

[Convenience Translation]

## Joint Report

of the

Management Board (*Vorstand*) of Zalando SE

and the

Managing Directors (*Geschäftsführer*) of Zalando Media Solutions GmbH

pursuant to § 293a of the German Stock Corporation Act (*Aktiengesetz*)

on the draft of the domination and profit and loss transfer agreement (*Beherrschungs- und Gewinnabführungsvertrag*)

between

Zalando SE

and

Zalando Media Solutions GmbH

### 1. Introduction

Zalando SE with registered seat (*Sitz*) in Berlin (hereinafter “**Zalando**”) and Zalando Media Solutions GmbH with registered seat in Berlin (hereinafter “**ZMS**”) intend to conclude a domination and profit and loss transfer agreement (hereinafter “**Agreement**”) pursuant to § 291 para. 1 sent. 1 of the German Stock Corporation Act (*Aktiengesetz*, hereinafter “**AktG**”). The Agreement is to be concluded in written form, and requires approval by the General Meeting (*Hauptversammlung*) of Zalando and the Shareholder Meeting (*Gesellschafterversammlung*) of ZMS, as well as registration in the commercial register (*Handelsregister*) of ZMS in order to become effective.

The General Meeting of Zalando will be requested to give its approval of the Agreement presumably on 31 May 2016, and the Shareholder Meeting of ZMS subsequent to this General Meeting. The Agreement is then to be concluded after approval has been granted and filed for registration with the commercial register of ZMS’s registered seat.

The Management Board of Zalando and the Managing Directors of ZMS jointly issue the following report in accordance with § 293a AktG to inform the shareholders of the two companies.

## 2. Parties to the Agreement

The parties to the agreement are Zalando and ZMS.

### 2.1 Zalando SE

Zalando is a European Company (*Societas Europaea*) with registered seat in Berlin and is registered in the commercial register of the local court (*Amtsgericht*) of Charlottenburg under HRB 158855 B.

Zalando is the operational parent company of the Zalando group. Zalando was founded in 2008 by Robert Gentz and David Schneider and in the meantime offers a leading online fashion platform for customers in 15 European countries. As of 31 December 2015, the Zalando group employed a total of 9,987 employees.

Zalando's financial year corresponds to the calendar year.

According to its articles of association (*Satzung*), the object of the company of Zalando is the development, marketing and provision of internet services (e-commerce covering goods of different kinds, in particular apparel and shoes), development, production, marketing and trading in such goods, in particular, apparel and shoes, the provision of logistic services, digital services and all other services relating to the aforementioned line of business. Zalando is entitled to perform all acts and take all steps and conduct all kind of transactions which relate to the company's object or which are appropriate to directly or indirectly further the attainment of the company's object. It may also establish or acquire enterprises in Germany or abroad and participate in such enterprises as well as manage such enterprises or confine itself to the management of its participation. Zalando can completely or partially have its operations, including the participations it holds, conducted by affiliated companies or transfer or outsource its operations to such affiliated companies as well as conclude intercompany agreements. Zalando may also establish branch offices and permanent establishments in Germany and abroad. The Company may limit its activity to a part of the areas designated above.

The registered share capital of Zalando is EUR 247,063,258.00 and is divided into 247,063,258 no-par value bearer shares each with a fractional value of the registered share capital of EUR 1.00 per share. The shares of Zalando are traded on the regulated market (*Prime Standard*) of the Frankfurt Stock Exchange (ISIN: DE000ZAL1111; WKN: ZAL111) since 1 October 2014.

The corporate bodies of Zalando are the Management Board (*Vorstand*), the Supervisory Board (*Aufsichtsrat*) and the General Meeting (*Hauptversammlung*).

The Management Board of Zalando consists of Robert Gentz, David Schneider and Rubin Ritter. The Management Board shall manage the company in its own responsibility. It has to manage the company in accordance with the law, the articles of association and the rules of procedure (*Geschäftsordnung*) for the Management Board. Notwithstanding the joint responsibility of the Management Board, the individual board members manage their respective business segments according to the

rules of procedure on their own responsibility. If the Management Board consists of several members, the company is legally represented by two members of the Management Board or by one member of the Management Board together with an authorized representative (*Prokurist*) within the meaning of §§ 48 *et seq.* of the German Commercial Code (*Handelsgesetzbuch*, hereinafter “**HGB**”). If only one member of the Management Board is appointed, such member solely represents the Company. The Supervisory Board may generally or in specific cases issue an exemption to all or to specific members of the Management Board from the prohibition to represent more than one party pursuant to § 181 2nd alternative of the German Civil Code (*Bürgerliches Gesetzbuch*); § 112 AktG remains unaffected. The three members of the Management Board Robert Gentz, David Schneider and Rubin Ritter are each exempt from the ban on multiple representation.

