

Memorandum of Understanding concerning the Service Contract for Hosting the EPRA Secretariat

Between **The EPRA Board Association** (hereinafter referred as "the Association"), which has the sole purpose of pursuing the interests of the European Platform of Regulatory Authorities (hereinafter referred to as "the EPRA") and which is represented by the Acting Chairperson of the Association's Executive Board, also Chairperson of the EPRA Executive Board, Ms Helena Mandić or her authorised representative

of the one part,

And **The enlarged Partial Agreement of the Council of Europe, the European Audiovisual Observatory** (hereinafter referred to as "the Observatory"), represented by its Executive Director, Ms Susanne Nikoltchev or her authorised representative

of the other part,

Considering the existing cooperation between the EPRA and the Observatory, perpetuated in the EPRA being a member of the Observatory's Advisory Committee and the Observatory having the status of a permanent observer at EPRA meetings,

Considering the decision taken by the EPRA Members on 13 May 2005 at the 21st EPRA meeting in Sarajevo, by which the Members agreed to a relocation of the EPRA Secretariat at the European Audiovisual Observatory in Strasbourg from 2006,

Considering the decision taken by the Observatory's Executive Council on 17 June 2005 to host the EPRA Secretariat and to formalise the necessary arrangements,

Having regard to the Statutes of the EPRA Board Association as adopted on 2 September 2005, which state that the Association was established in order to pursue the interests of the EPRA and the co-operation between European regulatory authorities in the field of broadcasting fostered within the framework of EPRA.

Having regard to the Statutes of the EPRA as modified at the Ohrid meeting on 26 May 2011 and to the Statute of the Observatory as modified by Resolution Res (2000) 7 and adopted by the Committee of Ministers on 21 September 2000 at the 722nd meeting of the Ministers' Deputies of the Council of Europe,

Having regard to Article 1 of the EPRA Statutes describing the primary function of EPRA as being that of "a forum for informal discussion and exchange of views between regulatory authorities in the field of the media; a forum for exchange of information about common issues of national and European media regulation; a forum for discussion of practical solutions to legal problems regarding the interpretation and application of media regulation;" and expressly excluding "the making of common declarations and the pursuit of national goals",

Taking into account the budgetary provisions laid down in Article 8 of the EPRA Statutes,

Having regard to Article 7 § 1, second sentence of the EPRA Statutes calling on the hosting body to guarantee the independence of the EPRA Secretariat,

Considering that the services of the Observatory include “to bring about co-operation between public and private suppliers of information, ... , whilst at the same time respecting the independence and confidentiality of information provided by professionals” as well as “to constitute a network consisting of a central unit and co-operating institutions and partners, resting on the principles of flexibility and decentralisation and relying, as far as possible on existing centres and institutes, ...” (Article 1.3. Observatory Statute)

Considering that the practical modalities (e.g. labour and employment conditions, auditing) for hosting the EPRA Secretariat at the Observatory have to be determined within the Observatory's statutory framework,

Considering the need to partially amend the revised Memorandum of Understanding signed between the Association and the Observatory on 21 October 2014, in order to reflect changes in the EPRA Secretariat staffing.

THE FOLLOWING REVISED MEMORANDUM OF UNDERSTANDING HAS BEEN AGREED

Article 1 – Subject Matter

- (1) The Observatory will host the EPRA Secretariat and provide for all facilities and services needed to fulfil its functions as defined in Article 7 § 3 of the EPRA Statutes.
- (2) The purpose of this Memorandum of Understanding (hereinafter referred to as "MoU") is to define the institutional arrangements for the
 - establishment and running of the EPRA Secretariat at the Observatory/Council of Europe,
 - employment of staff needed to run the EPRA Secretariat,
 - guarantee of the independence of the EPRA Secretariat,
 - coverage of expenses involved and accounting.

