

*Execution*

**468 SPAC II SE**

***Europäische Gesellschaft***

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Grand Duchy of Luxembourg  
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**KOORDINIERTER SATZUNG ZUM [\*\*\*] 2023**

## **A. NAME - PURPOSE - DURATION - REGISTERED OFFICE**

### **Article 1 Name - Legal form**

There exists a European Company (*Societas Europaea*) under the name “**Marley Spoon Group SE**” (the “**Company**”) which is governed by the law of 10 August 1915 on commercial companies, as amended (the “**Law**”), by the provisions of Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company (the “**Regulation**”), as well as by the present articles of association.

### **Article 2 Purpose**

- 2.1 The Company’s purpose shall be the creation, holding, development and realisation of a portfolio, consisting of interests and rights of any kind and of any other form of investment in entities in the Grand Duchy of Luxembourg and in foreign entities, whether such entities exist or are to be created, especially by way of subscription, by purchase, sale, or exchange of securities or rights of any kind whatsoever, such as equity instruments, debt instruments as well as the administration and control of such portfolio.
- 2.2 The Company may further grant any form of security for the performance of any obligations of the Company or of any entity in which it holds a direct or indirect interest or right of any kind or in which the Company has invested in any other manner or which forms part of the same group of entities as the Company and lend funds or otherwise assist any entity in which it holds a direct or indirect interest or right of any kind or in which the Company has invested in any other manner or which forms part of the same group of companies as the Company.
- 2.3 The Company may borrow in any form and may issue any kind of notes, bonds and debentures and generally issue any debt, equity and/or hybrid securities in accordance with Luxembourg law.
- 2.4 The Company may carry out any commercial, industrial, financial, real estate or intellectual property activities which it may deem useful in accomplishment of these purposes.

### **Article 3 Duration**

- 3.1 The Company is incorporated for an unlimited period of time.
- 3.2 The Company may be dissolved at any time by a resolution of the general meeting of Shareholders adopted in the manner required for an amendment of these articles of association.

### **Article 4 Registered office**

- 4.1 The registered office of the Company is established in the municipality of Luxembourg, Grand Duchy of Luxembourg.
- 4.2 The management board may transfer the registered office of the Company within the same municipality or to any other municipality in the Grand Duchy of Luxembourg and, if necessary, subsequently amend these articles of association to reflect such change of registered office.
- 4.3 Branches or other offices may be established either in the Grand Duchy of Luxembourg or abroad by a resolution of the management board.
- 4.4 In the event that the management board determines that extraordinary political, economic, health or social circumstances, natural disasters or pandemics have occurred or are imminent

that would interfere with the normal activities of the Company at its registered office, the registered office may be temporarily transferred abroad until the complete cessation of these extraordinary circumstances; such temporary measures shall not affect the nationality of the Company which, notwithstanding the temporary transfer of its registered office, shall remain a Luxembourg company.

- 4.5 The registered office of the Company may be transferred to another member state of the European Union in accordance with the Regulation and the Law. Such transfer will not result in the winding-up of the Company or the creation of a new legal person.

## **B. SHARE CAPITAL – SHARES**

### **Article 5 Share capital**

- 5.1 The Company's share capital is set at [\*\*\*] euro (EUR [\*\*\*]), represented by (i) [\*\*\*] ([\*\*\*)] class B1 shares without nominal value (the "**Class B1 Shares**"), (ii) [\*\*\*] ([\*\*\*)] class B2 shares without nominal value (the "**Class B2 Shares**"), (iii) [\*\*\*] ([\*\*\*)] class B3 shares without nominal value (the "**Class B3 Shares**"), (iv) [\*\*\*] ([\*\*\*)] class B4 shares without nominal value (the "**Class B4 Shares**" and together with the Class B1 Shares, the Class B2 Shares and the Class B3 Shares, the "**Class B Shares**", and the holders thereof being referred to as "**B Shareholders**") and (v) [\*\*\*] ([\*\*\*)] class A shares without nominal value (the "**Class A Shares**", and the holders thereof being referred to as "**A Shareholders**"). Any reference made hereinafter to the "**Shares**" or a "**Share**" shall be construed as a reference to the Class A Shares and/or the Class B Shares, depending on the context and as applicable. The same construction applies to any reference made hereinafter to the "**Shareholders**" or a "**Shareholder**" of the Company.
- 5.2 The Company's share capital may be increased or reduced by a resolution of the general meeting of Shareholders adopted in the manner required for an amendment of these articles of association or as otherwise set out in these articles of association.
- 5.3 Any new Shares to be paid for in cash shall be offered by preference to the existing Shareholders *pro rata* to their participation in the same class they hold prior to the issuance of new Shares within the same class. In case of a plurality of Shareholders, such Shares shall be offered to the Shareholders in proportion to the number of Shares of the same class held by them in the Company's share capital and more specifically, the Share class concerned. The management board shall determine the time period during which such preferential subscription right may be exercised, which shall not be less than fourteen (14) days from the publication of the offer on the *Recueil électronique des sociétés et associations* and in one newspaper published in Grand Duchy of Luxembourg. However, in accordance with Article 420-26 (3) of the Law, where all the Shares are in registered form, the Shareholders may be informed by registered letter without prejudice to any other means of communication required to be accepted individually by their addressees and which warrant notification. The general meeting of Shareholders may limit or cancel the preferential subscription right of the existing Shareholders subject to quorum and majority required for an amendment of these articles of association. The management board may limit or cancel the preferential subscription right of the existing Shareholders in accordance with Article 5 hereof or if the general meeting of Shareholders has previously authorised the management board by resolution adopted with the quorum and majority required for an amendment of these articles of association.
- 5.4 If after the end of the subscription period not all of the preferential subscription rights offered to the existing Shareholders have been subscribed by the latter, third parties may be allowed to participate in the share capital increase, except if the management board with the consent of the supervisory board decides that the preferential subscription rights shall be offered to the existing Shareholders who have already exercised their rights during the subscription period,

