 7.2 of the conversion plan). With regard to the composition of the supervisory board of Fresenius SE with employee representatives who are not exclusively been appointed in Germany, reference is being made to the statements regarding employee involvement (cf. Section 7 of the conversion plan).

8.4 Further, there are no other measures intended or planned as a consequence of the conversion which would affect the situation of the employees.

**Section 9**  
**Auditor**

KPMG Deutsche Treuhand-Gesellschaft Aktiengesellschaft Wirtschaftsprüfungsgesellschaft, Marie-Curie-Straße 30, 60439 Frankfurt am Main, is appointed as auditor for the first financial year of Fresenius SE.

Bad Homburg v.d.H., October 10, 2006

Fresenius Aktiengesellschaft

The Management Board

sgd. Dr. Ulf M. Schneider

sgd. Stephan Sturm

**Annex I:** Statutes of Fresenius SE

**Statutes of Fresenius SE**

## **I. General Provisions**

### **Section 1 Company Name and Registered Office**

The company is a European Company having the company name

Fresenius SE.

Its registered office is in Bad Homburg vor der Höhe.

### **Section 2 Corporate Purpose**

- (1) The corporate purpose of the company is:
  - a) development, manufacture, and distribution as well as trading with products, systems, and processes in the health care sector,
  - b) construction, development, and operation of medical and curative facilities as well as of hospitals,
  - c) planning and construction of production plants, in particular for the manufacture of pharmaceutical, dietary, and medical devices products,
  - d) consulting in the medical and pharmaceutical fields as well as scientific information and documentation.

The company engages in business activities in its domestic market or abroad either directly or through associated companies (*Beteiligungsgesellschaften*).

- (2) The company is entitled to enter into any business transactions and take any measures that are deemed necessary or useful in accomplishing the corporate purpose of the company, in particular, to acquire interests in other companies of the same or a related kind, to take over their management and/or representation, to transfer company divisions, including major company divisions, to other enterprises, provided that the company owns at least the majority of the latter's voting capital and/or holds a controlling interest, and to establish branches at home and abroad.

### Section 3 Notifications

All proclamations of the company shall be published in the electronic Federal Gazette (*elektronischer Bundesanzeiger*).

## II. Subscribed Capital and Shares

### Section 4 Subscribed Capital

- (1) The subscribed capital (*Grundkapital*) of the company amounts to Euro 154,130,730.00 and is divided into 77,065,365 ordinary bearer shares (*Inhaber-Stammaktien*) and 77,065,365 non-voting preference bearer shares (*Inhaber-Vorzugsaktien*).

The terms of the non-voting preference bearer shares are set out in Section 20. The issuance of further preference shares, which with respect to the distribution of the profits or of the company's assets rank equal to or prevail over the preference shares already issued, is not subject to the approval of the holders of preference shares.

- (2) The portion of the subscribed capital attributable to the ordinary bearer shares was paid in
- a) in the amount of DM 100,000 against an issue of shares in the nominal amount of DM 100,000 through the conversion of Fresenius Verwaltungs GmbH;
  - b) in the amount of DM 19,538,800 against an issue of shares in the nominal amount of DM 19,538,800 through contribution in kind by Mrs. Else Kröner, namely through the contribution of her interests in the limited partnerships (*Kommanditbeteiligungen*)
    - (aa) Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG  
Apparatebau KG
    - (bb) Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG  
Klinikbedarf KG
    - (cc) Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG,
  - c) in the amount of DM 361,200 against an issue of shares in the nominal amount of DM 361,200 through contribution in kind by Mr. Detlef Kröner, namely through the contribution of his interests in the limited partnerships (*Kommanditbeteiligungen*)

