

# DVTM - Articles of Association

in the version dated 21.06.2017

# Deutscher Verband für Telekommunikation und Medien

## Articles of Association

in the version adopted by the General Meeting of Members on 21.06.2017

### **Section 1 Name and registered office**

1. The Association bears the name "**Deutscher Verband für Telekommunikation und Medien [German Association for Telecommunication and Media]**" and is registered in the Register of Associations.
2. The Association has its registered office in Bonn.
3. Its financial year is the calendar year.

### **Section 2 Purpose of the Association**

1. The Association is a voluntary alliance of companies. These companies are involved in the fields of telecommunications, media, energy, "bettertainment", including some which participate in the convergent supply chain of service providers and developers within those sectors.

The purpose of the Association is

- a) the representation of its members' interests vis-à-vis legislative bodies, government authorities, organisations and other associations at national and international levels,
- b) the perception and promotion of shared general interests in the spheres of legal policy and in the regulatory and commercial spheres,
- c) the representation of the members' interests vis-à-vis the public,
- d) the maintenance and ongoing development of the Code of Conduct which has been developed by the Association, and which the members accept as binding.

The objectives of the Association are

- a) the creation of balanced commercial and consumer-friendly regulatory and legislative general conditions,
- b) the creation and safeguarding of fair competitive conditions,
- c) the promotion of commercial activity and exchange between the members.

2. The Association serves to the promote commercial interests as defined by Section 8 para. 3 (2) of the UWG [German Unfair Competition Act].

It aims to contribute to the encouragement of fair business practices by participating in legal research and observing and monitoring the market, as well as providing information and guidance. It strives to bring about universally applicable competitive conditions in the value-added telecommunications services sector. At its discretion, the Association takes action against unfair competition, both in and out of court. The Association can also pursue this aim outside the Federal Republic of Germany.

3. The central body of the Association is the Code of Conduct Commission, which draws up the German Code of Conduct for Telecommunications and Media.

The Code of Conduct Commission checks the Code regularly for conformity with currently applicable legislation and revises it accordingly. The Association is involved with its members, and with non-members who recognise the Code as binding upon their business activity, in furthering their compliance with the Code. It is the Association's duty, at its discretion, to take action, both in and out of court, against members and external bodies who violate the Code.

4. At its discretion, the Association provides expert opinions vis-à-vis courts and government authorities and supports these insofar as is appropriate, given its particular specialist knowledge.

5. The Association pursues the objective of collaboration with national and international audit institutions and represents the interests of its members in bodies which promote value-added telecommunications services by means of voluntary self-regulation within the spirit of the Code.

6. The Association pursues, exclusively and directly, non-profit making objectives as defined by the chapter of the Abgabenordnung [German Fiscal Code] entitled "Tax-privileged purposes".

### **Section 3 Membership**

1. Any business person or any company active in the sectors named in Section 2 (1) can apply to become a full member of the Association.

Furthermore, any alliance of several such businesses (association) that has its own legal personality can become a full member, as can organisations or companies which support the achievement of the Association's aims.

Full members are eligible to vote and have active and passive voting rights.

Full members on fee scale levels 1 and 2 have one vote, as do associations and organisations. Members on fee scale levels 3 and 4 have two votes, and members on fee scale levels 5 and 6 have three votes. If membership fees are not paid by the due date, membership and voting rights are suspended and the member has no voting right at the General Meeting of Members and the other organs. The Annex regarding fee scale levels is attached to the Articles of Association.

2. Natural and legal entities can apply to become associated members.

Associated members are not eligible to vote and have neither active nor passive voting rights.

### **Section 4 Recording procedures**

Applications for membership are to be sent in writing to the Administrative Office address. The Executive Board makes the decision regarding the membership request.

Admission to full membership is on the assumption that the applicant acknowledges the Association's Code of Conduct in writing and subjects himself to it, insofar as it is binding.

