

Viewed as a percentage of overall risk, our main risks lie in the performance, financial and economy and industry categories. Together, these three categories represent around 92 percent of total risk.

We are not currently aware of any other significant risks to the Group. Furthermore, we have not identified any individual or collective risks to our continued existence as a going concern that might negatively affect the company in the foreseeable future.

The risk profile of the Wacker Neuson Group is not currently analyzed and evaluated by an external body such as a rating agency.

**Distribution of risk<sup>1</sup>**  
as a %

| Risk category                  | Percentage share of total risk |
|--------------------------------|--------------------------------|
| Financial risks                | 49.5                           |
| Environment and industry risks | 32.2                           |
| Performance-related risks      | 9.9                            |
| Other risks                    | 3.8                            |
| Strategic business risks       | 3.4                            |
| Legal risks                    | 1.2                            |

<sup>1</sup> Differences attributable to rounding

**X. Information in accordance with Section 315 (4) and Section 289 (4) of the German Commercial Code (HGB) as well as the Executive Board report in accordance with Section 176 (1) Sentence 1 AktG (German Stock Corporation Act)**

According to Section 315 (4) of the HGB, listed companies must disclose information on the composition of capital, shareholders' rights and restrictions, participating interests and corporate bodies that may be relevant for takeovers in the Group Management Report. The same information must also be disclosed in the Management Report, pursuant to Section 289 (4) of the HGB. Furthermore, according to Section 176 (1) Sentence 1 of the AktG, the Executive Board must submit a report containing this information to the AGM. The following contains a summary of the information pursuant to Section 315 (4) and Section 289 (4) of the HGB as well as the corresponding explanatory comments pursuant to Section 176 (1) Sentence 1 of the AktG.

**Composition of subscribed capital**

At December 31, 2009, the company's share capital amounted to EUR 70,140,000, divided into 70,140,000 individual no-par-value nominal shares, each representing a proportionate amount of the share capital of EUR 1 according to Article 3 (2) of the Articles of Incorporation of Wacker Neuson SE. There is only one type of share; all shares are vested with the same rights and obligations as outlined in detail in particular under Sections 12, 53a, 188 ff and 186 of the AktG. Each share entitles the bearer to one vote at the AGM. Any treasury shares held by the company do not entitle it to any rights (Section 71b AktG). Under the terms of Section 67 (2) of the AktG, registered shares only confer shareholder rights vis-à-vis the company to those shareholders entered as such in the stock register.

**Restrictions affecting voting rights or the transfer of shares**

**Information on the pool agreement**

There is a pool agreement between some shareholders and companies of the Wacker family on the one hand, and companies and shareholders of Neuson on the other. Prior to each AGM of Wacker Neuson SE, the pool members decide how to exercise voting and petition rights in the meeting. Each pool member undertakes to exercise their voting and petition rights in the AGM in line with the pool's decisions, or to have these rights exercised in this manner. If the pool does not reach a decision with regard to a resolution on the allocation of annual profits, adoption of the annual financial statements by the AGM, approval of Executive and Supervisory Board members' actions, appointment of the auditor, upholding minority interests and compulsory changes to the Articles of Incorporation as a result of changes to legislation or jurisdiction, the pool members have the right to freely exercise their voting rights. In all other cases, the pool members must vote to reject the proposal. The Neuson shareholders appoint two members to the Supervisory Board, and the Wacker shareholders appoint two further members to the Supervisory Board.

Shares can be transferred without restriction to spouses, registered partners, pool members' children, children adopted when they were minors by pool members, siblings, foundations set up by pool members that are either charitable foundations or in which the beneficiaries and the controlling members of the management board satisfy the aforementioned criteria, and companies where the direct or indirect shareholders also satisfy the aforementioned criteria. If shares are transferred

to any such persons, they must join the pool agreement. If shares are transferred to third parties, either for a fee or free of charge, the other pool members have the right to acquire these shares. If the shares are to be sold to third parties off the stock exchange, all of the other pool members have a preferential purchase right. If a pool member intends to transfer shares in such a way that more than 50 percent of voting rights in Wacker Neuson SE would be held by third parties who do not satisfy the criteria defining those individuals to whom transfers can be freely made, the remaining pool members have the right to also sell their shares. If a pool member is excluded from the pool for good reason, the other pool members have a right to acquire the shares or a preferential purchase right. This also applies if a pool member ceases to qualify as a pool member.