Article 2 – Duration and Renewal

- (1) The MoU shall enter into force on 1 January and shall cover the period of the financial year in question (1 January – 31 December), provided that the Executive Council of the Observatory approves, and the Financial Committee of the Observatory adopts, the Observatory's budget of the year in question.
- (2) The MoU will thereafter be renewed between the parties for successive periods of one year. If neither party notifies the other of its intention not to renew the MoU by registered mail by 15 September at the latest, the MoU will be deemed to have been renewed in accordance with this Article. The reservation of approval by the Executive Council and adoption by Financial Committee mentioned in 2.1 applies.

Article 3 – Termination of the Memorandum of Understanding

- (1) Should the Observatory be dissolved, the financial contribution of the Association or any remainder thereof would first be used to cover outstanding costs related to the hosting of the EPRA Secretariat. Any amount left thereafter would be refunded immediately to the Association.
- (2) Should the Association be dissolved, the financial contributions of the Association or any remainder thereof would first be used to cover outstanding costs related to the hosting of the EPRA Secretariat. Any amount left thereafter would be reimbursed to the Association or the body taking over its function.

- (3) In case one of the contracting parties fails to fulfil its main obligations (e.g. default in hiring EPRA staff or in bi-annual payments for the services rendered by the Observatory), the aforementioned applies *mutatis mutandis*.

Article 4 – EPRA Secretariat

- (1) The Observatory provides for the EPRA Secretariat a fully equipped office as well as the necessary IT facilities and communications services at the Observatory's premises in Strasbourg for a maximum of three persons (staff and/or trainee). The EPRA Secretariat has access to the Observatory information sources as well as the Council of Europe's documentation centre.
- (2) The Observatory employs two staff in order to run the EPRA Secretariat. The staff (hereinafter referred to as "EPRA Secretariat staff members") have the status of staff member of the Council of Europe hired on the following positions on contracts renewable each year: a Head of the EPRA Secretariat for a B5 full time position and an administrative assistant for a B4 full time position. The persons proposed for the position cannot be employed without the prior consent of the Executive Board of the EPRA and the Association.
- (3) The EPRA Secretariat staff members participate in the Council of Europe's social security and pension schemes. Furthermore, the EPRA Secretariat staff members fully benefit from the Council of Europe's staff facilities, including training schemes.
- (4) The Council of Europe's Staff Regulations and additional provisions apply to the EPRA Secretariat staff members, as staff members of the Council of Europe. The Executive Director of the Observatory will be the official supervisor of the Head of the EPRA Secretariat.
- (5) According to the needs of the EPRA Secretariat and within the budgetary limits defined in this MoU, the Observatory may employ one additional person on a temporary contract in order to assist the EPRA Secretariat in its work.
- (6) Within its general framework for traineeships and the budgetary limits defined in this MoU, the Observatory offers the possibility to engage trainees to support the work of the EPRA Secretariat. Additionally, external services may be commissioned to the extent that they are covered by the financial contribution of the Association.

Article 5 – Independence of the EPRA Secretariat – Confidentiality

- (1) The Observatory will respect the decisions of the Executive Board of EPRA concerning the functions of the EPRA Secretariat as laid out in the EPRA

Statutes and ensure that the EPRA Secretariat will serve the Executive Board of EPRA at its requests and according to its demands.

- (2) The Executive Board of EPRA will instruct the Head of the EPRA Secretariat concerning his/her tasks. The Executive Board of EPRA will refrain from requesting anything that could result in a violation of the Observatory's Statute or the rules and regulations of the Council of Europe. In particular, it will respect the Observatory's obligations.
- (3) The rules of confidentiality of both parties will be mutually respected.