## **Section 5 Members' rights and obligations**

Members have the right

- to make use of the Association logo registered as a trademark in their business communications (e.g. home page, letterheads);
- to participate in the General Meeting of Members and to put forward proposals to the General Meeting;
- to obtain information and advice from the Association's organs.

Members have the obligation

- to support the achievement of the Association's aims and its work and to organise their own activities in such a way that the standing of the Association is not impaired;
- to implement resolutions adopted;
- to pay membership fees as they become due.

## **Section 6 Termination of membership**

Membership ends upon resignation or exclusion, or when a company is deleted from the Commercial Register or is otherwise deleted or dissolved.

Withdrawal from the Association takes place by giving written notice to the address of the Administrative Office. It can be declared only at the end of the Association's fiscal year, in which case a minimum of three months' notice is mandatory.

A member can, following a prior hearing by the Executive Board, be excluded from the Association if it contravenes the interests of the Association by intent or gross negligence. Contravention of those interests takes place, in particular, when a member

- a) repeatedly violates the regulations of the Code of Conduct or, in the event of repeated violations by its customers, does not immediately take appropriate steps to put an end to such violations;
- b) fails to pay the membership fees by the due date despite two written reminders.

The application for exclusion is to be sent in writing to the member no later than three weeks prior to the decision. In the event of an objection to the exclusion, membership is suspended until the next General Meeting of Members, which will conclusively decide the case with a resolution adopted by a majority of three quarters of the votes present.

Members who have resigned or been excluded have no right to the Association's assets. The same applies to members whose membership has been suspended. Membership fees which have already been paid will not be refunded. Members are, however, liable for obligations arising up until their departure (membership fees).

## **Section 7 Organs of the Association**

The organs of the Association are the Executive Board, the General Meeting of Members, the company management and the auditors.

## **Section 8 General Meeting of Members**

1. The ordinary General Meeting of Members is held once a year. Extraordinary General Meetings of Members are held if this is necessary in the interests of the Association. An extraordinary General Meeting of Members must be convened if a quarter of the active members submit a written request for this to the Executive Board.

2. General Meetings of Members are convened by the Chairman, or, if he is prevented from doing so, by a Deputy Chairman, in writing and/or in text form, giving details of the agenda set by the Executive Board.

The notice period for convening an ordinary General Meeting of Members must be at least 3 weeks. For an extraordinary General Meeting of Members the invitation must be sent at least 1 week prior to the date of the meeting.

The decisive date for adherence to the period of notice is the dispatch date (postmark) or the sent date in an electronic communication.

New agenda items for the ordinary General Meeting of Members can be submitted to the Administrative Office by any full member in writing and/or in electronic format (Section 126a BGB [German Civil Code]) up to, but no later than, one week prior to the date of the meeting. The Administrative Office will forward these promptly to all members. This does not apply to amendments to the Articles of Association, annual fees and charges.

3. The General Meeting of Members is conducted by the Chairman, or, if he is prevented from doing so, by one of the Deputy Chairmen. If they are also prevented from doing so, the General Meeting of Members shall elect someone from amongst them to chair the meeting.

4. During the General Meeting of Members, out of consideration for absent members, basically no new agenda items may be handled. The General Meeting of Members can, with a three-quarters majority of the votes present, make exceptions to this, but not with regard to amendments to the Articles of Association, annual fees and charges.

5. The General Meeting of Members is quorate if more than one quarter of the votes is present or is represented in writing. If there is no quorum, the next General Meeting of Members is quorate in any case. The invitation must draw attention to this.

6. A member can arrange to be represented by an authorised representative. The written proxy is to be submitted to the Chair of the meeting. Neither a member nor an authorised representative may control more than the voting rights of three members.

7. Unless these Articles of Association specify otherwise, the General Meeting of Members will adopt resolutions by a simple majority of the valid votes cast. Abstentions are deemed to be invalid votes. Where the Articles of Association allude to a three-quarters majority, a three-quarters majority of the valid votes cast is required.