- (aa) Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG  
Apparatebau KG
  - (bb) Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG  
Klinikbedarf KG
  - (cc) Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG,
  - d) in the amount of DM 3,162,100 against an issue of shares in the nominal amount of DM 3,162,100 through cash contribution by Mrs. Else Kröner, with a premium of 195%, and in the amount of DM 837,900 against an issue of shares in the nominal amount of DM 837,900 through cash contribution by Mr. Hans Kröner, with a premium of 195%;
  - e) in the amount of DM 6,000,000 through the conversion of capital reserves in the amount of DM 6,000,000 through the issuance of new shares with a nominal value of DM 6,000,000, with one new share being issued in each case for four old shares.
- (3) The subscribed capital of Fresenius SE was provided by way of conversion of Fresenius AG into a European Company (SE).
- (4) The management board is authorised, with the approval of the supervisory board, to increase until May 9, 2011, the subscribed capital of the company by a total of nominally Euro 12,800,000.00, through the single or multiple issuance of new ordinary bearer shares and/or non-voting preference bearer shares against contributions in cash and/or in kind, however, by no more than up to the amount in which the authorised capital pursuant to Section 4 para. 3 of the articles of association of Fresenius AG is still existent at the point in time Fresenius AG is converted into a European Company (SE) in accordance with the conversion plan dated October 10, 2006 (Authorised Capital I – *Genehmigtes Kapital I*). The number of shares shall increase in the same proportion as the subscribed capital. The shareholders shall be granted a subscription right. The management board is authorised, however, to exclude fractional amounts from the shareholders' subscription right and, if ordinary and preference shares are issued at the same time, to exclude the subscription right of the holders of shares of one type to shares of the other type, provided that the subscription ratio is determined to be the same for both types. The authorisation also includes the right to issue additional preference shares which are equal to non-voting preference shares previously issued in respect of the distribution of profits or of the company's assets. This authorisation may only be exercised to the extent that the number of ordinary shares issued does not exceed the number of non-voting preference shares issued in case all authorised capitals which are registered in the

commercial register (*Handelsregister*) on the basis of the resolutions adopted by the general meeting of Fresenius AG of May 10, 2006, are fully utilised.

- (5) The management board is authorised, with the approval of the supervisory board, to increase until May 9, 2011, the subscribed capital of the company by a total of nominally Euro 5,496,115.20, through the single or multiple issuance of new ordinary bearer shares and/or non-voting preference bearer shares against contributions in cash and/or in kind, however, by no more than up to the amount in which the authorised capital pursuant to Section 4 para. 4 of the articles of association of Fresenius AG is still existent at the point in time Fresenius AG is converted into a European Company (SE) in accordance with the conversion plan dated October 10, 2006 (Authorised Capital II – *Genehmigtes Kapital II*). The number of shares shall increase in the same proportion as the subscribed capital. The management board is authorised to exclude fractional amounts from the shareholders' subscription right and, if ordinary and preference shares are issued at the same time, to exclude the subscription right of the holders of shares of one type to shares of the other type, provided that the subscription ratio is determined to be the same for both types. Furthermore, the management board is authorised to decide on the exclusion of the shareholders' subscription rights, in each case with the approval of the supervisory board. The exclusion of subscription rights is only permissible, however, if in the case of a capital increase against contribution in cash, the issue price is not significantly lower than the stock exchange price. The exclusion of subscription rights in the case of a capital increase against contribution in kind is only permissible for the purposes of acquiring an enterprise, parts of an enterprise, or an interest in an enterprise. The authorisation also includes the right to issue additional preference shares which are equal to non-voting preference shares previously issued in respect of the distribution of profits or of the company's assets. This authorisation may only be exercised to the extent that the number of ordinary shares issued does not exceed the number of non-voting preference shares issued in case all authorised capitals which are registered in the commercial register (*Handelsregister*) on the basis of the resolutions adopted by the general meeting of Fresenius AG of May 10, 2006, are fully utilised.
- (6) The subscribed capital of the company is conditionally increased by up to Euro 1,078,029.00, divided into 1,078,029 shares, through the issuance of new ordinary bearer shares, however, no more than up to the amount and number of shares in which the conditional capital pursuant to Section 4 para. 5 sentence 1 of the articles of association of Fresenius AG is still existent at the point in time Fresenius AG is converted into a European Company (SE) in accordance with the conversion plan dated October 10, 2006 (Conditional Capital I Ordinary Shares – *Bedingtes Kapital I*



*Stämme*). The conditional capital increase will only be implemented to the extent that subscription rights for ordinary bearer shares are issued in accordance with the stock option plan pursuant to the resolution of the general meeting of Fresenius AG of June 18, 1998, and taking into account the amendment resolution of the general meeting of December 4, 2006, required due to the new division of the subscribed capital, and the holders of these subscription rights exercise these rights. The new ordinary bearer shares are entitled to profit participation starting from the beginning of the financial year in which they are issued.

