

## Articles of Association

### Voluntary Self-Regulation of Digital Media Service Providers

As of: 7 November, 2018

#### § 1 Name and location

- (1) The name of the Association is 'Voluntary Self-Regulation of Digital Media Service Providers' (FSM) and it is entered in the Registry of Associations, Berlin (Local Court, Charlottenburg).
- (2) The headquarters of the Association are in Berlin.
- (3) The financial year is the calendar year.

#### § 2 Purposes and activities of the Association

- (1) The purpose of the Association is to promote the protection, education and correct upbringing of minors, and consumer protection in the field of multimedia.
- (2) This will be achieved, in particular, by pursuit of the following activities:
  - Organisation of an institution of voluntary self-regulation with the aim of putting into practice the basic principles set out in the Code of Conduct for Voluntary Self-regulation of Multimedia Service Providers which appears in an annex to these Articles, and to promote the observance of its regulations.
  - Organisation of an institution of regulated self-regulation within the meaning of the Network Enforcement Act (Netzwerkdurchsetzungsgesetz, NetzDG).
  - The Association informs the general public about its own work, the application of technical mechanisms for protection, and the responsible use of telemedia.
  - Representing the interests of the members in national, European and international bodies and in the framework of conferences, podium discussions, hearings and in legislative processes.
  - The Association is engaged in continuous dialogue with the Commission for the Protection of Minors in the media (KJM), the media authorities of the various states, other state authorities, institutions and self-regulatory bodies at national, European and international levels and seeks to co-operate with these institutions.

- The Association constitutes a forum for critical discussion in society on questions of protection of minors in the media and to promote voluntary self-regulation in the spirit of the FSM Code of Conduct and the principles it lays down.
- The Association operates a hotline in accordance with the Complaint Rules, in particular to perform the duties assigned to organisations for self-regulation by the German interstate treaty on the protection of minors in the media (JMStV).
- The Association protects the fundamental rights of providers of telemedia services.
- The Association observes the requirements for protection of minors and other essential protection subject to the JMStV by implementation of the Code of Conduct together with further codices which may be added for individual sub-groups of members
- The Association supports its members in monitoring observance of the FSM Code of Conduct. Members have the opportunity to submit content of relevance to protection of minors to the independent auditors of the Expert Commission prior to publication.

(3) The activities of the FSM in relation to voluntary self-regulation can be extended to other areas by a decision of the General Members Meeting.

(4) The Association is a not-for-profit organisation and follows exclusively, directly, or indirectly, according to § 57 para. 1 clause 2 of the General Tax Code, objectives of public benefit in the sense of the Chapter "Tax-Exempt Objectives" of the Order. The Association does not primarily engage in commercial activities.

### **§ 3 Membership**

(1) The Association is made up of regular, associate and sponsoring members.

(2) Any provider of a telemedia service can be a regular member of the Association. A company which, in addition to the general Code of Conduct of the FSM, also signs at least one FSM Sub-Code of Conduct, counts as a regular member. A company which wishes to engage the FSM in dealing with violations of the JMStV alleged by the KJM, so that the hotline and at least one complaints committee carries out an enquiry under § 20 para. 5, JMStV, also counts as a regular member. A company that wishes to engage the FSM with tasks within the meaning of the Network Enforcement Act (NetzDG) is also considered a regular member. The Board decides on the necessary written application for membership.

- (3) Any provider of a telemedia service can be an associate member of the Association on condition that it does not use the services of the FSM as referred to in the above Section 2, sentences 2, 3 or 4. The Board decides on the necessary written application for membership.
- (4) Legal entities, particularly Associations from the communications and media industry, even if they do not meet the requirements of paragraph 2, can join the Association as sponsoring members. In addition, any legally autonomous sub-division of an organisation can become a sponsoring member of the Association, as long as their members are clearly identifiable and the sub-division was constructed on the decision of a legal entity. The Board decides on the necessary written application for membership.
- (5) Application can be made to change from a regular to an associate membership or from an associate membership to a regular membership. The Board decides on the necessary written application for membership.

