

# Report of the Supervisory Board of Biofrontera AG for the financial year 2022 (unaudited)

## Dear Shareholders,

the 2022 financial year shows a positive operating result for Biofrontera AG. We want to further support this development with significant cost-cutting measures and a clear focus on growth-enhancing measures. In doing so, the Supervisory Board is working together with each other and with the new company management in a spirit of trust.

We would also like to thank our employees for their efforts in supporting the development of Biofrontera AG in the past financial year.

## Supervision and advice

The Supervisory Board performed the duties incumbent upon it by law, the Articles of Association, the German Corporate Governance Code (the Code) and the Rules of Procedure. The Supervisory Board's activities included monitoring and advising the Executive Board on the management of the Company and the Group. The Supervisory Board discussed forward-looking business decisions and plans with the Executive Board.

The Executive Board provided the Supervisory Board with reports on the situation of the Company. The Supervisory Board was informed by the Executive Board about the current development of the Company both in meetings and outside meetings. On the basis of written and oral reports by the Executive Board, the Supervisory Board discussed the development of business and the situation of the Company in its deliberations. In addition, there was an exchange of information and ideas between individual Executive Board members and the Chairman of the Supervisory Board.

In the case of management measures, the Supervisory Board also reviewed their legality, regularity and expediency, as well as their economic efficiency. The division of the operating activities of the Biofrontera Group into an independent US sales company on the one hand and the (former) parent company Biofrontera AG on the other hand, which took place at the end of 2021, continues to be of no sustainable value creation for the Biofrontera AG Group in the opinion of the Supervisory Board. However, in the view of the Supervisory Board, a restructuring with the aim of re-combining the operating businesses is not readily feasible at present. The circumstances and strategic consequences of the deconsolidation of the two companies therefore formed a focus of the Supervisory Board's monitoring and advisory activities.

Deviations in the course of business from the plans were explained to the Supervisory Board by the Executive Board and discussed with it. The extent to which the statutory requirements and the resolutions, suggestions and recommendations of the Supervisory Board were subsequently taken into account or implemented by the Board of Management was also reviewed. The results led to changes in the Executive Board.

The Supervisory Board adopted resolutions on certain measures after receiving relevant information and documents and after consultation.

## Meetings and their main areas of discussion

In the performance of its duties, the Supervisory Board held eleven meetings in the reporting year. All meetings were held as telephone or video conferences.

At the meetings, the Executive Board reported on the current business situation. In particular, the Executive Board explained the liquidity situation of the Company in the context of sales forecasts and cost planning.

At the meeting on February 23, 2022, the Supervisory Board discussed the 2022 budget with the Executive Board. At this meeting, the Executive Board and Supervisory Board dealt in detail with the question of the financial situation and possible risk factors in this respect.

At the meeting on April 29, 2022, the auditors reported in full to the Audit Committee and the Supervisory Board on the timing, structure and results of the audit for fiscal 2021. After discussing the annual financial statements for 2021, the consolidated financial statements and the combined management report, the Supervisory Board approved the auditors' reports, raised no objections following the final results of its own review, and approved the annual and consolidated financial statements. It thus followed the recommendation of its Audit Committee, which had previously held a meeting in the presence of the auditors and discussed the annual financial statements 2021, the consolidated financial statements, the combined management report and the audit reports.

At the meeting on November 21, 2022, the new Executive Board reported in detail on the status of clinical trials and distribution agreements, sales development, and market development and opportunities, particularly in Europe. In addition, the Supervisory Board passed a resolution on the proposed resolutions for the Extraordinary General Meeting on January 9, 2023. Together with the Management Board, the strategic orientation and development potential of the Company in the current environment were discussed.

The Supervisory Board is also constantly concerned with the efficiency of its activities. Overall, the Supervisory Board has come to the conclusion that its cooperation adequately reflects the tasks of the Supervisory Board and the needs of the Company.

Prepared by the Personnel Committee, the possible future appointment of an additional Executive Board member was also discussed, along with a possible requirements profile and the further procedure in this matter.

