

**ARTICLES OF ASSOCIATION**  
of the  
**ICANN European Internet Users Forum**  
a Regional At-Large Organisation of ICANN

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## **1. Preamble**

TBD

## **2. Definitions**

These articles of association are to be construed and interpreted in accordance with swiss law in general and especially with the articles 60-78 of the swiss Zivilgesetzbuch (ZGB). The following terms in this agreement have the meaning set forth below:

- 2.1. "Articles of Association" or "Articles" mean this document, in its latest form as agreed upon by the "Members".
- 2.2. "Association" means the "ICANN European Internet Users Forum", which is a Verein under Swiss Law in the sense of Art 60 ZGB.
- 2.3. "Board of Directors" or "Board" means the Board of Directors of the "ICANN European Internet Users Forum", which is a Vorstand in the sense of Art 69 ZGB.
- 2.4. "General Assembly" means the assembly of all "Members" of the "ICANN European Internet Users Forum", it is a Generalversammlung in the sense of Art 64 ZGB.
- 2.5. "Members" are all members of the "ICANN European Internet Users Forum".

## **3. Name and Seat**

Under the Name "ICANN European Internet Users Forum" exists an association with the meaning of the Articles 60 ZGB and following. The seat of the Association is **SEAT**.

## **4. Language and Communication**

- 4.1. The working language of the Association is English.
- 4.2. Official communications between Members and the Association in general will be conducted via electronic mail.

**4.3. REFERENCE TO INSTRUMENTES (Section 1.4. ORIGINAL AOA)?**

## **5. Purpose**

### *5.1. Purpose of the Association*

The purpose of the Association is to consider and provide advice on the activities of ICANN, insofar as they relate to the interests of individual European internet users, especially with regard to fostering consumer protection, human rights and civil liberties and to strengthening participation rights in Internet policy decision making

5.1.1. Intention of RALO Status within ICANN

The Association intends to be the RALO for Europe ("EURALO") according to the ICANN Bylaws and as defined in the MoU that creates the EURALO.

5.1.2. Signing of a Memorandum of Understanding with ICANN

The Association and ICANN shall negotiate and sign a Memorandum of Understanding (MOU) concerning their mutual rights and obligations in connection with operationalising the relationship (**ARTICLE 4.1 ORIGINAL AOA!**).

5.1.3. Authorisation of the Board regarding the relationship with ICANN

The Board is authorized to conclude the necessary and appropriate agreements as defined by the General Assembly with ICANN as may be required from time to time in connection with the relationship with ICANN as provided in this Articles.

5.2. Means to achieve the Purpose

The purposes of the Association shall be achieved by, inter alia:

- 4.2.1. Organising events and activities, and supporting those of others, to promote user participation and bottom up approaches in ICANN and Internet governance processes;
- 4.2.2. Promoting dialogue concerning the human rights and public policy aspects of Internet governance;
- 4.2.3. Releasing Statements about policies and participatory structures concerning the Internet, especially to ICANN, based upon the input of the members of the Association;
- 4.2.4. Designating European members to ALAC or other ICANN bodies as appropriate and as defined by the MOU with ICANN;
- 4.2.5. To contribute to ALAC policy positions for representation to the ICANN Board and other policy-making bodies.

4.3. Code of Conduct

- 4.3.1. The Association shall at all times act in an open, accountable and transparent manner and is committed to cultural and geographic diversity and gender balance in its work internally and externally.
- 4.3.2. The Association shall pursue activities which are exclusively and directly for the benefit of the internet-using public. It shall not act in any way which is primarily of economic benefit to itself, its officers or Members.
- 4.3.3. The Association shall pursue activities which are exclusively and directly for the benefit of the internet-using public. It shall not act in any way which is primarily of economic benefit to itself, its officers or Members.
- 4.3.4. Unless otherwise determined by the General Assembly, all officers of the Association shall not be provided with a salary or otherwise recompensed for their work on behalf of the Association, except where expenses are incurred on behalf of the Association's business against receipts for the same, or as provided in (**Section 9.6. ORIGINAL AOA**). Any decision regarding alterations of these Articles should be submitted to the relevant competent financial authority before it is announced in the Register of Association.

**Kommentiert [F1]:** I would prefer to avoid "shall", since it is an unclear word. It either means "duty to" or "may". Some courts tend to rip statutes with it apart (Texas for example). See also *Garner, Legal Writing*.

## 6. Resources and Liability

6.1. Resources are formed and funded through donations and bequests granted to the “Association” by ICANN.

6.2. The “Association” does not and will not levy membership-fees.

6.3. There is no liability or additional payment liability of the members. Only the “Association” is liable for its obligations, in accordance with Art. 75a ZGB.

