

## **ARTICLES OF INCORPORATION**

Stichting Open Future

*FINAL VERSION dated 23 October 2020*

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### **Definitions**

#### Article 1

- 1.1 For the purpose of these Articles, “Book 2” is understood to mean the Second Book of the Netherlands Civil Code.
- 1.2 Reference to an expression or word in the singular includes a reference to this word in the plural and vice versa, unless it should appear otherwise or has obviously been meant otherwise.
- 1.3 Reference to the male sex includes a reference to the female sex and vice versa, unless it should appear otherwise or has obviously been meant otherwise.
- 1.4 Wherever reference is made in these Articles to “article” or “paragraph” it is a reference to an article or paragraph of an article in these Articles, unless it should appear otherwise or has obviously been meant otherwise.

### **Name and seat**

#### Article 2

- 2.1 The name of the Foundation is:  
**STICHTING OPEN FUTURE.**
- 2.2 The Foundation has its seat in Amsterdam.

## **Objects**

### Article 3

3.1 The objectives of the Foundation are:

- to act as a think tank on topics related to digital transformation and access to knowledge and culture;
- to act as a strategic advocacy organization that will enhance the capacity of the open movement to influence digital policy-making in the European Union;
- to undertake and promote projects aimed at improving access to knowledge and culture and to enhance the strategic advocacy capacity of the open movement in Europe;
- to carry out and promote activities for the benefit of European integration; and

further, all that which is incidental to this, or works in the interest of such kind of things, whether directly or indirectly, in the broadest sense of the words.

3.2 The Foundation aims to achieve its objectives by and through initiating, promoting, conducting, participating in and supporting (in terms of organization, materially and financially):

- conferences, education seminars, debates, trainings and other activities in the domain of economic, legal, social and environmental issues;
- projects and campaigns promoting access to knowledge and culture;
- research and development;
- maintaining a network of experts, stakeholders and others with an interest in the above mentioned topics;
- education and awareness raising;
- publications and advice.

## **Organisation**

### Article 4

The organisation of the Foundation consists of the following bodies:

- a. an Executive Board; and
- b. a Supervisory Board.

One or more advisory councils and / or committees can be added to the organisation of the Foundation.

## **Funds**

### Article 5

The funds intended for the realisation of the Foundation's objects consist of:

- (a) grants, gifts and donations;

- (b) subsidies;
- (c) means acquired by testamentary disposition or legacies, on the understanding that testamentary dispositions may only be accepted under benefit of inventory;
- (d) means acquired in any other manner.

**Executive Board's composition, appointment, suspension and dismissal, vacancies and absence**

Article 6

- 6.1 The Executive Board, being the management within the meaning of the law, consists of two or more natural persons.
- 6.2 Executive Board members shall be appointed by the Supervisory Board on the basis of a binding nomination containing at least one candidate for a vacant position. Where the nomination contains one candidate for a vacant position to be filled, the resolution on the nomination shall have the effect that this candidate is appointed, unless the binding effect of the nomination was set aside.
- 6.3 The Supervisory Board may at all times overrule the binding effect of said nomination by means of a resolution passed with two-thirds of the votes cast, which two-thirds represent more than fifty per cent (50%) of the number of Supervisory Board members in office.
- 6.4 The Executive Board shall appoint a chairman, secretary and treasurer from among its members. The offices of secretary and treasurer may be held by one person. The Executive Board shall allocate the duties among the board members in mutual consultations. Such allocation of duties does not affect the joint responsibility of all the members of the Executive Board for the entire management.
- 6.5 A member of the Executive Board may be suspended and removed from his office at any time by the Supervisory Board. The board member involved shall be enabled to account for his deeds at a Supervisory Board meeting. He may have himself assisted at such meeting by counsel. A resolution for suspension may only be adopted by a majority of two-third (2/3) part of the votes validly cast in a meeting in which all members of the Supervisory Board are present or represented at such meeting.

The suspension of a board member shall cease to exist, if the Supervisory Board fails to resolve on dismissal or on termination or continuation of the suspension within five (5) months after the date of commencement of the suspension. A suspension may be continued for a maximum of five (5) months, commencing on the date on which the resolution to continue the suspension was passed.