in proportion to the portion their Shares represent in the share capital; the modalities for the subscription are determined by the management board with the consent of the supervisory board. The management board with the consent of the supervisory board may also decide in such case that the share capital shall only be increased by the amount of subscriptions received by the existing Shareholders of the Company.

- 5.5 The Company may repurchase its Shares subject to the provisions of the Law. Class B Shares are not redeemable.

## **Article 6            Authorised capital**

- 6.1 The authorised capital, excluding the issued share capital, is set at [\*\*\*] euro (EUR [\*\*\*]), consisting of [\*\*\*] ([\*\*\*)] Class A Shares without nominal value. During a period of five (5) years from the date of incorporation or any subsequent resolutions to create, renew or increase the authorised capital pursuant to this Article 6, the management board with the consent of the supervisory board is hereby authorised to issue Class A Shares, to grant options or warrants to subscribe for Class A Shares and to issue any other instruments, such as convertible instruments, giving access to Shares within the limits of the authorised capital to such persons and on such terms as they shall see fit and specifically to proceed to such issue with limitation or removal of the preferential right to subscribe to the Shares issued for the existing Shareholders, and it being understood, that any issuance of such instruments will reduce the available authorised capital accordingly. With respect to warrants issued by the Company, the five (5) year limit applies to the issuance thereof, whereas the exercise of such warrants may occur after the expiration of the authorisation. Class A Shares may also be issued under the authorised capital against contribution in kind. Share capital increases may be made subject to and out of available reserves (including share premium) of the Company, against payment in cash or against payment in kind. The Company has issued [\*\*\*] ([\*\*\*)] class A warrants and [\*\*\*] ([\*\*\*)] class B warrants, which reduce the available authorised capital accordingly.
- 6.2 The authorised capital of the Company may be increased or reduced by a resolution of the general meeting of Shareholders adopted in the manner required for an amendment of these articles of association.
- 6.3 The above authorisation may be renewed through a resolution of the general meeting of Shareholders adopted in the manner required for an amendment of these articles of association and subject to the provisions of the Law, each time for a period not exceeding five (5) years.

## **Article 7            Shares – Form of Shares - Transfer of Shares**

- 7.1 The Class B Shares of the Company are in registered form.
- 7.2 A register of Class B Shares shall be kept at the registered office of the Company, where it shall be available for inspection by any Shareholder. This register shall contain all the information required by the Law. Ownership of Class B Shares is established by registration in said share register. Certificates evidencing registrations made in the register with respect to a Shareholder shall be issued upon request and at the expense of the relevant Shareholder.
- 7.3 The Class A Shares shall exist in dematerialised form (*titres dématérialisés*) pursuant to Article 430-7 of the Law, and in accordance with the law of 6 April 2013 on dematerialisation of securities (the “**Dematerialisation Law**”). All future Class A Shares to be issued by the Company shall be in dematerialised form, whereas any Class B Shares issued shall be in registered form.

