

FREENET AG

ARTICLES

OF ASSOCIATION

freenet **GROUP**

MOBILCOM-DEBITEL / KLARMOBIL.DE / GRAVIS / FREENET.DE
MEDIA BROADCAST / FREENET DIGITAL / FREENET ENERGY / MOTION TM

I. General provisions

§ 1

Company, registered office, financial year

(1) The company operates under the name of

freenet AG.

(2) The registered office of the company is in Büdelsdorf.

(3) The financial year is the calendar year.

§ 2

Purpose of the company

(1) The purpose of the company is to act as a managing holding company, i.e. in particular to hold and administer holdings in companies, to provide management consultancy and other support thereto, as well as to acquire and perform other business management tasks and services for companies engaged in the following areas in each case:

(a) Development and provision of all kinds of communication, Internet, multimedia and online services and applications as well as of devices in such fields, the rental of, trading in and leasing of such devices, services in the fields of market research, marketing, advertising, design, promotion, telecommunications, multimedia, trade fairs and events, the development and sale of software solutions and other products, the operation of information technology, telecommunication systems, training facilities and management consultancy as well as the performance of publishing activities and conducting of brokerage transactions.

(b) Offer, rendering and marketing of non-gratuitous and gratuitous telecommunications, radio and multimedia services to end customers and business customers, operation of platforms in this context, the acquisition and operation of the required infrastructure to this end, including network and transfer technologies, as well as the acquisition and exploitation of licences and other rights of use.

(2) The company may also engage itself in the business fields cited in paragraph 1, in particular conduct all transactions and take all measures in connection with such business fields. The company and the freenet

Group may also limit their respective activities to sections of the activities cited in paragraph 1.

- (3) The company may have holdings in other companies of the same or of a similar nature at home and abroad, or may establish, acquire and sell such companies; for investment purposes, it may establish, acquire, administer holdings in companies of all natures and limit itself to the administration of the holdings. The company may hive off its business wholly or partly to affiliated undertakings.

§ 3

Announcements

The company's announcements will be published in the German Federal Gazette.

II. Share capital and shares

§ 4

Amount and allocation of share capital

- (1) The company's share capital amounts to € 128,061,016 (in words: euros one hundred and twenty eight million sixty one thousand and sixteen).
- (2) Share capital is allocated into 128,061,016 registered shares.
- (3) In the case of an increase in capital, the share of profit for new shares can be regulated without regard to clause 60 of the German Companies Act (AktG).
- (4) The form and content of share certificates and dividend and renewal coupons is laid down by the Executive Board subject to Supervisory Board approval. The same applies to interim certificates, bonds, interest coupons and warrants. One certificate may be issued for multiple shares belonging to one shareholder. There is no right to individual documentation of the shares of one shareholder, even on a certificate.
- (5) Shares are registered shares. If, in the case of an increase in capital, the resolution makes no provision as to whether the new shares are to be in bearer or registered form, they shall be in registered form. Shareholders with registered shares have to furnish the company with the legally prescribed information for entry in the share register; in order to facilitate communication, electronic post addresses and any changes made to them are to be given in each case.
- (6) The Executive Board is authorised, for a period of five years after this authorisation has been entered in the commercial register, to increase the share capital, subject to Supervisory Board approval, by issuing new shares against contributions in cash, once or several