Article 6 – Financial Matters

- (1) The costs incurred by hosting the EPRA Secretariat, including the budget costs of the EPRA Secretariat staff members mentioned in Article 4 paragraphs 2 and 5, are covered by the financial contribution of the Association. The EPRA Secretariat benefits from the reduced-price schemes applying to the Observatory. However, as an Association, it does not benefit from the Privileges and Immunities attached to the Observatory's status of Partial Agreement of the Council of Europe; therefore, costs include VAT when applicable.
- (2) Within the Observatory budget, the Association's financial contribution will appear insofar as it covers the services provided by the Observatory. For accounting purposes, the financial contribution of the Association and the expenses pertaining to hosting the EPRA Secretariat will be clearly identified in the Observatory budget.
- (3) In view of EPRA's autonomy, it is the EPRA Secretariat's responsibility to decide on purchases and to respect the rules concerning procurement. The Observatory will not interfere in the purchasing process. Any asset purchased for the use of the EPRA Secretariat will be paid for directly by the Association and thus become property of the Association.
- (4) Annually, starting in June, the Observatory is drafting its budget for the following year; in this context the Observatory will give the EPRA Secretariat the necessary indications in order to enable the Head of the EPRA Secretariat to calculate the expenses of hosting the Secretariat for the following year.
- (5) Twice a year, the Observatory sends to the Association an overview of the amount corresponding to the forecast of the costs incurred by hosting the EPRA Secretariat during the next six months calling at the same time for the corresponding cash advance. It reports twice a year to the Association on the state of expenditure.
- (6) The accuracy of the accounting for the use of the financial contribution of the Association shall be subject to the yearly auditing of the Observatory budget

conducted by independent auditors according to the Observatory Statute and Financial Regulations.

- (7) The Observatory sends its final breakdown of accounts relating to the hosting of the EPRA Secretariat after the closing of the Observatory accounts and their approval by the Observatory's Board of External Auditors (BEA). The Association will receive a summary of those points of the report of the BEA concerning the income and expenditure related to the hosting of the EPRA Secretariat. The Association ensures that its financial contribution is sufficient to cover the costs of the Secretariat. Any amount of the financial contribution of the Association left from the budget year shall be settled by means of compensation on the contribution of the following budget year.

Article 7 – Publicity

- (1) Any notice or publication by the EPRA Secretariat, in whatever form and on or by whatever medium, including the Internet, will specify that it is an EPRA document. For such documents only the Association (or whom the Association might identify as author/responsible entity) assumes responsibility.
- (2) The EPRA and the Observatory will keep separate websites, which may nevertheless be linked, and refrain from using each other's logos, headed paper of any further item of stationery reflecting corporate identity.

Article 8 - Amendment of the Memorandum of Understanding

- (1) Any amendment to the MoU must be set out in a written MoU to be concluded on the same terms as the original MoU. A verbal understanding shall not be binding on the parties.

Article 9 – Settlement of Disputes

1. Any dispute regarding this Contract shall - failing a friendly settlement between the Parties - be submitted to arbitration.
2. The Arbitration Board shall be composed of two arbitrators each selected by one of the parties, and of a presiding arbitrator, appointed by the other two arbitrators; in the event of no presiding arbitrator being appointed under the above conditions within a period of six months, the President of the Tribunal de Grande Instance of Strasbourg shall make the appointment.
3. Alternatively, the parties may submit the dispute for decision to a single arbitrator selected by them by common agreement or, failing such agreement, by the President of the Tribunal de Grande Instance of Strasbourg.

4. The Board referred to in paragraph 2 of this Article or, where appropriate, the arbitrator referred to in paragraph 3 of this Article, shall determine the procedure to be followed.
5. If the parties do not agree upon the law applicable the Board or, where appropriate, the arbitrator shall decide ex aequo et bono having regard to the general principles of law and to commercial usage.
6. The arbitral decision shall be binding upon the parties and there shall be no appeal from it.

Article 10 – General Administrative Provision

Any communication relating to this MoU shall be made in writing and sent to the following addresses:

For the Association, to the attention of the acting Chairperson of the Association's Executive Board, also Chairperson of the EPRA Executive Board or his/her authorised representative, 76, allée de la Robertsau, F-67000 Strasbourg.

For the Observatory, to the attention of the acting Executive Director or his/her representative, 76, allée de la Robertsau, F-67000 Strasbourg.

The present MoU is drawn up and signed in English. It shall enter into force retroactively on 1 March 2019 and shall replace any previous Memorandum of Understanding between the parties having the same purpose.

Strasbourg, 26 September 2019

For the Association



Helena Mandić

For the Observatory



Susanne Nikoltchev

