

Report on agenda item 8

The Board of Management provides the following report in respect of agenda item 8 relating to the exclusion of the subscription right in accordance with Article 71 Section 1 No. 8 in conjunction with Article 186 Section 4 Sentence 2 Stock Corporation Act (AktG):

Agenda item 8 includes the proposal to authorize the Executive Board itself or through enterprises dependent on it or in majority ownership of the company or through third parties acting on its or their account to acquire own shares amounting to up to 10 % of the capital stock. The authorization shall apply until 20 May 2026 (inclusive) and thereby make use of the maximum period of five years under statutory regulations pursuant to Article 71 Section 1 No. 8 Stock Corporation Act (AktG). The authorization granted by the Annual General Meeting on 25 September 2020 under agenda item 8 shall be cancelled when the new authorization comes into effect.

a) Authorization to acquire own shares

Article 71 Section 1 No. 8 Stock Corporation Act also allows other forms of acquisition and sale to be used in addition to acquisition and sale on the stock market. The proposal for a resolution provides for the acquisition of shares also by means of a public offer tender made to all shareholders or a public invitation to submit offers for sale (jointly known as “**public purchase offer**”). Article 71 Section 1 No. 8 sentence 4 Stock Corporation Act (AktG) states clearly that acquisition through the stock market satisfies the equal treatment principle. In the case of a public purchase offer, any disadvantage to shareholders on account of application of the equal treatment principle is excluded pursuant to Article 53a Stock Corporation Act (AktG).

A public purchase offer may involve the volume of shares in the company offered by shareholders exceeding the number of shares envisaged by the company for acquisition or the number of shares required by the company. In this case an allocation does not have to be given on the basis of participation rates but on the basis of the ratio of the tendered shares. This serves to simplify the allocation procedure. This is intended to facilitate a preferential acceptance of smaller offers or smaller parts of offers up to a maximum of 100 shares. This option helps to avoid fractional amounts in the determination of the ratios to be acquired and small residual amounts, and this facilitates the technical process of the repurchase. A de facto discrimination against small shareholders can also be avoided in this way. Finally, provision is also to be made for a rounding based on commercial principles in order to avoid arithmetic fractions of shares. Insofar, the acquisition ratio and the number of shares being tendered for acquisition by individual shareholders can be rounded in the way necessary so as to ensure that the purchase of whole shares is technically possible. The Executive Board considers that the resultant exclusion of any more extensive preemptive tender right of the shareholders is objectively justified and reasonable with respect to the shareholders.

b) Authorization for the utilization of own shares acquired by the company

The acquired own shares may be used for all legally permissible purposes, in particular also as follows:

Article 71 Section 1 No. 8 sentence 4 Stock Corporation Act (AktG) permits the own shares acquired on the basis of this authorization or an earlier authorization to be sold on the stock market. If the Executive Board sells its own shares on the stock market, it is necessary in formal terms to exclude any indirect subscription right of the shareholders with respect to the company. However, the shareholders are not unreasonably disadvantaged as a result of this action. According to the statutory regulations, the sale of own shares on the stock market – in the same way as their acquisition on the stock market – must comply with the equal treatment principle as set out in Article 53a Stock Corporation Act (AktG).

Furthermore, it is proposed that the Annual General Meeting should authorize the Executive Board to sell own shares acquired on the basis of this authorization or earlier authorizations on the basis of an offer to all shareholders or in some other way. According to the statutory regulations, this approach also satisfies the equal treatment principle pursuant to Article 53a Stock Corporation Act (AktG).

The company shall also be permitted to sell the own shares acquired on the basis of this authorization or an earlier authorization subject to the prerequisites of Article 186 Section 3 sentence 4 Stock Corporation Act (AktG) excluding the subscription right other than on the stock market or by an offer to the shareholders against a cash consideration. This is intended to enable the company in particular to issue shares in the company at short notice. The proposed authorization serves to secure a permanent and appropriate capital base for the company. For example, it permits own shares to be sold to institutional shareholders or new groups of investors to be accessed. A prerequisite is that the shares are sold against a cash consideration at a price which is not significantly less than the stock market price of shares in the company on the date of the sale. The final definition of the sale price for the own shares is only determined for the own shares on a date shortly before the sale. The Executive Board will keep any discount on the stock market price as low as possible. Under no circumstances may the discount be more than 5% of the stock market price on the date of exercise of the authorization. The proportionate amount of the capital stock attributable to the shares being sold must not exceed 10% of the capital stock, neither on the date that this authorization becomes effective nor on the date of exercise of this authorization. This limit shall include shares which are issued during the term of this authorization from authorized capital subject to exclusion of the subscription right in accordance with Article 186 Section 3 sentence 4 Stock Corporation Act (AktG). Furthermore, this limit shall include shares which are issued to service bonds (including participation rights) with conversion and/or option rights or a conversion and/or option 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 sentence 4 Stock Corporation Act (AktG). The limit on the number of shares to be sold and the obligation to define the sale price of the shares being sold close to the stock market price provides the shareholders with reasonable protection against a dilution in the value of their shares. At the same time, it is ensured that the consideration to be received by the company is reasonable.