#### **Information on the partnership agreement of Wacker Familiengesellschaft mbH & Co. KG**

Some of the Wacker family shareholders hold part of their shares via Wacker Familiengesellschaft mbH & Co. KG, which in turn also holds shares via Wacker-Werke GmbH & Co. KG. Economic ownership of the shares is attributed to the Wacker family shareholders.

The pool agreement has precedence over the regulations of the partnership agreement as long as Wacker Familiengesellschaft mbH & Co. KG is party to the above pool agreement. A partners' meeting is held prior to every AGM of Wacker Neuson SE. In this meeting, the Wacker family shareholders define how they will vote and exercise their petitioning rights. However, votes in the AGM are to be cast in line with the pool's decisions. Two of the Wacker family shareholders have the right to propose one member of the Supervisory Board each to the shareholders, this member is then to be elected by the remainder.

Only the acquisition and preferential purchase rights in the pool agreement apply to family members who are party to the pool agreement. In the case of a sale by a family member who is not a pool member, acquisition and preferential purchase rights apply if shares are sold to third parties who do not fulfill

the criteria defining those individuals to whom shares can be freely transferred set forth in the abovementioned pool agreement. If a family shareholder exits the company as a result of a termination, the remaining pool members have a preferential purchase right to buy the shares for a period of two years from the date this shareholder exits the company. In addition, the partners' meeting can resolve that the exiting family shareholder does not receive compensation in cash but in the form of the shares to which they are financially entitled. After May 14, 2012, each exiting family member can demand to receive their compensation in the form of the shares to which they are financially entitled.

#### **Pool agreement between Lehner and Neuson shareholders**

The Lehner shareholders have issued a Neuson shareholder with power of attorney with regard to the shares they acquired prior to the merger and during the merger between the company and Neuson Kramer Baumaschinen AG (now Wacker Neuson Beteiligungs GmbH). The Neuson shareholder is independently responsible for exercising these voting rights. He is not subject to any instructions, and will always exercise these in the same way as for the shares that he himself holds. These shares are thus subject to the restrictions of the pool agreement mentioned above.

The Neuson shareholder has a preferential purchase right to buy these shares in the event of a transfer to entities other than the Neuson shareholder or to Lehner shareholders.

#### **Shares that part of the Executive Board members received as part of their remuneration**

Three of the members of the Executive Board have received shares in the company as part of their remuneration. The company has an unrestricted, preferential purchase or acquisition right over some of these shares in the event that they are transferred.

The Executive Board is not aware of any restrictions affecting voting rights or the transfer of shares.

## Direct or indirect participating interests in equity that exceed ten percent of voting rights

The Executive Board is aware of the following direct or indirect participating interests in the share capital of the company that exceed 10 percent of voting rights at December 31, 2009:

| as a % at Dec. 31, 2009                           | Direct share of voting rights | Voting rights allocated to the stakeholder <sup>1</sup> | Percentage of voting rights in total <sup>1</sup> |
|---|-------------------------------|---|---|
| <b>Stakeholder with duty to disclose interest</b> |                               |   |   |
| Wacker Familiengesellschaft mbH & Co. KG          | 5.29%                         | 57.80%  | 63.09%  |
| Wacker-Werke GmbH & Co. KG                        | 27.79%                        | 35.31%  | 63.09%  |
| Interwac Holding AG                               | 0.00%                         | 63.09%  | 63.09%  |
| VGC Invest GmbH                                   | 5.06%                         | 63.09%  | 68.15%  |
| Christian Wacker                                  | 0.74%                         | 63.09%  | 63.84%  |
| Dr. Ulrich Wacker                                 | 0.00%                         | 68.15%  | 68.15%  |
| Andreas Wacker                                    | 0.74%                         | 63.09%  | 63.84%  |
| Barbara von Schoeler                              | 0.26%                         | 63.09%  | 63.35%  |
| Petra Martin                                      | 0.00%                         | 63.09%  | 63.09%  |
| Dr. Andrea Steinle                                | 0.00%                         | 63.09%  | 63.09%  |
| Ralph Wacker                                      | 0.74%                         | 63.09%  | 63.84%  |
| Susanne Wacker-Waldmann                           | 0.74%                         | 63.09%  | 63.84%  |
| Benedikt von Schoeler                             | 0.00%                         | 63.09%  | 63.09%  |
| Jennifer von Schoeler                             | 0.00%                         | 63.09%  | 63.09%  |
| Leonard von Schoeler                              | 0.00%                         | 63.09%  | 63.09%  |
| Vicky Schlagböhmer                                | 0.01%                         | 63.09%  | 63.09%  |
| Christiane Wacker                                 | 0.00%                         | 63.09%  | 63.09%  |
| Georg Wacker                                      | 0.00%                         | 63.09%  | 63.09%  |
| Baufortschritt – Ingenieurgesellschaft mbH        | 0.00%                         | 63.09%  | 63.09%  |
| PIN Privatstiftung                                | 0.00001%                      | 63.09%  | 63.09%  |
| NEUSON Industries GmbH                            | 0.00001%                      | 63.09%  | 63.09%  |
| Johann Neunteufel                                 | 0.00001%                      | 63.09%  | 63.09%  |
| NEUSON Ecotec GmbH                                | 29.01%                        | 34.08%  | 63.09%  |
| Martin Lehner                                     | 0.46%                         | 62.76%  | 63.22%  |
| Adolf Lehner                                      | 0.33%                         | 62.76%  | 63.09%  |
| Herta Lehner                                      | 0.33%                         | 62.76%  | 63.09%  |

