



**Explanatory Report of the management board  
of ADVA Optical Networking SE**

**to the information in the (group) annual report 2021 pursuant to  
Section 289a and Section 315a Commercial Code (*Handelsgesetzbuch, HGB*)**

According to Section 176 para. 1 sentence 1 of the German Stock Corporation Act (*Aktiengesetz, AktG*), the management board has to make accessible to the general meeting an explanatory report on the information provided pursuant to Section 289a and Section 315a of the German Commercial Code. The aforementioned provisions of the German Commercial Code require stock corporations whose voting shares are admitted to stock market trading on an organized market to provide some additional information in the management report, e.g. on the composition of the subscribed capital, on any restrictions on voting rights and on participations in capital exceeding 10% of the voting rights. For this information in the (group) management report, we hereby provide the following explanations:

**Subscribed capital and shareholder structure**

As of March 31, 2022, ADVA Optical Networking SE has issued 51,445,892 no-par bearer shares of common stock (March 31, 2021: 50,496,692). During the reporting period, no other classes of shares were issued. All shares have the same rights and obligations. Each share grants one vote.

At the end of 2021, EGORA Group held directly and indirectly a total of 7,456,749 shares (at year-end 2020: 7,456,749 shares) according to the notification of 30 November 2017 that was published on 8 December 2017 or 14.49% of the share capital of ADVA Optical Networking SE (at year-end 2020: 14.77% of the share capital). 1,525,847 shares (at year-end 2020: 1,525,847 shares) were directly held by EGORA Ventures AG (previously: EGORA Holding GmbH). The remaining 5,930,902 shares (at year-end 2020: 5,930,902 shares) were held by EGORA Investments GmbH (previously: EGORA Ventures GmbH), a 100% subsidiary of EGORA Ventures AG. Both EGORA companies are based at Fraunhoferstraße 22 in 82152 Planegg-Martinsried, Germany. The difference between the percentage figures in the notification of December 8, 2017 from percentages stated here, is solely due to the fact that the notification was based on an amount of issued voting rights of 49,753,549 shares (December 31, 2021: 51,445,892 shares).

The largest single shareholder at the end of 2020, Teleios Capital Partners, gradually reduced its stake as of 31 December 2020 to less than three percent over the course of the first six months of 2021.

No other shareholder has notified the company until the balance sheet date to hold more than 10% of the company's shares outstanding on 31 December 2021.

The Management Board points out that the voluntary public takeover offer of Acorn HoldCo, Inc., with its registered seat in Wilmington, Delaware, United States of America, has been accepted for 33,957,538 shares or 66.01% of all shares currently outstanding. The consummation of the takeover offer is still pending and subject to conditions.

There are no classes of shares with special rights conferring control powers.

The company does not have an employee stock option program that provides for the direct issue of shares to employees. However, stock option and option bond programs enable employees to participate in the company's share capital.

#### Voting Rights and Stock Transfer Restrictions

Neither the voting rights per share nor the transferability of the shares of the company are subject to company law restrictions. In addition, at the end of 2021, the Management Board of ADVA Optical Networking SE was not aware of any shareholder agreements concerning the voting rights or the transfer of shares in the company.

#### Appointment and dismissal of the members of the management board

The appointment and dismissal of the members of the Management Board of ADVA Optical Networking SE follows the provisions of the SE-VO (Articles 39 para. 2, 46 para. 1 SE-VO), of the German Stock Corporation Act (Sections 84, 85 AktG in connection with Art. 9 para. 1 lit. c) (ii) SE-VO) as well as the provisions in Section 6 of the current Articles of Association of the Company. According to these articles, the supervisory board appoints the members of the management board and does so for a maximum of five years. However, it is the company's practice to appoint the members of the management board for two years only. Repeated appointment is possible. According to the company's articles of association, the management board of ADVA Optical Networking SE shall regularly consist of two individuals and the supervisory board shall have the right to determine and appoint a higher number of persons. If the management board consists of more than one individual, the supervisory board may appoint one member of the management board as chief executive officer or speaker of the management board, and another member as his or her deputy. The supervisory board may revoke an already-effective appointment due to important reasons (Section 84 para. 3 AktG in conjunction with Art. 9 para. 1 lit. c) (ii) SE-VO). In fiscal year 2021, no appointments or dismissals of management board were affected. ADVA Optical Networking SE's management board consisted of Brian Protiva (chief executive officer), Christoph Glingener (chief technology officer), Ulrich Dopfer (chief financial officer), and Scott St. John (chief marketing & sales officer).