#### **§ 4 Obligations of the members**

- (1) All members are obliged to support the purpose of the Association and to behave in such a manner that the reputation of the Association is not negatively affected. They are in addition obliged to pay their membership fees on the due date in accordance with the Membership Fee Regulations supplied in an annex to these Articles.
- (2) Members undertake to sign and put into practice the Code of Conduct. They further undertake to recognise the decisions of complaints committees and to obey their instructions. This also applies to decisions of the review committees in procedures of regulated self-regulation within the meaning of the NetzDG. Severe or repeated breaches of this obligation will be subject to sanction according to § 8, paras. 6 and 7.
- (3) Companies without their own Youth Protection Officers which wish to be members of the FSM submit the content they are offering for preliminary examination to the FSM when applying for membership. If the FSM Office on preliminary examination comes to the conclusion that infringements of the legal regulations for protection of minors cannot obviously be ruled out, the FSM Office will inform the Board of this assessment. In cases of doubt of this nature the Board will recommend the company to change the service it offers accordingly, to be able to comply with the conditions of application for membership of the FSM.

Companies which have appointed their own Youth Protection Officer and provide written assurance that their service at the time of joining conforms to the provisions of the FSM Code of Conduct are exempted from this obligatory preliminary examination.

- (4) If members wish to appoint the FSM to carry out the duties of the Youth Protection Officer they undertake to involve the FSM appropriately and in good time in questions of the production, acquisition, planning and design of their services and in all decisions relevant to the protection of minors, and to provide full information about the content in question.

When making significant changes which amount to a major re-design of the material, regular members of the FSM must submit their telemedia content to the FSM Office for examination. Members which have appointed their own Youth Protection Officer and provide written assurance that their service with the significant changes conforms to the provisions of the FSM Code of Conduct are exempted from this obligation.

If the FSM Office on examination comes to the conclusion that infringements of the legal regulations for protection of minors cannot obviously be ruled out, it will inform the Board of this assessment. In cases of doubt of this nature the Board will recommend the company to change the service it offers accordingly. If the member does not follow this recommendation, the Board can instruct the member to refer the material to the Expert Commission for advice.

If the obligations of sentence 1 and/or sentence 2 and/or sentence 6 are contravened, the FSM can disclaim responsibility for acting as Youth Protection officer in the sense of § 7 JMStV for this material.

- (5) Members which replace the Youth Protection Officer function through the FSM must inform the FSM of the websites for which they are responsible and any amendments to them. Violation of this obligation can result in proceedings under § 8 para. 6.

## **§ 5 Rights of regular members**

- (1) For regular members (§ 3 para. 2) the Association creates and maintains the conditions for recognition as an institution of voluntary self-regulation under the German Interstate treaty on the protection of minors in the media (JMStV) and as an institution of regulated self-regulation within the meaning of the Network Enforcement Act (NetzDG). Recognition can also be applied for by a consortium which belongs to the Association.

(2) Regular members are entitled:

- to take part and propose motions in the Members Assembly of the Association,
- to take part in working group meetings and events of the Association,
- to obtain information and advice from the institutions and committees of the Association,
- in court proceedings of fundamental importance to claim a share of the costs from the Association, if the Board agrees to consider it as a test case. If it is not possible to finance this within the current budget of the FSM, the cost will be met by a levy with the agreement of the Members Assembly,
- to access information provided on the themes which are of relevance for members.

(3) Regular members have the possibility:

- to replace the Youth Protection Officer in the sense of § 7 para. 1 JMStV, according to § 7 para. 2 JMStV, with the FSM.

This does not apply if performing the duties of the Youth Protection Officer for the specific material is likely to entail especially large auditing and consultancy fees. This is usually the case if the material consists substantially of user generated content or the service in question is exceptionally large. The Board advises the applicant company before the decision on the application.

- to engage the FSM following its recognition as an institution of voluntary self-regulation in dealing with infringements of the JMStV alleged by the KJM, so that the hotline and at least one complaints committee carry out a review according to § 20 para. 5 JMStV. In the same way, the member can entrust a complaints committee with reviewing an earlier decision on the application of youth welfare organisations set up under state law (§ 19 para. 2 No. 4 JMStV). The Complaint Rules govern the details.
- to transfer the decision on the illegality of contents in social networks operated by them in accordance with § 3 para. 2 No. 3b NetzDG to the FSM following its recognition as an institution of regulated self-regulation. The prerequisite for this is that the membership within the meaning of § 8 para. 1a is extended by this task. Details are governed by the NetzDG Rules of Procedure.
- to associate itself with a Sub-Code of Conduct of the Association.