<sup>1</sup> Votes bound through the pool agreement (see page 85) are added together. The figures are rounded to two decimal places.

## Bearers of shares with extraordinary rights that grant the holders controlling powers

There are no shares with extraordinary rights that grant the holders controlling powers.

### **Type of control of voting rights if employees hold participating interests and if they do not directly exercise their controlling rights**

The company's employees can exercise the controlling rights due to them from shares directly, as is the case for other shareholders, according to statutory provisions and the Articles of Incorporation.

### **Statutory provisions and provisions of the Articles of Incorporation regarding the appointment and dismissal of members of the Executive Board and changes to the Articles of Incorporation**

Members of the Executive Board are appointed and dismissed according to Sections 84 and 85 of the AktG. The Executive Board of Wacker Neuson SE must have at least two board members according to Article 6 (1) of the Articles of Incorporation of Wacker Neuson SE. The Supervisory Board otherwise determines the number of Executive Board members (Article 6 (2) Sentence 1 of the Articles of Incorporation). The Supervisory Board is responsible for appointing and dismissing Executive Board members; a simple majority of votes cast suffices for these decisions. In the event of a tie, the Supervisory Board Chairman shall have the casting vote or – if the Chairman did not participate in the vote – the casting vote shall pass to the Deputy Chairman. Executive Board members shall be appointed for a maximum term of six years (Section 9 (1) and Section 39 (2) and Section 46 of the regulation on the charter of an SE, Section 84 and 85 of the AktG, Article 6 (2) Sentence 1 of the Articles of Incorporation). The Supervisory Board can appoint a Chairman of the Executive Board, a Deputy Chairman of the Executive Board and a Spokesperson for the Executive Board (Article 6 (2) Sentence 2 of the Articles of Incorporation). The Supervisory Board has appointed a Chairman and a Deputy Chairman of the Executive Board.

Sections 179 ff of the AktG must be observed in the event of changes to the Articles of Incorporation. The AGM resolves on changes to the Articles of Incorporation (Sections 119 (1) No. 5 and 179 (1) of the AktG).

Under the charter of a European company (Societas Europaea or SE) such as Wacker Neuson SE, all decisions affecting the Articles of Incorporation must be approved with a majority of at least two thirds of the votes cast, unless the legislation of the state where the SE is based mandates or allows a larger majority to apply (Section 59 (1) of the regulation on the charter of an SE). Each member state is free, however, to rule that a simple majority of votes cast suffices, provided at least half of the subscribed capital is represented (Section 59 (2) of the regula-

tion on the charter of an SE). German legislation has instituted this option in Section 51 (1) of the law governing implementation of the SE in Germany. This does not apply to changes relating to the object/purpose of the company or relocation of the company seat. Similarly, it does not apply to instances where the law mandates that the votes cast must represent a higher percentage of the subscribed capital (Section 51 (2) of the law governing implementation of the SE in Germany). Accordingly, Article 21 (1) of the Articles of Incorporation states that unless otherwise stipulated by law, changes to the Articles of Incorporation require a two-thirds majority of the votes cast or – if at least half of the share capital is represented – a simple majority of votes cast.