8. In accordance with the election regulations adopted by the General Meeting of Members by simple majority, the General Meeting of Members is to elect the Executive Board, the auditors and the minutes secretary.

9. Resolutions are to be recorded in written minutes giving details of the place and time of the meeting together with the result of the vote. The written minutes are to be signed by the Chairman of the Executive Board and the minutes secretary elected by the General Meeting of Members.

## **Section 9 Executive Board**

1. The Executive Board consists of the Chairman and between 4 and a maximum of 11 Deputy Chairmen.

The General Meeting of Members elects the Chairman of the Board individually, and the Deputy Chairmen in order of the relative majority of votes achieved, for a period of 2 years. Members of the Executive Board may be re-elected several times.

Executive Board membership is exclusive to the person and is non-transferable. Election to the Executive Board further presupposes activity for or employment with a member of the Association.

Executive Board membership ends with the expiry of the term of office, dismissal by the General Meeting of Members or resignation from office by written communication to the Administrative Office.

If the company or organisation with which the Executive Board member is employed or active terminates its membership, or if the Executive Board member himself is no longer active or employed with an Association member, his Executive Board membership terminates. Upon request, the remaining Executive Board members may decide unanimously that this Executive Board member can remain in office until the expiry of his term of office.

The old Executive Board remains in office until a new Executive Board is elected. When the appointment of an Executive Board member ends, a new Executive Board member can be elected with effect from the next ordinary General Meeting of Members. A new Executive Board member is elected initially for his predecessor's remaining term of office.

2. The Association will be represented both in and out of court jointly by two Executive Board members or by one Executive Board member and the Managing Director.

3. The Executive Board carries out its activities in an honorary capacity.

4. The liability of the Executive Board vis-à-vis the Association is limited to gross negligence and intent.

5. The Executive Board is to adopt a set of procedural rules, and will inform the General Meeting of Members concerning these.

6. The Executive Board is to inform the Association members on a regular basis regarding its activities.

7. The Executive Board can appoint a former Executive Board member as an honorary member without voting rights. The honorary member of the Executive Board is entitled to participate in all meetings and telephone conferences.

## **Section 10 Management**

1. The Association is to maintain an administrative office for the management of the day-to-day business.
2. The Executive Board is to appoint a full-time Managing Director to take responsibility for the management of business affairs. The Managing Director is responsible to the Executive Board. He is to be appointed for a period of two years. Recurring appointment is allowed. Premature dismissal of the Managing Director requires a unanimous Executive Board resolution.
3. The management is responsible to the Executive Board and General Meeting of Members. It is to implement the resolutions of the General Meeting of Members and is entitled to participate in all the Association's meetings and negotiations.
4. The responsibilities of the management include maintaining an accounts system to record income and outgoings in the form of an Income and Expenditure Statement.
5. The liability of the Managing Director vis-à-vis the Association with regard to management is limited to gross negligence and intent.
6. The Executive Board is to provide the management with a set of procedural rules.

## **Section 11 Code of Conduct and Commission**

1. The Association maintains a commission, whose responsibility it is to bring and keep the content of the Code of Conduct up to date.
2. Its provisions are binding for the members.
3. The Association gives companies or organisations which, for business or professional organisation reasons, cannot become members of the Association, the opportunity of participating in the maintenance and ongoing development of the Code of Conduct. The General Meeting of Members regulates this in greater detail via the use and participation regulation adopted by simple majority of the General Meeting of Members, together with the scale of fees.
4. The Code of Conduct Commission has a Chairman and between 4 and a maximum of 11 deputies, who are elected for a period of two years by the Association members and external signatories to the Code, at the close of the General Meeting of Members.
  - a) The Chairman of the Code of Conduct Commission is elected individually.
  - b) Election as Chairman of the Code of Conduct Commission presupposes employment with or activity on behalf of a member of the Association. In the event of the votes being equal, the Chairman has the casting vote.
  - c) The other members are elected in order of the relative majority of votes achieved.
  - d) The election of the other members of the Code of Conduct Commission presupposes their activity on behalf of or employment with a member of the Association or an external company which is a signatory to the Code. At least half of the other members of the Code of Conduct Commission is to be made up of Association members.
  - e) Membership of the Code of Conduct Commission is exclusive to the person and is non-transferable.

