

Revision of the ESRA association bylaw

Motivation

ESRA is a Non-profit organisation registered in Belgium and subject to Belgium legislation, Non-profit organisations used to be governed by the act of 1921. On 23 March 2019, a government bill introducing a new Belgian Companies and Associations Code and It repealed the 1921 act. Therefore, the ESRA bylaw (Articles of the Association) must be amended to assure compliance with the new Belgian law. This also represents an opportunity to modernise our bylaw. Details of the required changes to comply with the Belgian Companies and Associations Code have been prepared by the appointed lawyer Philippe Malherbe and they can be found in the document **20240112 Memo ESRA.pdf**

Main changes

The following contain the major changes to the Articles of the Association and their rationality.

Type of association

ESRA is formally defined as: *“Art.1 The association takes the form of an international non-profit association.”*

The board of directors

The board of directors is the former Management Board. All the articles have been rewritten to comply with the Belgian Law. There is not substantial difference in terms of power and duties of the board of directors. The General Assembly elects the board of directors that elects a president: Art 12.2: *“The board of directors elects a president from among its members.”*

Clarification of legal representation is included in Art, 12.6: *The Board of Directors represents the association, including legal representation. Without prejudice to the general power of representation of the board of directors as a body, the association is validly bound, in and out of court, by all acts signed by two (or more) directors acting jointly. They are not required to justify their powers to third parties.”*

General assembly

The power of the general assembly has been made more explicit including some additional power such as to institute legal action by the association against the directors and auditor; Art. 11.1 *“4. Granting discharge to the directors and auditor, and, if necessary, instituting legal action by the association against the directors and auditor;”* and Making or accepting a succession: Art. 11.1 *“9. Making or accepting a gratuitous contribution of a universal succession;”*.

As required by Belgian law, the General Assembly decides with 3/4 of the votes (and not with the majority) for matters which has exclusive competence. Therefore the Art. 11.1 states: *“On matters over which it has exclusive competence under the law, the General Assembly makes decisions by a three-quarters majority vote and can only deliberate if more than half of its members are present or represented.”*. The General assembly can terminate the mandate of individual directors with a majority of vote: Article 12 - *“§3. The General Assembly may, by majority vote, decide to terminate the mandate of each director at any time, with immediate effect and without cause.”*

General assembly can hold meetings via video conference: Article 11.3 §4. *“Meetings may be held entirely or partially by video conference; participants in this conference declaring, at the beginning and end of the meeting, that they were able to hear and see the other participants, it being understood that cameras may have been disconnected during all or part of the meeting, depending on technical requirements.”* and *“§5. Members may, unanimously and in writing, make all decisions within the powers of the General Assembly, except for the amendment of the bylaws. In this case, the formalities of convocation need not be carried out. Members of the management body and, where applicable, the auditor, may, upon their request, become aware of these decisions.”*

Members

In order to follow the principle of inclusivity among countries in Europe, the following definition is used: Art. 5 *“Ordinary members include both legal entities - established in accordance with the law of their country of origin - and individuals from the European Union and EU candidate countries, the EFTA countries, and the UK.”*

Members are now grouped in three categories that match the current membership fees. Specifically.

1. *Academic organisations and individuals: a) High-education institutions; b) Research centres; c) Individual persons.*
2. *Professional organisations: a) Standardisation, regulatory, and government entities; b) National professional societies or associations; c) International professional societies or associations; d) Charities and non-profit organisations*
3. *Commercial and industrial organisations: a) National industrial companies and organisations; b) International industrial companies and organisations;*

Membership fees

It is a law requirement to fix the maximum amount of annual membership fees. The General Assembly has the power to review the maximum amount of fees every 2 years while the Board of Directors decide the exact amount. Art 8. *“Members shall be required to pay annual membership fees., The annual fees shall vary according to the types of legal status listed in Articles 5 and 6 and may differ for ordinary and observer members upon recommendation of the Board of Directors. The precise amount of membership fees is decided by the Board of Directors and should ensure the financial viability of the association.*

The maximum amount of contribution is €250 for Category 1 (Academic organisations and individuals), €500 for Category 2 (Professional organisations and non-profit organisations), and €750 for Category 3 (Commercial and industrial organisations). The review and adjustment of the maximum annual membership fees shall be proposed by the Board of Directors and decided upon at the General Assembly every two years, with a maximum increase of 10% at each review.”

Accounting

The budget of the association (including the proposal for the following financial year) needs to be approved by the General Assembly within 6 months to the end of the financial year. General assembly is generally held between June and September, therefore it is proposed a financial year starting on 1st of April. Art: 16 *“The financial year starts on 1st April and ends on 31st of March of each year. On the latter date, the financial records are closed, and the board of directors prepares the annual accounts in accordance with the applicable legal provisions. The board of directors also prepares a budget proposal for the following financial year. The board of directors submits the annual accounts for the previous financial year and the budget proposal for the following financial year to the annual general meeting.”*