(4) Regular members are entitled to vote in all questions affecting the Association. They are entitled to the following numbers of votes:

Turnover of the member company per calendar year:	Votes:
over 100 Million €	4
40 Million – 100 Million €	3
10 Million – 40 Million €	2
5 Million – 10 Million €	1
1 Million – 5 Million €	1
less than 1 Million €	1

If a company does not declare an annual turnover, it is entitled to 4 votes and will be assigned to the highest category for membership fees according to the Membership Fee Regulation.

In votings concerning a change of purpose of the Association, the termination of the Association and the adoption or alteration of the Membership Fee Regulations, every member with voting power is entitled to only one vote.

## **§ 6 Rights of associate members**

(1) The associate members are entitled:

- to take part in the Members Assembly of the Association,
- to take part in working group meetings and events of the Association unless they are explicitly reserved for the regular members,
- to obtain information and advice from the institutions and committees of the Association,
- to access information provided on the themes which are of relevance for members.

(2) The associate members have the possibility,

- to replace the Youth Protection Officer in the sense of § 7 para. 1 JMStV, according to § 7 para. 2 JMStV, with the FSM.

This does not apply if performing the duties of the Youth Protection Officer for the specific material is likely to entail especially large auditing and consultancy fees. This is usually the

case if the material consists substantially of user generated content or the service in question is exceptionally large. The Board advises the applicant company before the decision on the application.

(3) Associate members are not entitled to vote, except in the following areas:

- amendment of the rights and duties or the prerequisites for associate membership,
- amendment of the fees regulations and levies, as far as they affect associate members,
- change of purpose of the Association,
- termination of the association,
- election of the Board according to § 10 para. 1.

(4) If an associate member is entitled to vote in an individual case, it is entitled to only one vote.

## **§ 7 Rights of sponsoring members**

(1) The sponsoring members are entitled:

- to take part in the Members Assembly of the Association,
- to take part in working group meetings and events of the Association unless they are explicitly reserved for the regular and/or associate members,
- to obtain information and advice from the institutions and committees of the Association,
- to access information provided on the themes which are of relevance for members.

(2) Sponsoring members can pass on questions from their members concerning protection of minors in telemedia in individual cases to the Office of the FSM.

(3) With the exception of the following areas, sponsoring members have no voting rights:

- amendment of the rights and duties or the prerequisites for promotional membership,
- amendment of the fees regulations and levies, as far as they affect promotional members,
- change of purpose of the Association,
- termination of the association,
- election of the Board according to § 10 para. 1.

(4) If a sponsoring member is entitled to vote in an individual case, it is entitled to only one vote.

## **§ 8 Obtaining, extension and termination of the membership; due date for the membership fee**

- (1) To obtain membership, an application must be made. With the application, a signed copy of the Code of Conduct and, according to choice, further signed Sub-Codes for individual groups of members/themes are to be submitted and a contact partner with authority to vote and answer enquiries. Application constitutes acceptance of the Articles of Association, Code of Conduct, Complaints Rules and Fees Regulations.
- (1a) An application for membership extension is required if an existing member additionally wishes to entrust the FSM with the performance of its duties as an institution of regulated self-regulation within the meaning of the NetzDG. With the application, the NetzDG Rules of Procedure and the Rules of Charges of the NetzDG Review Committees are accepted without prejudice to the documents mentioned in paragraph 1.
- (2) The Board decides on applications according to paragraph 1 and 1a. The Board assigns the member to one of the fees categories according to the Membership Fee Regulations. In connection with the performance of tasks in accordance with the NetzDG, it shall also determine the corresponding basic amount and its distribution among the members concerned in accordance with the provisions of the membership fee regulations
- (3) The membership fee is an annual payment. It becomes due in advance on 1st January for the whole year. The same applies to the share of a member in the base amount for the assumption of tasks according to NetzDG.
- (4) Membership can terminate as follows:
  - Resignation from the Association is effected by written notice to the Managing Director. It can be declared only at the end of a fiscal year, and is subject to three months' notice.
  - In addition, membership terminates on exclusion, deletion of the company in the Commercial Register or other dissolution or liquidation of the member on occurrence of the event. The member must inform the Managing Director in providing the appropriate documentary evidence of the dissolution or liquidation.
- (5) Where membership is terminated within a fiscal year the requirement to pay the full annual fee persists. A proportionate reduction is not made.