f) The activity is carried out in an honorary capacity. The liability of the members in respect of their work for the Code of Conduct Commission is limited to gross negligence and intent.

g) If the Chairman or one of the other members of the Code of Conduct Commission resigns before his term of office expires, then a by-election is to be held at the close of the next ordinary General Meeting of Members, in accordance with the Code of Conduct Commission election regulations.

5. Each Association member is entitled to participate in the meetings of the Commission without having the right to vote. The Commission members, for their part, are authorised to call in individuals from among the members or signatories to the Code, or even external third parties, as experts on specific issues, albeit without their having the right to vote.

6. The Code of Conduct Commission is authorised to make alterations to Code of Conduct. Alterations are to be made in accordance with the procedural rules for the Code.

7. The members of the Code of Conduct Commission are to adopt, in agreement with the Executive Board of the Association, a set of procedural rules establishing the procedures in detail.

### **Section 12 Working groups**

1. Furthermore, additional working groups can be formed among the members. These working groups can be convened, on a voluntary basis, by the Managing Director, as required.

2. The working groups serve to assist with shaping opinions within the Association.

### **Section 13 Advisory Board**

To assist with the ongoing development of the German Code of Conduct for Telecommunications and Media and to support the implementation of high standards of competition and consumer protection in the telecommunications and media markets, the Executive Board can appoint an Advisory Board. The Executive Board is to decide on the Advisory Board constitution.

### **Section 14 Action in the event of violation**

1. The Association takes action at its discretion against violations of the Code of Conduct and of statutory provisions on the basis of its own checks - carried out from a competitively neutral standpoint.

2. The results of the checks are analysed, recorded statistically and, at its discretion, published. The checks are based on inspection plans containing details of which media, which type of service and/or which call number range is being checked for which type of violation.

3. It is, in principle, possible that proceedings will be taken under competition law in respect of the violations identified.

### **Section 15 Financing the Association**

The Association's costs are covered by the membership fees. The amount of the members' fee is decided by the General Meeting of Members. This is regulated in more detail by the scale of fees adopted by simple majority.

Income (charges for written warnings, contractual penalties) resulting from action taken against unfair competition will be used exclusively to finance judicial proceedings against unfair competition.

### **Section 16 Audit**

The General Meeting of Members is to appoint two auditors to monitor the financial management. The auditors are to be elected for a period of two years. This requires a simple majority of the valid votes cast.

Following their audit, they are to inform the Executive Board and the Managing Director of the results of the audit and to report to the General Meeting of Members. The auditors may not belong to the Executive Board.

### **Section 17 Amendment to the Articles of Association, dissolution of the Association**

An amendment to the Articles of Association, a merger with other associations or the dissolution of the Association must be decided by the General Meeting of Members with a three-quarters majority of the valid votes cast.

In the event of the dissolution of the Association or upon cessation of the tax-privileged purposes it has enjoyed hitherto, the assets of the Association shall pass to the Deutsche Kinderschutzbund [German Child Protection League] - Bundesarbeitsgemeinschaft Kinder- und Jugendtelefon e.V. [Federal Children's and Young People's Telephone Hotline] which must use them directly and exclusively for non-profit making, benevolent or religious purposes; this does not apply in the event of dissolution by means of a merger of the Association as the transferring legal entity with a legal entity whose articles of association in turn require that the association's assets are, in the event of dissolution, to be used exclusively for tax-privileged purposes as defined by Section 4 para. 2 (4) of the German Public Benefit Ordinance.

The Members  
Bonn, 21 June 2017