6.4. The “Association” holds its estate, which is managed by the “Board”.

6.5. The “Association” uses its resources to pursue its “Purpose”.

## 7. Membership

Humans and legal entities are applicable as Members, if they acknowledge and support the purpose of the Association. Legal entities must be domiciled in Europe.

### 7.1. Admission

Membership is by written and signed application, in the form and containing the information which is to be determinate by the Board.

The Board decides upon the admittance of potential Members.

The admission criteria and the decision upon admission may be review by the “General Assembly”.

### 7.2. End of Membership

Membership ends either by:

- a) Withdrawal
- b) Expulsion
- c) Death in the case of humans or loss of legal capacity, insolvency, dissolution or abolition in the case of legal entities.

Withdrawal, every member can leave the Association voluntarily by written and signed notice to the Board.

Expulsion, a Membership may be terminated by decision of the Board. Especially, but not limited to, for any act contrary to the purposes of the Association.

## 8. Rights and Duties of Members

TBD

## 9. Bodies of the Association

### 9.1. The Board

#### 9.1.1. Board Offices and period of office

The Board consist of, at least, two Members, which are elected by the General Assembly for a period of office for [Number of] years.

The president of the Board is elected by the General Assembly, for period of office for [Number of] years and presides over the meetings of the Board.

Kommentiert [F2]: Necessary under Swiss law.

Kommentiert [F3]: CAUTION! Dependent on the jurisdiction under which the member is incorporated, each of these options may occur at a different point in time. For example: an insolvent association or company is not immediately dissolve or loses its legal capacity in most jurisdictions.

Kommentiert [F4]: Single majority?

Kommentiert [F5]: Review by the General Assembly? Official Hearing may be mandatory under swiss law.

Kommentiert [F6]: Is there a need to deviate from the existing rules?

Kommentiert [F7]: Two is the minimum required by swiss law.

### 9.1.2. Board meetings and decisions

Meetings of the Board are convoked by the president of the board, either because of an according proposal by him or a request from a member of the Board.

Board meetings may take place in person, via telephone or videoconference or via the Internet.

The Board is quorate if two-thirds of the members of the Board are present or participate via other means.

Decisions and resolutions of the Board require a simple majority of the delivered votes, if not stated otherwise in the Articles of Association. Where a tied vote results, the president casts the deciding vote.

### 9.1.3. Representation and Responsibilities

The Board represents the Association outwards. A member of the Board signs collectively with the president of the Board together.

The Board is responsible for all matters of the Association, as far as they are not assigned to other bodies of the Association. It is accountable to the General Assembly for all its actions and decisions, without limitation.

## 9.2. The General Assembly

### 9.2. The General Assembly

#### 9.2.1. Composition

- (1) The “General Assembly” the senior body of the “Association” and may review, without limitation, any of the activities of the other “Bodies of the Association”.
- (2) The “General Assembly” consists of all “Members”. Every “Member” has an equal vote, except if it has been suspended according to the rules of procedure.
- (3) Proxies may only validly be appointed by a notice in writing (a “proxy notice”) which:
  - (a) states the name and address of the “Member” appointing the proxy;
  - (b) identifies the person appointed to be that “Member’s” proxy and the “General Assembly” in relation to which that person is appointed;
  - (c) is signed by or on behalf of the “Member” appointing the proxy, or is authenticated in such manner as the “Board” may determine; and
  - (d) is delivered to the “General Assembly” in accordance with the articles and any instructions contained in the notice of the “General Assembly” to which they relate.

#### 9.2.2. Forms of the General Assembly

A “General Assembly” may either take place in form of a funded meeting with personal attendance of the “Members” (“Funded Face to Face Meeting”), an unfunded meeting with personal attendance of the “Members” (“Nonfunded Face to Face Meeting”) or through an online forum (“Online-Meeting”). The provisions regarding the “General Assembly” are applicable to all of these meeting forms.

#### 9.2.3. Quorums of the General Assembly

- (1) At a “General Assembly”, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.

Kommentiert [F8]: Standard, but not mandatory.

Kommentiert [F9]: In what manner and by whom (ICANN I presume) are those meetings funded?

Kommentiert [F10]: Is there a specific form or forum? Are votes through E-Mail an issue?

- (2) The quorum for a “General Assembly”, regardless of being a “Funded Face to Face Meeting”, a “Nonfunded Face to Face Meeting” or an “Online-Meeting”, is at least half of the “Members”.