- (6) Serious or repeated violations against the Articles of Association, the Code of Conduct or against the decisions of the Complaints Committee lead to a written warning of the member by the Board. If the member subsequently does not behave in accordance with the Articles of Association, the Code of Conduct or the decision of the Complaints Committee, the Board can impose an appropriate penalty from the Association. For serious offences against the Statute of the Expert Commission, in particular the manner of publication and quotation of the expert opinion expressed as specified in point X.1., the Board can impose an appropriate penalty without prior warning. Penalties available to the Association are fines of up to € 20,000 or exclusion from the Association.
- (7) A member can be excluded from the Association by the Board if it acts in a manner contrary to the interests of the Association, deliberately or through gross negligence. A member acts in a manner contrary to the interests of the Association in particular if it seriously damages the reputation and concerns of the Association or persistently contravenes the purposes of the Association. As a rule, a member also acts against the interests of the Association if, in spite of repeated requests, it does not remedy a breach of the Code of Conduct determined by the Complaints Committee, although this is in fact feasible and can reasonably be expected, it continuously ignores sanctions or is repeatedly subject to Association fines imposed by the Board. A member that is in arrears with the payment of its contributions according to the Fees Regulations despite receiving a reminder can similarly be excluded from the Association. The member is to be informed by the Board of the prospective exclusion at least three weeks before taking the decision. The member can appeal against the decision of the Board within a period of three weeks and refer the decision to a vote of the Members Assembly.
- (8) If a member no longer wishes to entrust the FSM with the assumption of tasks within the meaning of the NetzDG with effect for the future while maintaining its membership, this must be notified to the managing director by written declaration. The declaration can only be made at the end of a business year, whereby a period of three months must be observed. Paragraph 5 shall apply mutatis mutandis to the basic amount determined by the Board. The Board shall decide on exceptions to sentences 2 and 3 of this paragraph at the request of the member, taking into account the interests of the Association and the question of whether the continuation of the tasks as a recognised institution of regulated self-regulation with regard to § 3 Para. 6 No. 5 NetzDG is endangered.

## **§ 9 Institutions and committees of the Association**

The institutions of the Association are the Board and the Members Assembly. The committees of the FSM are the Complaints Committee constituted as described in § 12, the Expert Commission as described in § 13 as well as the NetzDG Review Committees described in § 13a.

## **§ 10 Board**

- (1) The Board consists of the President, the Vice-President, the Treasurer and up to six further members. All members of the Board are entitled to vote in Board meetings. The Board will be elected by the Members Assembly for a period of two years by simple-majority voting. On expiry of this period, however, the Board remains in office until there is a new election. The Board or parts of the Board may be elected individually, by block voting or voting by proportional lists (method of voting). The Members Assembly decides on the method of voting by a simple majority. Voting may be open or by secret ballot. Voting is open unless a member requests a secret ballot. Re-election is allowed. The members of the Board act in a voluntary capacity.
- (2) The Association shall be represented judicially and otherwise by two members of the Board acting jointly. For internal matters only, the following applies: The Association shall be represented judicially and otherwise by the President and one other member of the Board, or if the President is indisposed, by two members of the Board, acting jointly.
- (3) If a member of the Association leaves the Association, this also applies for the member of the Board belonging to it. The same applies in the case that a member of the Board no longer represents a member of the Association or no longer works for the company or organisation for which he was working at the time of election. The next Members Assembly elects a successor for the retired member of the Board. The period of office of subsequently elected board members ends with the expiry of the period of office of the member elected according to paragraph 1.
- (4) The Board takes decisions by a simple majority. It is capable of taking decisions if more than half of the members entitled to vote are present or represented in writing. If the required quorum is not available, the next meeting of the Board is entitled to vote without exception in respect of all points of the agenda which were specified in the invitation to the

first Board meeting. The second Board meeting can also take place on the same day as the first. Attention must be drawn to this in the invitation.

(5) The Board can call on persons to take part in its meetings in an advisory capacity.

## **§ 11 Members Assembly**

(1) The regular Members Assembly takes place once a year. Extraordinary meetings take place when this is necessary in the interests of the Association. An extraordinary Members Assembly must be called if a quarter of the members request the calling of a meeting of this kind in writing, together with an explanation of the reasons and purpose.