The subscribed capital of the company is conditionally increased by up to Euro 1,078,029.00, divided into 1,078,029 shares, through the issuance of new non-voting preference bearer shares, however, no more than up to the amount and number of shares in which the conditional capital pursuant to Section 4 para. 5 sentence 4 of the articles of association of Fresenius AG is still existent at the point in time Fresenius AG is converted into a European Company (SE) in accordance with the conversion plan dated October 10, 2006 (Conditional Capital I Preference Shares – *Bedingtes Kapital I Vorzüge*). The conditional capital increase will only be implemented to the extent that subscription rights for non-voting preference bearer shares are issued in accordance with the stock option plan pursuant to the resolution of the general meeting of Fresenius AG of June 18, 1998, and taking into account the amendment resolution of the general meeting of December 4, 2006, required due to the new division of the subscribed capital, and the holders of these subscription rights exercise these rights. The new non-voting preference bearer shares are entitled to profit participation starting from the beginning of the financial year in which they are issued.

- (7) The subscribed capital of the company is conditionally increased by up to Euro 2,572,008.00, divided into up to 2,572,008 shares, through the issuance of new ordinary bearer shares, however, no more than up to the amount and number of shares, in which the conditional capital pursuant to Section 4 para. 6 sentence 1 of the articles of association of Fresenius AG is still existent at the point in time Fresenius AG is converted into a European Company (SE) in accordance with the conversion plan dated October 10, 2006 (Conditional Capital II Ordinary Shares – *Bedingtes Kapital II Stämme*). The conditional capital increase will only be implemented to the extent that convertible bonds for ordinary bearer shares are issued in accordance with the stock option plan pursuant to the resolution of the general meeting of Fresenius AG of May 28, 2003, and taking into account the amendment resolution of the general meeting of December 4, 2006, required due to the new division of the subscribed capital, and the holders of these convertible bonds exercise

their conversion rights. The new ordinary bearer shares are entitled to profit participation starting from the beginning of the financial year in which they are issued.

The subscribed capital of the company is conditionally increased by up to Euro 2,572,008.00, divided into up to 2,572,008 shares, through the issuance of new non-voting preference bearer shares, however, no more than up to the amount and number of shares, in which the conditional capital pursuant to Section 4 para. 6 sentence 4 of the articles of association of Fresenius AG is still existent at the point in time Fresenius AG is converted into a European Company (SE) in accordance with the conversion plan dated October 10, 2006 (Conditional Capital II Preference Shares – *Bedingtes Kapital II Vorzüge*). The conditional capital increase will only be implemented to the extent that convertible bonds for non-voting preference bearer shares are issued in accordance with the stock option plan pursuant to the resolution of the general meeting of Fresenius AG of May 28, 2003, and taking into account the amendment resolution of the general meeting of December 4, 2006, required due to the new division of the subscribed capital, and the holders of these convertible bonds exercise their conversion rights. The new non-voting preference bearer shares are entitled to profit participation starting from the beginning of the financial year in which they are issued.

- (8) In the case of a capital increase, participation in profits (*Gewinnbeteiligung*) may be determined in derogation of Section 60 of the German Stock Corporation Act (*Aktiengesetz*).

## **Section 5 Shares**

- (1) The shares are non-par value shares and are issued to bearer.
- (2) The company is entitled to issue share certificates made out to the bearer which embody multiple shares (global share certificates). The shareholders' right to have their shares embodied in certificates is excluded, unless certificates are required under the rules applicable at a stock exchange where the shares are admitted.
- (3) The management board, with the approval of the supervisory board, shall determine the form of the share certificates and of the dividend and renewal coupons.

### **III. Organisational Constitution of the Company**

#### **Section 6 Corporate Bodies**

The company's corporate bodies are:

- the management board,
- the supervisory board, as well as
- the general meeting of shareholders.