At the same time, it should be possible to offer own shares to third parties against non-cash considerations, in particular in the context of company mergers, or for the purpose of (also indirect) acquisition of enterprises, parts of enterprises, shareholders in other enterprises or any other assets or claims on the acquisition of assets or in the context of implementing a non-cash/optional dividend. This can enable the company to strengthen its competitiveness, and enhance its profitability and increase the value of the company. Experience shows in the case of such projects that large units are regularly involved. Very high considerations 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 consideration. 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. The possibility of being able to offer own shares as a consideration creates an advantage in the competition to acquire interesting acquisition objects. As a result of the offer of own shares to the shareholders with exclusion of subscription rights, a non-cash/optional dividend can be implemented in which the entitlements of the shareholders to payment of a dividend in cash can be enabled as a contribution in kind through the issue of own shares in order to maintain liquidity levels (known as a scrip dividend). The Executive Board will always ensure when establishing the valuation relations that the interests of the shareholders are appropriately safeguarded. This review by the Executive Board will take account of the price of the company's share on the stock market.

The company should also have the possibility of serving share option rights with own shares of the company which are issued by the company to its Executive Board and its managers, and to the Executive Management and the managers of its Group companies on the basis of the resolution on the Stock Option Program 2020 adopted under agenda item 8 at the Annual General Meeting held on 25 September 2020. The authorization for the utilization of own shares alongside the Contingent Capital 2020 I to serve the share option rights extends the flexibility of the company. In relation to the structure and conditions of the Stock Option Program 2020, reference is made to the resolution on agenda item 8 of the Annual General meeting held on 25 September 2020. The content of this corresponds to the content relating to this matter included in the resolution proposal of the administration in the convocation for the Annual General Meeting held on 25 September 2020

The company should also have the opportunity to utilize own shares for the fulfilment of conversion or option rights which are granted by the company or a Group company for the issue of bonds (including participation rights) in future, or for the fulfilment of conversion or option obligations arising from bonds (or participation rights) issued by the company or a Group company. Insofar as such instruments are issued on the basis of a separate authorization in future, it may be effective to serve the rights to subscribe to shares resulting from such instruments not by a capital increase but entirely or partly through own shares. The rights of shareholders are adequately safeguarded in this context because the shareholders have a subscription right to such instruments and its exclusion is only permissible by observing special requirements.

The authorization provides for the possibility of acquired own shares also being redeemed. The redemption should be possible in such a way that leads to the reduction of the capital stock of the company when shares are redeemed, or also without carrying out such a reduction of the capital stock by simply redeeming the shares while at the same time increasing the proportionate amount of the capital stock (amortization) attributable to the remaining shares in accordance with Article 237 Section 3 No. 3 Stock Corporation Act (AktG). The rights of shareholders are not impaired in either of these aforementioned cases.

It should also be possible for the shares to be used in connection with share-based compensation programs or employee share programs of the company or of enterprises dependent on it or in the majority ownership of the company, and shares

can be issued to persons who are or were in an employment relationship with the company or with an enterprise dependent on it or in the majority ownership of the company. Share-based compensation components have been proven compensation elements for managers and other employees of listed companies for a long time. Employee participation is also desired by lawmakers and is therefore facilitated in several different ways. In 2021, KPS AG expanded the long-term bonus plan for certain employees (*Long Term Incentive Plan*) in the KPS Group by a share-based element. The bonus fundamentally based on Group income in an initial appraisal stage is converted to virtual shares of the company (phantom shares), the market value of which is converted or calculated retrospectively after the expiry of a defined waiting time in a second appraisal stage within a final claim to a monetary consideration, which can be fulfilled at the discretion of the company partly or entirely also in shares in the company. The issue of shares to employees can be in the interest of the company and its shareholders because this enhances identification with the company and can hence increase the corporate value and the assumption of communal responsibility. Furthermore, early acquisition of own shares can result in ensuring an increase of the share price and thereby an associated increase in value of the bonus claims over the waiting period. In order to be able to offer employees own shares for acquisition, the subscription right of shareholders to these shares must be excluded. Own shares can be granted to employees for the above-mentioned purpose against a discounted consideration or without any consideration. The Executive Board will only make use of this possibility in reasonable scope and after careful consideration with the approval of the Supervisory Board in order to protect shareholders against excessive dilution of their shareholding.

In all the designated cases (apart from in the case of redemption and in the case of public offer to all shareholders (with the exception of fractional amounts)), the subscription right of the shareholders to these shares must be excluded so that they can be utilized as described. After carefully considering all the circumstances, the Executive Board has come to the conclusion that exclusion of the subscription right is appropriate, necessary, objectively justified and reasonable in the designated cases and for the reasons presented.

The Executive Board will review each individual case in order to establish whether own shares of the company should be used for the designated measures. When reaching its decision, the Executive Board will be guided by the interests of the shareholders and the company and will further carefully consider whether it should make use of the authorization. Only in this case will the measure will be adopted and the subscription right excluded.

The Executive Board will report on the decision about utilization of the repurchase authorization and the more detailed circumstances of the acquisition at the next relevant Annual General Meeting pursuant to Article 71 Section 3 Stock Corporation Act (AktG).

Unterföhring, April 2021

Leonardo Musso

Sole Member of the Executive Board