- 7.4 The dematerialised Shares are only represented, and the ownership of such Shares is only established by a record in the name of the Shareholder in a securities account. The dematerialised Shares issued by the Company shall be recorded at all times in a securities issuance account with a securities settlement system, which shall be determined by the management board (the “**Settlement Organisation**”). The securities issuance account shall indicate the identification elements of these dematerialised Shares, the quantity issued and any subsequent changes thereto. The Settlement Organisation may issue or request the Company to issue certificates relating to dematerialised Shares for the purpose of international circulation of securities.
- 7.5 The Class A Shares are freely transferable in accordance with the legal requirements for the dematerialised shares, which transfer shall occur by book entry transfer (*virement de compte à compte*).
- 7.6 The Class B2 Shares, the Class B3 Shares and the Class B4 Shares are not transferable, assignable or sellable until the first anniversary of the Business Combination or earlier if, at any time, the Closing Price (as defined below) of the Class A Shares for any ten (10) trading days within any 30-trading day period equals or exceeds twelve euro (EUR 12.00) other than (a) to the members of the management board or supervisory board or, in case an advisory board is established at the level of the Company, the members of such advisory board, any affiliates or family members of any members of the management board or supervisory board, any members or partners of TEIXL Investments GmbH, Ophelia Capital UG and/or Mr. Florian Leibert (collectively, the “**Sponsors**”), or their affiliates, any affiliates of the Sponsors, or any employees of such affiliates; (b) in the case of an individual, by gift to a member of one of the individual’s immediate family or to a trust, the beneficiary of which is a member of the individual’s immediate family, an affiliate of such person or to a charitable organization; (c) in the case of an individual, by virtue of laws of descent and distribution upon death of the individual; (d) in the case of an individual, pursuant to a qualified domestic relations order; (e) by private sales or transfers made in connection with the Consummation at prices no greater than the price at which the Class B Shares were originally purchased; (f) in the form of pledges, charges or any other security interest granted to any lenders or other creditors; (g) pursuant to enforcement of any security interest entered into in accordance with (f); (h) by virtue of the organizational documents of the Sponsors, upon liquidation or dissolution of the Sponsors; (i) to the Company for no value in connection with the Consummation; or (j) in the event of the completion of a liquidation, merger, share exchange or other similar transaction concerning the Company which results in all of the holders of Class A Shares having the right to exchange their Class A Shares for cash, securities or other property subsequent to the Consummation provided, however, that in the case of clauses (a) through (g) these permitted transferees (the “**Permitted Transferees**”) must enter into a written agreement agreeing to be bound by the same transfer restrictions.
- 7.7 For the purposes of identifying the holders of Class A Shares, the Company may, at its expense, request from the Settlement Organisation the name or the denomination, nationality, date of birth or date of incorporation and the address of the holders of the Class A Shares in its books which immediately confers or may confer in the future voting rights at the Company’s general meetings of Shareholders, together with the quantity of Class A Shares held by each of them and, where applicable, the restrictions the Class A Shares may be subject to. The Settlement Organisation shall provide the Company with the identification data on the holders of the securities accounts it has in its books and the number of Class A Shares held by each of them. The same information on the holders of Class A Shares shall be collected by the Company from the account keepers or other persons, whether from Luxembourg or abroad, who keep a securities account credited with the relevant Class A Shares with the Settlement Organisation.
- 7.8 The Company may request the persons indicated on the lists given to it or identified pursuant to Article 7.7 above to confirm that they hold the Class A Shares for their own account.

- 7.9 Where a person holding an account with the Settlement Organisation, or a person who holds an account with an account keeper or a foreign account keeper fails to communicate information requested by the Company within two (2) months as from the request by the Company pursuant to Article 7.7 above or if that person communicates incomplete or incorrect information regarding the capacity in which he is holding the Class A Shares and/or the quantity of the Class A Shares held by that person, the Company may suspend the voting rights up to the amount of the Class A Shares for which information requested was incorrect and/or incomplete or not received, until complete and correct information about the Class A Shares held by such person is well received by the Company.
- 7.10 The Company will recognise only one (1) holder per Share. In case a Share is owned by several persons, they shall appoint a single representative who shall represent them towards the Company. The Company has the right to suspend the exercise of all rights attached to that Share, except for relevant information rights, until such representative has been appointed.
- 7.11 The Company shall not issue fractional Shares.
- 7.12 Death, suspension of civil rights, dissolution, bankruptcy or insolvency or any other similar event regarding any of the Shareholders shall not cause the dissolution of the Company.

#### **Article 8 Conversion of Class B Shares**

- 8.1 All Class B Shares will automatically be converted into Class A Shares at a ratio of one (1) Class A Shares for one (1) Class B Share in accordance with the following schedule (i) five percent (5%) on the trading day of the Consummation, (ii) twenty-eight point three percent (28.3%) upon the official closing price of the Class A Shares as reported on XETRA, or if at the relevant time the Class A Shares are no longer traded on XETRA, such other stock exchange or securities market on which the Class A Shares are mainly traded at the relevant time (the "**Closing Price**"), for any ten (10) trading days within any 30-trading day period exceeding ten euro (EUR 10.00) and the lock-up pursuant to Article 7.6 has expired, (iii) thirty-three point three percent (33.3%) upon the Closing Price for any ten (10) trading days within any 30-trading day period exceeding fifteen euro (EUR 15.00) and (iv) thirty-three point three percent (33.3%) upon the Closing Price for any ten (10) trading days within any 30-trading day period exceeds twenty euro (EUR 20.00).
- 8.2 The management board is authorised to take any necessary measures to acknowledge the conversion of Class B Shares into Class A Shares and subsequently amend the articles of association of the Company (and notably represent the Shareholders and the Company in front of a notary to acknowledge the conversion and enact the resulting change to these articles of association) as well as to ensure the recording of the Class B Shares converted into Class A Shares in the securities issuance account.

