

Constitution

Preamble

Upon entering the digital age, in which real and virtual space will equally determine the social, cultural and scientific development of mankind, the Free Software Foundation Europe has the long-term goal to raise and work on the questions this will necessarily raise.

In this regard the direct function is the unselfish promotion of Free Software as well as creating and propagating the awareness of the related philosophical and social questions.

As its acknowledged sister organization, the FSFE will join forces with the Free Software Foundation founded by Richard M. Stallman in the United States of America. The latter, recognized tax-exempt charitable organization in the USA, has been dedicating itself since 1985 to the promotion and distribution of Free software and in particular the GNU-System, a Unix-like operating system. This system is mostly known by one of its variants, GNU/Linux, which since 1993 has been used successfully on many computers.

The term Free Software in the sense of the FSFE does not refer to the price, but rather to the following four freedoms:

1. freedom: the freedom to use a program for any purpose
2. freedom: the freedom to study the program and adapt it to your own needs.
3. freedom: the freedom to make copies for others.
4. freedom: the freedom to improve a program and make these improvements available to others, so that the whole community benefits.

This definition of Free Software goes back to the idea of freely exchanging knowledge and ideas that can traditionally be found in scientific fields. Like thoughts, software is non-tangible and duplicable without loss. Passing feeds an evolutionary process, advancing thoughts and software.

Only Free Software preserves the possibility to comprehend and build upon scientific results. For scientists, it is the only kind of software which corresponds to the ideals of a free science. Accordingly, the promotion of free software is also a promotion of science.

The distribution of information and the forming of an opinion are done increasingly by digital media, and the trend is to foster the use of those means for a direct citizen participation to democracy. Therefore, a central task of the FSFE is to train proficient citizens in these media, thereby promoting democracy.

Digital space (“Cyberspace”), with software as its medium and its language has an enormous potential for the promotion of all mental and cultural aspects of mankind. By making it commonly available and opening up the medium, Free Software grants equal chances and protection of privacy.

Coining the awareness for the problems related to the digital age in all parts of society is long-term goal and a core aspect of the work of the FSFE.

Therefore the FSFE will seek to increase the use of Free Software in schools and universities in order to parallelize the education in real space matters with the creation of understanding and awareness of problems in virtual space.

Free Software guarantees traceable results and decision-making processes in science and public life as well as the individual rights to free development of personality and liberty of opinion. It is the job of the FSFE to carry Free Software into all areas that touch public life or “informational human rights” of citizens.

§ 1 Name, seat, financial year

- (1) The association bears the name “Free Software Foundation Europe.” It is to be registered into the register of associations; after the registration it leads the additive “e.V..”
- (2) The association has its seat in Hamburg.
- (3) The financial year is the calendar year.

§ 2 Purpose, tasks, non-profit character

- (1) Purpose of the FSFE is the furthering and distribution of Free Software in order to support the free exchange of information and equal chances in accessing software as well as national education according to the principles stated in the preamble.
- (2) The goals of the FSFE are namely to be achieved by:
 1. the idealistic support of governmental and private organisations in all aspects of the Free Software,
 2. the cooperation and coordination of the national associations which pursue the same goals
 3. the support of programmers, realizing the charitable goals of the FSFE by developing Free Software, through scholarships,
 4. the distribution of the philosophical ideals of Free Software
 5. the information and training of the public about the possibilities and educational potential of Free Software,
 6. the development and providing of Free Software for the public.
- (3) The FSFE pursues exclusively and directly publicly-spirited purposes in the sense of the section “tax-privileged purposes” of the tax code. The FSFE is working selflessly and does not pursue self-economic goals.
- (4) Means of the FSFE may be used for the statutory purposes only. No person may be favored by expenses alien to the goals of the FSFE or disproportionally high. This applies

in particular to full-time members, that can receive an appropriate remuneration for the performed work.