6.6 Members of the Executive Board shall be appointed for a period of four (4) years and they shall forthwith be eligible for reappointment for another period of four (4) years. A third period in office is only possible if the Supervisory Board passes a resolution for such purpose by unanimous vote and no other candidate board member has been nominated.

The Executive Board shall draw up a rotation schedule. The board member that has been appointed in an interim vacancy shall take the place in the schedule of the person in whose place he has been appointed.

6.7 A member of the Executive Board shall cease to be a board member:

- (a) in case of death;
- (b) in case of bankruptcy or suspension of payment, or, in case of natural persons, a debt rescheduling arrangement has been declared applicable to him, whether temporarily or permanently;
- (c) following his being placed in receivership or under tutelage;
- (d) following his voluntary resignation (retirement);
- (e) because he is not reappointed or because his reappointment is no longer possible;
- (f) following his dismissal by a court of law;
- (g) following his dismissal given by the Supervisory Board.

Furthermore it is explicitly understood that there can be no close family relation or a comparable relation between members of the Executive Board.

6.8 Vacancies shall be filled as soon as possible. An incomplete Executive Board shall retain its powers.

In the event of a vacancy or the absence of all the members of the Executive Board or of a sole (remaining) member of the Executive Board, the general management will temporarily be attended to by the person appointed for such purpose by the Supervisory Board. That person cannot be a member of that Supervisory Board unless such person immediately steps down as a member of the Supervisory Board.

6.9 The Supervisory Board shall - based on a proposal by the Executive Board - determine the remuneration of the Executive Board members. Furthermore, the Executive Board members shall be entitled to reimbursement of the costs incurred by them in the performance of their duties. The remunerations and reimbursements will be mentioned and specified in the Annual Accounts.

6.10 For the purpose of a well-functioning board, Executive Board members shall be periodically assessed by the Supervisory Board. The way in which this assessment takes place can be detailed in regulations.

## **Executive Board; duties and powers**

### Article 7

- 7.1 The Executive Board is in charge of the management of the Foundation under the supervision of the Supervisory Board.
- 7.2 The Executive Board has power to conduct all legal transactions, including the concluding of agreements for the acquiring, selling or encumbering of registered property.  
The Executive Board shall also have power to conclude agreements, whereby the Foundation binds itself as surety or joint and several co-debtor, warrants performance by a third party or provides security for the debt of a third party.
- 7.3 The following board resolution shall require the prior approval of the Supervisory Board:
- a. adopting the budget;
  - b. adopting and drastically changing the (multi-year) policy plan;
  - c. making investments and entering into obligations in excess of an amount to be further determined in the Executive Board regulations;
  - d. entering into, changing and terminating cooperation with another legal person or organisation if that cooperation is of major importance to the Foundation and/or any legal persons and institutions affiliated with it;
  - e. the acquisition, amendment or termination of a participation or control in another legal entity, the incorporation of another legal entity, as well as the adoption and amendment of its articles of association;
  - f. entering into financing and providing security, whether or not for the benefit of a third party;
  - g. establishing and changing the Executive Board regulations;
  - h. amending the articles of association and dissolving the Foundation;
  - i. entering into a legal merger or demerger;
  - j. entering into transactions in which there are conflicts of interest of members of the Executive Board and/or members of the Supervisory Board that are of material significance to the Foundation and/or to the members of the Executive Board and/or members of the Supervisory Board;
  - k. to exercise, on behalf of the Foundation, an authority to appoint, suspend and dismiss a board member of another legal entity and to exercise the voting right on shares held by the Foundation in the capital of companies;
  - l. the termination of the employment of a considerable number of employees at the same time or within a short period of time or the breaking of an

- agreement with a considerable number of persons who work as self-employed persons or as a joint venture for the Foundation;
- m. drastically changing the working conditions of a considerable number of employees of the Foundation;
  - n. applying for bankruptcy and for suspension of payments of the Foundation.
- 7.4 The absence of the approval of the Supervisory Board as referred to in paragraph 7.3 cannot be invoked against third parties.
- 7.5 The Supervisory Board may decide that a legal act as referred to in paragraph 7.3 above, which is provided for in the Foundation's budget, does not require approval by the Supervisory Board.
- 7.6 The Supervisory Board is also authorized to subject other decisions than those referred to in paragraph 7.3 of this article to its approval. These other decisions must be clearly described and communicated to the Executive Board in writing.