### **C. GENERAL MEETING OF SHAREHOLDERS**

#### **Article 9 Powers of the general meeting of Shareholders**

The Shareholders exercise their collective rights in the general meeting of Shareholders. Any regularly constituted general meeting of Shareholders shall represent the entire body of Shareholders. The general meeting of Shareholders is vested with the powers expressly reserved to it by the Law and by these articles of association.

#### **Article 10 Convening of general meetings of Shareholders**

- 10.1 The general meeting of Shareholders may at any time be convened by the management board or the supervisory board to be held at such place and on such date as specified in the notice of

such meeting in accordance with the provisions of the Law and these articles of association, and in the event that Shares of the Company are listed on a foreign stock exchange, in accordance with the publicity requirements of such foreign stock exchange applicable to the Company.

- 10.2 The management board or the supervisory board shall convene the annual general meeting of Shareholders within a period of six (6) months after the end of the Company's financial year. Other meetings of Shareholders may be held at such place and time as may be specified in the respective notices of meeting.
- 10.3 The general meeting of Shareholders must be convened by the management board or the supervisory board, upon request in writing indicating the agenda, addressed to the management board or the supervisory board by one or several Shareholders representing at least ten percent (10%) of the Company's issued share capital. In such case, a general meeting of shareholders must be convened and shall be held within a period of one (1) month from the receipt of such request. If following a request made under this Article 10.3, a general meeting of shareholders is not held in due time, such Shareholder(s) may request the president of the district court (*Tribunal d'Arrondissement*) dealing with commercial matters and sitting as in urgency matters to appoint a delegate which will convene the general meeting of shareholders.
- 10.4 As long as the Shares are admitted to trading on a regulated market within a European Union member state, the general meeting of Shareholders must be convened in accordance with the provisions of the Luxembourg law of 24 May 2011 on the exercise of certain rights of shareholders in general meetings of the shareholders of listed companies, as amended (the "**Luxembourg Shareholder Rights Law**"). In accordance with the Luxembourg Shareholder Rights Law, the convening notice for any general meeting of Shareholders must contain (a) the agenda of the meeting, (b) the place, date and time of the meeting, (c) the description of the procedures that Shareholders must comply with in order to be able to participate and cast their votes in the general meeting of Shareholders, (d) statement of the record date and the manner in which Shareholders have to register and a statement that only those who are Shareholders on that date shall have the right to participate and vote in the general meeting of Shareholders, (e) indication of the postal and electronic addresses where and how the full unbridged text of the documents to be submitted to the general meeting of Shareholders and the draft resolutions may be obtained and (f) indication of the address of the internet site on which this information is available and such notice shall take the form of announcements published (i) thirty (30) days before the meeting, in the *Recueil Electronique des Sociétés et Associations* and in a Luxembourg newspaper and (ii) in a manner ensuring fast access to it on a non-discriminatory basis in such media as may reasonably be relied upon for the effective dissemination of information throughout the European Economic Area. A notice period of at least seventeen (17) days applies, in case of a second or subsequent convocation of a general meeting of Shareholders convened for lack of quorum required for the meeting convened by the first convocation, provided that this Article 10.4 has been complied with for the first convocation and no new item has been put on the agenda. The notices shall in addition be published in such other manner as may be required by laws, rules or regulations applicable to any stock exchange the Company is listed on, as applicable from time to time.
- 10.5 In accordance with the Luxembourg Shareholder Rights Law, one or several Shareholders, representing at least five percent (5%) of the Company's issued share capital, may (i) request to put one or several items to the agenda of any general meeting of Shareholders, provided that such item is accompanied by a justification or a draft resolution to be adopted in the general meeting of Shareholders, or (ii) table draft resolutions for items included or to be included on the agenda of the general meeting of Shareholders. Such request must be sent to the Company's registered office in writing by registered letter or electronic means and must be received by the Company at least twenty-two (22) days prior to the date of the general meeting of Shareholders and include the postal or electronic address of the sender. In case such

request entails a modification of the agenda of the relevant meeting, the Company will make available a revised agenda at least fifteen (15) days prior to the date of the general meeting of Shareholders.