§ 3 Acquisition of membership

- (1) Any national or foreign natural or legal person may become member of the FSFE. Natural persons must be 16 years old. Persons under age do not have eligibility for election.
- (2) Condition for the acquisition of the membership is a written application for membership to the President.
- (3) The General Assembly of the members decides on the application for membership with three quarter majority of the delivered valid votes; abstentions are therefore not counted. The President can grant the application for membership passing; the application for membership must then be confirmed by the next members assembly. In case of refusal of the request no obligation exists to communicate the reasons to the applicant.
- (4) Fellows elected according to § 6 become members of the FSFE. Their membership terminates automatically at the end of their term.

§ 4 End of membership

- (1) Membership ends
 - a. with the death of the member with natural persons and/or its liquidation in the case of legal persons;
 - b. by withdrawal from the association;
 - c. by exclusion from the association.
- (2) The withdrawal is made via written declaration vis-a-vis the President. The declaration withdrawal must be signed by the competent legal representative. The withdrawal can be declared at any time.
- (3) For important reasons or if the bond of trust between the members is broken, a member can be excluded by decision of the President from the association. Before deciding on the matter, the President must give the member opportunity to state its position in writing. The decision of the President is to be justified in writing and sent to the member. The member can appeal the decision at the General Assembly of the members. The appeal must be lodged within two weeks after communication of the decision at the President. The President has to call in a general assembly within three months of punctual insertion of the appointment, which can support the decision of the President with a majority of three quarters of the remaining members. Until the final decision about the exclusion, the member remains suspended of all obligations and all rights.

§ 5 Membership Fees, Remuneration

- (1) The association may collect annual financial dues from its members. The amount of such dues as well as their due dates and collection and establishment procedures are decided upon by the General Assembly.

(2) The president, the vice president, the financial officer, the executive director as well as other organs of the association, which have been assigned certain duties through the constitution of the association or through a decision of the General Assembly, may receive adequate remuneration and expense reimbursements for their services performed for the association. The appropriateness of such remuneration is determined by the overall financial situation of the association and by the specific tasks that need to be performed through the respective organ. Remuneration may not exceed the usual remuneration paid for freelance engagements for similar services rendered to comparable, non tax-exempt organisations, businesses, or governmental offices (for example in the IT industry). The amounts for remuneration for such organs are decided upon by the General Assembly.

(3) Members and non-members can receive remuneration for activities performed in order to further constitutional purposes of the association (for example project work) if such activities are in line with the constitutional goals and the remuneration is appropriate. Appropriateness of such remuneration is defined as amounts not exceeding usual remuneration for comparable freelance work performed for other non tax-exempt organisations, businesses, or governmental offices (for example in the IT industry). The exact terms for remuneration for members and non-members, the actual amounts as well as all other conditions will be decided upon through the General Assembly or its defined representative.

§ 6 Fellowship seats

Two seats in the General Assembly are up for election among Fellows of the FSFE, with a Fellow being defined in § 6 (2.4).

(1) Fellowship seats in the General Assembly must be held by natural persons, cannot be inherited and enjoy all rights and responsibilities of regular members of the General Assembly.

(2) Fellowships seats differ from regular seats in the following ways:

1. Each seat is subject to general election among all orderly Fellows of the FSFE;
2. Elections for seats shall be held yearly in rotation;
3. The term for each seat is two years;
4. An orderly Fellow is a natural person who
 - is registered to the Fellowship programme with correct information;
 - made their annual Fellowship contribution;
 - maintains a current email address in the Fellowship forwarding.
5. All orderly Fellows who have been subscribed to the Fellowship programme for more than one year are eligible for election.
6. The term begins with confirmation of the election results by the Fellowship coordinator.
7. Membership in the General Assembly terminates
 - automatically upon conclusion of their two-year term;
 - when a Fellow fails to meet the eligibility criteria defined above;
 - according to the provisions defined in § 4.