## Resolutions outside meetings

Outside of meetings, the Supervisory Board adopted resolutions in 37 parallel proceedings, including on Executive Board matters, legal issues, and in connection with the Annual General Meetings in fiscal 2022.

## Committees of the Supervisory Board

In the financial year 2022, there was an Audit Committee, a Nomination and Personnel Committee, and a Litigation Committee concerning the proceedings of Deutsche Balaton AG against Biofrontera AG. The Supervisory Board appointed one member of the Supervisory Board to chair each committee.

According to the Rules of Procedure of the Supervisory Board, the Chairman of the Supervisory Board shall also chair the committees that deal with Executive Board contracts and prepare the Supervisory Board meetings. Although the Supervisory Board Chairman was not Chairman of the Nomination and Personnel Committee dealing with Executive Board contracts in fiscal year 2022, he was a member of this committee. The Supervisory Board considers the deviation from the target provision of the Rules of Procedure in this respect to be harmless in terms of content. The Chairman of the Supervisory Board was not supposed to chair the Audit Committee, and this was not the case. The chairmen of the committees report to the Supervisory Board at each meeting on the work of the committees, with the exception of the Legal Action Committee.

### 1. audit committee

The Audit Committee deals in particular with accounting and risk management issues, the necessary independence of the auditor and the issuing of the audit engagement to the auditor and monitors the audit of the Company's annual financial statements. The committee met 15 times in the reporting year, with all meetings held as video conferences.

The members of the Audit Committee in the reporting year were: Mr. Karlheinz Schmelig (Chairman since February 22, 2022), Dr. Helge Lubenow and, since February 22, 2022, Dr. Jürgen Tielmann. Prof. Dr. Franca Ruhwedel was also a member and Chair of the Committee until February 22, 2022, when she stepped down.

### 2. nomination and personnel committee

The Nomination and Personnel Committee prepares, among other things, decisions of the Supervisory Board on the appointment and dismissal of members of the Executive Board. As the Supervisory Board as a whole is also responsible for compensation

decisions, the Personnel Committee also performed preparatory work in this respect. In the reporting year, it dealt in particular with the requirements for qualifications and critical monitoring of the performance of Executive Board members. In this context, the departure of the Chief Financial Officer Mr. Lutter and the appointment of Mr. Böckmann as interim Executive Board member as well as the appointment of Mrs. de la Huerta Martinez to the Executive Board.

The Nomination and Personnel Committee met twice in the reporting period; both meetings were held as video conferences. In addition to these formal meetings of the Nomination and Personnel Committee, the members of the committee held informal exchanges at least once a month.

The members of the Personnel Committee in the reporting period were: Dr. Helge Lubenow (Chair), Mr. Wilhelm K.T. Zours and Dr. Heikki Lanckriet.

### 3. other committees

In this respect, reference is made to the following section "Conflicts of interest".

## Individualized disclosure of Supervisory Board members' attendance at Supervisory Board and committee meetings in fiscal year 2022

Name	Supervisory Board meetings / Attendance	Attendance %	Committee meetings / Attendance	Attendance %
Prof. Dr. Franca Ruhwedel (Member until February 22, 2022)	1/1	100%	0/0	100%
Dr. Heikki Lanckriet	11/11	100%	2/2	100%
Dr. Helge Lubenow	11/11	100%	18/18	100%
Karlheinz Schmelig	11/11	100%	16/16	100%
Prof. Dr. Karin Lergenmüller (Member since August 23, 2022)	1/1	100%	0/0 *	100%
Dr. Jörgen Tielmann	11/11	100%	16/16	100%
Wilhelm K. T. Zours	11/11	100%	2/2	100%

\* No membership of a committee in the year under review

## Annual and consolidated financial statements 2022

Baker Tilly GmbH & Co. KG Wirtschaftsprüfungsgesellschaft, Düsseldorf, was appointed auditor of the annual financial statements and consolidated financial statements for fiscal 2022 by the Annual General Meeting on August 23, 2022, and subsequently commissioned accordingly by the Supervisory Board. The auditor's declaration of independence was obtained. Baker Tilly GmbH & Co. KG Wirtschaftsprüfungsgesellschaft, Düsseldorf, audited the annual and consolidated financial statements of Biofrontera AG and the combined management report for the 2022 financial year prepared by the Executive Board and issued an unqualified audit opinion. The auditor also found that the Executive Board has set up an appropriate information and monitoring system, the design and operation of which are suitable for the early identification of developments that could jeopardize the continued existence of the company.

