

## **Joint Report**

of the Board of Management  
of Bayer Aktiengesellschaft, Leverkusen ("BAYER")

and

of the Board of Management  
of Bayer CropScience Aktiengesellschaft, Monheim am Rhein ("BCS")

on the Control and Profit and Loss Transfer Agreement of February 22, 2024

in accordance with Section 293a of the AktG

In order to inform their stockholders and to prepare for the resolutions at the Annual Stockholders' Meetings of BAYER (**Agenda Item 8 of the ordinary Annual Stockholders' Meeting of Bayer Aktiengesellschaft on April 26, 2024**) and BCS, the Board of Management of BAYER and the Board of Management of BCS have drawn up the following joint report on the Control Agreement of February 21, 2017, to which a profit and loss transfer component was added, and its revision in the form of the Control and Profit and Loss Transfer Agreement between BAYER and BCS of February 22, 2024:

### **I. CONCLUSION OF THE PROFIT AND LOSS TRANSFER AGREEMENT; EFFECTIVE DATE**

On February 21, 2017, BAYER and BCS concluded a Control Agreement. On February 22, 2024, BAYER and BCS added a profit and loss transfer component to the agreement and revised it as a whole to form the Control and Profit and Loss Transfer Agreement. The Control and Profit and Loss Transfer Agreement will be submitted for approval in accordance with Sections 293 and 295 of the AktG to BAYER's Annual Stockholders' Meeting on April 26, 2024. It is intended that the Annual Stockholders' Meeting of BCS will approve the conclusion of the Control and Profit and Loss Transfer Agreement on February 28, 2024. The Control and Profit and Loss Transfer Agreement must also be entered in the commercial register at the registered office of BCS in order to take effect.

### **II. CONTRACTING PARTIES**

BAYER is a stock corporation (Aktiengesellschaft) entered in the commercial register of the Local Court of Cologne (Amtsgericht) under the number HRB 48248 with its registered office in Leverkusen. The company's fiscal year is the calendar year. According to the Company's Articles of Incorporation, the purpose of the Company is manufacturing, marketing and other industrial activities, or the provision of

services, in the fields of healthcare and agriculture. The Company may also perform these activities in the fields of polymers and chemicals. BAYER is the holding company of the Bayer Group. The Company is authorized to undertake all business that is related to, or directly or indirectly serves, the purpose of the Company. The Company may establish, acquire and invest in other enterprises, especially those whose corporate purpose fully or partially extends to the aforementioned areas. It may bring companies in which it holds participating interests under its uniform control, or confine itself to the administration thereof. It may transfer their operations in full or in part to newly established or existing subsidiaries.

BAYER's total assets were approximately EUR 84 billion in 2021, approximately EUR 101 billion in 2022 and approximately EUR 97 billion in 2023. BAYER's distributable profit was around EUR 2.055 billion in 2021, around EUR 2.382 billion in 2022 and around EUR 2.575 billion in 2023.

BCS is a stock corporation (Aktiengesellschaft) entered in the commercial register of the Local Court of Dusseldorf (Amtsgericht) under the number HRB 46985 with its registered office in Monheim am Rhein. The company's fiscal year is the calendar year. Its share capital amounts to EUR 1,000,000.00. BAYER is the sole stockholder of BCS. The object of BCS is manufacturing, marketing and other industrial activities or provision of services in the field of agriculture. BCS is authorized to undertake all business that is related to, or directly or indirectly serves, the purpose of the Company. Furthermore, BCS may establish, acquire and invest in other enterprises, especially those whose corporate purpose fully or partially extends to the aforementioned field. It may bring companies in which it holds participating interests under its uniform control, or confine itself to the administration thereof. It may transfer their operations in full or in part to newly established or existing subsidiaries.

BCS's total assets were approximately EUR 14 billion in 2021, approximately EUR 15 billion in 2022 and approximately EUR 13 billion in 2023. BCS's distributable profit was around EUR 1.759 billion in 2021, EUR 0 in 2022 (following transfer of its loss of around EUR 113 million to BAYER in accordance with the Control Agreement with BCS of February 21, 2017) and EUR 0 in 2023 (following transfer of its loss of around EUR 476 million to BAYER in accordance with the Control Agreement with BCS of February 21, 2017). BCS' losses amounting to approximately EUR 113 million in 2022 and to approximately EUR 476 million in 2023 were mainly attributable to write-downs on investments in affiliated companies.