(3) The following procedure applies for all elections of the Fellowship and is done in accordance with the Schulze method for voting:

1. The election is called and run by the Fellowship coordinator, who is appointed by the General Assembly;
2. Elections are called by signed email to the Fellows three months before the election date;
3. Candidates are all Fellows eligible for election who have informed the Fellowship coordinator of their intention to stand for office at least two months before the election date;
4. Each Fellow participating in the election shall submit a ballot ranking all Candidates.
5. Not all Candidates need to be ranked. Ranked Candidates are considered preferred to all unranked Candidates. Voters may rank Candidates equally. Unranked Candidates are considered to be ranked equally with one another.
6. From the list of Candidates, a list of pairwise defeats are generated:
 - (a) Given two Candidates A and B, $V(A,B)$ is the number of voters who prefer Candidate A over Candidate B.
 - (b) Candidate A defeats Candidate B, if $V(A,B)$ is strictly greater than $V(B,A)$.
7. From the list of pairwise defeats, a set of transitive defeats are generated:
 - (a) Candidate A transitively defeats Candidate C if A defeats C or if there is some other Candidate B where A defeats B AND B transitively defeats C.
8. A Schwartz set is constructed from the set of transitive defeats:
 - (a) Candidate A is in the Schwartz set if for all Candidates B, either A transitively defeats B, or B does not transitively defeat A.
9. If there are defeats between Candidates in the Schwartz set, we drop the weakest such defeats from the list of pairwise defeats, and return to step 6.
 - (a) A defeat (A,X) is weaker than a defeat (B,Y) if $V(A,X)$ is less than $V(B,Y)$. Also, (A,X) is weaker than (B,Y) if $V(A,X)$ is equal to $V(B,Y)$ and $V(X,A)$ is greater than $V(Y,B)$.
 - (b) A weakest defeat is a defeat that has no other defeat weaker than it. There may be more than one such defeat.
10. If there are no defeats within the Schwartz set, then the winner is chosen from the Candidates in the Schwartz set. If there is only one such Candidate, (s)he is the winner. If there are multiple Candidates, the winner is randomly chosen by lot.

§ 7 Structure of the association

(1) The Free Software Foundation Europe forms a European federation structure and is divided into national associations. Those are associations with own juridical personality after the law on societies of the European State for its area the association are active. All members of the national associations must also be members of the FSFE.

(2) In order to preserve the uniformity, the national associations have to fulfill minimum requirements determined by the General Assembly, which are written down in a constitution-template for national associations. This applies with the exception of requirements that are inadmissible according to the laws of the state in which the national association is to be created. In this case the constitution is to be modified so it reflects the intentions of the constitution-template most closely. The constitution requires the acceptance by the Executive Council before the national association becomes part of the FSFE.

(3) The finances of the national associations are determined by the budgeting in accordance with § 9 of this statute.

(4) The national associations can conclude contracts in their own name for the fulfillment of local tasks, if the means are present for the fulfilment of these contracts. They can in no case enter obligations for the FSFE.

(5) The national associations can only enter into negotiations for issues that are focussed around their region and only with public authorities and organisations responsible for their respective areas.

(6) The national associations are entitled and obliged to bear their own name through which the affiliation with the Free Software Foundation Europe is expressed. This has to be done by adding the denomination “Chapter” with the name of the state in English to “Free Software Foundation Europe” (“FSFE”). Additionally they can bear the name in the national language.

(7) The Executive Council is entitled to revoke the right for the national association to use the name “FSFE” if the national association violates this constitution or its own constitution. The national association can appeal the decision at the General Assembly of the members. The appeal must be lodged within two weeks after communication of the decision at the Executive Council. The Executive Council has to call in a General Assembly within three months of punctual insertion of the appointment, which can remedy or overrule the decision of the Executive Council with a majority of three quarters of the remaining members.