(2) Members Assemblies are called by the President or, if he or she is indisposed, the Vice-President, in writing or electronically, together with the agenda determined by the Board. Three weeks' notice is required in calling a meeting.

(3) The responsibilities of the Members Assembly in particular include the following:

- Acceptance of the statement of accounts of the Board,
- Discharging the Board,
- Election of the President, Vice-President, Treasurer and up to six further members of the Board (§ 10 para. 1),
- Amendment of the Articles of Association, the Code of Conduct, the Complaints Rules and the Fees Regulations,
- Extending the activities of the FSM to include other areas of self-regulation and making provision to meet the internal organisational pre-conditions

Decisions on adoption and amendment of sub-codes for individual groups of members/ themes in association with the Code of Conduct are taken by the members concerned in agreement with the Board.

(4) The Members Assembly is led by the President or, if he or she is indisposed, the Vice-President. If the latter is also indisposed, the Members Assembly elects a member of the Board to chair the meeting. The Members Assembly can decide to amend or extend the agenda determined by the Board.

- (5) The Members Assembly is capable of taking decisions if more than half of the members entitled to vote are present or represented by proxy. If the capacity to take decisions is not available, the next Members Assembly is entitled without exception to decide all points of the agenda which were specified in the invitation to the first Members Assembly. The second Members Assembly can also take place on the same day as the first. Attention must be drawn to this in the invitation.

Entitlement to vote and the number of votes of different members for the various matters subject to a vote are determined according to the provisions of § 5 para. 4, § 6 paras. 3 and 4, and § 7 paras. 3 and 4 of these Articles. Every member can transfer their vote(s) to another member in writing. This assignment to vote by proxy must be laid before the Members Assembly. No member can exercise the voting rights of more than two additional members.

A member in arrears with its membership contribution, taking into account conditions for payment approved by the Board, in full or in part, for a period of more than three months, is not entitled to vote until it has paid the sum outstanding in full.

Unless otherwise provided in these Articles, in passing resolutions of the Members Assembly a simple majority of validly cast votes is decisive. Abstentions count as invalid votes. To the extent that the Articles refer to a 75%-majority, a 75%-majority of validly cast votes is necessary.

Decisions are to be recorded in writing giving the place and time of the Meeting as well as the result of the vote. The record is to be signed by the chair of the meeting.

- (6) Decisions of the Members Assembly can also be taken by written circular with the majorities determined in these Articles. The proposal of a resolution is to be communicated by the President of the Board to every member of the Association in writing, by fax or e-mail. Voting on the proposal takes place within time-limit proposed by the President of the Board. This may not be shorter than 3 weeks following the distribution of the proposal. Votes are cast by declaration to the President of the Board. This can be in writing, by fax or e-mail. Votes which are not cast, abstentions or votes arriving late count as invalid votes. Decisions reached by written circular are to be recorded in writing, giving the result of the vote. The record is to be signed by the President of the Board or his representative.

## **§ 12 Hotline**

- (1) The tasks of the Hotline are determined by the Complaints Rules passed by the Members Assembly with a 75%-majority.
- (2) The Hotline consists of the manager, staff and the Complaints Committee. The Complaints Committees have a total of at least six normal and three deputy members. If members or employees of members of the association participate in this committee, they may not participate in decisions about their own company/association. In the selection of the complaints committee it must also be ensured that the persons concerned are in possession of the necessary expertise through their education or their professional experience to maintain a high quality of inspection decisions and expert opinions. In addition, persons will also be considered from social groups which are particularly concerned with questions of the protection of minors. Members of the complaints committee will be appointed by the Board for at least two years. Members of the Association and the manager of the Hotline are entitled to propose nominations.
- (3) The manager and the staff of the Hotline are independent and not bound by instructions. In their work they are subject only to the law, in particular the Interstate Treaty on the Protection of Minors (JMStV), the statutes and guidelines issued under it, the FSM Articles of Association, the FSM Code of Conduct and the FSM Complaints Rules. The members of the Complaints Committee work on a voluntary basis.
- (4) The particulars are covered in the Complaints Rules

## **§ 13 Expert Commission**

- (1) The duties, composition and procedures for lodging and examination of cases are set out in the statute of the Expert Commission (EC) which is to be issued by the Board of the FSM.
- (2) Regular, associate and sponsoring members of the FSM have the right, and sometimes also the duty (according to § 4 para. 3), to submit an application to the EC for a review of the multimedia content for which they are responsible with respect to its conformity with the Code of Conduct and corresponding group Sub-Codes of the FSM as well as the statutory provisions for protection of minors in the media.