#### Changes to the articles of association

Amendments to the articles of association of ADVA Optical Networking SE are subject to the provisions of Art. 59 SE-VO and Section 179 AktG. According to Art. 59 para. 1 SE-VO, amendments to the articles of association generally require a resolution of the annual general meeting passed by a majority of not less than two-thirds of the votes cast, unless the legal provisions for public companies provide for or permit higher majorities. For amendments to the articles of association of an SE domiciled in Germany, pursuant to Section 179 para. 2 sentence 1 AktG, a majority of at least three quarters of the share capital represented in the resolution is required. In line with the SE-VO, which always refers to the majority of the votes cast and not to the capital majority (see Articles 57, 58, 59 SE-VO), the three-quarter majority requirement does not apply to the represented capital stock, but is based on the votes cast. Changes to the articles of association must therefore be approved by the annual general meeting by a majority of at least three quarters of the votes cast.

The articles of association of ADVA Optical Networking SE do not make use of the possibility, by way of derogation from the articles of association, to allow a simple majority of votes for resolutions amending the articles of association, provided that at least half of the share capital is represented (Art. 59 (2) SE-VO in conjunction with Section 51 para. 1 SEAG).

In addition, the regulations of Section 4 para. 9 and Section 13 para. 3 of the current articles of association of the company apply, whereby the supervisory board is authorized to resolve amendments to the articles of association. In particular, the supervisory board is authorized to change the wording of the articles of association in accordance with the scope of the capital increases from authorized capital and the entry into effect of conditional capital.

#### Issue and buy-back of shares

The rights of the management board to issue new shares are regulated in Section 4 para. 4 and para. 5k of the articles of association of ADVA Optical Networking SE. In accordance with the current articles of association of ADVA Optical Networking SE, the management board may currently issue up to 24,965,477 shares from authorized capital totaling EUR 24,965,477 against cash and / or non-cash contributions excluding subscription rights (Authorized Capital 2019/I). As of 31 December 2021, the authorized capital amounted to EUR 24,965,477, so that the authorization of the management board to issue new shares against cash or non-cash contributions as at this date amounted to 24,965,477 shares.

In detail, the management board is initially authorized in accordance with Section 4 para. 4 of the current articles of association to issue the capital stock by May 21, 2024 by issuing a total of up to 24,965,477 new no-par-value bearer shares (ordinary shares) - or contribution in kind by up to EUR 24,965,477.00.

The management board is authorized, with the consent of the supervisory board, to exclude the subscription right in the case of capital increases against contributions in kind, provided that the shares issued during the term of this authorization with the exclusion of the subscription right of the shareholders against contributions in cash or in kind do not exceed a total of 20% of the share capital neither at the time this authorization becomes effective nor at the time this authorization is exercised.

In the case of capital increases against cash contributions, the shareholders must in principle be granted a subscription right to the new shares. The new shares are to be underwritten by at least one credit institution or at least one company operating in accordance with Section 53 para. 1 sentence 1 or Section 53b para. 1 sentence 1 or para. 7 of the German Banking Act (*Kreditwesengesetz*) with the obligation to offer them to the shareholders for subscription.