times, however by no more than € 12,800,000.00 (in words: twelve million, eight hundred thousand euros) (Contingent Capital 2018). The shareholders' statutory subscription rights may also be granted by means of offering the new shares to one or several financial institutions and/or similar companies or a group or a consortium of banks and/or such similar companies in accordance with clause 186 paragraph 5 of the German Companies Act (AktG), with the obligation to offer them to shareholders (indirect subscription right). The Executive Board is authorised, subject to Supervisory Board approval, to exclude shareholders' subscription rights when issuing new shares against non-cash contributions. The Executive Board is also authorised with the approval of the Supervisory Board, to exclude fractional amounts of the subscription right and also to exclude the subscription right for issues of shares to persons who were or are in an employment relationship with the company (with the exception of shares issued to members of the executive bodies of the company) or with affiliated companies (employee shares). In addition, the Executive Board, with the approval of the Supervisory Board, can exclude the subscription right of shareholders if the new shares are issued in return for a non-cash contribution for an issue amount which is not significantly lower than the market price of the already listed shares of the company at the time at which the issue amount is definitively fixed (at a time which is as close as possible to the time at which the shares are placed). The authorisation to exclude subscription rights pursuant to the previous sentence may, however, only be used to the extent that the pro-rata amount of the new shares in the share capital does not exceed 10% of the share capital on the date this authorisation is entered in the commercial register or – if this amount is lower - at whatever time the authorisation is exercised. The proportion of the share capital attributable to shares that may have been issued since the Annual General Meeting resolution regarding this authorisation, based on an authorisation to issue new shares under exclusion of the statutory subscription rights in accordance with sections 202 paragraph 2, 203 paragraph 1, 186 paragraph 3 sentence 4 of the German Companies Act (AktG), or that may have been sold since the Annual General Meeting resolution regarding this authorisation, based on an authorisation to acquire own shares under exclusion of statutory subscription rights in accordance with sections 71 paragraph 1 no. 8, 186 paragraph 3 sentence 4 of the German Companies Act (AktG), is to be deducted from this 10% limit. Also to be deducted is the proportion of the share capital attributable to shares that may be issued based on bonds with option or conversion rights or an option or conversion obligation, or the company's right of delivery of shares, provided that these bonds have been issued in accordance with sections 221 paragraph 4 sentence 2 and 186 paragraph 3 sentence 4 of the German Companies Act (AktG) since the Annual General Meeting resolution regarding this authorisation. The Executive Board is authorised to define the further details of the respective capital increase and the corresponding implementation with the approval of the Supervisory Board.

- (7) Share capital is subject to a contingent increase of up to € 12,800,000 by way of issuing up to 12,800,000 new no-par-value bearer shares, with each individual no-par-value share accounting for € 1.00 of the share capital (contingent capital 2016). The purpose of the contingent capital increase is to enable no-par-value bearer shares to be granted to the holders or creditors of convertible and/or option bonds which are issued on the basis of the authorisation of the Company or one of its directly or indirectly owned subsidiaries as adopted by the Annual General Meeting of 12 May 2016 under Agenda item 10, letter A) and which provides a conversion or option right or right to delivery of shares in relation to the no-par-value bearer shares of the Company or which establishes a conversion or option obligation in relation to these shares. The shares are issued at conversion or option prices to be determined in accordance with the authorisation resolution described before.

The contingent capital increase is only to be carried out in the event bonds are issued in accordance with the authorisation resolution by the Annual General Meeting of 12 May 2016 (Agenda item 10) and only to the extent to that conversion or option rights or a right to delivery of shares are utilised or to which holders or creditors with a conversion or option obligation meet their conversion or option obligation and if treasury shares are not used for settlement or if the Company does not provide a cash settlement. The new no-par-value bearer shares participate in the profits from the beginning of the financial year in which they are created. The Executive Board is authorised to stipulate all further details pertaining to the implementation of the contingent capital increase.

- (8) The Executive Board is authorised, for a period of years after this authorisation has been entered in the commercial register, to increase the share capital, subject to Supervisory Board approval, by issuing new shares against contributions in cash and/or contributions in kind, once or several times, however by no more than a total of EUR 12,800,000.00 (in words: twelve million eight hundred thousand euros) (authorised capital 2016). The shareholders' statutory subscription rights may also be granted by means of offering the new shares for sale to one or more financial institutions and/or similar companies or a group or a consortium of banks and/or such similar companies in accordance with section 186 paragraph 5 of the German Companies Act (AktG), with the obligation to offer them to shareholders for subscription (indirect subscription right). The Executive Board is authorised, subject to Supervisory Board approval, to exclude shareholders' subscription rights when issuing new shares against contributions in kind. The Executive Board is also authorised, subject to Supervisory Board approval, to exclude fractional amounts from subscription rights as well as to exclude issuance to persons in an employment relationship with the company (with the exception of members of the company's executive body) or to persons associated with affiliated undertakings