The Supervisory Board is entitled to approve changes to the Articles of Incorporation that are merely a matter of wording (Section 179 (1) Sentence 2 of the AktG, Article 15 of the Articles of Incorporation).

### **The Executive Board's powers, in particular with regard to the possibility of issuing or buying back shares**

#### **Treasury shares**

By way of a resolution by the AGM on May 28, 2009, the Executive Board is authorized, with the prior approval of the Supervisory Board, to acquire 7,014,000 treasury shares via the stock exchange by November 27, 2010. This acquisition may also be performed by one of the company's group companies or for its or their account by third parties. In so doing, the shares acquired as a result of this authorization together with other shares in the company that it has already acquired and still holds may not at any time total more than 10 percent of the existing share capital. Shares may not be purchased for the purpose of trading company shares on the stock exchange.

The compensation paid by the company per registered share (without incidental acquisition costs) may not be more than 10 percent higher or lower than the arithmetic average of the closing prices for shares in the company in XETRA trading (or a comparable successor system) on the Frankfurt Stock Exchange on the last five stock market days prior to the date on which the undertaking to acquire the shares was entered into. The authorization can be exercised in whole or in parts, in the latter case also on multiple occasions.

The Executive Board may also redeem the treasury shares still to be acquired without a renewed resolution by the AGM with the permission of the Supervisory Board. The authorization can be exercised in whole or in parts, in the latter case also on multiple occasions. The redemption is performed such that

the share capital is not changed, but that the proportion the other shares represent in the share capital is increased in accordance with Section 8 (3) of the AktG (Section 237 (3) No. 3 of the AktG). The Executive Board is authorized to change the number of shares in the Articles of Incorporation accordingly.

The Executive Board is authorized, with the approval of the Supervisory Board, to use shares in the company that were acquired as a result of the above authorization as (partial) compensation as part of mergers or to acquire companies, participating interests in companies or parts of companies. The acquired treasury shares may also be sold to Executive Board members and members of executive bodies of associated companies within the framework of an executive profit-share model, which has yet to be approved by the Supervisory Board. The Supervisory Board will determine the extent to which shares will be sold to members of the Executive Board within the framework of this plan when deciding on the overall executive profit-share model. In addition, the Executive Board is authorized, with the approval of the Supervisory Board, to sell the treasury shares still to be acquired at a price that is not substantially lower than the stock market price on the date of the sale. The price at which shares in the company can be sold may not be more than 5 percent lower than the arithmetic average of the closing prices of shares in the company in XETRA trading (or a comparable successor system) at Frankfurt Stock Exchange on the last five stock market days prior to the date of the general sale. In this case, the number of the shares to be sold together with the new shares that were issued after this authorization was issued excluding subscription rights in accordance with Section 186 (3) Sentence 4 of the AktG, and together with treasury shares already sold, may not exceed 10 percent of the company's share capital which exists on the date the resolution by the AGM came into effect. The authorization to redeem/sell shares can be availed of in full or in several partial amounts. The shareholders' subscription rights to treasury shares in the company is excluded to the extent that these shares are redeemed or sold according to the above authorizations.

### Authorized Capital I

According to Article 3 (3) of the Articles of Incorporation, the Executive Board is authorized to increase the company's share capital by April 12, 2012, with the approval of the Supervisory Board, by issuing new, registered shares against cash contributions, in full or in partial amounts, on one or several occasions, however at the most by a maximum of EUR 1,000,000 (Authorized Capital I).

Shareholders' statutory subscription rights are excluded:

- If employees of the company and its affiliates and executive bodies of affiliates (to the extent that these are not simultaneously members of the company's Executive Board) are offered shares at an issue price that is 15 percent lower than the issue price;
- For fractional amounts;
- Otherwise, if the issue price of the new shares is not significantly below the company's market price and the new shares issued to the exclusion of subscription rights do not exceed a total of 10 percent of the share capital, neither at the time the authorization takes effect, nor at the time of exercising. Shares must be added to the above 10 percent threshold if they were issued or are to be issued to service options or convertible bonds to the extent that the bonds are issued in corresponding application of Section 186 (3) Sentence 4 of the AktG excluding subscription rights; in addition, the sale of treasury shares is to be added if the sale was made as a result of a valid authorization to sell treasury shares that applied on the date that Authorized Capital I came into effect in corresponding application of Section 186 (3) Sentence 4 of the AktG excluding subscription rights.