- (3) Regular, associate and sponsoring members of the FSM have the right to be awarded a seal of approval where conformity is established by the EC with the Code of Conduct and corresponding group Sub-Codes of the FSM as well as the statutory provisions for protection of minors in the media. The details are covered by the statute of the Expert Commission.
- (4) Regular, associate and sponsoring members of the FSM have the right to submit an application to the EC to obtain an age rating for content they provide and for which they are responsible. They can also apply for confirmation of an age rating done by the provider pursuant to § 5 para. 2 JMStV. Details are regulated in the statute of the Expert Commission.
- (5) Regular, associate and sponsoring members of the FSM have the right to submit an application to the EC for a review of technical or other measures according to § 5 para. 3 JMStV or parental control software according to § 11 JMStV. Details are regulated in the statute of the Expert Commission.
- (6) To the extent that members or employees of members of the Association are active in this Commission, they may not be active in decisions concerning their own company or Association. In the choice of members of the Expert Commission, it must also be ensured that the persons concerned are in possession of the necessary expertise through their education or their professional experience to maintain a high quality of inspection decisions and expert opinions. In addition, persons will also be considered from social groups which are particularly concerned with questions of the protection of minors. The members of the Expert Commission will be appointed by the Board for at least two years. Members of the Association and the manager of the Hotline are entitled to propose nominations.

## **§ 13a NetzDG Review Committees**

- (1) The tasks, composition as well as application and review procedures of the NetzDG Review Committees are set out in the NetzDG Rules of Procedure to be adopted by the Board of FSM.
- (2) The NetzDG Review Committees shall have a total of at least six full members and three deputy members. If members or employees of members of the association participate in

this Committee, they may not participate in decisions about their own company. When selecting the members of the NetzDG review committees, care must also be taken to ensure that the persons have acquired the necessary expertise through their training or professional experience in order to guarantee the high quality of the decisions and expert opinions. The members of the NetzDG review committees are appointed by the board for at least one year. The members of the Association, the managing director of the FSM and the chairman of the Directors' Conference of the State Media Authorities are entitled to make proposals.

## **§ 14 Head Office and Management**

To conduct the current administrative activities of the Association it maintains a full-time Head Office. This is led by a full-time Managing Director who is appointed or dismissed by the Board with a  $\frac{2}{3}$  majority. The full-time Managing Director appoints and dismisses staff and manages current business. Further details are governed by procedural rules to be decided by the Board for the work of the Board and the management and a catalogue of activities requiring approval. The Head Office conducts the investigation according to § 4 Paragraphs 3, 4, or ensures its conduct.

## **§ 15 Financial report**

The Members Assembly elects two auditors, each for a period of two years. They check the business accounts and submit a report to the first Members Assembly after the end of the financial year. The auditors may belong to the Board. Re-election is allowed.

## **§ 16 Financing the Association**

- (1) The costs of the Association will be covered by membership fees, levies, donations, state subsidy, levies related to expenditure of the expert panels and other means. The Membership Fee Regulations and any amendments to them will be decided by a 75% majority of the members.
- (2) The funds of the Association may be used only for purposes laid down in these Articles. Members receive no financial benefit from the funds of the Association.

## **§ 17 Amendment Articles of Association and Basic Code of Conduct**

Amendment of the Articles of Association, amendment of their purpose, and amendment of the Code of Conduct is decided by the Members Assembly with a majority of 75% of validly cast votes.

## **§ 18 Termination of the Association**

- (1) Termination of the Association is decided by the Members Assembly with a majority of 80% of the validly cast votes. Notice must be given of the motion to terminate the Association subject to the required period of notice with the invitation to the Members Meeting.
- (2) On termination of the Association or in case tax privileged status ceases to apply the funds of the FSM pass to the children's charity Deutsches Kinderhilfswerk e.V., to be used directly and exclusively for non-profit purposes.

Berlin, 7th November, 2018