

Convention  
concerning the Construction and Operation  
of a European X-Ray Free-Electron Laser Facility

Directory

Article 1	Establishment of the European XFEL Facility .....	4
Article 2	Name .....	4
Article 3	Organs .....	5
Article 4	Finance .....	5
Article 5	Contributions .....	7
Article 6	Criteria for the scientific use of the European XFEL Facility .....	8
Article 7	Movement of personnel and scientific equipment .....	9
Article 8	Coverage of potential VAT costs .....	9
Article 9	Arrangements with other users .....	9
Article 10	Intellectual Property .....	10
Article 11	School .....	10
Article 12	Disputes .....	10
Article 13	Depositary and entry into force .....	11
Article 14	Accession .....	12
Article 15	Duration .....	12
Article 16	Decommissioning .....	12
Article 17	Amendments to the Annex and to the Technical Documents .....	13

The Governments of

the Kingdom of Denmark,  
the French Republic,  
the Federal Republic of Germany,  
the Hellenic Republic,  
the Republic of Hungary,  
the Republic of Italy,  
the Republic of Poland,  
the Russian Federation,  
the Slovak Republic,  
the Kingdom of Spain,  
the Kingdom of Sweden,  
the Swiss Confederation,  
the United Kingdom of Great Britain and Northern Ireland,

Hereinafter referred to as "the Contracting Parties",

Desiring to further strengthen Europe's and the Contracting Party countries' position in research in the world, and to intensify scientific co-operation across disciplinary and national boundaries;

Having decided to promote the construction and operation of a European X-Ray Free-Electron Laser Facility housing a superconducting linear accelerator, radiation beam lines and experimental facilities for the use of the scientific community, based on criteria of scientific excellence;

Recognising that this new kind of facility with unprecedented quality of the X-Ray radiation regarding coherence, spectral brilliance and time resolution will in the future be of great significance in many different fields of fundamental and applied science and for industrial applications;

Building on the successful international TESLA Collaboration, the European Strategy Forum on Research Infrastructures, and the Memorandum of Understanding on the Preparatory Phase of the European X-Ray Free-Electron Laser Facility agreed in Berlin on 23 September 2004;

Expecting other countries to participate in the activities undertaken together under this Convention;

Have agreed as follows:

#### Article 1

##### Establishment of the European XFEL Facility

- (1) The construction and operation of the European X-Ray Free-Electron Laser Facility as described in more detail in the XFEL Technical Design Report, an Executive Summary of which is attached as Part A of Technical Document 1, shall be entrusted to a Limited Liability Company, hereinafter referred to as "the Company", which shall be subject to German law, unless otherwise provided under this Convention. The Articles of Association of the Company are attached hereto as Annex<sup>1</sup>. The Company shall undertake activities for peaceful ends only.
- (2) The Shareholders of the Company shall be appropriate bodies designated for this purpose by the Contracting Parties. The Contracting Parties shall designate such Shareholders by written notice received by the other Contracting Parties.
- (3) The Company and DESY in Hamburg will collaborate on construction, commissioning and operation of the XFEL on the basis of a long-term agreement.

#### Article 2

##### Name

The Company shall be known as the "European X-Ray Free-Electron Laser Facility GmbH" (European XFEL GmbH).

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<sup>1</sup> The Annex contains the Articles of Association without the names of the Shareholders.

### Article 3

#### Organs

(1) The organs of the Company shall be the Shareholders' Assembly, hereinafter referred to as "the Council", and the Management Board.

(2) Delegates to the Council shall be appointed and have their appointments terminated in accordance with a procedure determined by the Contracting Parties concerned.

### Article 4

#### Finance

(1) Each Contracting Party shall make available to the Shareholders for which it is responsible grants covering the Shareholders' contributions to the annual budgets of the Company as defined in Article 5.

(2) The construction costs as defined in paragraphs 4 and 5 below cover a facility with five undulator branches and ten experimental stations (hereinafter referred to as "the European XFEL Facility"). However, the construction of the European XFEL Facility shall start on the basis of the funding commitments set out in Article 5, in accordance with the Scenario for the Rapid Start-up of the European XFEL Facility attached as Part B of Technical Document 1. Nevertheless, the final goal remains the realisation of the European XFEL Facility as described in the XFEL Technical Design Report, an Executive Summary of which is attached as Part A of Technical Document 1.

(3) The construction period shall be divided into two phases:

- a) During phase I the Company shall construct and commission the accelerator and one undulator branch including instrumentation for first experiments. In parallel the Company shall pursue construction of the other undulator branches. Phase I is expected to extend over not more than eight years from the date of start of construction. It shall end at the date decided by the Council, with reference to the intermediate target specifications for initial operation set out in the Executive Summary of the XFEL Technical Design Report attached as Part A of Technical Document 1.

