

**SAF-HOLLAND SE**

*Société européenne*

Siège social: 68-70, Boulevard de la Pétrusse, L-2320 Luxembourg

Grand Duchy of Luxembourg

R.C.S. Luxembourg: B113.090

**EXPLANATORY REPORT TO A PROPOSAL FOR THE TRANSFER OF THE REGISTERED OFFICE  
FROM LUXEMBOURG TO GERMANY DATED 9 MARCH 2020**

- **Jack GISINGER**, being a director of the Company;
- **Ingrid JÄGERING**, being a director of the Company;
- **Dr. Martin KLEINSCHMITT**, being a director of the Company;
- **Anja KLEYBOLDT**, being a director of the Company;
- **Martina MERZ**, being a director of the Company; and
- **Carsten REINHARDT**; being a director of the Company;

jointly constituting the board of directors (the "**Board**") of **SAF-HOLLAND SE**, a European company (*société européenne*) governed by the laws of Grand Duchy of Luxembourg and by the Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European company (SE) (the "**SE Regulation**"), having its registered office at 68-70, Boulevard de la Pétrusse, L-2320 Luxembourg, Grand Duchy of Luxembourg, and registered with the Luxembourg register of commerce and companies (*Registre de Commerce et des Sociétés*, "**RCS**") under number B113.090 (the "**Company**")

## RECITALS

- A. On 14 February 2020, the extraordinary general meeting of the Company's shareholders has decided to convert the Company from a Luxembourg public limited liability company (*société anonyme*, S.A.) into a European company (SE) (the "**Conversion**"), in accordance with the draft terms of conversion as prepared by the Board on 6 December 2019 (the "**Conversion Plan**"). The Conversion was registered with the RCS on 24 February 2020 and thereby became legally effective.
- B. For the purpose of Conversion, the Board has also drawn up an explanatory report to the Conversion Plan dated 6 December 2019. It has informed therein that "*Shortly following the Conversion, it is contemplated to transfer the office of the Company from Luxembourg to Germany in accordance with Articles 490-1 et seqq. of the law of 10 August 1915 on commercial companies, as amended from time to time*".
- C. It is now intended to transfer the Company's registered office from Grand Duchy of Luxembourg to Germany in accordance with Articles 490-1 et seqq. of the Luxembourg law of 10 August 1915 on commercial companies, as amended from time to time (the "**Company Act**") and Article 8 of the SE Regulation (the "**Transfer**").
- D. The Board has approved on the date hereof a draft proposal of Transfer and in accordance with Article 491-3 of the Company Act, the Board has drawn up this explanatory report for the Transfer (the "**Report**").

## HEREBY DECLARE

### Article 1 Reasons for the Transfer

The Board intends to transfer the Company's registered office from Grand Duchy of Luxembourg to Germany. The Company is closely connected to Germany through its direct subsidiary, SAF-HOLLAND GmbH, which acts as the main operating subsidiary of the Company and its group companies (together, the "**Group**") and which has its registered office at Bessenbach, Germany. The Board believes that the Transfer would be beneficial for the Group as the legal and operative functions would no longer be separated in two locations and the costs involved by these separate functions could be reduced significantly. Moreover, the Company's shares are admitted to trading to the regulated market of the Frank-

furt Stock Exchange and the sub-segment thereof with additional post-admission obligations (Prime Standard). With the Transfer, the Company will have its registered office in the same country where its shares are listed. This is expected to help to reduce the legal complexity and related costs.

## **Article 2**

### **Consequences for the Company's activities**

The Board does not expect the Transfer to have any negative consequences for the Company's current activities.

## **Article 3**

### **Consequences for the shareholders**

The Board does not expect any negative consequences for the Company's shareholders. The Company's corporate form will not change and it will remain organized as a European company (*société européenne*) under German laws. The Company's shares will further continue to be admitted to trading to the regulated market of the Frankfurt Stock Exchange and the sub-segment thereof with additional post-admission obligations (Prime Standard).