(employee shares). In addition, the Executive Board may, subject to Supervisory Board approval, exclude shareholders' subscription rights if the new shares are issued in return for cash capital contributions at an issue price that does not substantially fall below the exchange price of the company's already listed shares on the date the issue price is finally determined, which should ensue as closely as possible to the placement of the shares. The authorisation to exclude subscription rights pursuant to the previous sentence may, however, only be used to the extent that the pro-rata amount of the new shares in the share capital does not exceed 10% of the share capital on the date this authorisation is entered in the commercial register or – if this amount is lower – at whatever time the authorisation is exercised. The pro-rata amount of the share capital attributable to shares that may have been issued since the adoption of the Annual General Meeting resolution regarding this authorisation, based on an authorisation to issue new shares under exclusion of the statutory subscription rights in accordance with sections 202 paragraph 2, 203 paragraph 1, 186 paragraph 3 sentence 4 of the German Companies Act (AktG), or that may have been sold since the adoption of the Annual General Meeting resolution regarding this authorisation, based on an authorisation to acquire own shares under exclusion of statutory subscription rights in accordance with sections 71 paragraph 1 no. 8, 186 paragraph 3 sentence 4 of the German Companies Act (AktG), is to be deducted from this 10% limit. Also to be deducted is the pro-rata amount of the share capital attributable to shares that may be issued based on bonds with an option or conversion right or an option or conversion obligation or a corporate right to delivery of shares, provided that such bonds have been issued in accordance with sections 221 paragraph 4 sentence 2, 186 paragraph 3 sentence 4 of the German Companies Act (AktG) since the adoption of the Annual General Meeting resolution regarding this solution. The Executive Board is also authorised, subject to Supervisory Board approval, to determine the further details of each capital increase and the implementation thereof.

III. Executive Board

§ 5 Composition

- (1) The Executive Board of the company consists of one or several persons.

The Supervisory Board shall appoint the Executive Board members and determine their number. The appointment of deputy Executive Board members is possible.

- (2) The Supervisory Board may appoint a chairperson and deputy chairperson of the Executive Board.

- (3) The Executive Board shall determine its rules of procedure by unanimous decision of its members and the agreement of the Supervisory Board unless the Supervisory Board decrees rules of procedure for the Executive Board.

§ 6

Company management and representation

- (1) The members of the Executive Board shall manage the company's business in compliance with the law, the articles of association and the rules of procedure for the Executive Board.
- (2) The company shall be legally represented by two Executive Board members or one Executive Board member with one authorised representative. If there is only one member of the Executive Board, he/she is authorised to solely represent the company.
- (3) The Supervisory Board can determine that individual Executive Board members are authorised to solely represent the company. It can also exempt individual Executive Board members from the limitations of clause 181 of the German Civil Code (BGB) provided that this is not contrary to clause 112 of the German Companies Act (AktG).
- (4) The Supervisory Board ordains in the rules of procedure for the Executive Board or by resolution that certain types of transaction require its approval.

IV. Supervisory Board

§ 7

Composition, period of office

- (1) The Supervisory Board is comprised of 12 members, six of whom are voted for by the Annual General Meeting and six of whom are elected in accordance with the German Codetermination Act (Mitbestimmungsgesetz) 1976.
- (2) The election applies for no longer than the period up until the end of the Annual General Meeting that resolves formal discharge for the fourth financial year after the commencement of the period of office. In this connection, the financial year in which the period of office begins is not included in the calculation. The election of the successor of a member resigning before the end of the period of office shall apply for the remainder of the period of office of the resigned member.
- (3) Members of the Supervisory Board can resign from office by written notice or declaration by telefax to the Executive Board at any time, provided that the time is not inopportune. If there is good cause, the resignation can become effective immediately.