The Supervisory Board of Zalando consists of nine members, of whom six members are shareholder representatives and three members are employee representatives.

The members of the Supervisory Board of Zalando acting as shareholder representatives at the time of issuing this report are:

- Cristina Stenbeck,
- Lorenzo Grabau,
- Anders Holch Povlsen,
- Lothar Lanz,
- Kai-Uwe Ricke and
- Alexander Samwer

The members of the Supervisory Board of Zalando acting as employee representatives at the time of issuing this report are:

- Dylan Ross,
- Konrad Schäfers and
- Beate Siert.

## **2.2 Zalando Media Solutions GmbH**

ZMS is a German limited liability corporation (*GmbH*) with registered seat in Berlin and is registered in the commercial register of the local court (*Amtsgericht*) of Charlottenburg under HRB 169205 B.

ZMS was founded by notarised deed on 21 July 2015 under the name Lindentor 139. V V GmbH with registered office in Berlin as shelf company. Zalando acquired all shares in the company on 29 September 2015 and changed the name to Zalando Media Solutions GmbH.

ZMS's financial year corresponds to the calendar year.

The object of ZMS according to its articles of association is provision of data and marketing services of all kinds, in particular in the digital area.

ZMS is an online marketing technology platform. Brands and other advertisers are invited to place their marketing content on this platform into the Zalando shop websites and apps. The content can also be placed on marketing affiliates' websites and mobile apps.

ZMS has not commenced its operations in the business year 2015 and did not have any employees as of 31 December 2015.

The registered share capital (*Stammkapital*) of ZMS amounts to EUR 25,000.00 and is divided into 25,000 shares each with a notional value of EUR 1.00 per share. All shares in ZMS are held by Zalando.

The Managing Directors of ZMS are Jerome Cochet and Andreas Antrup. They each represent the Company jointly with another Managing Director or with an authorized representative (*Prokurist*). Both Managing Directors are exempt from the ban on multiple representation.

### **3. Explanation of the Agreement**

The Agreement is a domination and profit and loss transfer agreement, and thus an enterprise agreement (*Unternehmensvertrag*) pursuant to § 291 par. 1 sent. 1 AktG.

The following annotations are made to the individual provisions of the agreement:

- **Management of ZMS (§ 1)**

Through the Agreement, ZMS submits the management of its company to the directions of Zalando. Zalando is thus authorised to give instructions to the Managing Directors of ZMS relating to how ZMS is managed. The Managing Directors of ZMS are obligated to follow the instructions. Notwithstanding the right to issue instructions, management and representation of ZMS continue nonetheless to reside with the Managing Directors of ZMS.

Since instructions as a matter of principle do not require any special form, the agreement provides that the Managing Directors of ZMS can demand that instructions be confirmed in writing.

An instruction to change, maintain or terminate the domination and profit and loss transfer agreement cannot be granted pursuant to § 299 AktG.

- **Profit and loss transfer (§ 2)**

Pursuant to § 2 para. 1 of the Agreement, ZMS undertakes to transfer its entire profit to Zalando during the term of the Agreement. To be transferred – subject to establishing reserves in accordance with § 4 of the Agreement (on this see

below) – is the net income for the year incurred without transfer of profits, reduced by a possible loss carried forward from the previous year, the amount excluded from distribution in accordance with § 268 para. 8 HGB and by allocations to the reserves in accordance with § 4 para. 1 of the Agreement, and increased by amounts possibly withdrawn from the retained earnings in accordance with § 4 para. 1 of the Agreement (see on the withdrawal from retained earnings below). The transfer of profits may, however, in no case exceed the amount specified in § 301 AktG, whereby the highest amount is determined pursuant to § 301 AktG as amended from time to time.

- **Loss absorption (§ 3)**

Zalando is obligated to absorb the losses of ZMS in accordance with the provisions of § 302 AktG as amended from time to time. According to this provision, Zalando must compensate for any loss incurred during the term of the Agreement – without taking into account the obligation to offset losses – unless such loss was offset by amounts taken from the other profit reserves (*andere Gewinnrücklagen*) which were paid into the reserves during the term of the Agreement. § 3 provides for a dynamic reference to § 302 AktG (“as amended from time to time”).