### **Executive Board; procedures**

#### Article 8

- 8.1 The Executive Board shall meet at least once every year whereby the board members shall need to participate in person, while other meetings can be held by phone or web conferencing. Each board member shall have one vote in the meetings of the Executive Board. To take resolutions it is required that more than half of the board members are present at the meeting in person. Insofar as these Articles do not prescribe a majority qualified otherwise, all resolutions of the Executive Board shall be passed by an absolute majority of the votes validly cast. If the votes are equal, the proposal is rejected.
- 8.2 The Executive Board may also pass resolutions without a meeting being held, provided all board members have been enabled to vote and none of them lodges an objection against this manner of voting. A resolution has been passed in such case if the absolute or required larger majority of the number of board members has declared to be in favour of the proposal. Each resolution that has been passed without a meeting being held shall be announced at the next meeting, and such announcement shall be recorded in the minutes of such meeting.
- 8.3 Each member of the Executive Board shall be equally empowered to convene a meeting of the Executive Board.
- 8.4 The convening of meetings of the Executive Board shall be done in writing whilst observing a period of at least eight (8) days and stating the business to be transacted at the meeting. In urgent cases, at the discretion of the chairman, the convening period may be limited to at least twenty-four (24) hours.

Executive Board meetings shall be held in the Netherlands, preferably in Amsterdam, or in another town or city in the European Union, to be determined by the chairman. Where the chairman determines that a meeting is to be held outside the Netherlands, he shall, when establishing the location, take into account that the travelling distance will be reasonable and acceptable to all the members of the Executive Board.

If the provisions set forth hereinbefore have not been observed, the Executive Board may nevertheless pass valid resolutions, provided that the board members who are not present at the meeting have declared prior to the date of the meeting that they do not object to the decision-making process.

- 8.5 The chairman shall preside over Executive Board meetings; in his absence the meeting itself shall elect its chairman.
- 8.6 The chairman shall determine the manner in which votes will be cast at the meetings, on the understanding that, where one or more board members should so require, votes on persons shall be taken by ballot.
- 8.7 The judgement expressed by the chairman at the meeting concerning the result of the voting shall be decisive.  
The same applies to the substance of the resolution passed, insofar as the vote was taken on a proposal not laid down in writing.
- 8.8 Minutes shall be kept of the business transacted at the meeting by the person appointed for such purpose by the chairman.  
The minutes shall be passed at the same meeting or at the next meeting.
- 8.9 An Executive Board member shall not participate in any deliberation and decision-making if he has a direct or indirect personal interest that conflicts with the interest of the Foundation. If, as a result, no board resolution can be taken, the decision shall be taken by the Supervisory Board.

### **Representative authority**

#### Article 9

- 9.1 The Executive Board represents the Foundation unless determined otherwise by law.
- 9.2 In addition, the Foundation may be represented by two members jointly.
- 9.3 The Executive Board is authorised, without prejudice to its own responsibility, to authorise one or more of its members or other persons to represent the Foundation pursuant to a power of attorney and to grant them such capacity and powers as to be determined by the Executive Board.

### **Indemnification**

#### Article 10

Each member of the Executive Board shall be indemnified by the Foundation to the fullest extent permitted under the applicable laws in respect of any liability, cost, expense, charge and/or loss provided such person acted honestly and in good faith except to the extent that any such liability, cost, expense, charge and/or loss result from the gross negligence or willful default of such member of the Executive Board.

