

## Statement on corporate governance in accordance with Section 289f and 315d of the HGB

The statement on governance in accordance with Section 289f and 315d of the German Commercial Code (Handelsgesetzbuch, HGB) comprises the declaration of conformity pursuant to Section 161 of the German Stock Corporation Act (Aktiengesetz, AktG), relevant information on corporate governance practices, and a description of the procedures of the Executive Management Board and the Supervisory Board along with the composition and procedures of their committees.

Pursuant to Section 161 of the AktG, any non-compliance with the recommendations of the German Corporate Governance Code must be described and justified in the declaration of conformity. Medigene reports on non-compliance with certain recommendations of the German Corporate Governance Code as described in the following statement on corporate governance.

### **I. Declaration of conformity by the Executive Management Board and Supervisory Board of Medigene AG pursuant to Section 161 of the AktG**

Section 161 (I) (1) of the German Stock Corporation Act (AktG) requires the Executive Management and the Supervisory Boards of a listed stock corporation to declare annually that the recommendations of the "Government Commission on the German Corporate Governance Code" published by the Federal Ministry of Justice in the official section of the Federal Gazette have been and are complied with, and which recommendations have not been or are not being applied, and for what reason. In addition to the presentation of the applicable German Stock Corporation Act, the German Corporate Governance Code ("Code") also includes recommendations from which a company may deviate ("shall" provisions). However, any deviation has to be disclosed and accounted for annually.

Since issuing the last Declaration of Conformity on 13 December 2016 Medigene AG has complied with the recommendations of the Code in its version dated 5 May 2015, except with the declarations made in the Declaration of Conformity of 13 December 2016. For the period starting 28 November 2017 the Executive Management and Supervisory Boards declare conformity with the Code in its version dated 7 February 2017 with the following exceptions, and declare their intention to comply in the future as follows:

#### **Section 3.8 para. 3 of the Code: Deductible in the case of D&O insurances**

The D&O insurance (so-called directors' and officers' liability insurance) taken out by Medigene AG for its Supervisory Board members does not provide for any deductible. Medigene AG does not intend to agree a general deductible for its Supervisory Board members with its D&O insurance carrier. The legal obligation to adapt D&O insurance contracts pursuant to Section 93 (II) (3) of the German Stock Corporation Act (AktG) in conjunction with Section 23 (I) (1) of the Introductory Act to the German Stock Corporation Act (EgAktG) is applicable only to Executive Management Board members. In Section 116 (I) of the German Stock Corporation Act, the legislator did not require any deductible for Supervisory Board members, but expressly excluded the Supervisory Board instead. The Executive Management and Supervisory Board of Medigene AG believe that the nature of the position as a Supervisory Board member, which is also emphasized by the different remuneration, calls for a distinction between D&O insurances for Executive Management and Supervisory Board members. Both the Executive Management and Supervisory Boards also believe that the motivation and sense of responsibility applied by the members of the Supervisory Board of Medigene AG in the

fulfillment of their duties are fully guaranteed without any general deductible as recommended under the Code.

#### **Section 4.1.5 sentence 2 of the Code: Proportion of women in management levels under the Executive Management Board**

The Executive Management Board of Medigene AG resolved on a target regarding the proportion of women in the so-called „Management Team“. A second level was consciously not defined in the light of the current size of Medigene AG and the respective structure of the company, which would not be meaningful and appropriate. The definition of only one management level in the form of the Management Team reflects existing reporting lines to the Executive Management Board. A second management level which would be meaningful in the sense of the Equal Opportunities Act does not exist and cannot meaningfully defined through titles or other definitions such as responsibility over personnel.

#### **Section 4.2.3 para. 3 of the Code: Establishment of a targeted pension level**

For the members of the Executive Management Board of Medigene AG, there is a defined contribution plan that does not aim to achieve a specific level of pensions. The Supervisory Board considers the existing pension system as appropriate and well balanced.