However, the management board is authorized, with the consent of the supervisory board, to exclude the subscription rights of shareholders in the event of capital increases against cash contributions, provided that the shares issued during the term of this authorization under exclusion of the shareholders' subscription rights against cash contributions or contributions in kind do not exceed a total of 20% of the share capital neither at the time this authorization becomes effective nor at the time when this authorization is used,

- (i) if the subscription right is excluded in order to realize any peaks, or
- (ii) insofar as the exclusion of subscription rights to dilution protection is required to grant subscription rights to holders of conversion or option rights issued or to be issued by the Company or by companies in which the Company holds a direct or indirect majority interest to grant a subscription right with regard to new shares to the extent they are

entitled to exercise the conversion or option rights or fulfillment of conversion obligations; or

- (iii) if the issue price of the new shares does not significantly fall below the stock exchange price and the shares issued in accordance with or in analogous application of Section 186 para. 3 sentence 4 of the German Stock Corporation Act against cash contributions excluding subscription rights during the term of this authorization amount to a total of 10% of the share capital neither at the time this authorization becomes effective nor at the time this authorization is exercised. The following are to be counted towards the limit of 10% of the share capital:
- treasury shares that are sold during the term of this authorization in accordance with the application of Section 186 para. 3 sentence 4 AktG, excluding the subscription right of the shareholders, and
  - shares that are or are to be issued to service bonds with conversion or option rights if and to the extent that the bonds are issued with the exclusion of subscription rights during the term of this authorization in analogous application of Section 186 para. 3 sentence 4 AktG.

The authorization of the management board to issue new shares from authorized capital enables the management board to cover a capital requirement in a timely, flexible and cost-effective manner and to use – depending on the market – situation attractive financing options. In particular, by being able to issue new shares for the purpose of acquiring companies or stakes in companies against contributions in kind and thereby excluding shareholders' subscription rights up to an amount of 20% of the share capital, the company can carry out acquisitions without burdening liquidity .

In addition, as of December 31, 2021, a conditional capital of EUR 5,049,669 was registered with the commercial register (Contingent Capital 2011/I). The conditional capital increase serves to grant share purchase and similar rights to members of the management board, employees of the company and members of the management and employees of affiliated companies. This capital increase will only be carried out to the extent that the holders of the subscription rights exercise their right. 949,200 new shares were already created in 2021 as a result of the exercise of stock options, but have been registered with the commercial register after the balance sheet date. Thus, the number of shares that can be issued by the management board from the conditional capital is reduced to 4,100,469 of the outstanding shares.

At year-end 2021, the management board was authorized to buy back up to a total of 10% of the existing share capital at the date of the resolution of the annual general meeting or, if lower, at the time the authorization will be exercised. This right was granted to the Management Board by resolution of the Annual General Meeting of May 22, 2019 until May 21 2024. These shares may be used for any legally permissible purpose, especially as consideration for the acquisition of companies, parts of companies or corporate interests, for the issue of employee shares to employees of the Company and affiliates, to service subscription rights from the company's stock option and option bond programs as well as for the withdrawal of shares.

Provisions for changes of control as a result of a takeover bid

As of the end of 2021, ADVA Optical Networking SE has a bilateral loan with a nominal amount of EUR 10.0 million (repayable at maturity) and a syndicated loan with a nominal amount of EUR 38.0 million (repayable since June 2019 in semi-annual installments and a bullet payment at maturity) as financial liabilities. In addition, there is one undrawn credit line of EUR 10.0 million. In the event of a change of control over ADVA Optical Networking SE in connection with a potential takeover offer, the creditors of these loans have the right to terminate with immediate effect. The creditors of the syndicated loan have waived their right to termination with regard to the takeover offer by Acorn HoldCo, Inc.

As of December 31, 2021, for the event of a takeover bid-driven change of control, there have been no recourse agreements in place with any of the members of the Management Board or with any of the Group's employees.

Other mandatory disclosures

All employees participating in the capital of ADVA Optical Networking SE were able to exercise their control rights directly during the 2021 financial year.

Meiningen, in April 2022

ADVA Optical Networking SE  
The Vorstand

Brian Protiva

Ulrich Dopfer

Christoph Glingener

Scott St. John