With the intended establishment of fiscal unity for income tax purposes (see below under 4.) between ZMS and Zalando, it is absolutely necessary to provide such an obligation on the part of Zalando to offset possible losses of ZMS (§17 para. 1 sent. 2 no. 2 of the corporate tax law (*Körperschaftsteuergesetz*, hereinafter “*KStG*”).

- **Formation and liquidation of reserves (§ 4)**

ZMS is entitled, with the consent of Zalando, to allocate amounts from annual net profits to other profit reserves (*andere Gewinnrücklagen*) (revenue reserves in accordance with § 272 para. 3 sent. 2 no. 3 HGB), insofar as this is permitted under commercial law and economically justified on the basis of sound business judgment. Other profit reserves formed during the term of the Agreement pursuant to § 272 para. 3 sent. 2 no. 3 HGB shall be dissolved at the request of Zalando and shall be used pursuant to § 302 AktG as amended from time to time to offset an annual net loss or transferred as profit. The transfer of amounts resulting from the dissolution of capital reserves (*Kapitalrücklagen*) or of retained earnings and profit carried forwards (*Gewinnrücklagen und -vorträge*) formed before this Agreement came into force is excluded. The provisions laid down in § 4 are standard provisions of a domination and profit and loss transfer agreement.

- **Due date (§ 5)**

§ 5 of the Agreement stipulates, on the one hand, the due date of the claims to profit transfer and loss compensation: the claim for loss compensation under § 3 of the Agreement becomes effective upon expiry of the last day of each financial year of ZMS and becomes also due and payable on that date. The

claim regarding profit transfer under § 2 of the Agreement, on the other hand, becomes effective upon expiry of the day of the passing of a resolution by the shareholders of ZMS approving the financial statements of each financial year of ZMS.

Moreover, § 5 para. 3 and para. 4 of the Agreement contain provisions on the possibility of requesting advance payments against an expected claim for profit transfer or an expected claim to offset an annual net loss.

§ 5 para. 1 of the Agreement stipulates that the claims to profit transfer and loss compensation shall each be subject to interest of 5% p.a. from their due date in accordance with §§ 352, 353 HGB. Advance payments in accordance with § 5 para. 3 or para. 4 of the Agreement are interest-free. In so far as it turns out, however, that advance payments made exceed the actual obligations to transfer profits or to offset losses, the amount overpaid shall be treated as an interest-bearing loan and shall be subject to interest from the date of payment of the advance in accordance with § 5 para. 5 sent. 1 of the Agreement.

- **Effectiveness, duration and termination (§ 6)**

§ 6 contains provisions on the effectiveness, duration and termination of the Agreement.

In line with the statutory approval requirements pursuant to § 293 AktG, § 6 para. 1 of the Agreement stipulates that in order to become effective the Agreement requires the approval of the General Meeting of Zalando as well as the approval of the Shareholder Meeting of ZMS.

In accordance with the statutory provision in § 294 para. 2 AktG, § 6 para. 2 of the Agreement clarifies that the Agreement does not become effective until its registration in the commercial register of ZMS. It shall then apply – with the exception of the provisions of § 1 – retrospectively from the beginning of the financial year of ZMS in which the Agreement becomes effective. The obligations to transfer profits and to offset losses therefore apply for the entire financial year 2016, provided that the Agreement is registered in the current financial year 2016 prior to 31 December 2016. The provisions of § 1, in particular the right of Zalando to issue instructions, apply for the first time only after the Agreement's registration in the commercial register of ZMS.

§ 6 para. 3 of the Agreement stipulates the term of the Agreement. The Agreement has a fixed minimum term of five full years from the beginning of the financial year in which the Agreement became effective based on its registration in the commercial register of ZMS. Following the expiry of the minimum term, the Agreement is extended by one further year at a time, unless it is terminated by either Party no later than one month before its expiry. If the end of the period of validity does not coincide with the end of ZMS's financial year, the Agreement stipulates that the period of validity is extended to the end of ZMS's respective current financial year. In order for the intended fiscal unit for income tax purposes to become effective, the Agreement must be concluded pursuant to § 14 para. 1 sent. 1 no. 3 in conjunction with § 17 para. 1 of the

Corporate Tax Act (*Körperschaftsteuergesetz*) for a period of at least five full years and must be actually executed during its entire period of validity.