- 10.6 If provided for in the relevant convening notice, Shareholders may participate in a general meeting of Shareholders by video conference or any other electronic means made available by the Company, ensuring an effective participation in the meeting, whose deliberations are transmitted continuously, notably, any or all of the following forms of participation: (i) a real-time transmission of the general meeting of Shareholders; (ii) a real-time two-way communication enabling Shareholders to address the Shareholders' meeting from a remote location; and (iii) a mechanism for casting votes.
- 10.7 If all Shareholders are present or represented, the general meeting of Shareholders may be held without prior notice or publication.
- 10.8 The provisions of the Law are applicable to general meetings of Shareholders. The management board may determine other terms or set conditions that must be respected by a Shareholder to participate in any meeting of Shareholders in the convening notice (including, but not limited to, longer notice periods).
- 10.9 A Shareholder may act at any general meeting of Shareholders by appointing another person, Shareholder or not, as his proxy in writing by a signed document transmitted to the Company by mail or facsimile or by any other means of communication authorised by the management board. One person may represent several or even all Shareholders.
- 10.10 A board of the meeting (bureau) shall be formed at any general meeting of Shareholders, composed of a chairman, a secretary and a scrutineer, each of whom shall be appointed by the general meeting of Shareholders and who do not need to be Shareholders. The board of the meeting shall ensure that the meeting is held in accordance with applicable rules and, in particular, in compliance with the rules in relation to convening the meeting, majority requirements, vote tallying and representation of Shareholders.
- 10.11 An attendance list must be kept at any general meeting of Shareholders.
- 10.12 In accordance with these articles of association, each Shareholder may vote at a general meeting of Shareholders through a signed voting form sent by post, electronic mail, facsimile or by any other electronic means of communication authorised by the management board to the Company's registered office or to the address specified in the convening notice. The Shareholders may only use voting forms provided by the Company which contain at least (i) the name or corporate denomination of the Shareholder, his/her/its address or registered office, (ii) the number of votes the shareholder intends to cast in the general meeting of Shareholders, (iii) the place, date and time of the meeting, (iv) the agenda of the meeting, the proposals submitted to the resolution of the meeting as well as for each proposal three boxes allowing the Shareholder to vote in favour of or against the proposed resolution or to abstain from voting thereon by ticking the appropriate boxes. The Company will only take into account voting forms received prior to the general meeting of Shareholders to which they relate. Forms in which no vote is expressed, or which do not indicate an abstention shall be void.
- 10.13 Within fifteen (15) days following the general meeting of Shareholders, the Company shall publish on its website the voting results.

## **Article 11 Admission**

- 11.1 If Shares of the Company are listed on a stock exchange, any Shareholder who holds one or more Share(s) of the Company at 24:00 hours (midnight) Luxembourg time on the date falling



fourteen (14) days prior to (and excluding) the date of the general meeting of Shareholders (the "**Record Date**") shall be admitted to the relevant general meeting of Shareholders. Any Shareholder who wishes to attend the general meeting of Shareholders must inform the Company thereof at the latest on the Record Date, in a manner to be determined by the management board in the convening notice. In case of Shares held through a Settlement Organisation or with a professional depository or sub-depository designated by such depository, a holder of Shares wishing to attend a general meeting of Shareholders should receive from such operator or depository or sub-depository a certificate certifying the number of Shares recorded in the relevant account on the Record Date in written or electronic form. The certificate should be submitted to the Company at its registered address no later than two (2) business days prior to the date of the general meeting of Shareholders. In the event that the Shareholder votes through proxies, the proxy has to be deposited at the registered office of the Company at the same time or with any agent of the Company, duly authorised to receive such proxies. The management board may set a shorter period for the submission of the certificate or the proxy.

- 11.2 With respect to Shares which are not listed on a stock exchange, any Shareholder who holds one or more of such non-listed Shares of the Company, who is registered in the share register of the Company relating to such non-listed shares on the Record Date, shall be admitted to the relevant general meeting of Shareholders.

#### **Article 12 Quorum and Majority**

- 12.1 Each Share entitles the holder thereof to one vote, subject to the provisions of the Law. Unless otherwise required by law or by these articles of association, resolutions at a general meeting of Shareholders duly convened are adopted by a simple majority of the votes validly cast, regardless of the portion of capital represented.
- 12.2 Subject to the provisions of the Law, any amendment of the articles of association requires a majority of at least two-thirds of the votes validly cast at a general meeting of Shareholders at which at least half of the share capital is present or represented, in case the second condition is not satisfied, a second meeting may be convened in accordance with the Law, which may deliberate regardless of the proportion of the capital represented and at which resolutions are taken at a majority of at least two-thirds of the votes validly cast. Abstention and nil votes will not be taken into account for the calculation of the majority.
- 12.3 The Shareholders may change the nationality of the Company only by a majority of two-thirds of the votes validly cast at a general meeting of Shareholders at which at least half of the share capital is present or represented.
- 12.4 For as long as the Company has different classes of Shares, and when the deliberations of the general meeting of Shareholders would be susceptible to modify the respective rights of such Share classes, the applicable quorum and majority requirements must be met in each of the Share classes.

#### **Article 13 Adjourning general meetings of Shareholders**

The management board may adjourn any general meeting of Shareholders already commenced, including any general meeting convened in order to resolve on an amendment of the articles of association. The management board must adjourn any general meeting of Shareholders already commenced if so required by one or several Shareholders representing at least ten percent (10%) of the Company's issued share capital. By such an adjournment of a general meeting of Shareholders already commenced, any resolution already adopted in such meeting will be cancelled. For the avoidance of doubt, once a meeting has been adjourned

pursuant to the second sentence of this Article 13, the management board shall not be required to adjourn such meeting a second time.

#### **Article 14 Minutes of general meetings of Shareholders**

- 14.1 The board (*bureau*) of any general meeting of Shareholders shall draw up minutes of the meeting which shall be signed by the members of the board of the meeting as well as by any Shareholder who requests to do so.
- 14.2 Any copy and excerpt of such original minutes to be produced in judicial proceedings or to be delivered to any third party shall be signed by the chairman or the vice-chairman of the management board, if any, or by any two members of the management board.