#### **Section 5.4.6 para. 1 sentence 2 of the Code: Consideration of committee work in the compensation of Supervisory Board members**

There is no differentiation between a chairman and a regular member of a committee. Both the Executive Management and Supervisory Boards believe that the Supervisory Board members show a high degree of commitment in their committee work without any such arrangement.

Martinsried, 28 November 2017

For the Supervisory Board:

For the Executive Management Board:

Prof Horst Domdey

Prof Dolores Schendel

Chairman of the Supervisory Board

Chief Executive Officer

The declarations of conformity of Medigene AG are available for a minimum of five years in each case on the Company's website (<http://www.medigene.com/investors-media/corporate-governance/declaration-on-corporate-governance>).

## II. Function and composition of the Executive Management Board and the Supervisory Board

### Function and composition of the Executive Management Board

The Executive Management Board of Medigene AG in its entirety and each individual Board member engage in the business of the Company with the due care and diligence of proper and conscientious management in accordance with the law, the Articles of Association and the Executive Management Board's Rules of Procedure. The Executive Management Board assumes responsibility for the management of the Company. In doing so, it is obliged to act in the Company's best interest and is committed to sustainably enhancing enterprise value. In managing the Company, the Executive Management Board considers the interests of the Company's shareholders, employees and other stakeholders.

In the 2017 fiscal year, the Executive Management Board of Medigene AG had three members which were reduced to two in the 2<sup>nd</sup> quarter of the year. The Executive Management Board consisted of three members on January 1, 2017 with the appointment of Dr. Thomas Taapken in addition to Prof Dolores Schendel and Dave Lemus. Dave Lemus decided to leave the Company as of April 30, 2017. The Executive Management Board therefore consisted of Prof. Dolores Schendel as Chief Executive Officer and Chief Scientific Officer and Dr. Thomas Taapken as Chief Financial Officer from May 1, 2017 onwards.

Members of the Executive Management Board cooperate closely and keep each other informed about important measures taken and processes implemented in their areas of responsibility. The Executive Management Board passes resolutions during meetings which take place at regular intervals, at least once a month. If required, the Executive Management Board also takes decisions outside its regular meetings.

The Executive Management Board's Rules of Procedure describe the processes and approaches that form the basis of the Executive Management Board's work. The Rules of Procedure also include regulations for business transactions which require the Supervisory Board's consent, the Company's organisational chart and basic behaviour policy guidelines.

The Executive Management Board works closely with the Supervisory Board. It keeps the Supervisory Board informed regularly, promptly and comprehensively on all business matters relevant to the Company.

### Function and composition of the Supervisory Board

It is the duty of Medigene AG's Supervisory Board to appoint the members of the Executive Management Board, to advise them regularly and to control and support the management and the achievement of Medigene AG's long-term goals. The Supervisory Board of Medigene AG is composed of six members, pursuant to Article 10 (I) (1) of the Articles of Association and to Sections 95, 96 (I) and 101 (I) of the AktG as of December 31, 2017.

The term of office of the Supervisory Board consisting of originally three members elected by the Annual General Meeting on August 11, 2016 expires at the end of the Annual General Meeting in 2019, which resolves on the Supervisory Board's discharge for the 2018 fiscal year. This office term also applies for the additional three members elected by the Annual General Meeting on May 24, 2017 by way of a supplementary election.

Dr. Keith Manchester, Dr. Gerd Zettlmeissl and Ronald Scott were elected as additional members of the Supervisory Board. Prof. Horst Domdey (Chairman), Ms. Antoinette Hiebeler-Hasner (Deputy Chairwoman), Dr. Yita Lee, Dr. Keith Manchester, Dr. Gerd Zettlmeissl and Ronald Scott are currently the members of the Supervisory Board. Ms. Hiebeler-Hasner serves

as the independent financial expert as required under Section 100 para. 5 of the AktG, while also chairing the Audit Committee.

In alignment with the defined aims for its composition, more than 50% of the members of the Supervisory Board are considered to be independent within the meaning of the German Corporate Governance Code.

The Supervisory Board conducts an efficiency review every two years in accordance with Section 5.6 of the German Corporate Governance Code. The last review took place in March 2017. All reviews carried out to date ascertained that the Supervisory Board's organisation is efficient and confirmed optimum cooperation between the Executive Management Board and the Supervisory Board.

