

# Statutes

## Open Logistics Foundation | 2021

### I. General Provisions

#### 1 Name, legal form, registered office, financial year

- 1.1 The foundation operates under the name of "Open Logistics Foundation". The foundation is to be registered in the foundations register or another register in its stead. If and to the extent that German law governing foundations provides for the suffix "e.S." or another suffix to be added to the legal form designation, the foundation shall add the corresponding suffix to the legal form designation.
- 1.2 The foundation is a foundation with legal capacity organised under German civil law (*rechtsfähige Stiftung des bürgerlichen Rechts*).
- 1.3 The foundation has its registered office in Dortmund.
- 1.4 The financial year of the foundation is the calendar year.

### II. OBJECT OF THE FOUNDATION/FOUNDATION ASSETS

#### 2 Object of the foundation

- 2.1 The foundation solely and directly pursues not-for-profit purposes within the meaning of the chapter of the German Fiscal Code (*Abgabenordnung*, "AO") entitled "Purposes afforded preferential tax treatment".
- 2.2 The object of the foundation is the promotion of science and research in Germany and abroad, particularly in the area of logistics, and science and industry aimed at improving logistics solutions.
- 2.3 The stated object of the association is to be realised by, in particular:
  - (a) creating an open and neutral platform for the common development, use and provision of open source software and/or open source hardware as well as cloud-based software and/or hardware;
  - (b) integrating scientific findings, applied research and practice in practical (open source) applications;
  - (c) developing and establishing software and/or hardware standards and participating in the development of policies and legislative processes relating to the stated object of the foundation;
  - (d) developing and providing services insofar as it relates to the stated object of the foundation;
  - (e) supporting the development of open source communities and providing software and hardware for maintaining open source communities;
  - (f) implementing scientific projects to develop free open source software and/or open source hardware;

- (g) linking experts together and supporting professional development in the area of digitalisation insofar as it relates to the stated object of the foundation;
  - (h) organising events such as seminars, symposia, lectures, information sessions and other events insofar as it relates to the stated object of the foundation; and
  - (i) carrying out and promoting other activities and measures designed to serve the stated object of the foundation.
- 2.4 The foundation's work is altruistic by nature. It does not primarily pursue its own financial interests.
- 2.5 The foundation's funds may only be used for the purposes stated herein. The founders and their legal successors do not receive any grants or benefits from the foundation's funds.
- 2.6 The foundation may enter into and maintain collaborative arrangements under one or more cooperation agreements ("**Cooperation Agreements**") with one or more association(s) which support the foundation and have their registered office and administrative headquarters in the Federal Republic of Germany ("**Support Association**") and/or become an equity shareholder/partner in companies serving the stated object of the foundation.

### **3 Foundation assets**

- 3.1 The assets of the foundation at the time of its formation shall be preserved and constitute its "**Endowment**". The Endowment (regardless of whether or not it is augmented) together with the other assets of the foundation designated for use form the "**Foundation Assets**". The Foundation Assets may be increased by way of subsequent donations (endowments) by the founders or third parties. Endowments that are not earmarked for a specific purpose accrue to the other assets of the foundation.
- 3.2 In the interest of the continued, long-term existence of the foundation, the value of the Endowment must be preserved undiminished at all times. Subject to approval by the foundation supervisory authority, the assets may in the exceptional case be utilised up to an amount of 10% of the value of the Endowment if the object of the foundation cannot be realised otherwise and it is ensured that the assets withdrawn will be repatriated within the next three years. The pursuit of the object of the foundation may not be materially compromised by any such repatriation.
- 3.3 Asset reclassification is permitted. All or some of the profits from reclassifying assets may be used to achieve the object of the foundation or recognised as reserves. Section 3.2 sentence 1 must be observed.
- 3.4 Income from the Foundation Assets and the donations not accruing to it shall initially be used to cover the costs of the administration of the foundation and all other expenses of the foundation ("**Administration Costs**") and to readily realise the object of the foundation in the context of tax law provisions. Unrestricted reserves or reserves earmarked for a specific purpose may be recognised to the extent permitted by tax law. All or a portion of unrestricted reserves may be allocated to assets subject to resolution of the Board of Directors.