#### **D. MANAGEMENT**

#### **Article 15 Dual management and supervisory structure**

- 15.1 The Company's management shall be subject to articles 442-1 to 442-19 of the Law, unless otherwise provided in these articles of association.
- 15.2 The Company shall be managed by a management board which exercises its functions under the control of a supervisory board.

#### **Article 16 Composition and powers of the management board, rules of procedure**

- 16.1 The management board is composed of at least two (2) members.
- 16.2 The management board is vested with the broadest powers to act in the name of the Company and to take any action necessary or useful to fulfil the Company's corporate purpose, with the exception of the powers reserved by the Law or by these articles of association to the supervisory board or to the general meeting of Shareholders.
- 16.3 The management board shall determine its own rules of procedure and may create one or several committees. The composition and the powers of such committees, the terms of the appointment, removal, remuneration and duration of the mandate of its/their members, as well as its/their rules of procedure are determined by the management board. The management board shall be in charge of the supervision of the activities of the committee(s). For the avoidance of doubt, such committees shall not constitute management committee in the sense of Article 441-11 of the Law.
- 16.4 The following actions and transactions in relation to the Company's management require an express decision of the supervisory board of the Company:
- o issuance of Class A Shares, granting options to subscribe for Class A Shares and to issue any other instruments, such as convertible warrants, giving access to Shares under the authorised capital;
  - o proposal of a business combination to the shareholders;
  - o material transactions with related parties in accordance with the provisions of the Luxembourg Shareholder Rights Law;
  - o liquidation of material companies;

- o amendments to the appointment, removal and term of office of members of the management board;
- o institution and termination of court cases or arbitration proceedings involving an amount in controversy of more than five million euro (EUR 5,000,000) in the individual case; and
- o acquisition, sale and encumbrance of real estate and similar rights or rights in real estate with a value of more than ten million euro (EUR 10,000,000) in the individual case.

16.5 The management board may unanimously pass resolutions by circular means when expressing its approval in writing, by facsimile, electronic mail or any other similar means of communication. Each member of the management board may express his/her consent separately, the entirety of the consents evidencing the adoption of the resolutions. The date of such resolutions shall be the date of the last signature.

#### **Article 17 Daily management**

17.1 The daily management of the Company as well as the representation of the Company in relation to such daily management may be delegated to one or several members of the management board, officers or other agents, but not to a member of the supervisory board. Their appointment, removal and powers shall be determined by a resolution of the management board.

17.2 The Company may also grant special powers by notarised proxy or private instrument.

#### **Article 18 Appointment, removal and term of office of members of the management board**

18.1 The members of the management board shall be appointed by the supervisory board which shall determine their remuneration and term of office. The term of office of a member of the management board may not exceed five (5) years. Members of the management board may also be re-appointed for successive terms.

18.2 Any member of the management board may be removed from office at any time, with or without cause by the supervisory board.

18.3 If a legal entity is appointed as member of the management board of the Company, such legal entity must designate a physical person as permanent representative who shall perform this role in the name and on behalf of the legal entity. The relevant legal entity may only remove its permanent representative if it appoints a successor at the same time. An individual may only be a permanent representative of one (1) member of the management board of the Company and may not be himself a member of the management board of the Company at the same time. An individual cannot be a permanent representative of a member of the management board of the Company and of a member of the supervisory board of the Company at the same time.

#### **Article 19 Vacancy in the office of a member of the management board**

19.1 In the event of a vacancy in the office of a member of the management board because of death, legal incapacity, bankruptcy, resignation or otherwise, this vacancy may be filled on a temporary basis and for a period of time not exceeding the initial mandate of the replaced member of the management board by the remaining members of the management board until the next meeting of the supervisory board, which shall resolve on the permanent appointment in compliance with the applicable legal provisions.

19.2 Alternatively, the supervisory board may temporarily appoint one (1) of its members in order to exercise the functions of a member of the management board. His mandate as member of the supervisory board is suspended for the time of his appointment as member of the management board.

#### **Article 20 Conflict of interest**

20.1 Save as otherwise provided by the Law, any member of the management board who has, directly or indirectly, a financial interest conflicting with the interest of the Company in connection with a transaction falling within the competence of the management board, must inform the management board of such conflict of interest and must have his declaration recorded in the minutes of the meeting of the management board. The relevant member of the management board may neither take part in the discussions relating to such transaction nor vote on such transaction. Any such conflict of interest must be reported to the next general meeting of Shareholders prior to such meeting taking any resolution on any other item.

20.2 Where, by reason of conflicting interests, the number of members of the management board required in order to validly deliberate is not met, the management board may decide to submit the decision on this specific item to the general meeting of Shareholders.

20.3 The conflict of interest rules shall not apply where the decision of the management board relates to day-to-day transactions entered into under normal conditions.