### **III. EXPLANATION OF THE CONTROL AND PROFIT AND LOSS TRANSFER AGREEMENT**

#### **1. Management**

In accordance with § 1 of the Control and Profit and Loss Transfer Agreement, BCS places the management of its company under the control of BAYER. BAYER is entitled to issue instructions to the Board of Management of BCS with regard to the management of the company. If no instructions have been issued, the Board of Management of BCS shall manage the company on its own responsibility.

The right to issue instructions is determined in accordance with Section 308 of the AktG, as amended. BCS is required to follow legitimate instructions. Instructions can also be issued that are detrimental to BCS if they serve the interests of BAYER and companies that are members of the Bayer Group. The Management is not required to comply with any prohibited instructions, for example, instructions that would violate mandatory statutory provisions if they were to be followed. Furthermore, no instruction to amend, maintain, or terminate the Agreement may be issued.

BAYER shall only exercise its right to issue instructions through the Board of Management. Instructions must be issued in text form.

In this respect, there are no changes to the content of the Control Agreement of February 21, 2017.

## **2. Profit transfer**

In accordance with § 2 of the Control and Profit and Loss Transfer Agreement, BCS agrees to transfer its entire profit to BAYER. Subject to the creation or release of reserves, net income for the year before transfer of profit, less any loss carried forward from the previous year, the amount to be transferred to the legal reserve in accordance with Section 300 of the AktG and the amount subject to a restriction on distribution in accordance with Section 268, Paragraph 8 of the German Commercial Code (HGB), must be transferred. BCS may transfer amounts from net income for the year to other retained earnings (Section 272, Paragraph 3 of the HGB) with BAYER's consent to the extent that this is permissible under commercial law and is economically justified, based on prudent business judgment. Other retained earnings created during the course of this Agreement must be released if required by BAYER and must be used to offset the net loss for a year or transferred as profit. The transfer of amounts resulting from the release of other retained earnings created before the commencement of this Agreement or from capital reserves is excluded. These provisions correspond to the restrictions on transferring profit set out in Section 301 of the AktG that apply in this case. Section 301 of the AktG, as amended, also applies.

The transfer of profits was newly introduced in § 2 of this Agreement.

## **3. Absorption of losses**

In accordance with § 3 of the Control and Profit and Loss Transfer Agreement, BAYER is obliged, pursuant to Section 302 of the AktG, as amended, to absorb losses. Pursuant to Section 302 of the AktG, BAYER is obligated to compensate any net loss for the year arising during the term of the Agreement to the extent that it is not offset by withdrawing amounts from other retained earnings that were transferred to them during the course of the Agreement. In accordance with Section 302, Paragraph 3 of the AktG, BCS may in general not waive or settle the claim to have losses offset until three years after the date on which entry of the termination of this Agreement in the commercial register is deemed to have been announced pursuant to Section 10 of the HGB. In accordance with Section 302, Paragraph 4 of the AktG, the statute of limitation for any claims by BCS is ten years starting from

the day on which notice of the entry of the termination of the Agreement in the commercial register has been given pursuant to Section 10 of the HGB.

With respect to the provisions on the absorption of losses, there is no change to the content of the Control Agreement of February 21, 2017.

#### **4. Effective date and duration**

The Control and Profit and Loss Transfer Agreement takes effect upon entry in the commercial register at the registered office of BCS and applies retroactively for the period from the start of the fiscal year in which the entry was made, except for the right to issue instructions. For the period before this Agreement becomes effective, the Control Agreement of February 21, 2017, applies along with Bayer's right to issue instructions to BCS agreed therein. This makes clear the successive applicability of the Control Agreement of February 21, 2017, and of the Control and Profit and Loss Transfer Agreement of February 22, 2024.

The Control and Profit and Loss Transfer Agreement can be terminated by giving six months' notice of termination effective as of the end of a fiscal year, but not before the end of the fiscal year that ends at least five years after the beginning of the fiscal year in which this Agreement takes effect. As such, a minimum duration for the Agreement of five years is agreed from the time this Agreement takes effect.