The consolidated financial statements were prepared on the basis of International Financial Reporting Standards (IFRS). The financial statement documents were discussed by the Audit Committee on April 24, 2023 in the presence of the auditor and the other members of the Supervisory Board. At this meeting, the annual and consolidated financial statements were also discussed with the Executive Board. The Audit Committee dealt in particular with the key audit matters described in the respective audit opinion, including the audit procedures performed. The financial statement documents were discussed in the presence of the auditors. All members of the Supervisory Board received the financial statement documents and the auditors' reports in good time before this meeting and dealt

with these documents. The auditors reported on the audit, commented on the main points of the audit and were available to the Supervisory Board to answer questions and provide information. The auditors reported on the scope, focal points and main findings of their audit, focusing in particular on the key audit matters and the audit procedures performed. The auditors were available to the Supervisory Board to answer questions and provide further information. Questions from the Supervisory Board were answered by the Executive Board and the auditors. The auditors also provided information on their findings regarding internal control and risk management in relation to the financial reporting process.

At its balance sheet meeting on April 27, 2023, the Supervisory Board noted with approval the audit reports as well as the annual and consolidated financial statements and the combined management report. After discussing the annual financial statements, the consolidated financial statements and the combined management report, the Supervisory Board concurred with the auditor's reports and the results of the audit, raised no objections following the final results of its own review, and approved the annual and consolidated financial statements. The annual financial statements of Biofrontera AG were thus adopted.

This report of the Supervisory Board was adopted at the financial statements meeting on April 27, 2023, as was the corporate governance declaration.

## **Auditor and responsible auditor**

Baker Tilly GmbH & Co. KG Wirtschaftsprüfungsgesellschaft, Düsseldorf, is acting as auditor for Biofrontera AG and the Group for the first time for the 2022 financial year.

## **Corporate Governance and Declaration of Conformity pursuant to Section 161 of the German Stock Corporation Act (AktG)**

Information on corporate governance is presented in the Annual Report and on the internet at [www.biofrontera.com](http://www.biofrontera.com) in the section "Investors" / "Corporate Governance" and in the Corporate Governance Statement. There, in particular, details are also provided on the objectives of the Supervisory Board with regard to its composition and the status of implementation.

## **Trainings and development measures**

The Company supports the members of the Supervisory Board to an appropriate extent in their induction into office and in training and development measures.

## **Conflicts of interest**

Each member of the Supervisory Board is obliged to act in the interests of the Company. In making decisions, they may not pursue personal interests or take advantage of business opportunities to which the company is entitled for their own benefit without a resolution of the Supervisory Board. The Rules of Procedure of the Supervisory Board stipulate that each member of the Supervisory Board shall disclose conflicts of interest to the Supervisory Board. This applies in particular to conflicts of interest that may arise as a result of a consultancy or board position with customers, suppliers, lenders or other business partners. Material and not merely temporary conflicts of interest in the person of a Supervisory Board member shall lead to the termination of the mandate.

On December 13, 2021, Deutsche Balaton AG, Heidelberg, filed a declaratory action against Biofrontera AG with the Cologne Regional Court, which was decided by the Cologne Regional Court on December 9, 2022. Mr. Wilhelm K.T. Zours indirectly holds the majority of shares in Deutsche Balaton AG via VV Beteiligungen AG and is Chairman of the Supervisory Board of Deutsche Balaton AG. There is a de-entitlement agreement between VV Beteiligungen AG and Deutsche Balaton AG. Since December 14, 2021, Mr. Zours has also been a member of the Company's Supervisory Board and its Chairman. In essence, the lawsuit was about Deutsche Balaton AG's opinion - shared by the Cologne Regional Court in its judgment - that the IPO of Biofrontera Inc. together with capital measures would have