20.4 The daily manager(s) of the Company, if any, are subject to Articles 20.1 to 20.3 of these articles of association provided that if only one (1) daily manager has been appointed and is in a situation of conflicting interests, the relevant decision shall be adopted by the management board.

#### **Article 21 Dealing with third parties**

21.1 The Company shall be bound towards third parties in all circumstances (i) by the joint signature of any two (2) members of the management board or (ii) by the joint signature or the sole signature of any person(s) to whom such signatory power may have been delegated by the management board within the limits of such delegation.

21.2 Within the limits of the daily management, the Company shall be bound towards third parties by the signature of any person(s) to whom such power may have been delegated, acting individually or jointly in accordance within the limits of such delegation.

#### **Article 22 Composition and powers of the supervisory board**

22.1 The supervisory board shall be in charge of the permanent supervision and control of the Company's management by the management board. It may in no case interfere with such management. The rules of procedures of the management board may provide for consent requirements of the supervisory board.

22.2 The supervisory board has an unlimited right of information regarding all operations of the Company and may inspect any of the Company's documents. It may request the management board to provide any information necessary for exercising its functions and may directly or indirectly proceed to all verifications which it may deem useful in order to carry out its duties.

22.3 At least every calendar quarter, the management board provides a written report to the supervisory board on the business of the Company and the foreseeable future development thereof. In addition, the management board shall promptly pass to the supervisory board any information on events likely to have an appreciable influence on the situation of the Company.

22.4 The supervisory board shall be composed of at least three (3) members. However, if, at a general meeting of shareholders, it is established that the Company has only a sole shareholder, the supervisory board may be composed of only one (1) member until the next annual general meeting following the establishment of the existence of more than one (1) shareholder. The supervisory board may elect among its members a chairman and a vice-chairman of the supervisory board. It may also choose a secretary who does not need to be a Shareholder or a member of the supervisory board. A member of the management board cannot be a member of the supervisory board at the same time.

#### **Article 23 Appointment, removal and term of office of members of the supervisory board**

23.1 Members of the supervisory board shall be appointed by the general meeting of Shareholders which shall determine their remuneration and term of office.

23.2 The members of the supervisory board are elected for a term not exceeding a period ending at the expiration of the general meeting of Shareholders that resolves on the discharge for the exercise of the supervisory board member's mandate for the fourth (4th) financial year of the term of office. The year of appointment does not count towards the fourth year. Members of the supervisory board may be re-appointed for successive terms.

23.3 Any member of the supervisory board may be removed from office at any time, with or without cause by the general meeting of Shareholders at a two-thirds majority vote of the Shares present or represented.

23.4 If a legal entity is appointed member of the supervisory board of the Company, such legal entity must designate an individual as permanent representative who shall perform this role in the name and on behalf of the legal entity. The relevant legal entity may only remove its permanent representative if it appoints a successor at the same time. An individual may only be a permanent representative of one (1) member of the supervisory board and may not be a member of the supervisory board at the same time. An individual cannot be a permanent representative of a member of the supervisory board and of a member of the management board at the same time.

23.5 In the event of a vacancy in the office of a member of the supervisory board because of death, legal incapacity, bankruptcy, retirement or otherwise, this vacancy may be filled on a temporary basis and for a period not exceeding the initial mandate of the replaced member of the supervisory board, by the remaining members of the supervisory board until the next general meeting of Shareholders which shall resolve on a permanent appointment in compliance with the applicable legal provisions.

23.6 If the total number of members of the supervisory board falls below three (3) or below such higher minimum set by these articles of association, as applicable, such vacancy must be filled without undue delay.

#### **Article 24 Rules of procedure of the supervisory board and supervisory board committees**

24.1 The supervisory board shall determine its own rules of procedure and may create one or several committees. The composition and the powers of such committees, the terms of the appointment, removal, remuneration and duration of the mandate of its/their members, as well as its/their rules of procedure are determined by the supervisory board. The supervisory board shall be in charge of the supervision of the activities of the committee(s). For the avoidance of doubt, such committees shall not constitute management committee in the sense of Article 441-11 of the Law.

24.2 The supervisory board may pass unanimous resolutions by circular means when expressing its approval in writing (including by electronic mail). The members may express their consent separately on one or several documents. The date of such resolutions shall be the date of the last signature.

#### **Article 25 Conflicts of interest**

The provisions of Article 20 of these articles of association apply *mutatis mutandis* to the conflicts of interest at the level of the supervisory board.

### **E. AUDIT AND SUPERVISION**

#### **Article 26 Auditor(s)**

26.1 The transactions of the Company shall be supervised by one or several independent auditors (*réviseur(s) d'entreprises agréé(s)*) in accordance with applicable law.

26.2 The independent auditor(s) shall be appointed by the general meeting of Shareholders which shall determine their number, fix their remuneration, and their term of office, which may not exceed six (6) years. A former or current independent auditor may be reappointed by the general meeting of Shareholders.

26.3 An independent auditor may only be removed by the general meeting of Shareholders for cause or with his/her approval.

