

## Explanatory Document: Changes to the RIPE NCC Articles of Association

### **Motivation for the changes to the RIPE NCC Articles of Association**

In 2003 the original RIPE NCC Articles of Association (AoA) were amended to improve the operational ability and flexibility of the RIPE NCC. The change focused on several specific items, namely:

- alignment of General Meetings (GM) with RIPE meetings, to increase participation and to lose the need to postpone approval of the organisation's finances to late in the year;
- to place the responsibility of approval for the activity plan and budget with the Executive Board;
- to remove the membership categories from the AoA;
- to simplify the voting procedure;
- to remove the transitory provisions.

The other provisions, articles and the structure of the AoA were not reviewed.

In recent years several changes have been incorporated into the Dutch code of law, some of these addressed the increase in corporate governance. This has led to the situation that several of the articles and paragraphs from the AoA are overruled by Dutch law and are now obsolete.

The RIPE NCC management investigated the current issues affecting the AoA. These issues are:

- an absence of liquidation/settlement provisions; this is a legal requirement;
- several of the articles do not meet recent changes in Dutch law;
- GM (proxy) voting and attendance. The AoA stated a two week term for proxy voting which conflicted with current legislation, on legal advice we allowed proxies to come in until the last moment, which led to authentication problems;
- some subtle inconsistencies between the English and Dutch version. For example the word "jaarrekening" (or financial report) was translated as annual report;
- there was no option for "other" membership.

Following these legal issues and in an effort to improve the clarity and structure of the AoA, we have reviewed the full document. In addition the RIPE NCC has made every effort to avoid the possibility of misinterpretation by:

- (1) using clear definitions in the AoA and;
- (2) instructing a sworn translator to make a certified translation of the AoA from English to Dutch.

The Dutch version of this document will take precedence over the English version (this is mandatory by Dutch law).

Below you will find the new articles. All articles in *italic red* are articles that have been rephrased to improve their clarity. Upon approval of the new AoA the RIPE NCC will also publish a document to explain the meaning and procedures of the new AoA further.

## **Guide to changes to the RIPE NCC Articles of Association (AoA)**

### **Article 1 – Definitions**

NEW. This article defines the capitalised terms used in the AoA. The intention is to leave as little space as possible for misinterpretation.

### **Article 2 – The Association: Name and Seat**

Former Article 1. “the Netherlands” has been added.

### **Article 3 – The Association: Objectives**

Former Article 2. The objective has been more generally defined: “to perform activities for the benefit of the membership, primarily activities that the members need to organise as a group”. The scope of paragraph 2.1 “for Europe and surrounding areas” and paragraph 2.2 “in the European Area” has been removed.

### **Articles 4, 5, 6 and 7 – Membership**

These articles deal with the membership of the association and all rights and obligations in connection with them.

### **Article 4 – Membership: candidate, full and special members**

Former Article 3. This article has been rephrased and some paragraphs were deleted.

4.1 Former paragraph 3.1. Use of defined term “Contributor”

4.2 Former paragraph 3.2. The following exceptions have been removed; (a) (longer period agreed by parties) and (b) (no or barely any use of services).

4.3 Former paragraph 3.3. The second sentence has been removed.

4.4 New. Special membership: to open the possibility of a special membership to non-contributors.

### **Article 5 – Membership: Register**

Former Article 4. Paragraphs have been added to show that the register will also record the persons authorised to represent the member at the General Meeting (GM). The Administrative and Technical Contact (the admin-c and tech-c) have been added as persons that can represent a member.

5.4 New. Paragraph 5.4 has been added to comply with the (amended) regulations (Dutch law) regarding e-mail convocation of meetings.

### **Article 6 – Membership: End of Membership**

Former Article 5.

6.1 Former paragraph 5.1(d). “by removal” has been deleted. The AoA already provide for the termination of membership by means of notice therefore this clause has never been used and is obsolete.

6.2 Former paragraph 5.2(a) and (b). “notice of termination in the event the member is no longer party to the Standard Service Agreement” has been deleted because in that event the membership ends automatically pursuant to paragraph 6.1(d).

Changed notice period from “without period of notice” to “reasonable period of notice”. This reasonable period of notice depends on “the severity of the reason for termination”.