The Supervisory Board has set up two committees for the fulfilment of its duties:

### **Nomination & Compensation Committee**

The tasks of the Nomination and Compensation Committee include human resource issues regarding the members of the Supervisory Board and the Executive Management Board. The focus is on preparing the service agreements for the members of the Executive Management Board and submitting proposals for their remuneration. The decision about these aspects is taken by the Supervisory Board. The Nomination and Compensation Committee comprises Dr. Gerd Zettlmeissl in the capacity of Chairman as well as Prof. Horst Domdey and Dr. Yita Lee as of December 31, 2017.

### **Audit Committee**

The members of the Audit Committee deal with issues relating to accounting, risk management, internal control system and compliance, required independence of the auditor, issuing the audit assignment to the auditor, determining audit priorities and agreeing to the audit fee with the auditors. The Audit Committee comprises Ms Antoinette Hiebeler-Hasner in the capacity of Chairwoman, Dr. Keith Manchester and Ronald Scott as of December 31, 2017.

## **III. Law on the equal participation of men and women in leadership positions**

In accordance with the law on the equal participation of men and women in leadership positions, which came into effect on May 1, 2015, the Supervisory Board established by initial resolution on October 8, 2015 a target figure for the representation of women in the Supervisory Board, whereas at the time of passing the resolution, the proportion stood at 0%. The Supervisory Board of Medigene AG should reach the target of at least 15% by June 30, 2017 which was fulfilled by 16.7%. During the reporting period there was one woman on the three-member Supervisory Board of Medigene AG (equals to 33%) until May 24, 2017 and on the six-member Supervisory Board (equals to 16.7%). The Supervisory Board resolved on July 25, 2017 a target of at least 16.7% to be applicable by June 30, 2022.

Furthermore, the Supervisory Board defined initial targets for the Executive Management Board on October 8, 2015. In line with these, the proportion of women in the Executive Management Board should have been at least 25% by June 30, 2017. At the time of passing the resolution on October 8, 2015, the proportion stood at 33%, as of June 30, 2017 and December 31, 2017 the proportion stood at 50%. The Supervisory Board resolved on July 25, 2017 a target of at least 25% to be applicable by June 30, 2022.

On September 30, 2015, the Executive Management Board of Medigene AG also established a target proportion of women in the “management team”, the management tier below the Executive Management Board. The management team of Medigene AG consists out of departments’ heads with a direct reporting line to the Executive Management Board. In line with this, the proportion of women in the management team should have been at least 30% by June 30, 2017. At the time of passing the resolution this proportion was 42%, and 40% as of June 30, 2017. The Executive Management Board resolved on July 4, 2017 a target of at least 30% to be applicable by June 30, 2022. Although this is envisaged by the act, the resolution does not define two separate tiers of management below the Executive Management Board as this would not have been meaningful or appropriate given Medigene AG’s current size and structure. By only defining one tier of management (the management team) the reporting lines to the Executive Management Board are reflected. Although the definition of a second management tier would be indicated by the law, this does not exist and cannot be clearly defined by job titles or management responsibility in this case.

## ÜBERSICHT ZIELGRÖSSEN UND ENTWICKLUNG FRAUENANTEIL

|   | AS OF 08.10.2015 | TARGET 30.06.2017 | AS OF 30.06.2017 | AS OF 31.12.2017 | TARGET 30.06.2022 |
|---|------------------|-------------------|------------------|------------------|-------------------|
| Supervisory Board                           | 0%               | ≥ 15%             | 16.7%            | 16.7%            | ≥ 16.7%           |
| Executive Management Board                  | 33%              | ≥ 25%             | 50%              | 50%              | ≥ 25%             |
| Management level below the Management Board | 42%              | ≥ 30%             | 40%              | 33.3%            | ≥ 30%             |

Medigene AG will continue to report on its implementation in achieving the self-defined target proportions.