**Supervisory Board: composition and appointment**

Article 11

- 11.1 The Foundation has a Supervisory Board, consisting of at least three natural persons to be determined by the Supervisory Board.  
The Supervisory Board is composed in such a way that the members can operate independently and critically in relation to each other, the day-to-day and general management of the institution and any particular interest.
- 11.2 The members of the Supervisory Board are appointed by the Supervisory Board, on the basis of a non-binding nomination by the Executive Board. If the Supervisory Board has informed the Executive Board that it will not appoint the nominated person, the Executive Board may make a second non-binding nomination within two months after the first nominee has not been appointed. If the Executive Board fails to make that second nomination in a timely manner, the Supervisory Board is allowed to appoint a new member without any further nominations possible.
- 11.3 The Supervisory Board appoints a chairman from among its members. Without prejudice to collective responsibility, the Supervisory Board may decide on a mutual division of tasks and powers.
- 11.4 A member of the Supervisory Board is appointed for a period of four (4) years and resigns in accordance with a schedule to be drawn up by the Supervisory Board.  
A member of the Supervisory Board who resigns in accordance with this paragraph may be reappointed once for a further four (4) years. A member of the Supervisory Board appointed to fill an interim vacancy takes the place of the person in whose vacancy he was appointed on the retirement schedule.
- 11.5 In the event of vacancies, the Supervisory Board retains its powers without prejudice to the obligation to take immediate measures to supplement its membership and provided that at least three members are in office.
- 11.6 Unless the Supervisory Board decides that a reasonable remuneration would be appropriate for its members, they will not receive any remuneration for the supervisory activities to be performed by them on behalf of the Foundation.



Costs incurred by them in the performance of their supervisory function are reimbursed by the Foundation.

**Supervisory Board: suspension, dismissal, resignation, prevention and absence**

**Article 12**

- 12.1 The members of the Supervisory Board shall be suspended and dismissed by the Supervisory Board. A member of the Supervisory Board can be suspended and dismissed for, among other things:
- a. neglect of his task or insufficient performance;
  - b. incompatibility of functions or interests;
  - c. change in circumstances or other reasons for which the Supervisory Board considers it in the interest of the Foundation that his maintenance as a member of the Supervisory Board cannot reasonably be expected of the Foundation.
- 12.2 If a member of the Supervisory Board is suspended, the Supervisory Board must decide within three months after the suspension has taken effect to dismiss the member of the Supervisory Board concerned or to lift or maintain the suspension. In the absence of a decision as referred to in the previous sentence, the suspension will lapse.
- A decision to maintain the suspension can only be taken once and the suspension can be maintained for a maximum of three months, starting on the day on which the Supervisory Board took the decision to maintain it.
- 12.3 The member of the Supervisory Board who is being deliberated on about dismissal, suspension and/or maintenance thereof will be given the opportunity during the meeting of the Supervisory Board in which his dismissal, suspension and/or maintenance thereof will be submitted to the order will be given the opportunity to account for his performance. In doing so, he can be assisted by counsel.
- 12.4 A member of the Supervisory Board resigns:
- a. by his voluntary resignation (thanks);
  - b. through the loss of the free administration or free disposal of his assets;
  - c. upon expiry of the period for which he was appointed, subject to his possible reappointment;
  - d. by his dismissal granted by the Supervisory Board;
  - e. by dismissal by the court;
  - f. by his death.
- 12.5 In the absence or inability to act of one or more members of the Supervisory Board, the remaining members, or the remaining member, will assume the full

duties of the Supervisory Board. A non-full Supervisory Board remains fully competent.

In the absence of all members of the Supervisory Board, the president of the court of the district in which the Foundation has its official seat will, at the request of either a resigned member of the Supervisory Board or the Executive Board, with due observance of the provisions of these articles of association, a new Supervisory Board will be appointed.

### **Supervisory Board: duties and powers**

#### Article 13

- 13.1 The Supervisory Board has the task of supervising the policy of the Executive Board and the general course of affairs within the Foundation. The Supervisory Board assists the Executive Board with solicited and unsolicited advice. In fulfilling its task, the Supervisory Board focuses on the interests of the Foundation and takes into account the stakeholders involved with the Foundation.
- 13.2 With due observance of the laws and regulations in the field of the protection of privacy and personal data, after consultation with the Executive Board and after a specific decision taken to that end, the Supervisory Board or one or more members authorized by the Supervisory Board shall have access to all premises of the Foundation and the right to inspect all documents and books of the Foundation at any time.
- 13.3 The members of the Supervisory Board may, at the expense of the Foundation, after consultation with the Executive Board, be assisted by the accountant of the Foundation or an expert to be appointed by the Supervisory Board, who should be given the opportunity to inspect the entire administration.
- 13.4 The members of the Supervisory Board may give instructions to the Executive Board regarding the type of information to be provided, as well as regarding the manner and frequency of the provision of information by the Executive Board.
- 13.5 The Supervisory Board annually evaluates its own performance without the Executive Board. At least annually, the Supervisory Board holds an evaluation meeting with the Executive Board about the mutual functioning of both bodies as such and in relation to each other.