required the approval of the Annual General Meeting of Biofrontera AG. The action was directed against Biofrontera AG, represented by the Management Board and represented by the Supervisory Board. After becoming aware of the lawsuit, the Supervisory Board resolved that a committee be formed in this connection and appointed the following Supervisory Board members to the committee: Mr. Jörgen Tielmann (Chairman), Mr. Karlheinz Schmelig and Dr. Helge Lubenow. The Litigation Committee met once in the reporting period and otherwise passed resolutions in parallel proceedings.

Mr. Zours therefore did not participate in any deliberations or resolutions in connection with the lawsuit.

In the view of the Supervisory Board, the conflict of interest has thus been adequately taken into account. Even from a retrospective perspective, it cannot be determined that there was a material and not merely temporary conflict of interest that would have necessitated termination of the mandate.

## Changes in the Supervisory Board

By resolution of the Annual General Meeting on August 23, 2022, Prof. Dr. Karin Lergenmüller was elected to the Supervisory Board of Biofrontera AG until the end of the Annual General Meeting for the financial year ending on December 31, 2025. With the appointment of Prof. Dr. Karin Lergenmüller, the Supervisory Board is once again composed of six members in accordance with the Articles of Association; until August 23, 2022, it consisted of only five members following the resignation of Prof. Dr. Franca Ruhwedel as of February 22, 2022.

Maruho Deutschland GmbH filed an action for annulment against the resolution. By further resolution of January 9, 2023, the Annual General Meeting confirmed the election. In an extension of the action, Maruho Deutschland GmbH is also contesting this confirmation resolution. The Company is currently conducting settlement negotiations with Maruho Deutschland GmbH to resolve the legal dispute.

## Changes in the Management Board

Effective August 14, 2022, Mr. Ludwig Lutter (Chief Financial Officer) resigned from Biofrontera AG. Legal proceedings are pending between Mr. Lutter and the Company in which Mr. Lutter is asserting further payment claims arising from his Management Board service contract, which was terminated by summary dismissal for cause. The interim Management Board mandate of Mr. Paul Böckmann existed from June 9, 2022 and expired on September 30, 2022. However, he continued to support Biofrontera AG as an external advisor during the reporting period even after his departure. In September 2022, Mrs. Pilar de la Huerta Martinez, currently the only member of the Management Board, was appointed Chief Financial Officer. Mrs. Pilar de la Huerta has been CEO and CFO of various technology companies in the pharmaceutical and healthcare sector for more than 25 years and thus has relevant industry experience and a high level of professional aptitude. The Supervisory Board would like to thank Mrs. de la Huerta and Mr. Böckmann for their strong commitment to the Company in a challenging phase of business development and for the trustful cooperation.

## Future

The Supervisory Board considers discussions between Biofrontera AG and Biofrontera Inc. on further restructuring steps with the aim of optimally combining the operating businesses to be expedient.

Even if Biofrontera AG can report a positive operating result for the 2022 financial year, we must not overlook the fact that we form a "community of fate" with Biofrontera Inc. in which we continue to hold around 30% of the shares and which is reporting high losses. The economic success of Biofrontera AG in the future depends to a large extent on the sales success of Biofrontera Inc. on the US market. Only if Biofrontera Inc., equipped with the funds required until Biofrontera Inc. breaks even, can continue to significantly increase its sales, can Biofrontera AG also continue to develop positively. The share of the US market in total sales of the product Ameluz® is expected to continue to increase, as is the dependence of Biofrontera AG's earnings on the success of Biofrontera Inc.

The development of the Biofrontera share price was also unsatisfactory in 2022. In the coming period, the Supervisory Board and the Management Board will continue to work constructively and in a results-oriented manner to improve the economic situation of Biofrontera AG and its valuation on the capital market.

Finally, we would again like to thank you, dear shareholders\*, for your commitment and trust!

Heidelberg, April 27, 2023

Wilhelm K. T. Zours  
Chairman of the Supervisory Board