§ 8 Bodies of the association

The Free Software Foundation Europe forms a European federation. Organs of the FSFE are:

- a) the General Assembly.
- b) the President;
- c) the Vice-President;
- d) the Financial Officer;
- e) the Executive Director;
- f) the Executive Council;

§ 9 The General Assembly

- (1) In the General Assembly, each member that is a natural person, has a voice. For the practice of the right to vote another member can be authorized by written message to the President. The authorisation is to be given for each General Assembly separately. A member cannot practise the right to vote for more than one third of all members.
- (2) The General Assembly has exclusive jurisdiction for the following affairs:
 1. Budgeting;
 2. Defining the discretionary limit for executive financial decisions by the Executive Director;
 3. Agenda-setting and determination of priorities for the President, Vice-President and Executive Director;
 4. Review the annual report of the President, Vice-President, Executive Director, and Financial Officer;
 5. Exoneration of the organs;
 6. Choice and recall of the President, the Vice-President, the Financial Officer, and the Executive Director.
- (3) Members of the General Assembly are liable to protect the confidential and sensitive information of the FSFE. This obligation survives the termination of membership.
- (4) Members of the General Assembly are not liable vis-a-vis the association for unintentional oversight.

§ 10 The convening of the General Assembly

- (1) At least once a year, if possible in the first quarter, is the orderly General Assembly to take place; if possible in one of the states, in which a national association exists. It is called up in writing by the President under adherence to one period of six weeks under indication of the agenda. The period begins with the day following the sending of the invitation letter. The invitation letter is to be considered delivered to the member, if it is addressed to the last address or e-mail address given by the member in writing. With written agreement of three quarters of the members, the invitation period can be shortened to three weeks.
- (2) The agenda is determined by the President. Each member can request a supplement of the agenda in writing to the President until at the latest one week before a General Assembly. The President has to announce the supplement at the beginning of the General Assembly. About applications for supplement of the agenda, which are made at the General Assembly, are decided by the General Assembly.

§ 11 The extraordinary General Assembly

The President can call up an extraordinary General Assembly at any time. It must be called up, if at least a quarter of all members require it in writing under indication of the purpose and reasons to the President. To the extraordinary meeting of the members the § 9, § 10 and § 12 apply accordingly.

§ 12 Adoption of resolutions of the General Assembly

- (1) The General Assembly is led by the President, at his indispensability by the Vice-President and at the indispensability of the latter by the Financial Officer.
- (2) The type of election is determined by the assembly director. The election must be carried out in writing, if a third of the members present in person with the election requests this.
- (3) The General Assembly is not public.
- (4) The General Assembly is resolutionable, if it was duly called up and at least one third of all members is present or represented by members present. In the case of decision inability, the President is obliged to call up a second General Assembly with the same agenda within four weeks; this General Assembly will resolutionable without consideration of the members present. This is to be referred to in the invitation.
- (5) Unless stated otherwise in the statute, the General Assembly passes decisions with simple majority of the delivered valid voices; abstentions are therefore left out of the consideration. Changes of the statute require a majority of three quarters of the delivered valid voices; abstentions are not counted. Dissolution of the FSFE requires four fifths of the voices of all members of the association. Changing the purpose of the FSFE can only be decided with unanimous agreement of all members. Members not present at the General Assembly can submit their agreement in writing to the president within one month.
- (6) In the case of elections it is elected who received more than half of the delivered valid voices. If nobody received more than half of the delivered valid voices, a ballot takes place between the candidates who received most voices. The person who receives the most votes in this ballot is elected. In the case of equal number of votes once a new choice is necessary; if the mood equality continues to exist, the lot decides.
- (7) Over decisions of the General Assembly, a protocol is to be led, that is to be signed by the recording clerk and the assembly director. It is to contain the following ascertainments: Place and time of the assembly, the person of the assembly director and the recording clerk, the number of members present, the agenda, the individual election results and the type of the election. For amendments of the statute the exact wording is to be given.