§ 6 para. 4 of the Agreement clarifies that the Agreement can be terminated with immediate effect for good cause at any time. Such good cause exists in particular (i) if Zalando no longer directly or indirectly holds a voting majority at ZMS or (ii) if Zalando sells or contributes the shares in ZMS to a third party which is not an affiliate of Zalando within the meaning of §§ 15 et seqq. AktG, as well as in the event of a merger, split-up or liquidation of Zalando or of ZMS. The examples cited under (ii) are cases in which in accordance with the currently applicable Corporate Tax Guidelines (*Körperschaftsteuerrichtlinien*, hereinafter referred to as “KStR”) good cause for a termination of a domination and profit and loss transfer agreement may exist (cf. clause 60 para. 6 sent. 2 KStR). The important reasons cited above are not exhaustive in this regard.

Finally, § 6 para. 5 of the Agreement stipulates that termination must be made in writing.

- **Final provisions (§ 7)**

§ 7 para. 1 of the Agreement clarifies that amendments to the Agreement must be made in writing.

§ 7 para. 2 of the Agreement contains a standard safeguarding clause, a severability clause, according to which the overall validity of the Agreement is not affected by an individual provision that is invalid or unenforceable or by gaps in the Agreement. In such a case the Parties undertake to replace the invalid or unenforceable provision with a valid or enforceable provision which comes as close as possible to the economic intent of the invalid or unenforceable provision or in the event of an incomplete provision to agree upon a legally valid provision which they would have agreed upon, on the basis of their economic intent, if they had considered this issue.

#### **4. Explanation of the legal and economic reasons for the conclusion of the domination and profit and loss transfer agreement**

The Agreement is a necessary prerequisite for the establishment of a fiscal unit for corporate and trade tax purposes (*körper- und gewerbesteuerliche Organschaft*) between Zalando and ZMS. Through such a fiscal unit the profits and losses of ZMS are attributed directly to Zalando as the controlling company for tax purposes, so that any profits made by one company are offset by the losses of the other company (consolidation of results - *Ergebniskonsolidierung*). In addition, with an existing fiscal unit for corporate and trade tax purposes, any profit transfers from ZMS to Zalando are not treated as at least partially taxable dividend payments, which would be subject to capital gains tax – even though this would be predominantly refundable in principle. Depending on the profit situation of the companies concerned this can result in tax advantages.

There is no economically viable alternative to the establishment of a fiscal unit for corporate and trade tax purposes and thus to the conclusion of the Agreement. The

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objectives pursued with the establishment of a fiscal unit would not be achieved through a different legal or tax arrangement. The consolidation of results could be achieved by changing the legal form of ZMS to a partnership, but only for corporate tax and not for trade tax purposes. A merger between ZMS and Zalando is not an option either, because the loss of ZMS's legal independence is not the desired aim.

The additional conclusion of a domination agreement (*Beherrschungsvertrag*) facilitates management of the group, since it allows Zalando to issue instructions to the Managing Directors of ZMS in the interests of the Zalando Group, thus ensuring that Zalando and ZMS act in a coordinated way.

The Agreement provides advantages for ZMS resulting from the related financial security, since Zalando must offset all losses incurred by ZMS during the term of the Agreement.

From the perspective of the shareholders of Zalando, except for the obligation to assume losses described, there are no special consequences. In particular, no consideration payment or compensation is owed to outside shareholders, since Zalando is the sole shareholder in ZMS.

**5. No consideration and no compensation; no audit of the Agreement**

Since Zalando is the sole shareholder of ZMS and consequently there are no outside shareholders (*außenstehende Gesellschafter*) in ZMS, provisions regarding a consideration payment to or a compensation of outside shareholders pursuant to §§ 304 and 305 AktG are not required in the Agreement. For this reason, neither an audit of the Agreement pursuant to § 293b para. 1 AktG, nor the preparation of an audit report pursuant to § 293e AktG, are required. In the absence of a consideration payment to be determined pursuant to § 304 AktG or a cash compensation payment pursuant to § 305 AktG, an assessment of the contracting companies in order to determine an appropriate level of the consideration payment or cash compensation is not required.

A summary evaluation of the Agreement leads to the result that on the basis of the above the Agreement is advantageous to both Zalando and ZMS.

[Signature Pages follow]

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Berlin, 13 April 2016

**Zalando SE**

The Management Board

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Robert Gentz

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David Schneider

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Rubin Ritter

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Berlin, 13 April 2016

**Zalando Media Solutions GmbH**

The Managing Directors

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Jerome Cochet

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Andreas Antrup