### **F. FINANCIAL YEAR – ANNUAL ACCOUNTS – ALLOCATION OF PROFITS – INTERIM DIVIDENDS**

#### **Article 27 Financial year**

The financial year of the Company shall begin on the first of January of each year and shall end on the thirty-first of December of the same year.

#### **Article 28 Annual accounts and allocation of profits**

28.1 At the end of each financial year, the accounts are closed and the management board draws up an inventory of the Company's assets and liabilities, the balance sheet and the profit and loss accounts in accordance with the Law.

28.2 Of the annual net profits of the Company, five per cent (5%) at least shall be allocated to the legal reserve, which cannot be distributed. This allocation shall cease to be mandatory as soon and as long as the aggregate amount of such reserve amounts to ten per cent (10%) of the share capital of the Company.

28.3 Sums contributed to a reserve of the Company may also be allocated to the legal reserve.

28.4 In case of a share capital reduction, the Company's legal reserve may be reduced in proportion so that it does not exceed ten per cent (10%) of the share capital.

28.5 Upon recommendation of the management board, the general meeting of Shareholders shall determine how the remainder of the Company's profits shall be used in accordance with the Law and these articles of association. In the event that distributions are made:

(i) if the distribution declared does not exceed one euro cent (EUR 0.01) per Share, then each Share shall be entitled to receive the same amount to the extent such amount does not exceed one euro cent (EUR 0.01) per Share; and

(ii) if the distribution exceeds one euro cent (EUR 0.01) per Share, then (a) each Share shall receive a dividend of one euro cent (EUR 0.01) and (b) for the remainder, each Class A Share shall be entitled to receive the same fraction of the distribution (and each Class B Shares shall be entitled to none of the distribution).

28.6 The payment of the dividends to a depositary operating principally with a Settlement Organisation in relation to transactions on securities, dividends, interest, matured capital or other matured monies of securities or of other financial instruments being handled through the system of such depositary discharges the Company. Said depositary shall distribute these funds to his depositors according to the amount of securities or other financial instruments recorded in their name.

28.7 Dividends, which have not been claimed within five (5) years after the date on which they became due and payable, revert back to the Company.

#### **Article 29 Interim dividends - Share premium and assimilated premiums**

29.1 The management board may proceed with the payment of interim dividends subject to the provisions of the Law and these articles of association.

29.2 Any share premium, assimilated premium or other distributable reserve may be freely distributed to the Shareholders subject to the provisions of the Law and these articles of association.

29.3 Notwithstanding the foregoing and subject to the Law, the management board may in particular make use of any sums contributed to the share premium to convert any amount thereof into share capital in order to issue Shares upon the exercise of warrants issued by the Company, at the discretion of the management board and limiting or suppressing the preferential subscription right of existing Shareholders.

29.4 The management board shall create a specific reserve in respect of the exercise of any class A warrants or class B warrants issued by the Company (the "**Warrant Reserve**") and allocate and transfer sums contributed to the share premium and/or any other distributable reserve of the Company to such Warrant Reserve. The management board may, at any time, fully or partially convert amounts contributed to such Warrant Reserve to pay for the subscription price of any Class A Shares to be issued further to an exercise of class A warrants or class B warrants issued by the Company. The Warrant Reserve is not distributable or convertible prior to the exercise, redemption or expiration of all outstanding class A warrants and class B warrants and may only be used to pay for the Class A Shares issued pursuant to the exercise of such class A warrants and class B warrants; thereupon, the Warrant Reserve will become a distributable reserve.

### **G. LIQUIDATION**

#### **Article 30 Liquidation**

30.1 In the event of dissolution of the Company in accordance with Article 3.2 of these articles of association, the liquidation shall be carried out by one or several liquidators who are appointed by the general meeting of Shareholders deciding on such dissolution and which shall determine their powers and their compensation. Unless otherwise provided, the liquidators

shall have the most extensive powers for the realisation of the assets and payment of the liabilities of the Company.

- 30.2 The surplus resulting from the realisation of the assets and the payment of the liabilities shall be distributed among the Shareholders, *mutatis mutandis*, in accordance with Article 28.5 hereof.

## H. GOVERNING LAW

### Article 31 Governing law

All matters not governed by these articles of association shall be determined in accordance with the Law and the Regulation.

## I. DEFINITIONS

Capitalised terms used and not otherwise defined in these Articles shall have the following meaning:

**Marley Spoon** means Marley Spoon SE, a European company (*société européenne*) incorporated under the laws of Germany and registered in the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Charlottenburg under HRB 250627 B with registered office at Paul-Lincke-Ufer 39-40, Berlin, Germany.

**Business Combination** means the business combination between the Company and Marley Spoon pursuant to which the Company directly or indirectly acquired a certain amount of the outstanding equity and equity equivalents of Marley Spoon in exchange for Shares as agreed upon pursuant to the terms of that certain business combination agreement entered by, among others, the Company and Marley Spoon.

**Consummation** means the completion of the Business Combination.