- 3.5 Donations designated for this purpose by the donors or based on a call by the foundation for donations earmarked for a specific purpose must be allocated to the Foundation Assets.
- 3.6 No individual may derive benefits from donations, expenditures or other disposals made by the foundation from its Foundation Assets which do not accord with or which run counter to the object of the foundation or from unreasonably high remuneration.
- 3.7 There is no legal entitlement to payments from the foundation or the grant of foundation funds.
- 3.8 Donations from Support Association must generally be used to pursue the object of the foundation.

### III. GOVERNING BODIES

#### 4 Governing bodies

- 4.1 The governing bodies of the foundation are the Board of Directors (*Vorstand*) (sections 5–7) and the Board of Trustees (*Kuratorium*) (sections 8–10) . Members of one governing body may not serve concurrently as a member of another governing body. Members of the Board of Trustees may not sit on the executive board of a Support Association.
- 4.2 To the extent not otherwise stipulated below, members of the foundation's governing bodies provide their services on a part-time basis and may be paid reasonable remuneration for their services. All members of the foundation's governing bodies are entitled to the reimbursement of proven out-of-pocket expenses and expenditures reasonably incurred by them insofar as such expenses and expenditures were necessary. The Board of Directors shall stipulate the details in a remuneration policy, which shall require the approval of the Board of Trustees.
- 4.3 Members of the foundation's governing bodies are liable to the foundation for intentional or grossly negligent conduct. If third parties bring a claim against a member on account of their activities on behalf of the foundation, the foundation will indemnify the relevant member against any and all claims, unless the member's conduct was intentional or grossly negligent. The foundation shall bear the reasonable costs of any legal representation of the member required in this connection. The foundation is entitled to take out appropriate insurance for the foundation and its directors and trustees to protect against the aforementioned risks.
- 4.4 Subject to the approval of the Board of Trustees, the Board of Directors may appoint one or more persons to assist with managing the day-to-day business of the foundation ("**Managing Directors**"). No individual who is a member of a governing body within the meaning of section 4.1 may be appointed as a Managing Director. The Board of Directors is responsible for overseeing the Managing Directors and ratifies their actions autonomously. Managing Directors may be appointed as special representatives of the foundation within the meaning of sections 86 and 30 of the German Civil Code (*Bürgerliches Gesetzbuch*, "BGB"), subject to the approval of the Board of Trustees, insofar as this is necessary for the proper management of the foundation's business. The Board of Directors shall stipulate the details in rules of procedure for the Managing Directors, which shall require the approval of the Board of Trustees.

## **5 Board of Directors**

- 5.1 The Board of Directors is composed of up to three natural persons. The Board of Directors elects from among its ranks a chairperson and a deputy chairperson.
- 5.2 The first Board of Directors is appointed in the act of formation establishing the foundation (*Stiftungsgeschäft*). After the foundation's establishment, directors are appointed by a Support Association with which a corresponding Cooperation Agreement is in place. The Board of Trustees may, by a majority of 2/3 of the votes cast, overrule the Support Association's appointment and appoint the successor itself if (i) the successor appointed by the Support Association is professionally or personally unsuited for the office; or (ii) there is reason to believe that the involvement of the person in question might compromise the work on the Board or that their involvement would otherwise run counter to the object of the foundation or the intended objectives of the provisions of these statutes. If no Cooperation Agreement is in place with a Support Association, the Board of Trustees shall appoint the members of the Board of Directors directly.
- 5.3 Directors are appointed for a term of office ending upon expiry of the third full financial year from the beginning of their term. Directors may be re-elected (multiple times), however no sooner than 12 months prior to expiry of their term of office. If a successor has still not been elected when the term of office expires, the director whose term has expired shall remain in office until such time as a successor has been appointed.
- 5.4 If a director withdraws before the term of office specified in section 5.3 sentence 1 expires, the successor shall be appointed for the remaining term of the departing director.
- 5.5 The term of office shall furthermore end
- a) upon expiry of the financial year in which the director reaches the age of 65;
  - b) by virtue of the director's resignation or death; or
  - c) if the Board of Trustees resolves on their dismissal for good cause.
- 5.6 The Board of Directors may adopt rules of procedure for itself.