## **Article 4**

### **Legal, economic, tax-related and employment-related implications**

#### **1. Legal implications**

In accordance with Article 8(1) of the SE Regulation, the transfer of a European company shall not result in the winding up, dissolution or liquidation of the Company or in the creation of a new legal person.

Considering that there will be no change to the Company's legal personality, the Transfer is not expected to adversely affect the rights of the creditors of the Company.

It is not intended to grant any special rights or other advantages to the Company's shareholders before the Transfer, during the Transfer or after the Transfer.

## 2. Economic implications

The aim of the Transfer is to reduce on-going annual costs incurred by maintaining the current structure of the Group. The Group has strong ties to Germany and the rest of Europe and all other group functions are situated in Germany. Further to that, the presence of legal executive functions in Germany is expected to result in a substantial reduction in costs, and time necessary for regular travel to Grand Duchy of Luxembourg and should increase efficiency and communications.

## 3. Tax-related implications

### 3.1. Luxembourg Tax-related implications

As a result of the Transfer, the Company will have to determine its profits for Luxembourg tax purposes as if it were liquidated. This applies to any gains allocable to the participation in SAF-HOLLAND GmbH. However, such gains are generally tax exempt. It is currently assumed that no significant corporate income tax burden is triggered at level of the Company for Luxembourg tax purposes. No adverse net worth tax consequences are expected at the Company level either as the Transfer (taking place in 2020) will end the Company's net worth tax obligations and liabilities for 2021 and there should not be any exit tax consideration for Luxembourg net worth tax. No Luxembourg withholding tax applies on the deemed liquidation of the Company for Luxembourg tax purposes.

As a result of the Transfer, the following Luxembourg tax implications should be considered by the shareholders of the Company depending on their own situation which can be roughly summarized as follows:

- For the Luxembourg tax resident companies: the Transfer may trigger taxation at level of those shareholders unless entitled to the participation exemption regime.
- For the Luxembourg tax resident individuals: only speculative capital gains arising from the disposal of shares representing 10% or less (at any point in time during the 5 years preceding the disposal, directly or indirectly) should be taxable to income tax ("speculative" meaning that a disposal of the shares takes place within 6-month after their acquisition).

- For the non-Luxembourg resident shareholders (individuals, companies or collective bodies) without any form of taxable presence in Luxembourg:
  - no adverse tax consequences are expected in the absence of right to tax attributed to Luxembourg under an applicable double taxation treaty;
  - in the absence of an applicable double taxation treaty, Luxembourg only taxes speculative gains (same meaning as above) on a disposal of a substantial participation (*i.e.*, participation of more than 10% at any point in time during the 5 preceding years, directly or indirectly (which for individuals includes shares held by spouse, partner or minor children)).

Notwithstanding the foregoing, the assessment of the tax consequences requires a consideration of the individual circumstances of the shareholder. It is therefore recommended that shareholders consult their own tax advisors with respect to their individual tax situation.

### 3.2. German Tax-related implications

- As result of the Transfer, the tax implications at the level of the Company may be summarized as follows:
  - The Company becomes subject to unlimited tax liability in Germany following the Transfer. As a result, the Company is generally subject to corporate income tax plus solidarity surcharge and trade tax with its worldwide income in Germany.
  - The Company's assets (including the Company's participation in SAF-HOLLAND GmbH) should basically be accounted at fair market value (*gemeiner Wert*) determined at the time of transfer for German tax purposes (*i.e.* tax balance sheet). The fair market value of the assets may deviate from the current tax book value at the level of the Company.
- Potential tax consequences at the level of the direct and indirect subsidiaries of the Company have not yet been investigated in detail.
- The German tax effects of the Transfer at the level of the shareholders may be summarized as follows:

- German tax resident shareholders:
  - At the level of the German tax resident shareholders, no immediate income tax burden should be triggered for German tax resident shareholders.
  - Following the Transfer, dividends and capital gains remain subject to German unlimited income / corporate tax liability at level of the German tax resident shareholders basically to the same extent as before the Transfer (for 2020, dividend exemption privileges to be considered).