§ 8

Chairperson of the Supervisory Board

- (1) The Supervisory Board elects from its midst a chairperson and a deputy chairperson in accordance with clause 27 paragraphs 1 and 2 of the German Codetermination Act (Mitbestimmungsgesetz) 1976 for the period of office specified in clause 7 paragraph 2 of these articles of association.
- (2) If the chairperson of the Supervisory Board or his/her deputy resign prematurely from this office, the Supervisory Board shall carry out without delay a new election for the remainder of the period of office of the resigned person.

§ 9

Convening of meetings

- (1) The meetings of the Supervisory Board shall be held in session. In justifiable exceptional cases, the chairperson of the Supervisory Board, or where he/she is not able, his/her deputy, may determine that individual members of the Supervisory Board can participate in a meeting by way of a video and/or telephone conference or that the entire meeting can be held as a video and/or telephone conference.
- (2) The meetings of the Supervisory Board shall be convened in writing or by telefax by the chairperson of the Supervisory Board, or where he/she is not able, by his/her deputy, with notice of fourteen days. In calculating the notice period, the day of sending the invitation and the day of the meeting are not counted. In urgent cases, the chairperson may shorten this notice period appropriately or convene the meeting verbally, by telephone, by telefax, by e-mail or by way of other customary means of telecommunications.
- (3) Notice of the meeting must be accompanied by the agenda. A resolution in respect of an item not properly notified in the invitation to the meeting may only be passed providing no member of the Supervisory Board present objects. Absent Supervisory Board members shall be given the opportunity in such cases, to oppose the resolution or vote in writing within a reasonable period to be determined by the chairperson. The resolution is only effective if the absent Supervisory Board members have not objected or have agreed within the time period.

§ 10

Passing of resolutions

- (1) Resolutions of the Supervisory Board are normally passed in meetings. Outside of meetings, resolutions can also be passed by order of the chairperson of the Supervisory Board in writing, by telephone,

by telefax, by e-mail or by way of other customary means of communication. The members of the Supervisory Board have no right to object. Resolutions passed in accordance with the above-mentioned paragraph 2 shall be determined by the chairperson in writing and forwarded to all members. For resolutions passed outside of meetings, the provisions of clause 10 paragraphs 2 to 5 apply accordingly. Resolutions of the Supervisory Board can also be passed in a way that combines resolutions in meetings and outside of meetings.

- (2) The Supervisory Board is quorate if at least half of its members participate in the resolution. A member is also deemed to participate when he/she abstains in the vote.
- (3) Supervisory Board members who do not participate in a meeting of the Supervisory Board can participate in a resolution of the Supervisory Board carried out at the meeting if they have their written vote cast by another member of the Supervisory Board. The casting of the second vote of the chairperson of the Supervisory Board can also be in writing.
- (4) Resolutions of the Supervisory Board are passed with a simple majority unless otherwise provided for by law. This also applies for elections. In this process, abstentions do not count as a vote cast. In the event of a tie, if the Supervisory Board does not decide otherwise, the chairperson shall decide whether the item is to be voted on again and whether the new vote is to be taken in that meeting or another meeting of the Supervisory Board. If there is a tie again in the new vote in relation to the same item, the chairperson shall have two votes.
- (5) If not all members of the Supervisory Board are present when a resolution is passed and the missing Supervisory Board members do not have a written vote submitted for them, the resolution is to be adjourned if at least two of the present members of the Supervisory Board request it. Where there is an adjournment, the new resolution shall take place in the next scheduled meeting unless a special Supervisory Board meeting is convened. Another request for adjournment by a minority when the new resolution is passed is not possible.
- (6) Minutes shall be kept of the negotiations and resolutions of the Supervisory Board which are to be signed by the chairperson of the meeting or by the person organising the vote when there is a vote outside the meeting.
- (7) The chairperson of the Supervisory Board is authorised to make statements of intent or other statements required for implementation of Supervisory Board resolutions in the name of the Supervisory Board.