§ 13 The President

- (1) The President is elected by the General Assembly of the members for the duration of two years, from the election on. Beyond these two years the President continues to be in office up to the election of a new President.
- (2) Electable are only members of the FSFE. With the end of membership in the association, the office of the President also ends.
- (3) If the President resigns prematurely or otherwise becomes permanently indispensable, the Vice-President automatically succeeds as the new President up to the election of a new President within the regular term.
- (4) The President is responsible for all affairs the FSFE, as far as they are not transferred to another organ of the FSFE by statute. The President has in particular the following tasks:
 - a) Coordination of the substantial and political decision finding of the General Assembly;

- b) Convening and preparation of the General Assembly of the members as well as list the agenda;
 - c) Creation of the annual report;
 - d) Adoption of resolutions over the admission and the exclusion of members;
 - e) Support and control of the national associations;
 - f) External representation of the organisation;
 - g) Legally responsible representative of the association according to § 26 Par. 2 S. 1 BGB.
 - h) The cooperation with the Vice-President.
 - i) The supervision of the Executive Director in his executive implementation of the priorities and strategies defined by the General Assembly.
- (5) The President is not liable vis-a-vis the association for unintentional oversight.

§ 14 The Vice-President

- (1) The Vice-President supports and advises the President in all tasks.
- (2) The Vice-President represents the President in the following cases:
 - a) Departure of the President;
 - b) Passing indispensability of the President;
 - c) Written delegation of tasks by the President.
- (3) The President is indispensable if he communicates this in written form to the Vice-President. The Vice-President takes care of all matters as long and to the extent they were transferred to him in writing by the President. The President is considered indispensable if he is not attainable or cannot exercise his office more than seven days because of illness.
- (4) The Vice-President is elected by the General Assembly for the duration of two years, from the election on. Beyond these two years the Vice-President continues to be in office up to the election of a new Vice-President.
- (5) Only members of the FSFE can be elected for Vice-President. With the end of membership in the association, the office of the Vice-President also ends.
- (6) If the Vice-President resigns prematurely or otherwise becomes permanently indispensable, the President can appoint a successor for the remaining term of office.
- (7) The Vice-President is not liable vis-a-vis the association for unintentional oversight.

§ 15 The Financial Officer

- (1) The Financial Officer acts as the financial supervisor on behalf of FSFE's General Assembly. He monitors the financial management and decisions by the Executive Director and reports to the General Assembly.
- (2) The Financial Officer is responsible to advise the Executive Council in the event of changes to the budget between convenings of the General Assembly.
- (3) The Financial Officer in particular must pay attention that
 - a) possible profits are used only for the statutory purposes and that the FSFE is working selflessly.
 - b) no member may get shares of the profits or other allowances from the means of the FSFE or its local associations. This also applies to separating members.
 - c) funds of the FSFE can only partially be used for other tax-exempt charitable organizations and only if these organizations use them for constitutional goals.
 - d) administrative costs, which are alien to the purpose of the FSFE may not be granted. Same applies to disproportionately high payments.
- (4) The Financial Officer is elected by the General Assembly for the duration of two years, from election on. Beyond those two years he remains in office up to the election of the new Financial Officer.
- (5) Only members of the FSFE can be selected for Financial Officer. With the end of membership in the association, the office of the Financial Officer also ends.
- (6) If the Financial Officer resigns prematurely or otherwise becomes permanently indispensable, the President can select a successor for the remaining term of office.
- (7) The Financial Officer is not liable vis-a-vis the association for unintentional oversight.