## **6 Responsibilities of the Board of Directors**

- 6.1 The Board of Directors represents the foundation in and out of court. It holds the status of a legal representative. If only one director is appointed, such director shall represent the foundation alone. Otherwise, the foundation is represented by two directors acting jointly. The directors may be granted sole power of representation by resolution of the Board of Trustees.
- 6.2 The Board of Directors manages the business of the foundation in all respects. It may delegate the day-to-day business to Managing Directors, if any.
- 6.3 In managing the business of the foundation, the Board of Directors is bound by the law, these statutes and the known or presumed will of the founders.
- 6.4 The Board of Directors may at its discretion solicit legal and tax advice for an appropriate fee.
- 6.5 The Board of Directors shall enter into and maintain Cooperation Agreements with one or more Support Associations, insofar as this serves the stated object of the foundation. A

Cooperation Agreement may only be entered into, amended and/or rescinded subject to the approval of the Board of Trustees. The Board of Directors shall ensure that at any given time only one Support Association has a right of appointment pursuant to section 5.2 and section 8.2 and a right of dismissal pursuant to section 8.4 (c) under the Cooperation Agreement entered into with it.

## **7 Internal procedure of the Board of Directors**

- 7.1 Meetings of the Board of Directors are convened by the chairperson or, if they are unavailable, by the deputy chairperson as necessary, but at least quarterly, subject to two weeks' notice, which notice must include the agenda. Meetings shall also be convened if a director so requests.
- 7.2 The Board of Directors shall be quorate if all directors have been given proper notice and are present. Defective notice will be deemed cured if all affected directors are present and none of them has raised an objection. The foregoing shall also apply where virtual meetings (online meetings) are conducted.
- 7.3 To the extent these statutes do not provide otherwise, decisions of the Board of Directors are adopted by a simple majority of the votes cast. In the event of a tie, the chairperson or, if they are unavailable, the deputy chairperson shall have the casting vote
- 7.4 If no director objects, resolutions may be adopted by circulation outside of meetings (in writing, by fax or electronically, e.g., by e-mail).
- 7.5 Minutes of the meetings shall be taken and signed by the directors.
- 7.6 In managing the business of the foundation, the Board of Directors shall follow the recommendations of the Board of Trustees within the meaning of section 9.4, insofar as a resolution of the Board of Trustees has been obtained on such recommendations.

## **8 Board of Trustees**

- 8.1 The Board of Trustees is composed of at least three but no more than five persons. At least one trustee shall have special expertise in the fields relating to the stated object of the foundation under section 2 or be a recognised scientist or lecturer at a university in one of those fields.
- 8.2 The first Board of Trustees is appointed by the founders upon establishment of the foundation. After the foundation's establishment, trustees are appointed by a Support Association with which a corresponding Cooperation Agreement is in place. The Board of Trustees may, by a majority of 2/3 of the votes cast, overrule the Support Association's appointment and appoint the successor by co-optation itself if (i) the successor appointed by the Support Association is professionally or personally unsuited for the office; or (ii) there is reason to believe that the involvement of the person in question might compromise the work of the Board or that their involvement would otherwise run counter to the object of the foundation or the intended objectives of the provisions of these statutes (in particular the targeted composition under section 8.1 sentence 2). The foregoing shall also apply to the

appointment of additional trustees if the Board of Trustees is composed of fewer than five persons. A departing trustee shall be eligible to vote on their own re-election and the election of a successor. If no Cooperation Agreement is in place with a Support Association, trustees shall be appointed directly by co-optation; the remaining trustees resolve on a successor by simple majority.