## IV. Compliance Management System & Key Corporate Governance Practices

### Code of Conduct

Medigene implemented a formal Compliance Management System. This includes a Code of Conduct which is published on the Company’s website (<https://www.medigene.com/investors-media/compliance/code-of-conduct>). The code of Conduct explains the Company’s philosophy and addresses certain topics such as interaction amongst each other, with patients and shareholders, but also how to deal with conflicts of interest and the commitment to comply with laws and regulations, especially compliance with securities exchange regulations. Employees are asked to report any breaches to their superior or the responsible Executive Management Board member.

### Compliance risk areas

Compliance relevant areas were identified as compliance risk areas such as criminal law, tax law and accounting, data protection, laboratory security and pharmaceutical law with applicable stipulations and internal guidelines and rules of procedures.

A key aspect of this is the securities law as well as the statutory prohibition of insider trading complemented by the Company’s insider policy and rules of conduct. Employees who are involved in insider projects will be informed about their rights and obligations as well as legal consequences in case of a breach of law. The members of the Executive Management Board and the Supervisory Board are informed likewise as insiders and directors of the Company regarding directors’ dealings.

Medigene implemented a Risk Management System (RMS) as a supervision tool to control potential risks, to identify essential developments early and to initiate counter-measures to avoid risk materialisation. Medigene's activities are permanently exposed to external and internal influences and changes linked to risk potentials. To prevent risks and to manage risks through the avoidance of risks, minimisation of risks and risk mitigation and therefore to secure the Company's existence in the long term is the core task of a systematic risk management.

Furthermore, an Internal Control System (ICS) was implemented with the aim, amongst others, to avoid or to reduce the number of mistakes or to identify irregularities in accounting early by set control activities. The correctness, completeness and the reliability of accounting by regular manual and IT-based controls as well as a timely and reliable financial reporting through transparent business processes and control of interfaces and evaluations shall be ensured.

Company policies and standard operating procedures are issued in many areas, and these should be followed, with compliance being monitored by the appointed area's representative(s).

Furthermore, Medigene has signed up to the code of the "Voluntary Self-Regulation for the Pharmaceutical Industry" organisation ("Freiwillige Selbstkontrolle für die Arzneimittelindustrie e.V."; <http://www.fs-arzneimittelindustrie.de/verhaltenskodex>). The aim of this organisation is to observe and ensure proper collaboration between pharmaceutical companies and physicians, pharmacists, patient self-help organisations and other members of the medical community, sanctioning violations where necessary.

## **Compliance Officer & Compliance Committee**

The Compliance Management System and its effectiveness is supervised by a Compliance Officer. With the support of the Compliance Committee, the Compliance Officer monitors changes to legislation and directives as well as compliance with operational processes. If needed, the Compliance Officer together with the Compliance Committee works on change requests to improve the effectiveness of the CMS. The Compliance Committee, which is supporting the Compliance Officer, consists of representatives from Human Resources, Finance, Quality Assurance and Legal Affairs.

The Compliance Officer is independent in his actions in connection with his activities. It is important that he retains the necessary autonomy in the interest of a functioning CMS. Reporting is made directly to the Chairperson of the Audit Committee with information provided to the Executive Management Board being the board having the overall responsibility for compliance.

## **Whistleblower System**

Employees and third parties have the possibility to share information about legal violations in the Company through the Whistleblower System implemented on the Company's website. It may occur that employees or third parties witness actions or behavior that is not in line with the Code of Conduct or applicable law, such as misconduct, rude behavior, dubious practices or divergence from guidelines and procedures. The Whistleblower System allows such information to be communicated to the Company, also anonymously. Whistleblowers that provide a tip-off in good faith need not fear any negative consequences. Addressee of any tip-off provided through the Whistleblower System is the Compliance Officer.

The Compliance Management System forms the basis of Medigene AG's and its affiliates' corporate activities.

Martinsried, March 2018

For the Supervisory Board:

For the Executive Management Board:

Prof. Dr. Horst Domdey

Prof. Dr. Dolores J. Schendel

Chairman of the Supervisory Board

Chief Executive Officer