

Vivoryon Therapeutics N.V.

EXPLANATORY NOTES TO  
THE PROPOSED AMENDMENTS TO  
THE ARTICLES OF ASSOCIATION



EXPLANATORY NOTES TO THE PROPOSED AMENDMENTS TO THE ARTICLES OF ASSOCIATION OF: Vivoryon Therapeutics N.V. (the “**company**”), dated May 12, 2021, as they will be presented for a decision at the annual general meeting to be held on June 28, 2021

## 1. General

This proposal to amend the company’s articles of association is made:

- in connection with the proposed conversion of all issued and outstanding shares in the capital of the company from their current bearer form into shares in registered form;
- to provide for more flexibility in respect of the term of office for which executive directors or non-executive directors are appointed;
- to incorporate certain changes which are considered beneficial in connection with, and which could facilitate, a potential listing of shares in the capital of the company on the New York Stock Exchange or the NASDAQ Stock Market; and
- to incorporate an amendment of a more technical nature in connection with the Act on Management and Supervision of Legal Entities amending certain provisions of Book 2 of the Dutch Civil Code (*Wet bestuur en toezicht rechtspersonen*; the “**MSLE Act**”), which act will enter into force as from July 1, 2021 (see further under 4).

## 2. Conversion of bearer shares into registered shares

As of its incorporation as a German *Aktiengesellschaft* (an “**AG**”), the company’s share capital consisted of bearer shares only. For practical reasons (mainly related to the switch of clearing system, from Clearstream Germany to Euroclear Netherlands), upon conversion of the company from an AG into a Dutch public company (an “**NV**”) with effect as of 28 November 2020 the company’s share capital continued to consist of bearer shares only. However, the share capital of most NVs listed on Euronext Amsterdam and/or on foreign stock exchanges nowadays consists of registered shares only, allowing for full dematerialisation of securities in accordance with the relevant provisions of the Dutch Securities Giro Act (*Wet giraal effectenverkeer*).

In line with this market practice, it is proposed to amend the company’s articles of association to provide that all shares in the capital of the company shall be registered shares, thereby converting all issued and outstanding bearer shares into registered shares (please refer to article 4). Nothing will change for a holder of bearer shares: the shares remain tradable through his/her securities account and all meeting rights, voting rights and dividend rights remain unchanged.

The introduction of shares in registered form achieves an optimal form of dematerialisation for the company because the physical global share certificate, which is currently held by Euroclear Netherlands, can be cancelled. The holders of shares in registered form are not registered in the register of shareholders. Pursuant to the Dutch Securities Giro Act, Euroclear Netherlands (or the relevant intermediary) will be registered as shareholder in the company’s shareholders’ register.

In connection with the proposed conversion of bearer shares into deposit shares, a number of provisions in the articles of association will also be amended; please refer to new article 5 (Register of Shareholders), article 12 (Transfer of Shares), article 13 (Pledging of Shares and usufruct on Shares) and article 29 (Notice, agenda and venue of meetings).

## 3. Term in office of executive directors and non-executive directors

The current articles 15.6 and 15.7 prescribe a term in office for executive directors and non-executive directors, respectively, in line with the provisions of the Dutch Corporate Governance Code. However, where it is possible to deviate from the provisions of the Dutch Corporate Governance Code (and explain this deviation in the report of the board of directors that is part of the annual report over the

relevant financial year), it is legally not possible to appoint an executive director or non-executive director for a term in office deviating from the provisions of the company's articles of association.

To allow for more flexibility, it is therefore proposed to delete the current articles 15.6 and 15.7.

#### **4. Potential listing of shares on the New York Stock Exchange or the NASDAQ Stock Market**

The company is exploring the opportunities to obtain a secondary listing on the New York Stock Exchange or the NASDAQ Stock Market. Although no decision to effect such a listing has been made yet, certain changes have been identified which are considered beneficial in connection with, and which could facilitate, such a listing. For this reason, it is proposed to incorporate the new articles 8.3 (Payment for Shares), 12.4 (Transfer of Shares) and 39 (Federal forum provision).

#### **5. Other**

Pursuant to the MSLE Act, the articles of association may further determine when inability (*belet*) of a director occurs. For this purpose, a definition of "Inability" is added to the definitions in article 1.1.

#### **6. Authorization**

The proposal includes authorizing each executive director of the company and also each (candidate) civil law notary and notarial assistant of KB Notarissen, civil law notaries in Amsterdam, the Netherlands, each of them severally, to have the notarial deed of amendment executed pursuant to which the proposed amendments to the company's articles of association will be incorporated.

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