§ 11

Duties of the Supervisory Board, compensation

- (1) The Supervisory Board oversees the Executive Board's management of the company and has all the duties and rights conferred upon it by law and the articles of association. It is authorised to determine changes to the articles of association which only affect their wording.
- (2) Immediately following the election of the chairperson of the Supervisory Board and his/her deputy, the Supervisory Board shall form a committee for the achievement of the duty specified in clause 31 paragraph 1 of the German Codetermination Act (Mitbestimmungsgesetz) 1976, which shall comprise the chairperson of the Supervisory Board, his/her deputy, and two members of the Supervisory Board one of each elected with the majority of the votes cast by the employee Supervisory Board members and the shareholder Supervisory Board members. The Supervisory Board can form further committees from its members and stipulate their duties and authority. If it is legally permissible, decision-making authority can also be conferred upon them.
- (3) The Supervisory Board may adopt its rules of procedure.
- (4) The members of the Supervisory Board receive for each full financial year of membership on the Board, commencing with 1 January 2009, a fixed compensation of € 30,000.00. The chairperson of the Supervisory Board receives double this amount, the deputy one and a half times this amount. Each Supervisory Board member receives an additional € 1,000.00 attendance fee for every meeting of the Supervisory Board he/she attends. Supervisory Board members who belong to a committee of the Supervisory Board – with the exception of the committee formed in accordance with clause 27 paragraph 3 of the German Codetermination Act (Mitbestimmungsgesetz) 1976 – receive an additional € 1,000.00 attendance fee for each meeting of the committee. The chairperson of the committee receives double this amount.

The fixed compensation according to the first sentence is payable in the amount of one quarter of the total at the end of each quarter. The attendance fees are to be paid in the respective sums at the end of each quarter. Supervisory Board members who have not been members of the Supervisory Board for a full financial year shall receive compensation in accordance with the duration of their membership on the Board.

- (5) The members of the Supervisory Board also receive, after the end of each financial year, a variable compensation in the amount of € 500.00 for each € 0.01 in dividends in excess of € 0.10 per company share which is distributed to the shareholders for the previous financial year. The provisions of the previous paragraph (4), sentence

two and seven shall apply accordingly. The amount of the variable compensation is limited to the amount which is due in fixed compensation according to paragraph (4).

- (6) The company shall take out an indemnity insurance against pecuniary loss for the members of the Supervisory Board to protect them against liability risk arising from their activity as members of the Supervisory Board.
- (7) Supervisory Board members also receive reimbursement of any expenses as well as reimbursement of any turnover tax, if applicable, on their compensation and expenses.

V. Annual General Meeting

§ 12

Place and convening

- (1) The Annual General Meeting shall take place within the first 8 months of the financial year at the company's registered office, in a German city with more than 100,000 inhabitants or at the registered office of a German stock exchange.
- (2) The Annual General Meeting is convened by the Executive Board or in legally prescribed cases by the Supervisory Board.
- (3) The convening of the Annual General Meeting – if no shorter deadline is permissible under law – should be announced at least thirty days before the date of the meeting. The date of the Annual General Meeting and the date of the announcement are not included in the above-mentioned period. The deadline for the announcement shall be extended by the number of days of the registration deadline (clause 13 paragraph 2).

§ 13

Requirements for participation and exercising of voting rights

- (1) Only shareholders who are entered on the company's share register on the date of the Annual General Meeting and who have registered with the company in good time in advance of the Annual General Meeting shall be entitled to attend the Annual General Meeting and to exercise their voting right.
- (2) Registration must reach the company at the address indicated for this purpose in the invitation to the Annual General Meeting, at least six days before the date of the Annual General Meeting. The invitation to the Annual General Meeting may envisage a shorter deadline, to be defined as a number of days. The date of the Annual General Meeting and the date of receipt are not included in the above-mentioned period.