- 8.3 Trustees are appointed for a term of office ending upon expiry of the third full financial year from the beginning of their term. If a trustee withdraws before the term of office specified in sentence 1 expires, a successor shall be appointed for the remaining term of the departing trustee in accordance with sentence 1. If a successor has still not been elected when the term of office expires, the trustee whose term has expired shall only remain in office until such time as a successor has been appointed if the Board of Trustees would otherwise have fewer than three members.
- 8.4 Notwithstanding the provisions in section 8.3, last sentence, the term of office shall in any case end
- a) upon expiry of the financial year in which the trustee reaches the age of 65;
  - b) by virtue of the trustee's resignation or death; or
  - c) if a Support Association with which a Cooperation Agreement exists resolves on their dismissal for good cause.
- 8.5 The members of the Board of Trustees elect from among their ranks a chairperson and a deputy chairperson. The Board of Trustees appoints the chairperson and deputy chairperson by simple majority of the votes cast. A trustee shall be eligible to vote on their own appointment as chairperson or deputy chairperson. The term of office of the chairperson and deputy chairperson shall end upon expiry of their term of office as a trustee. Trustees may be re-appointed multiple times as chairperson or deputy chairperson. The Board of Trustees may vote to retract a trustee's appointment as chairperson or deputy chairperson by a 2/3 majority of the votes cast. A trustee shall not be eligible to vote on their own dismissal as chairperson or deputy chairperson.
- 8.6 The Board of Trustees may adopt rules of procedure for itself.
- 8.7 The trustees work for the foundation in an honorary capacity. However, all trustees are entitled to the reimbursement of proven out-of-pocket expenses and expenditures reasonably incurred by them insofar as such expenses and expenditures were necessary. They are not entitled to receive remuneration for their time.
- 8.8 The trustees are liable for intentional or grossly negligent conduct only.
- 8.9 As against the Board of Directors and in legal transactions with the Board of Directors or individual directors, the Board of Trustees shall be represented by the chairperson or, if the chairperson is unavailable, by the deputy chairperson.

## **9 Responsibilities of the Board of Trustees**

- 9.1 The Board of Trustees exercises the functions delegated to it under these statutes. The Board of Trustees advises and monitors the Board of Directors in the performance of its duties, particularly in its pursuit of the stated object of the foundation. The Board of Trustees

may adopt a list of transactions for the Board of Directors which are subject to its approval and may amend that list at any time.

The Board of Trustees has the following additional responsibilities:

- a) appointing and dismissing members of the Board of Directors as well as deciding on granting exemption from the restrictions of section 181 BGB and granting sole power of representation;
- b) approving rules of procedure for the Board of Directors;
- c) approving the annual financial statements and subsequently deciding on the ratification of the actions of the Board of Directors;
- d) approving amendments to the object of the foundation, resolutions to dissolve or consolidate the foundation and other amendments to the statutes; and
- e) deciding on the use of the assets of the foundation in the event it is dissolved or wound up.

9.2 Every member of the Board of Trustees has a comprehensive right to inspect all documents and records relating to business transactions.

9.3 The Board of Trustees shall also be responsible for providing technical and scientific support with respect to the measures referred to in section 2.2. It shall develop the technical requirements and standards for the measures specified in section 2.2 and support the Board of Directors in the decision-making process and managing the business of the foundation by providing its expert advice and recommendations.

9.4 The Board of Trustees may delegate individual tasks, insofar as they are related to the tasks under section 9.3, to project groups which shall be accountable to the Board of Trustees for their work, with such work being limited in terms of time and subject matter. The members of project groups are selected by the Board of Trustees from among the members of the Support Association or their representatives. The Board of Trustees may not select persons as members of a project group if there is reason to believe that the involvement of the person in question might compromise the work of the project group or that their involvement would otherwise run counter to the object of the foundation or the intended objectives of the provisions of these statutes.

9.5 The Board of Trustees may, at its due discretion, solicit technical and scientific expertise from third parties even for an appropriate fee.

## **10 Internal procedure of the Board of Trustees**

10.1 Meetings of the Board of Trustees are convened by the chairperson as necessary, but at least half yearly, subject to two weeks' notice, which notice must include the agenda. Meetings shall also be convened if a trustee so requests.

10.2 The members of the Board of Directors shall be invited to all meetings of the Board of Trustees and have a right to attend, insofar as the Board of Trustees does not intend to deliberate and/or adopt resolutions pertaining to the person of a director. The Board of Directors shall be heard prior to the decisions of the Board of Trustees, but shall not have the right to vote.

