



## **Declaration by the Board of Management and the Supervisory Board of Bayer AG concerning the German Corporate Governance Code (May 21, 2003 version) pursuant to Article 161 of the German Stock Corporation Act<sup>1</sup>**

Under article 161 of the German Stock Corporation Act, the Board of Management and the Supervisory Board of Bayer AG are required to issue an annual declaration that the company has been, and is, in compliance with the recommendations of the „Government Commission on the German Corporate Governance Code“ as published by the Federal Ministry of Justice in the official section of the electronic Federal Gazette (Bundesanzeiger), or to advise of any recommendations that have not been, or are not being, applied.

The declaration pursuant to article 161 of the Stock Corporation Act shall be available to shareholders at all times.

For the past, the following declaration refers to the November 7, 2002 version of the Code. For the current and future corporate governance practice of Bayer AG, the following declaration refers to the recommendations in the May 21, 2003 version of the Code.

The Board of Management and the Supervisory Board of Bayer AG hereby declare that the company is in compliance with the recommendations of the „Government Commission on the German Corporate Governance Code“ as published by the Federal Ministry of Justice in the official section of the electronic Federal Gazette and has been in compliance since issuance of the last declaration of conformity in December 2002. Only the following recommendations were not, or are not being, applied or were, or are being, applied in a modified form:

### **1. Section 2.3.3:**

*The Company shall facilitate the personal exercising of shareholders' rights. The company shall also assist the shareholders in the use of proxies. The Board of Management shall arrange for the appointment of a representative to exercise shareholders' voting rights in accordance with instructions.*

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<sup>1</sup> This document is an English translation of a German document. The German document is the official and controlling version, and this English translation in no event modifies, interprets or limits the official German version.

As in the past, stockholders attending the Annual Stockholders' Meeting can exercise proxy voting rights and issue instructions via proxy voting cards. There are plans to facilitate the exercising of voting rights through the appointment of a representative beginning in 2004.

**2. Section 3.8, Paragraph 2:**

*If the company obtains D&O [Directors' and Officers' Liability] insurance for the Board of Management and the Supervisory Board, a suitable deductible should be agreed.*

The present D&O insurance for Bayer AG does not cover an intentional breach of duty. To the extent insurance coverage is provided, there is no deductible for members of the Board of Management or the Supervisory Board.

Bayer AG has obtained personal declarations of obligation from the members of its Board of Management and Supervisory Board concerning the payment of a deductible, even if insurance coverage otherwise exists under D&O insurance obtained by the company. Pursuant to these declarations, members of the Board of Management who cause damage to the company or third parties through gross negligence under German standards in their Board of Management activity are to pay for such damage up to an amount equivalent to half of their annual income in the year in which the damage occurs. Members of the Supervisory Board who cause damage to the company or third parties through gross negligence under German standards in their Supervisory Board activity are to pay for such damage up to an amount equivalent to the variable portion of their respective annual compensation as members of the Supervisory Board for the year in which the damage occurs. This does not limit their liability toward the company or third parties.

**3. Section 4.2.3 , Paragraph 2, Sentence 4:**

*For exceptional, unforeseen developments, the Supervisory Board (in connection with stock option programs or similar arrangements for boards of management) should agree on a possible limit (cap).*

In connection with future stock option programs or similar arrangements, the Supervisory Board intends to reach corresponding agreements with the members of the Board of Management.

**4. Section 5.4.5:**

*The compensation of the Supervisory Board shall also take into account serving as the Chair and membership in committees.*

This was not yet the case until the corresponding amendment of the Articles of Incorporation at the Annual Shareholders' Meeting on April 25, 2003.

**5. Section 7.1.4:**

*Under this recommendation, the company should publish a list of certain third party companies providing, among other things, their operating results for the last fiscal year.*

The operating results of third-party companies are published only to the extent they are available when Bayer's annual financial statement is prepared.

Leverkusen, December 2003

For the Board of Management:

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Wenning

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Kühn

For the Supervisory Board:

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Dr. Schneider