If the Control and Profit and Loss Transfer Agreement is not terminated, it shall be automatically extended by one fiscal year in each case, subject to the same notice period. This means that the provisions of the Control Agreement of February, 21, 2017, are unchanged.

In addition, the Control and Profit and Loss Transfer Agreement can be terminated for good cause without observing any notice period. This applies especially to BAYER in the event that BAYER is no longer the majority stockholder in BCS, another stockholder has acquired a stake in BCS, or one of the cases set out in administrative order R 14.5, Paragraph 6, Sentence 2 of the German Corporate Income Tax Guidelines (KStR) of 2022 or an administrative order replacing it applies. In accordance with R 14.5, Paragraph 6, Sentence 2 of the KStR, good cause for extraordinary termination also extends to the sale or contribution of the tax group subsidiary by the tax group parent as well as to the merger, split-off or liquidation of the tax group parent (BAYER) or the tax group subsidiary (BCS); these are now expressly defined as a good cause in the Control and Profit and Loss Transfer Agreement. The reasons for termination for good cause are thus specified in greater detail than in the Control Agreement of February 21, 2017. This is advisable as set out in administrative order R 14.5, Paragraph 6, Sentence 2 of the KStR.

**5. No entitlement to payment of compensation or a settlement payment pursuant to Section 304 and Section 305 of the AktG; no audit of agreement**

The Control and Profit and Loss Transfer Agreement – in common with the Control Agreement of February 21, 2017 – does not provide for any compensation payments or any settlement payment for non-controlling interest shareholders because BAYER is the sole stockholder of BCS.

As BAYER holds all shares in BCS, there is also no requirement for audit of the Control and Profit and Loss Transfer Agreement by an expert auditor (contract auditor) in accordance with Section 293b, Paragraph 1 of the AktG or for preparation of an audit report in accordance with Section 293e of the AktG.

**IV. ECONOMIC SIGNIFICANCE AND PURPOSE OF THE CONTROL AND PROFIT AND LOSS TRANSFER AGREEMENT**

By introducing the profit and loss transfer component, the Control and Profit and Loss Transfer Agreement serves to create a consolidated tax group for the purposes of income tax between BAYER and BCS beyond the existing consolidated tax group for value added tax purposes.

The consolidated tax group for corporate income tax and trade tax purposes results in consolidated taxation of BCS (the tax group subsidiary) and BAYER (the tax group parent). This enables profits and losses to be offset against each other for tax purposes. Only BAYER as the tax group parent is thus liable for corporate income tax and trade tax. The Control and Profit and Loss Transfer Agreement therefore enables the tax-optimized recognition of the profits and losses of BCS in the context of a consolidated tax group for corporate income tax and trade tax purposes.

The legal security in the organizational integration of BCS into BAYER, achieved through the Control Agreement of February 21, 2017, which served to ensure the continued existence of the consolidated tax group for value added tax purposes with BAYER, is safeguarded by the Control and Profit and Loss Transfer Agreement.

Otherwise, there are no essential changes to the content in the Control and Profit and Loss Transfer Agreement compared with the Control Agreement of February 21, 2017; only editorial adjustments have been made. The changes therefore do not have any financial or operational impact on the companies involved.

On the whole, the Control and Profit and Loss Transfer Agreement contains the standard provisions agreed when a group of companies is established.

## **V. ALTERNATIVES TO ENTERING INTO THE CONTROL AND PROFIT AND LOSS TRANSFER AGREEMENT**

There was no economically reasonable alternative to entering into the revised Control and Profit and Loss Transfer Agreement between BAYER and BCS that could have achieved the objectives described above in the same manner or better. In particular, entering into other types of intercompany agreement within the meaning of Section 292 of the AktG (company lease agreement, company surrender agreement, profit pool, or agreement as to the partial absorption of profit and loss) or a management agreement cannot achieve the consolidated taxation of BAYER and BCS.

Leverkusen, February 22, 2024

Bayer Aktiengesellschaft  
The Board of Management

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Monheim am Rhein, February 22, 2024

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