§ 14

Chairperson of the Annual General Meeting / visual and audio transmission

- (1) The chairperson of the Supervisory Board shall chair the Annual General Meeting and where he is prevented, a shareholder Supervisory Board member designated by the chairperson of the Supervisory Board. Should the chairperson of the Supervisory Board be prevented and not designate a shareholder Supervisory Board member as the chairperson of the Annual General Meeting, Supervisory Board members present at the venue when the Annual General Meeting is scheduled to begin shall determine the chairperson of the Annual General Meeting by a majority vote.
- (2) The chairperson shall chair the Annual General Meeting and determine, in accordance with legal provisions, the course of the proceedings at the Annual General Meeting, in particular the method, form and sequence of the voting.
- (3) The Executive Board is authorised to permit full or partial visual and/or audio transmission of the Annual General Meeting in a manner whose details shall be determined by the Executive Board; during the proceedings of the Annual General Meeting, this right shall be held not by the Executive Board but by the chairperson of the meeting. Furthermore, the Executive Board is authorised to arrange that shareholders may attend the Annual General Meeting even without physical presence on site and without being represented by a proxy, and exercise all of their rights, or individual ones, entirely or in part by way of electronic communication.

§ 15

Voting right, right to speak and ask questions

- (1) Each share entitles the holder to one vote at the Annual General Meeting.
- (2) If shares are not fully paid up, the voting rights are dormant.
- (3) The voting right can be exercised by proxy. For the granting of proxy, its revocation and evidence of the authorisation in relation to the company, the relevant legal provisions shall apply. Unless a more stringent form is mandatory by law, text form shall suffice; clause 135 of the German Companies Act (AktG) remains unaffected.
- (4) The chairperson of the Annual General Meeting is authorised to reasonably restrict – in terms of time – the shareholders' right to ask questions and to speak. In particular, he/she has the right at the beginning or in the course of the Annual General Meeting, to set a reasonable time limit for the whole course of the Annual General Meeting, for individual agenda items or for individual speakers. In ar-

ranging the Annual General Meeting, the chairperson of the Annual General Meeting should be guided by the fact that the Annual General Meeting is conducted in an appropriate and reasonable time.

- (5) The Executive Board is authorised to arrange that shareholders may cast their votes in writing or by way of electronic communication, even if they do not attend the Annual General Meeting.

§ 16

Passing of resolutions

Unless there are compelling legal provisions to the contrary, resolutions of the Annual General Meeting are passed with a simple majority of the votes cast. If the German Companies Act (Aktiengesetz) stipulates an equity majority for the passing of a resolution, however, a simple majority of the share capital represented at the passing of the resolution shall suffice, provided this is legally permissible.

VI.

Annual financial statements

§ 17

Annual financial statements, appropriation of profit

- (1) In the first three months of the financial year, the Executive Board shall prepare the annual financial statements and the management report for the preceding financial year and submit them immediately to the auditor and Supervisory Board. At the same time, the Executive Board shall submit to the Supervisory Board the proposal for the appropriation of profit which it intends to submit to the Annual General Meeting.
- (2) The Supervisory Board shall examine the annual financial statements, the management report and the proposal for the appropriation of profit within one month after receipt of the auditors' report. The report of the Supervisory Board shall be forwarded to the Executive Board.
- (3) The Executive Board and Supervisory Board are authorised when approving the annual financial statements to allocate to other revenue reserves partly or wholly the net income remaining after deduction of any amounts transferable to the legal reserve and of a tax loss carry forward. The allocation of a part exceeding one half of the net income is not permissible if the other revenue reserves after allocation would exceed half the share capital.
- (4) After receipt of the Supervisory Board report concerning the result of its examination, the Executive Board shall immediately convene the ordinary Annual General Meeting, which shall take place within the first eight months of each financial year.

- (5) The Annual General Meeting can resolve to distribute the retained earnings to the shareholders partly or wholly in the form of dividends in kind.
- (6) After the end of the financial year, the Executive Board is authorised, subject to Supervisory Board approval, to make an advance payment on account of the estimated retained earnings to the shareholders, provided the provisional financial statements for the preceding financial year show a net income. The advance payment on account may be a maximum of half the amount remaining from the net income after deduction of any amounts transferable to revenue reserves in accordance with the law or articles of association. Furthermore, the advance payment on account may not exceed half of the previous year's retained earnings.

VII. Final provisions

§ 18

Set-up costs

Costs arising from the establishment of the company (notary, court, consultancy) shall be borne by the company up to € 5,000.00.

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