### **Supervisory Board: meeting and working method**

#### Article 14

- 14.1 At meetings of the Supervisory Board, each member of the Supervisory Board has one vote. The Supervisory Board decides by an absolute majority of the votes validly cast, unless these articles of association provide otherwise.

- 14.2 If the votes are tied, the proposal may be placed on the agenda for the next meeting of the Supervisory Board. If the votes are tied again at this next meeting, the proposal is deemed to have been rejected.
- 14.3 Valid resolutions can only be passed if all members of the Supervisory Board have been convened with due observance of the provisions below and more than half of the members of the Supervisory Board is present or represented at the meeting. If the rules regarding the notice are not observed, valid resolutions can nevertheless be taken unanimously in a meeting in which all members of the Supervisory Board are present, all without prejudice to the provisions of paragraph 14.7.
- 14.4 A member of the Supervisory Board may be represented at a meeting by another member of the Supervisory Board authorized in writing.
- 14.5 The meetings of the Supervisory Board are chaired by the chairman or, if he is absent, by a person appointed by the Supervisory Board from among its members. The chairman of the meeting appoints a secretary for the meeting in question.
- 14.6 Meetings of the Supervisory Board are held at least three (3) times a year and in addition as often as the chairman or two of its members so request. The meeting is convened in writing to each member of the Supervisory Board. It mentions the place and time of the meeting and the items to be discussed in the meeting. The notice period is at least seven days, not counting the day of the notice and the day of the meeting. In urgent cases - at the sole discretion of the chairman - the notice period may be shortened.
- 14.7 The Supervisory Board may also pass resolutions outside a meeting, provided this is done in writing and all members of the Supervisory Board have expressed themselves in favor of the proposal concerned. Such a decision is recorded in the minutes register of the Supervisory Board.
- 14.8 All members of the Executive Board, if invited to do so, are obliged to attend the meetings of the Supervisory Board and to provide all information required by the Supervisory Board.
- 14.9 The Supervisory Board may lay down its further working method and decision-making and everything relating to its functioning in the regulations of the Supervisory Board.

**Financial year. Annual accounts. Auditor**

**Article 15**

- 15.1 The financial year of the Foundation runs concurrent with the calendar year and thus runs from the first day of January to the thirty-first day of December of the same year.
- 15.2 Each year, within six (6) months after the end of the financial year, subject to extension of this period by the Executive Board by at most five (5) months on account of circumstances of an exceptional nature, the Executive Board shall draw up annual accounts and an annual report relating to the financial year just passed. Added to these documents shall be the data and particulars referred to in Article 392(1) of Book 2.
- 15.3 The annual accounts shall be signed by each member of the Executive Board and each member of the Supervisory Board. Should the signature of one or more of them be missing, mention thereof shall be made and the reason therefore stated.
- 15.4 The Executive Board shall take care that the annual accounts, and, if so required, the annual report and the data and particulars added thereto under said Article 392 are made available at the Foundation's office as soon as possible but not later than as of the date on which the meeting is convened that is intended for their consideration. Members of the Executive Board and of the Supervisory Board may inspect said documents at this office and obtain a copy thereof, free of charge.
- 15.5 The Supervisory Board may give an assignment to a "register accountant" (chartered accountant) or other expert as referred to in Article 393 of Book 2 – either of them referred to below as the "Expert" – or an organisation within which such Experts co-operate, to audit the annual accounts. The Supervisory Board may withdraw the assignment as referred to in this paragraph at any time and give it to another Expert.
- 15.6 The Expert shall report on the audit performed by him to the Supervisory Board and the Executive Board and shall issue an audit opinion in respect thereof.
- 15.7 To the extent that the law so permits, the giving of the assignment as referred to before need not be effected or the assignment may be given to another party than the Expert referred to in said paragraph.
- 15.8 Confirmation and adoption of the annual accounts is done by the Supervisory Board. Such confirmation and adoption shall not constitute a discharge to its members for their management conducted in the financial year just passed. The Supervisory Board may separately decide to grant discharge the members of the Executive Board for their acts of management, without prejudicing the provisions set forth in Article 300a in conjunction with Article 139 of Book 2

*(liability for providing misleading representation of the condition of the foundation).*

15.9 The Executive Board shall be under the obligation to keep the documents referred to in this article in file for a period of at least seven (7) years.