#### **A. Management Board**

##### **Section 7 Composition**

- (1) The management board shall comprise of at least two persons. The supervisory board may determine a higher number. It may appoint a chairman of the management board as well as deputy members of the management board.
- (2) The members of the management board are appointed by the supervisory board for a maximum term of five years. Reappointments are permissible.
- (3) The resolutions of the management board shall be adopted by simple majority of the votes unless required otherwise by statutory law. If a chairman of the management board has been appointed he shall have the casting vote in case of a parity of votes (tie).
- (4) If a chairman of the management board has been appointed he shall have the right to object to a management board resolution (veto right). If the chairman of the management board exercises his veto right the resolution shall be deemed to not have been passed.

##### **Section 8 Representation of the Company**

- (1) The company shall be represented by two management board members or by one management board member jointly with an executive holding a general power of attorney (*Prokura*). The general power of attorney (*Prokura*) may only be granted as

joint power of attorney (*Gesamtprokura*) subject to the restrictions referred to in Section 8 (3).

- (2) The supervisory board may grant the right to solely represent the company (*Einzelvertretung*) to individual or several members of the management board and revoke such right at any time.
- (3) The express prior consent of the supervisory board is required:
  - a) for the acquisition, disposal and encumbrance of real property and equivalent rights, if in an individual case the amount of Euro 15,000,000.00 is exceeded,
  - b) the taking up of new and the discontinuation of existing lines of business,
  - c) the granting of consent to the undertaking of any of the above legal acts by an associated company (*Beteiligungsgesellschaft*).
- (4) Notwithstanding the collective responsibility of the management board, the supervisory board may assign the duties of the management board to the individual members of the management board, in particular in form of rules of procedure for the management board and, within the scope of mandatory legal provisions and the statutes, determine the relations of the management board members among each other and towards the company and define, in extension of Section 8 (3), the acts for which the management board shall require the express prior consent of the supervisory board. The supervisory board may also grant consent in accordance with Section 8 (3) in a general manner, for limited or unlimited periods, as well as to individual members of the management board, in particular to the chairman of the management board. The supervisory board may at any time extend, restrict or revoke the rules of procedure for the management board. The supervisory board may transfer the passing of resolutions in accordance with Section 8 (3) and the granting of approvals in accordance with the rules of procedure for the management board to a committee of the supervisory board; such a committee must have three members, but otherwise the supervisory board may freely determine its composition.
- (5) The management board, with the approval of the supervisory board, may give to itself rules of procedure, as long as and to the extent that the supervisory board has not issued such rules of procedure for the management board.

## **B. Supervisory Board**

### **Section 9**

#### **Election and Term of Office of the Supervisory Board**

(1) The supervisory board shall comprise twelve members who are appointed by the general meeting. Of the twelve members, six members are to be appointed upon proposal of the employees. The general meeting shall be bound to the proposals for the appointment of the employee representatives.

(2) As members of the first supervisory board are appointed for a term until the close of the general meeting which resolves on the ratification of actions for the first financial year of Fresenius SE, however, for no longer than a term of three years:

Dr. Gerd Krick, Königstein, Former Chairman of the Management Board of Fresenius AG

Dr. Gabriele Kröner, Berg, doctor

Dr. Gerhard Rupprecht, Gerlingen, Member of the Management Board of Allianz AG, Chairman of the Management Board of Allianz Deutschland AG

Dr. Dieter Schenk, München, attorney and tax advisor, law firm Nörr, Stiefenhofer & Lutz

Dr. Karl Schneider, Mannheim, Former Chairman of the Management Board of Südzucker AG

Dr. Bernhard Wunderlin, Bad Homburg v.d.H., Former Managing Director of Harald Quandt Holding GmbH

The other six members of the supervisory board shall be appointed upon proposal of the employees. The first financial year of Fresenius SE is the financial year in which the conversion of Fresenius AG into a European Company (SE) is registered in the commercial register of Fresenius AG.

(3) The general meeting appoints the supervisory board members, subject to Section 9 (2), for a term until the close of the general meeting which resolves on the ratification of actions for the fourth financial year after the term of office commenced, with the financial year in which the term of office commences not being counted, however, for no longer than for a period of six years. Reappointments are permissible.

