Ordinary Annual General Meeting of KPS AG on Friday, 7 April 2017

Report by the Executive Board on agenda item 7

According to agenda item 7, the Executive Board is to be authorized to increase the capital stock of the company up to 6 April 2022 (inclusive) with the agreement of the Supervisory Board by up to a nominal amount of EUR 18,706,050.00 by issue of up to 18,706,050 new registered no-par shares against cash and/or non-cash consideration (authorized capital 2017). The Executive Board makes the following report pursuant to Article 203 Section 2 p. 2 Stock Corporation Act (AktG) in conjunction with Article 186 Section 4 p. 2 Stock Corporation Act (AktG):

When utilizing the authorized capital 2017 the shareholders have a right of subscription.

a) However, the Executive Board is to be able to exclude the subscription right for fractional amounts with the agreement of the Supervisory Board. This is intended to facilitate the handling of issues with general subscription right of the shareholders. Such fractional amounts may result from the individual issue volume and the presentation of a practical subscription ratio. Their value is generally low for the individual shareholder, whereas the expense for this issue without such exclusion is significantly higher. The exclusion therefore serves to enhance the practical feasibility and easier implementation of an issue. The new shares excluded as free fractions of the subscription right of shareholders will be exploited in the best interests of the company.

b) Furthermore, the subscription it is to be possible to exclude the subscription right in the case of capital increases for a cash consideration in respect of up to 10% of the capital stock which is in existence at the date of implementation or exercise of the authorization, if the new shares are issued at an amount pursuant to Article 186 Section. 3 p. 4 Stock Corporation Act (AktG) which does not differ significantly from the stock market price (so-called simplified exclusion of subscription rights). This limit of 10% shall include shares which are sold or issued during the period of this authorization with exclusion of the subscription right in direct or corresponding application of Article 186 Section 3 p. 4 Stock Corporation Act (AktG). Furthermore, the limit shall include shares to service bonds (including participation rights) with conversion or option rights or a conversion obligation, insofar as the bonds or participation rights are issued during the course of this authorization with exclusion of the subscription right in corresponding application of Article 186 Section 3 p. 4 Stock Corporation Act (AktG).

This authorization places the Executive Board in the position of being able to take advantage of market opportunities quickly and flexibly. It means that we can cover a capital requirement that may arise in this connection, if necessary at very short notice, without having to engage in a subscription offer which takes at least 14 days to arrange. The placement of the new shares is carried out here at a price close to the stock exchange price and this is generally associated with a lower discount than in the case of subscription rights issues. In addition, this type of placement is able to achieve strategic acquisition of new shareholder groups. The simplified subscription right exclusion generally relates to the standard case under statutory regulations whereby the subscription right of shareholders can be excluded. The limit of 10% of the capital stock which is in existence at the date of implementation or exercise of the authorization with the inclusion of other cases of direct or corresponding application of Article 186 Section 3 p. 4 Stock Corporation Act (AktG) takes account of the need to protect the shareholders in relation to a proportionate dilution of their shareholdings. Shareholders who want to retain their proportionate shareholding can prevent the reduction of their proportionate shareholding by acquisitions on the stock exchange. In the case of the simplified subscription right exclusion, the issue amount of the new shares must not significantly fall below the stock exchange price. This takes adequate account of the need to protect shareholders from dilution of the value of their shareholding. In accordance with the statutory rationale of Article 186 Section 3 p. 4 Stock Corporation Act (AktG) and following assessment of the circumstances outlined above, exclusion of subscription rights in within the circumscribed limits preserves the interests of the shareholders to a reasonable extent and is in accordance with the interests of the company, particularly in relation to safeguarding the necessary scope for taking action.

c) The subscription right is also to be excluded in the case of capital increases against a non-cash contribution. The company should also continue to be able to acquire enterprises, parts of enterprises, shareholdings or economic assets in connection with a project, and other assets or claims, in order to strengthen its competitiveness, enhance the company’s profitability and increase the value of the company. It emerges that in the case of such projects large units are regularly involved. Very high contributions have to be paid many times in such situations. They should or can – also from the perspective of an optimum financial structure – often be provided entirely or partly as a non-cash contribution. Moreover, sellers frequently insist on acquiring shares as a consideration because this can be more cost-effective for them and sellers can in this way also indirectly have a share in the opportunities and risks of the units sold. The possibility of using own shares as an acquisition currency thereby gives the company the option of exploiting such acquisition opportunities quickly, flexibly and with the preservation of liquidity. It places the company in a position to acquire even large units in exchange for shares. Even in the case of individual economic assets, it should be possible under certain circumstances to make acquisitions either entirely or partly in exchange for shares. In all cases, it must be possible to exclude the subscription right of shareholders. Since this type of acquisition generally has to be carried out at short notice, it is not possible to achieve this for practical reasons by passing resolutions at the Annual General Meeting which only takes place once a year. This approach requires authorized capital which the Executive Board – with the agreement of the Supervisory Board – can quickly access. The company does not suffer any disadvantage as a result of this, because the issue of shares against a non-cash contribution assumes that the value of the non-cash contribution is in a reasonable relationship with the value of the shares to be issued. The Executive Board will carefully review the valuation ratio when exercising the authorization and ensure that the interests of the company and its shareholders are appropriately safeguarded and that a reasonable issue price is obtained for the new shares.

After carefully considering all the circumstances, the Executive Board has come to the conclusion that exclusion of the subscription right in the cases referred to is objectively justified and reasonable for the reasons presented also taking into account the corresponding dilution effects to the detriment of shareholders. The Executive Board will carry out a careful review in each case to ascertain whether the utilization of the authorized capital 2017 is in the interests of the company and its shareholders. The Executive Board will report to the Annual General Meeting about any utilization of the authorized capital 2017.

Unterföhring, 23.2.17
Ort, Datum

Leonardo Musso,
Member of the Executive
Board

Unterföhring, 23.2.17
Ort, Datum

Dietmar Müller,
Mitglied des Vorstands