### **Amendment to the Articles**

#### Article 16

16.1 The Supervisory Board has the authority to amend the Articles.

16.2 The Supervisory Board resolution to amend the Articles must be passed by a majority of at least two-third (2/3) part of the votes cast at an Supervisory Board meeting at which all members are present.

Should the meeting at which a resolution to amend the Articles is to be considered not be complete, a new meeting shall be convened to be held no sooner than two (2) weeks after said meeting. At this new meeting the resolution may be passed by a majority of at least two-third (2/3) part of the votes cast, but irrespective of the number of members present.

16.3 The convening notice for such meeting at which a proposal to amend the Articles is to be considered shall always state so. In addition, a copy of the proposal containing the verbatim text of the proposed amendment must be enclosed with the convening notice. In such case, the convening period shall amount to at least two (2) weeks.

16.4 An amendment to the Articles shall be effected by notarial deed. Each member of the Executive Board is authorized to execute the deed of amendment or to have it executed.

16.5 A copy of such deed evidencing the amendment shall be entered in the commercial register of the Chamber of Commerce.

### **Dissolution and settlement**

#### Article 17

17.1 The Supervisory Board shall have the authority to dissolve the Foundation.

17.2 The provisions set forth in paragraphs 2 and 3 of Article 16 shall apply correspondingly to the resolution of the Supervisory Board to dissolve the Foundation.

17.3 Unless the Supervisory Board should resolve otherwise, the Executive Board members shall be in charge of the liquidation.

17.4 The liquidators shall ensure that the dissolution is entered in the register referred to in paragraph 5 of the preceding Article.

17.5 Any positive balance upon liquidation and settlement of the Foundation shall be transferred to one or more other organisations, to be designated by the

Supervisory Board, that have a similar objective.

17.6 After the dissolution the Foundation shall continue its existence insofar as this is required for the liquidation of its property. During the liquidation the provisions of these Articles shall as much as possible remain in force. The words “in liquidation” must be added to the Foundation’s name in documents originating from and announcements made by it.

17.7 After liquidation the books, documents and other data carriers of the dissolved foundation shall for the period prescribed by the law remain in the custody of the person appointed for this purpose by the liquidators. Such person shall be obliged to file his appointment for registration with the register referred to in paragraph 5 of Article 16.

### **Codes of Rules**

#### Article 18

18.1 After approval by the Supervisory Board, the Executive Board has the authority to draw up, amend or repeal one or more codes of rules.

18.2 Regarding the drawing up, amending and repealing of a code of rules, Article 16, paragraph 2, shall apply correspondingly.

18.3 The contents of a code of rules may not be in conflict with the law or these Articles.

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*Final statements:*

#### Financial year:

The first financial year of the Foundation shall commence on the day of its incorporation, being the twenty-third day of October two thousand and twenty (23-10-2020) and end on the thirty-first day of December two thousand twenty-one (31-12-2021).

#### Registered address:

Bonairestraat 9, 1058 XC Amsterdam

#### Incorporators and Executive Board members:

1. Johann Paul Keller, with the title of *Chairman*;

2. Aleksander Michal Tarkowski, with the title of *Secretary/Treasurer*.

Supervisory Board members:

1. Renata Avila Pinto, born in Guatemala City on the first day of January nineteen hundred and eighty-one (01-01-1981);
2. Martin Reinhold Felix Senfleben, born in Darmstadt (Germany) on the twenty-eighth day of January nineteen hundred and seventy-five;
3. Bregtje Merijn van der Haak, born in Utrecht (the Netherlands) on the fifteenth day of June nineteen hundred and sixty-six.