- (4) If a member appointed by the general meeting ceases to be a member of the supervisory board before his term of office expires, a new member is to be appointed by the next general meeting. The newly-appointed member shall hold office for the remaining term of office of the member whose membership has ceased.
- (5) The general meeting may appoint substitute members for the supervisory board members to be appointed by it. Their positions as substitute members shall revive if and when the general meeting appoints a new member for a former member who has left office and has been replaced by the respective substitute member. The term of office of the substitute member is limited to the period up to the close of the general meeting at which an appointment according to Section 9 (4) takes place.
- (6) Each member of the supervisory board may resign from office, also without cause, by giving one month's written notice to the chairman of the supervisory board. The chairman of the supervisory board shall give notification of his resignation from office to his deputy.

#### **Section 10 Constitution of the Supervisory Board**

- (1) Following the general meeting at which a new supervisory board has been appointed, the supervisory board shall hold a meeting without special notice in which the supervisory board shall elect, if necessary, a chairman and two deputy chairmen from among its members for the whole term of their office on the supervisory board.
- (2) In case the membership of the chairman or one of his deputies should cease before the expiry of his term of office, the supervisory board shall elect a successor without undue delay (*unverzüglich*).
- (3) For the election of the chairman of the supervisory board, the oldest member in terms of age among the shareholder representatives on the supervisory board shall have the chair; Section 11 (5) sentence 2 shall apply.

#### **Section 11 Meetings and Resolutions of the Supervisory Board**

- (1) The meetings of the supervisory board are to be convened by the chairman in writing with a notice period of 14 days. The individual items of the agenda are to be stated in the invitation to the meeting. In urgent cases, this notice period may be shortened and the meeting convened by telegram, telex, facsimile, by other means of electronic communication (e-mail etc.) or by telephone.

- (2) Resolutions of the supervisory board generally are to be passed in actual meetings (*Präsenzsitzungen*). However, it is permissible that meetings of the supervisory board are held by means of video conference, or that individual members of the supervisory board participate by means of video transmission, and that in such cases resolutions or votes are also passed or cast by means of video conference or video transmission, respectively. Outside of meetings, resolutions may be passed in text form (in writing, by telegram, telex, facsimile, by other means of electronic communication (e-mail etc.)) or by telephone, if the chairman of the supervisory board, or in case the chairman is unavailable, his deputy directs to do so and no member of the supervisory board objects to this procedure in text form without undue delay (*unverzüglich*).
- (3) The supervisory board shall constitute a quorum if half of the total number of members of which it comprises participates in the passing of a resolution. If no equal number of shareholders' representatives and of employees' representatives on the supervisory board takes part in the passing of a resolution, or if the chairman of the supervisory board does not take part, the passing of the resolution is, upon motion of at least two supervisory board members, to be postponed. Section 11 (1) shall apply to the new passing of a resolution; the latter may take place on the same day if the chairman of the supervisory board so directs.
- (4) If members of the supervisory board are unable to attend meetings, they may have their written vote submitted by another member of the supervisory board. The submission of a written vote shall count as participation in the passing of the resolution.
- (5) Resolutions of the supervisory board require the majority of the votes cast. In the case of a parity of votes, the vote of the chairman, or, if he does not participate in the passing of the resolution, the vote of the deputy chairman, provided that he is a shareholder representative, shall be decisive. A deputy chairman who is an employee representative shall not be entitled to a casting vote. Section 11 (5) sentence 2 of the statutes also applies to the passing of resolutions in the committees of the supervisory board of which the chairman or his deputy, if he is a shareholder representative, is a member.
- (6) Minutes shall be prepared of the supervisory board meetings which are to be signed by the chairman of the meeting. The chairman of the supervisory board shall sign the records of resolutions passed outside of actual meetings pursuant to Section 11 para. 2 (*Präsenzsitzungen*).

**Section 12**  
**Rights and Duties of the Supervisory Board**

- (1) The supervisory board has the rights and duties defined by mandatory legal provisions and by these statutes.
- (2) The supervisory board is supposed to issue rules of procedure for the management board in accordance with Section 8 (4).
- (3) The supervisory board is entitled to make such amendments to the statutes which only concern their wording without a resolution of the general meeting. This also applies in the cases of Section 4 para. 1 sentence 1, and paras. 4, 5, 6 and 7.

**Section 13**  
**Rules of Procedure of the Supervisory Board**

The supervisory board shall issue rules of procedure for itself within the framework of applicable mandatory legal provisions and the statutes.