- b) During phase II the Company shall operate the accelerator complex and the first undulator branch with first experiments. In parallel the Company shall finish construction of the remaining undulator branches and shall commission them progressively together with the experimental stations. Phase II, at the end of which the final target specifications (set out in the Executive Summary of the XFEL Technical Design Report attached as Part A of Technical Document 1) shall be attained, is expected to extend over not more than three years from the end of phase I. After completion of phase II the Company operates the European XFEL Facility and pursues a programme for its further development.
- (4) The "construction costs" shall be the sum of:
- a) the expenditure during the preparatory phase as specified in Technical Document 5;
  - b) all expenditure during phase I; and
  - c) that part of expenditure during phase II which is attributed to completion of construction and commissioning of the remaining undulator branches and experimental stations, and to related modifications of the accelerator complex.
- (5) The construction costs of the European XFEL Facility, as described in the Executive Summary of the XFEL Technical Design Report attached as Part A of Technical Document 1, shall not exceed
- 1082 Million Euro
- at 2005 prices.
- (6) A table showing the estimated annual incidences of expenditure is attached as Technical Document 2.
- (7) The Council shall review at least annually the actual and forecast construction costs (including costs for commissioning). If at any time it appears to the Council that the accelerator complex, the undulator branches and the experimental stations may not be satisfactorily completed, taking account of the cost limit defined in paragraph 5 above and the target specifications set out in Technical Document 1, then the Council, on the advice

of the Management Board, shall decide cost constraint measures to ensure that the limit is not exceeded.

(8) The Council acting unanimously may approve a modification of the construction costs (including costs for commissioning).

(9) An estimation of the annual operating budgets including provision for development is specified in Technical Document 2.

## Article 5 Contributions

(1) The German Contracting Party shall make available for the Company's use, free of charge and ready to build on, the sites in Hamburg and Schenefeld marked on the site plan attached as Technical Document 3.

(2) The Contracting Parties shall ensure that the Shareholders contribute to construction costs (including preparatory and commissioning costs) either in cash or in kind. In-kind contributions will be defined and decided according to Technical Document 4.

(3) At the time of signing this Convention, the Contracting Parties enter into the following commitments to contribute towards construction costs (including preparatory and commissioning costs) (all amounts referring to 2005 prices):

11.0 M€	by the Kingdom of Denmark,
36.0 M€	by the French Republic,
580.0 M€	by the Federal Republic of Germany,
4.0 M€	by the Hellenic Republic,
11.0 M€	by the Republic of Hungary,
33.0 M€	by the Republic of Italy,
21.6 M€	by the Republic of Poland,
250.0 M€	by the Russian Federation,
11.0 M€	by the Slovak Republic,
21.6 M€	by the Kingdom of Spain,
12.0 M€	by the Kingdom of Sweden,
15.0 M€	by the Swiss Confederation,
30.0 M€	by the United Kingdom of Great Britain and Northern Ireland.

(4) The Contracting Parties expect that during the construction period further efforts will be made, permitting the complete European XFEL Facility as described in the XFEL Technical Design Report to be realised.

(5) Use of the European XFEL Facility by the scientific community of a Contracting Party presupposes that the Shareholder(s) of that Contracting Party participate in an appropriate way in covering the operating costs of the European XFEL Facility. The corresponding repartition scheme shall be agreed by the Council not later than three years after the beginning of the construction period.

(6) The Contracting Parties shall ensure that the Shareholders contribute to operating costs in accordance with the agreed scheme.

(7) Changes of contributions to construction costs (including preparatory and commissioning costs) and to operating costs, as well as the transfer of shares or parts thereof of the Company mentioned in Article 1 shall be regulated in the Articles of Association, attached as Annex, empowering the Council to take such decision.

## Article 6

### Criteria for the scientific use of the European XFEL Facility

(1) The use of the European XFEL Facility shall be based on criteria of scientific excellence and benefits to society.

(2) The assessment and recommendation of proposals concerning experiments to be carried out and concerning the use of the European XFEL Facility are overseen by the Company's Scientific Advisory Committee (Article 16 of the Annex).

(3) The Council creates the prerequisites to avoid a lasting and significant imbalance between the use made of the European XFEL Facility by the scientific community of a Contracting Party country and the contribution of that Party's Shareholder(s) to the European XFEL Facility.

#### Article 7

##### Movement of personnel and scientific equipment

(1) Subject to the requirements of national legislation, each Contracting Party shall within its jurisdiction facilitate the movement and residence of nationals of the Contracting Party countries employed by or seconded to the Company or doing research using the Company's facilities and of the family members of such nationals.

(2) Each Contracting Party shall within its territory and in accordance with the law in force facilitate the issuance of transit documents for temporary imports and exports of scientific equipment and samples to be used for research using the Company's facilities.

#### Article 8

##### Coverage of potential VAT costs

(1) The Company shall be subject to the general regulations for value added tax (VAT).