6.3 Former paragraph 5.4. A sentence has been added regarding the immediate termination of membership.

6.4 Former paragraph 5.5.

6.5 Former paragraph 5.6. Changed “financial nature” to “annual contribution”.

6.6 Former paragraph 5.7.

### **Article 7 – Membership: Contribution and Obligations**

Former Article 6. This article has been rephrased and a connection was made between the failure to pay the annual contribution and the right of the same member to attend the GM and to exercise their voting rights.

7.1 Former paragraph 6.1.

7.2 New Members that do not pay cannot attend the GM or vote at the GM.

7.3 Former paragraph 6.2.

### **Articles 8, 9, 10 and 11 – Executive Board**

Former Article 7-10. The order of these articles has been changed to improve clarity.

#### **Article 8 – Executive Board: General**

8.1 Former first section of paragraph 10.1.

8.2 Former paragraph 7.1.

8.3 Former paragraph 9.1.

8.4 Former paragraph 9.2. The phrase: “adoption can be done by means of written correspondence” has been amended to “in writing”.

The method of publishing the minutes has been changed from “sent to the members” into “published on the website of the association”.

#### **Article 9 – Executive Board: Appointment, Suspension and Dismissal**

9.1 Former paragraph 7.2.

9.2 Former paragraph 7.3.

9.3 Former paragraph 7.4. The limitation to the period an adviser can be appointed (six months, with possibility for two extensions) has been deleted.

9.4 Former paragraph 8.1.

9.5 Former paragraph 8.2.

9.6 Former paragraph 8.3.

9.7 Former paragraph 8.4.

9.8 Former paragraph 8.5.

9.9 Former paragraph 8.6. Part of the second sentence “and also if the member no longer meets the membership requirements” has been deleted as there are no specific membership requirements.

Death of an Executive Board member has been added as a reason for termination of membership.

## **Article 10 – Executive Board: Authority and Representation**

10.1 Former paragraph 10.2.

10.2 Former second paragraph of 10.1 As there is no voting committee, the following phrase has been deleted: “The manner of consultation shall be laid down in regulations by the voting committee as referred to in Article 20”.

10.3 Former paragraph 10.3.

10.4 Former paragraph 10.4.

10.5 Former paragraph 10.5.

## **Article 11 – Approval of Decisions of the Executive Board**

11.1 Former paragraph 12.1.

11.2 Former paragraph 12.2.

## **Article 12 – Management Team**

Former Article 11. Order and numbering has been changed to improve clarity. Changed “Management” to “Management Team”.

12.1 Former first section of paragraph 11.1. Changed “persons” to “Managing Directors”.

12.2 Former second section of paragraph 11.1.

12.3 Former fourth section of paragraph 11.1.

12.4 Former third section of paragraph 11.1. Changed “consulted the members” to “approved by the General Meeting”.

12.5 Former paragraph 11.2.

12.6 Former paragraph 11.3.

12.7 Former paragraph 11.4.

### **Article 13 – Financial Year. Financial Report. Annual Report**

This article has been extended to include all provisions regarding accounting and the Annual and Financial Report. For definitions of Annual Report, Financial Report and Audit Report, see Article 1.

13.1 Former paragraph 13.

13.2 Former paragraph 14.1.

13.3 Former paragraph 14.2.

13.4 Former second and third section paragraph 14.2. Audit report has been added and wording has been replaced by the defined terms; Financial Report and Audit Report. The reference has been removed.

13.5 Former fourth section paragraph 14.2 .

13.6 Former paragraph 14.3. The period was changed from “ten years” to “the legally required period”.

### **Articles 14, 15, 16, 17, 18, 19, and 20 – General Meeting**

These articles deal with the GM of the association and all rights and obligations in connection with it. The order of the articles has been changed and the (sub)paragraphs have been numbered to improve clarity.

### **Article 14 – General Meeting: General Meetings. Annual Meetings. Extraordinary General Meetings**

14.1 Former paragraph 15.1.

14.2 Former paragraph 15.2. The wording has been replaced by the defined term Annual Meeting (see Article 1).

14.3 Former paragraph 15.7.

### **Article 15 – General Meeting: Convocations. Agenda. Resolutions**

15.1 Former first section of paragraph 15.3. Amended to show that the RIPE NCC will publish the verbatim text of resolutions and will send the member the draft Activity Plan and budget prior to the GM in which these are to be discussed. Wording has been added to be able to call a GM in case of lack of authority by the Executive Board.