**Section 14**  
**Remuneration of the Supervisory Board**

- (1) Each member of the supervisory board shall receive a fixed remuneration of Euro 13,000.00 per annum for every full financial year, payable after the completion of the financial year. For each full financial year, the remuneration shall increase by 10% if the dividend distributed per ordinary share for such financial year (dividend amount according to the resolution of the general meeting – gross dividend) is one percentage point higher than 3.6% of the proportionate amount per individual no-par value share of the subscribed capital; intermediate amounts shall be interpolated. If the general meeting resolves a higher remuneration in view of the results of the financial year, such new amount shall be applicable. The chairman of the supervisory board shall receive twice, his deputies one and a half times the remuneration of a supervisory board member.
- (2) For a membership in the audit committee (*Prüfungsausschuss*) and for a membership in the personnel committee (*Personalausschuss*) of the supervisory board a member shall receive an additional remuneration of Euro 10,000.00 for each membership, while the chairman of such committee shall receive twice the amount.
- (3) If a financial year does not comprise a full calendar year or if a member of the supervisory board is on the supervisory board only for part of a financial year, the remuneration shall be paid on a *pro-rata temporis* basis. This shall apply accordingly



to the membership in the audit committee and in the personnel committee of the supervisory board.

- (4) The members of the supervisory board shall be reimbursed for the expenses incurred exercising their office, including applicable value-added tax. The company shall provide insurance coverage to the members of the supervisory board in an extent appropriate with regard to the exercise of the supervisory board office, and with an appropriate deductible (*angemessener Selbstbehalt*).

## **C. General Meeting of Shareholders**

### **Section 15 Convening the General Meeting**

- (1) The general meeting shall be convened at least 30 days prior to the day by the end of which the shareholders have to register for the general meeting.
- (2) The general meeting shall be held at the registered office of the company, or at the place of a German stock exchange, or at the registered office of a domestic associated company (*Beteiligungsgesellschaft*).

### **Section 16 Participation in the General Meeting**

- (1) Shareholders who wish to participate in the general meeting or to exercise their voting right have to register for the general meeting and prove their eligibility. The registration and proof of eligibility must be received by the company at the address stated for this purpose in the invitation no later than on the seventh day prior to the general meeting (registration date). If the end of the period falls on a Saturday, Sunday, or a holiday recognised by statute law at the registered office of the company, the preceding working day shall be relevant for the delivery.
- (2) For the purpose of proving eligibility under para. 1, a special proof of share ownership issued by the custodian institution in text form in the German or English language is sufficient. The proof regarding shares which are not held in a collective custody account may also be issued by the company or by a bank against delivery of the shares. The proof of shareholding has to relate to the point in time as determined by the German Stock Corporation Act (*Aktiengesetz*).

**Section 17**  
**Date of the General Meeting of Shareholders**

The general meeting which receives the approved annual financial statements or, as the case may be, which resolves upon the approval of the annual financial statements as well as the ratification of the actions of the management board and supervisory board (*Entlastung*), and the appropriation of profits (general meeting of shareholders) shall be held within the first six months after the completion of a financial year.

**Section 18**  
**Chairmanship of the General Meeting and Voting**

- (1) The general meeting shall be chaired by the chairman of the supervisory board, and, if he is unavailable or at the request of the chairman of the supervisory board, by another member of the supervisory board which the chairman of the supervisory board determines. If no such determination was made, another member of the supervisory board to be determined by the supervisory board shall chair the meeting if the chairman of the supervisory board is unavailable.
- (2) The chairman shall chair the meeting, determine the order of items to be discussed and of the speakers as well as the manner and form of voting. The chairman may determine appropriate restrictions of the speaking time, of the question time, and of the combined speaking and question time at the beginning or during the general meeting, regarding the discussions on individual items of the agenda, as well as for individual speaking and question contributions. He shall order the end of the debate to the extent that and as soon as this is necessary for an orderly conduct of the general meeting.
- (3) The resolutions of the general meeting shall be passed by a simple majority of votes cast unless the statutes or mandatory legal provisions do require otherwise. Unless mandatory legal provisions require otherwise, amendments of the statutes require a majority of two thirds of the votes cast or, if at least half of the subscribed capital is represented, the simple majority of votes cast. If, for the effectiveness of the passing of resolutions, mandatory legal provisions require that, in addition, a majority of the subscribed capital be represented when the resolution is passed, the simple majority of the subscribed capital represented shall be sufficient, to the extent that this is permitted by law. If the voting results in a tie a motion shall be deemed rejected.
- (4) Each ordinary share grants one vote in the general meeting. The preference shares carry no voting rights unless mandatory legal provisions provide otherwise.