Depending on the individual situation of the German tax resident shareholder, Luxembourg could, however, have had a withholding taxation right with respect to dividends. In this case, Germany generally had to credit such withholding tax. After the Transfer, Luxembourg should no longer have a withholding taxation right.

With respect to capital gains realized before the Transfer, a Luxembourg taxation right should have been excluded by the double taxation treaty between Germany and Luxembourg for shareholders entitled to treaty benefit.

- Non-German tax resident shareholders:
  - Dividends received by a shareholder not tax resident in Germany will be subject to German withholding tax at 25% plus 5.5% solidarity surcharge thereon. However, (i) a corporate shareholder may apply for refund of German withholding tax exceeding 15% plus 5.5% solidarity surcharge thereon; (ii) in case the foreign corporate shareholder is resident in a EU-member state holding directly at least 10% for an uninterrupted period of 12 month, withholding tax is reduced to nil; (iii) in case the non-German shareholder is resident in a treaty jurisdiction, a refund to usually 15% (possibly further refunds possible) can be claimed according to the relevant double taxation agreement. Both the refund and the reduction of German withholding tax depend on whether certain

additional prerequisites can be fulfilled (*e.g.* formal and substance requirements).

- Capital gains from the sale of shares by a shareholder not resident in Germany are only taxable in Germany if the shareholder holds a qualifying shareholding (*i.e.* at least 1% of the capital within the last five years has been held directly or indirectly; gratuitous transfers from predecessors must be taken into account). In such cases, the relevant double taxation treaties usually provide for partial or complete exemption from German taxation. If the respective shareholder is subject to taxation with the capital gains in Germany and not protected by an applicable treaty, it is not conclusively clear whether the capital gain is determined by using the historical acquisition costs of the shareholder or the fair value of the shares in SAF-HOLLAND SE at the time of Transfer.

Notwithstanding the foregoing, the assessment of the tax consequences requires a consideration of the individual circumstances of the shareholder. It is therefore recommended that shareholders consult their own tax advisors with respect to their individual tax situation.

#### **4. Employment-related implications**

The Company has no employee.

The Company has initiated the formation of an SE works council (the "**SE Works Council**"). This SE Works Council will have the right to be informed and consulted on the progress of the business of the Company and its prospects and, for that purpose, to meet with the management body of the Company at least once a year.

In exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, transfers, the closure of establishments or undertakings or collective redundancies, the SE Works Council shall have the right to be informed and consulted on the contemplated measures affecting the employees' interests and, for that purpose, to request a meeting with the management body of the Company.

The SE Works Council will be composed of 19 members being employees of the Company's subsidiaries and establishments, elected and appointed in accordance with the provisions of Article L. 443-2 of the Luxembourg Labor Code (*Code du travail*) and the applicable law in the jurisdiction of the Company's relevant subsidiary and/or establishment. It will be composed by members in proportion to the number of employees in each member state of the European Union and other states parties to the Agreement on the European Economic Area, so as to permit the employees in each member state to have a proportional participation in the SE Works Council. The members of the SE Works Council will be elected for a period of five years.

Once formed, the SE Works Council will elect from among its members a select committee which will be in charge of the daily business, comprising at most three members, one of which being the president.

The SE Works Council will continue to exercise its function following the Transfer and will have substantially the same information and consultation rights as it will have prior to the Transfer.

Therefore, no impacts on employee representation are to be expected as a result of the Transfer.

It is expected that the Transfer will not have any negative repercussions on employment in the Group.

Signed in \_\_\_\_\_, on \_\_\_\_\_.

**For the board of directors of SAF-HOLLAND SE**

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Name: **Dr. Martin KLEINSCHMITT**  
Title: director and authorized signatory