Subject to the approval of the Supervisory Board, the Executive Board also decides on the content of the respective share rights and the other conditions of the share issue including the issuing amount.

### Authorized Capital II

According to Article 3 (4) of the Articles of Incorporation, the Executive Board is still authorized to increase the company's share capital by April 12, 2012, with the approval of the Supervisory Board, by issuing new, registered shares against contributions in kind, in full or in partial amounts, on one or several occasions, however at the most by a maximum of EUR 5,360,000 (Authorized Capital II).

The shareholders' statutory subscription rights are excluded to grant shares against the contribution of companies and participating interests in companies or parts of companies to the company.

Subject to the approval of the Supervisory Board, the Executive Board also decides on the content of the respective share rights and the other conditions of the share issue including the issuing amount.

The authorized capital amounts described above reflect the practices typical of listed businesses similar to the company. They are not intended to obstruct takeover bids.

### Key company agreements that are subject to a change of control clause following a takeover bid and the resulting impact

The company has the following key agreements with companies that are subject to a change of control clause:

The conditions of the master credit agreement in the original amount of EUR 50 million to finance the acquisition of the Weidemann Group in 2005 include an extraordinary right on the part of the lender to terminate the credit line in the event of a change to the company's shareholder structure.

A credit agreement for a revolving line of credit for EUR 2 million to finance working capital requirements for the company grants the lender the right to extraordinary termination of the agreement if there is a change of control at the company. According to the credit agreement, there is a change of control if a different person acquires or takes over at least 50 percent of voting rights in the company, or ascertains that they hold this amount. Voting rights are allocated in accordance with Section 30 of the WertpapierÜbernahmegesetz (WpÜG – German Acquisition and Takeover Act).

A further credit agreement for a revolving line in the amount of EUR 10 million to finance working capital requirements for the company grants the lender the right to terminate the agreement at any time if the shareholder families no longer jointly hold at least 50 percent of shares in the company.

### Compensation agreements between the company and the members of the Executive Board or its employees for the event of a takeover offer.

There is no such agreement.

### Concluding remark

During the period under review, the Executive Board had no reason to address issues concerning a takeover, or engage with disclosure details stipulated under the German Takeover Directive Implementation Act (Übernahmerrichtlinie-Umsetzungsgesetz). The Executive Board therefore does not see the need to add further details to the information provided above.

## XI. Declaration on corporate governance according to Section 289a HGB

On March 25, 2010, the Executive Board of Wacker Neuson SE issued a corporate governance declaration pursuant to Section 289a of the German Commercial Code (HGB). This can be downloaded from the Wacker Neuson SE website at [www.wackerneuson.com/declaration-on-corporategovernance](http://www.wackerneuson.com/declaration-on-corporategovernance). This declaration is also included in the Wacker Neuson SE 2009 annual report (page 26).

## XII. Remuneration framework

### Information on the Executive Board

According to the Vorstandsvergütungs-Offenlegungsgesetz (German Executive Board Remuneration Disclosure Act), listed companies must disclose individualized information on the Executive Board's remuneration in the notes to the annual and consolidated financial statements, broken down into performance-related and non-performance related components as well as long-term incentives. The Act stipulates that information may be withheld if the AGM resolves this with a majority of 75 percent of votes cast. This type of resolution can be passed for a maximum period of five years. The company has availed of this opportunity for fiscal years 2006 to 2010 inclusive by way of a resolution by the AGM on May 15, 2006.

The Executive Board's remuneration will be defined by the entire Supervisory Board and reviewed at regular intervals. Defining the structure and amount of the remuneration is based on the company's size and economic position as well as the tasks and performance of the members of the Executive Board.

The Executive Board's remuneration comprises:

- A fixed annual basic salary
- A variable annual salary
- Special bonus
- Transitional pay, compensation upon an early exit
- Remuneration in the case of accident, illness or death
- Non-cash remuneration and other additional remuneration
- A pension commitment