## **IV. Annual Financial Statements and Distribution of Balance Sheet Profits**

### **Section 19 Financial Year, Accounting**

- (1) The financial year shall be the calendar year.
- (2) The management board shall prepare the financial statements and the management report for the respective previous financial year within the first three months of the financial year, however, at the latest within the maximum period set by mandatory legal provisions, and submit them to the auditors.
- (3) The supervisory board mandates the auditor for the audit.
- (4) The management board shall present the annual financial statements and the management report as well as the consolidated financial statements and the group management report to the supervisory board without undue delay after their preparation. At the same time, the management board shall submit to the supervisory board the proposal which it intends to submit to the general meeting concerning the appropriation of balance sheet profits (*Verwendung des Bilanzgewinns*).

### **Section 20 Appropriation of Profits**

- (1) The general meeting shall resolve upon the appropriation of balance sheet profits (*Bilanzgewinn*), subject to the following paragraphs 2 through 4.
- (2) The non-voting preference shares (Section 4) shall receive a dividend from annual balance sheet profits which is Euro 0.03 per preference share higher than the dividend for the ordinary shares, however, the dividend shall amount to at least Euro 0.06 per preference share. If the proportionate amount of the subscribed capital for each preference share no longer amounts to Euro 2.56 per share but, after completion of a capital increase from the company's funds (*Kapitalerhöhung aus Gesellschaftsmitteln*) and subsequent new division of the subscribed capital only amounts to Euro 1.00 per share, the preference shares shall receive a dividend that is Euro 0.01 (instead of Euro 0.03) per preference share higher than the dividend for the ordinary shares, however, the dividend shall amount to at least Euro 0.02 (instead of Euro 0.06) per preference share.
- (3) The minimum dividend in an amount of Euro 0.06 per preference share (or, respectively, Euro 0.02 in the case of a proportionate amount in the subscribed capital

of Euro 1.00 per preference share) shall prevail over the distribution of a dividend to ordinary shares.

- (4) If the balance sheet profits of one or more financial years are not sufficient to distribute Euro 0.06 per preference share (or, respectively, Euro 0.02 in the case of a proportionate amount in the subscribed capital of Euro 1.00 per preference share), the lacking amounts excluding interest shall be paid subsequently from the balance sheet profits of the following financial years, in each case after distribution of the minimum dividend to the preference shares for these financial years and before distributing a dividend to the ordinary shares. The right to the payment of arrears is part of the share in profits for the financial year from the balance sheet profits of which the payment of arrears on the preference shares is made.

### **Section 21 Formation Expenses / Benefits**

- (1) The company shall bear the formation expenses (conversion costs) in connection with the formation of Fresenius AG, especially any corporate taxes, commercial register and notary fees, notification costs and the costs for the audit up to a total amount of DM 5,790.
- (2) In connection with the formation of Fresenius AG, the company shall also bear the formation expenses (costs of the capital increase) especially any corporate taxes, commercial register and notary fees, notification costs, costs for the audit (audit of contribution in kind and capital increase) and consulting fees up to a total amount of DM 433,000.
- (3) With regard to the conversion of Fresenius AG into Fresenius SE, the formation expenses up to an amount of Euro 3,000,000 shall be borne by the company.
- (4) In connection with the conversion of Fresenius AG into Fresenius SE, the following is pointed out for reasons of legal precaution:

Notwithstanding the statutory competences of the supervisory board of Fresenius SE, it is to be assumed that the acting members of the management board of Fresenius AG will be appointed members of the management board of Fresenius SE. Members of the management board of Fresenius AG are Dr. Ulf M. Schneider (chairman), Rainer Baule, Andreas Gaddum, Dr. Ben J. Lipps and Stephan Sturm.

Furthermore, the shareholders' representatives on the supervisory board of Fresenius AG are to be appointed as members of the supervisory board of Fresenius SE (see Section 9 para. 2).