#### 9.2.4. *The ordinary General Assembly*

- (1) An ordinary “General Assembly” has to be held at least once a year.
- (2) The notice of the ordinary “General Assembly” occurs in written form, by the “Board” with the final agenda at least twenty-one days prior.
- (3) All proposals for an ordinary “General Assembly” have to be forwarded to the “President of the Board”, in written form at least twenty-one days prior.

#### 9.2.5. *The extraordinary General Assembly*

An extraordinary “General Assembly” may be convoked on decision of the “Board” or on request of at least a [Number] of “Members”. The notice of the extraordinary “General Assembly” occurs in written form, by the “Board” with the final agenda at least [Number] days prior.

#### 9.2.6. *Decisions and Resolutions of the General Assembly*

- (1) Decisions and resolutions of the General Assembly, ordinary or extraordinary, require a “Simple Majority” of the delivered votes, if not stated otherwise in the Articles of Association. All votes are open, secret votes have to be requested by a “Simple Majority” of all delivered votes.
- (2) A “Simple Majority” is reached by fifty percent plus one vote of the delivered votes.
- (3) Decisions and resolutions in a “General Assembly” in form of a “Funded Face to Face Meeting” require two-thirds of the delivered votes.
- (4) In case of a resolution regarding any transaction, legal act or litigation between the “Association” and a “Member”, that “Member” is excluded from voting on that matter.

## **10. Change of the Articles of Association**

TBD

## **11. Dissolution of the Association**

For dissolution of the Association three-fourths of all current members must give their consent.

Where the General Assembly does not decide otherwise, the Board shall appoint two authorised liquidators.

In the event of the Association’s dissolution its assets, if not otherwise decided by the General Assembly, will pass to ALAC who must use the assets according to the purposes of the then-current Articles of Association.

The preceding rules also apply if the Association dissolves or is dissolved or otherwise ceases operation.

**Kommentiert [F11]:** How is voting done currently? Show of hands? Polling? By device? In written form?

**Kommentiert [F12]:** This, in accordance with the last sentence of 9.2.2., allows for a majority of 50%+1 vote for all meetings, regardless of form (as agreed upon in the June call see: <https://community.icann.org/display/EURALO/Action+Items+%3A+2017.06.14+EURALO+Bylaws+Taskforce+Call> ). The limitation of delivered votes leads in effect to the situation, that abstention votes may or may not be counted. This will not be addressed, as soon as there is an agreement on abstentions.

**Kommentiert [F13]:** In accordance with the vast majority of drafters I set the voting-quorum in funded face-to-face meetings on 2/3. Again, I used the delivered votes. This means in accordance with 9.2.6.1. that all other forms (unfunded f2f meeting and online meetings) have a quorum 50%+1 vote. I did design these rules, whenever possible in accordance with a majority according to the table of quorums. However, regarding the attendance quorum, there is no consensus on Non-Funded F2F and Online-Meetings. For reasons of simplicity I used 50% again, so that all Meetings have the same attendance quorum. Neither me, nor Swiss law have a preference on this.

**12. Applicable Law and Dispute Resolution**

12.1 The “Articles” and all its exhibits are to be governed by and construed in accordance with Swiss law, to the exclusion of the conflict of law rules of Swiss international private law.

12.2.1. All disputes, disagreements or any claim arising from the Articles or its exhibits or relating to the Articles or its exhibits, its violation, dissolution or invalidity are to be first exclusively referred to the “Board”.

12.2.2. If the “Board” is not able to resolve the dispute between the parties within three weeks, or if one of its members is part of the dispute, the dispute is exclusively referred to the “ICANN Ombudsman”.

12.2.3. If the “ICANN Ombudsman” is not able to resolve the dispute within seventy days, the dispute is exclusively referred to an “Arbitration Panel”.

12.2.3.1. The “Arbitration Board” is formed by three “Members”. Each of the parties of the dispute, may nominate one member and these appoint the third. Any conflict of interest regarding the or part in the dispute, prohibits a “Member” from being part of the “Arbitration Panel”, in this event another “Member” has to be chosen by the respective party.

12.2.3.2. The rules for the arbitral proceedings are the UNCITRAL Arbitration Rules as of 2013.

12.2.3.3. The “Arbitration Panel” decides disputes with a single majority vote. The decision is final and enforceable but can be reviewed by the “General Assembly” and the Swiss court appropriate.

12.2.3.4. Decisions of the “Arbitration Panel” can be referred for review to the “General Assembly” by the parties of the dispute.

**13. Entry into Effect**

The Articles, in their present form, have been approved by the assembly of founders and are effective immediately.

\_\_\_\_\_  
Signature of the president of the assembly of founders      Date and place

\_\_\_\_\_  
Signature of the keeper of the minutes      Date and place