- 10.3 The Board of Trustees shall be quorate if all trustees have been given proper notice and more than half of them are present. Defective notice will be deemed cured if all the participants to be invited (sections 10.1 and 10.2) are present and none of them has raised an objection. The foregoing shall also apply where virtual meetings (online meetings) of the Board of Trustees are conducted.
- 10.4 Decisions of the Board of Trustees are adopted by a simple majority of the votes cast. Where voting is tied, the chairperson or, in the chairperson's stead, the deputy chairperson has the casting vote.
- 10.5 If no trustee objects, resolutions may be adopted by circulation outside of meetings (in writing, by fax or electronically, e.g., by e-mail).
- 10.6 Minutes of the meetings shall be taken and signed by those trustees in attendance and then sent for their information to any persons who were eligible to attend but were absent (sections 10.1 and 10.2).

#### IV. MISCELLANEOUS

##### 11 Amendments to the statutes and dissolution of the foundation

- 11.1 Amendments to these statutes, applications for consolidation with another foundation subject to preferential tax treatment or to dissolve the foundation may only be decided by the Board of Directors subject to the approval of the Board of Trustees. Subject to approval by the foundation supervisory authority, the object of the foundation may by resolution pursuant to sentence 1 be amended or expanded if there has been a material change in circumstances such that it no longer appears appropriate to pursue the object of the foundation or if the organisation of the foundation is changed, provided that the realisation of the object of the foundation is not compromised as a result. The new object of the foundation must also be subject to preferential tax treatment.

The foundation shall only be dissolved if it appears impossible under the given circumstances to ever thoroughly and sustainably realise the object of the foundation even if that object were to be changed. Any new foundation created by virtue of consolidation must also be subject to preferential tax treatment.
- 11.2 If the foundation is wound up or dissolved or no longer pursues purposes that attract preferential tax treatment, the foundation's [residual] assets will be transferred to the Support Association subject to preferential tax treatment with which at the time of the wind-up or dissolution the longest-standing Cooperation Agreement exists, unless the Board of Trustees resolves (pursuant to section 9.1 e)) that the assets are to accrue to another corporation that enjoys preferential tax treatment and pursues the same or a similar object. The corporation shall use the assets directly and exclusively for not-for-profit purposes that accord most closely with the stated object of the foundation.

## 12 Supervision of the foundation/entry into force

- 12.1 The foundation is subject to government supervision in accordance with the law governing foundations applicable in the state of North Rhine-Westphalia.
- 12.2 The District Government (*Bezirksregierung*) of Arnsberg is responsible for the supervision of the foundation; the highest foundation supervisory authority is the Ministry of the Interior (*Ministerium des Innern*) of the state of North Rhine-Westphalia.
- 12.3 The foundation supervisory authority shall be informed of the affairs of the foundation at any time upon request. The annual financial statements as well as notifications regarding changes in the composition of the foundation's governing bodies must be submitted without being requested to do so. The approval and supervisory powers of the foundation supervisory authority must be observed.
- 12.4 The foundation shall enter into force on the day of its recognition by the foundation supervisory authority.

## 13 Position of the tax office

- 13.1 Notwithstanding the special approval requirements arising from the Foundation Act of North Rhine-Westphalia (*Stiftungsgesetz NRW*), resolutions on amendments to the statutes and the dissolution of the foundation must be notified to the competent tax office.
- 13.2 Where amendments are made to the statutes concerning the object of the foundation, a statement from the tax office on preferential tax treatment must be obtained beforehand.

## 14 Severability

- 14.1 Should any present or future provision of these statutes be or become invalid or unenforceable, either in whole or in part, this shall not affect the validity of the remaining provisions hereof. The foregoing shall also apply to any omissions contained herein. The invalid or unenforceable provision shall be replaced, or the omission rectified, by an appropriate provision which, to the extent permitted by law, most closely reflects that which the founders intended or would have intended had they considered the point when these statutes were originally drafted, or a provision was subsequently included.
- 14.2 The foregoing shall also apply where the invalidity of a provision is based on, for example, a measure of performance or time (deadline or date) prescribed in the statutes; in such case, a legally permissible measure of performance or time (deadline or date) which most closely reflects that which was intended shall be deemed agreed.



(the German version is legally valid)