15.2 Former Article 18. Current Dutch law does require prior approval to send e-mail convocations.

15.3 Former paragraph 15.4. Dutch law requires that the “adoption of the Financial Report” and the “discharge of the Executive Board” are achieved by two different resolutions.

*15.4 Former paragraph 15.5.*

15.5 Former paragraph 15.6. A new subsection (d) has been added to cover changes to the arbitration procedure.

*15.6 Former second and third section of paragraph 15.3.*

*15.7 Former fourth section of paragraph 15.3.*

*15.8 Former paragraph 15.8.*

*15.9 Former paragraph 19.4.*

#### **Article 16 – General Meeting: Location. Attendance. Voting rights**

This article has been rephrased in order to clarify who can attend and vote on behalf of a member.

16.1 NEW. This paragraph states the location of the GM.

*16.2 Former paragraph 16.2.*

16.3 Former paragraph 16.1. Notification of attendance of GM. The provision specifies in more detail what information must be provided by the member in the notification. The provision more clearly distinguishes external proxies from internal representatives of a member (employees and directors). External proxies can only attend and vote if they have notified the association two weeks in advance, while employees and directors may also attend if they have not notified the association previously. This is applicable if their name has been registered pursuant to Article 5 or if they can show documents proving their authority to represent the member (paragraph 16.4).

16.4 NEW. Proxies (external) that have not been submitted two weeks in advance of the GM are not recognised by the association and are deemed to be void. This is to allow time to authenticate the proxy votes.

16.5 Former section of paragraph 16.4. Amended, see explanatory note to paragraph 16.3 above.

16.6 NEW. To be able to verify if the person registered is the person present.

*16.7 Former first section 16.3.*

*16.8 Former second section of paragraph 16.4.* Changed the maximum number of proxies from two percent to one percent of the total membership.

16.9 Former second section of paragraph 16.3.

Former Article 16.5 (restrictions on voting rights for group companies) has been deleted. The restriction is not valid under Dutch law. Also it is very unlikely with the current member count that a group company would be able to cast more than two percent of the

total number of possible votes.

#### **Article 17 – General Meeting: Votes**

*17.1 Former paragraph 17.1*

*17.2 Former paragraph 17.2*

*17.3 Former paragraph 17.3*

*17.4 Former paragraph 17.4*

*17.5 Former paragraph 17.5*

17.6 Former paragraph 17.6 and Former paragraph 17.8, has been rephrased and amended. The requirement that votes need to be in writing has been deleted as this does not reflect the current practice of voting by show of hands. The provision has also been amended to provide that election of persons shall always be by secret ballot, this is in line with current practice.

*17.7 Former paragraph 17.7*

#### **Article 18 – General Meeting: Chair, Minutes**

*18.1 Former paragraph 19.1*

*18.2 Former paragraph 19.2*

*18.3 Former paragraph 19.3*. Removed the clause that members can request a hardcopy or an extract.

#### **Article 19 – General Meeting: Resolutions Outside of Meetings**

19.1 Former paragraph 20.1. The need to comply with the “regulations, laid down by the voting committee” has been changed into “the provisions of these Articles of Association”.

19.2 Former paragraph 20.2.

Former paragraph 20.3. The phrase “voting committee” has been deleted. Please also see Article 17.

#### **Article 20 – Amendment of the Articles of Association and Dissolution**

20.1 Former paragraph 21.1.

*20.2 Former paragraph 21.2*

20.3 Former paragraph 21.3.

20.4 Former paragraph 21.4.

#### **Article 21 – Liquidation / Settlement**

*21.1 Former paragraph 22*

21.2 NEW. A paragraph defining the purpose of a credit balance upon liquidation is required by law. Please note that it is possible to choose one of the three purposes for the credit balance. A refund to the members on a pro rata basis in connection with the paid contribution (service fees) is also possible.

Former Article 23. Definition of “in writing”, has been incorporated in Article 1.

Former transitory provision has been deleted as the termination of Executive Board Membership is addressed in new paragraph 9.6.