§ 16 The Executive Director

- (1) The Executive Director coordinates the day-to-day activities of the association according to the budgets and priorities set by the General Assembly and in coordination with the President and Vice-President of the association.
- (2) The Executive Director will be appointed by the General Assembly on the basis of a written contract which is to be signed by the President on behalf of the association.
- (3) The Executive Director remains in office until the contract ends or is terminated by the General Assembly or the President acting on its behalf.
- (4) The Executive Director should not be a member of the association, but joining or leaving the association has no effect on the position of Executive Director.
- (5) If the Executive Director quits prematurely or otherwise becomes permanently indispensable, the President can select a successor.
- (6) The Executive Director is responsible for administrative management of the organisation, including
 - a) coordination and supervision of the employees;

- b) representation of the organisation on contractual matters;
 - c) representation of the organisation towards financial institutions;
 - d) representation of the organisation on matters of taxation;
 - e) coordination of the FSFE administrative office;
 - f) coordination of the Executive Council of FSFE;
 - g) coordination of the Executive Team of FSFE, consisting of employees and volunteers;
 - h) creating the annual executive report for the annual General Assembly.
- (7) The Executive Director leads the finances according to the budget and priorities determined by the General Assembly. The budgeting and priorities must give that
- a) possible profits are used only for the statutory purposes and that the FSFE is working selflessly.
 - b) no member may get shares of the profits or other allowances from the means of the FSFE or its local associations. This also applies to separating members.
 - c) funds of the FSFE can only partially be used for other tax-exempt charitable organizations and only if these organizations use them for constitutional goals.
 - d) administrative costs, which are alien to the purpose of the FSFE may not be granted. Same applies to disproportionately high payments.
- (8) Changes to the budgeting by the Executive Director between convenings of the General Assembly require approval by the Executive Council.
- (9) Expenses for which the total expense exceeds the discretionary limit defined by the General Assembly in its budgeting cannot be authorised by the Executive Director and require approval of the Executive Council.
- (10) The Executive Director is not liable vis-a-vis the association for unintentional oversight.
- (11) For important reasons or if the bond of trust with the Executive Director is broken, the Executive Director can be suspended of all rights and obligations by decision of the President. The decision of the President is to be justified in writing and sent to the Executive Director. The Executive Director can appeal the decision at the General Assembly of the members. The appeal must be lodged within two weeks after communication of the decision at the President. The President has to call in a General Assembly within three months of punctual insertion of the appeal, which can support the decision of the President with a single majority. Until the final decision the Executive Director remains suspended of all obligations and all rights.

§ 17 The Executive Council

The Executive Council of the FSFE consists of the Executive Director, the President and Vice-President.

- (1) The Executive Council is coordinated by the Executive Director.
- (2) The Executive Council is resolutionable, if at least two members are present in person, among them the President. Decisions are passed by single majority of votes.
- (3) The Executive Council is responsible for

- a) approval of expenses for which the total expense exceeds the discretionary limit for the Executive Director, as defined by the General Assembly in its budgeting;
- b) advising the Executive Director on the implementation of the priorities and strategic guidelines established by the General Assembly;
- c) approval of changes to the budgeting between convenings of the General Assembly after consultation with the Financial Officer.
- d) approval of the constitutions of the national associations and revocation of the right for the national associations to use the name "FSFE".

(4) Members of the Executive Council are not liable vis-a-vis the association for unintentional oversight.

§ 18 Dissolution of the association

- (1) The dissolution of the FSFE can only be decided in a General Assembly by the majority in accordance to § 12.
- (2) If the General Assembly decides nothing else, the President is the liquidator entitled to act as substitute.
- (3) After liquidation or loss of the tax-privileged purposes, available funds go to a legal entity of the public right or another tax-privileged association, which has to use it directly and exclusively for charitable purposes in the sense of this constitution. Resolutions over the future use of the funds may be executed only after consent of the responsible tax office.
- (4) The preceding regulations apply accordingly, if the FSFE is dissolved for another reason or loses its legal capacity.

§ 19 Written form

Writing form is fulfilled if one of the following conditions is met:

- a) handwritten signed paper document;
- b) E-mail signed with a key that is sufficiently state of the art. The association decides what is to be regarded as state of the art and the key must be certified by the association.

§ 20 Place of jurisdiction

Place of jurisdiction for all rights and duties resulting from this statute is Hamburg, Germany.