(2) As far as a Shareholder's contributions to construction costs (including preparatory and commissioning costs) and to operating costs are subject to VAT, this VAT due will be borne by the Contracting Party that levies the tax.

(3) As far as a Shareholder's contributions to construction costs (including preparatory and commissioning costs) and to operating costs are not subject to VAT and this leads to an exclusion from, or a reduction of, the Company's right to deduct or claim a refund of the VAT paid by the Company to third parties, this non-deductible VAT will be borne by the Contracting Party that levies the tax.

#### Article 9

##### Arrangements with other users

Arrangements for long-term use of the European XFEL Facility by Governments or groups of Governments not acceding to this Convention, or by establishments or organisations thereof, may be made by the Company subject to the unanimous approval of its Council.

Article 10  
Intellectual Property

(1) In accordance with the objects of the present Convention the term "Intellectual Property" will be understood according to Article 2 of the Convention Establishing the World Intellectual Property Organisation signed on 14 July 1967.

(2) With respect to questions of Intellectual Property, the relations between the Contracting Parties will be governed by the national legislation of the Contracting Party countries, as well as on the basis of the corresponding provisions of agreements on cooperation in science and technology between the European Community and non-EU Contracting Parties.

Article 11  
School

The German Contracting Party shall support efforts for educational access to public or private international schools in the Federal Republic of Germany for children of the Company's staff, or of other staff seconded to or active with the Company.

Article 12  
Disputes

(1) The Contracting Parties shall endeavour to settle by negotiations any dispute concerning the interpretation or application of this Convention.

(2) If the Contracting Parties cannot reach agreement on the settlement of a dispute, each of the Contracting Parties concerned may submit the dispute for decision to an arbitral tribunal.

(3) Each Contracting Party being a party to the dispute shall appoint an arbitrator; nevertheless, if the dispute is between one of the Contracting Parties and two or more other Contracting Parties the latter shall choose one arbitrator in common. The arbitrators thus appointed shall choose a national of a country other than the countries of the Contracting Parties in dispute to act as umpire and to assume the functions of Chairman of the arbitral tribunal, with a casting vote in the event of votes of the arbitrators being equally divided.

The arbitrators shall be appointed within two months from the date of the request for a settlement by means of arbitration, the Chairman within three months from that date.

(4) If the time limits specified in the foregoing paragraph are not observed and no other arrangement is made, each party to the dispute may request the President of the Court of Justice of the European Communities or, if appropriate, of the International Court of Justice to make the necessary appointments.

(5) The arbitral tribunal shall take its decisions by a simple majority.

(6) The arbitral tribunal shall take its decisions on the basis of paragraph 1 of Article 38 of the Statute of the International Court of Justice. Its decisions shall be binding.

(7) The tribunal shall determine its rules of procedure in accordance with Chapter III of Part IV of the Convention for the Pacific Settlement of International Disputes signed at The Hague on 18 October 1907.

(8) Each party to the dispute shall bear its own costs and an equal share of the costs of the arbitral proceedings.

(9) The tribunal shall base its decisions on the rules of law applicable to the dispute under consideration.

### Article 13

#### Depositary and entry into force

(1) This Convention shall enter into force on the first day of the second month after all signatory Governments have notified the Government of the Federal Republic of Germany as depositary of this Convention that the national approval procedure has been completed.

(2) The Government of the Federal Republic of Germany shall promptly inform all signatory Governments of the date of each notification provided for in the foregoing paragraph and the date of entry into force of this Convention.

(3) Before the entry into force of this Convention, the Contracting Parties may agree that part or all of the articles set out in this Convention be applied provisionally.

#### Article 14

##### Accession

(1) After the entry into force of this Convention, any Government may accede thereto with the consent of all Contracting Parties upon the conditions negotiated. The conditions of accession shall be the subject of an agreement between the Contracting Parties and the acceding Government or group of Governments.

(2) Governments acceding to the Convention within a period of six months after its initial signing, enter under the same conditions as the Contracting Parties.

#### Article 15

##### Duration

(1) This Convention is concluded for an initial period ending on 31 December 2026. It shall remain in force after that date for successive periods of five years each, with a reaffirmation of the scientific and technical direction of the European XFEL Facility issued for each new five-year period on the basis of a review paper approved by the Council of the Company.

(2) A Contracting Party may withdraw from this Convention with three years' notice, to be given to the Government of the Federal Republic of Germany. Withdrawal can only take effect on 31 December 2026 or at the end of each successive period of five years.

(3) This Convention shall stay effective with the remaining parties. The conditions and effects of withdrawal from this Convention by a Contracting Party, in particular its share in the costs of dismantling the Company's plant and buildings and compensation for losses, shall be settled by agreement among the Contracting Parties before the withdrawal of a Contracting Party takes effect.

Article 16  
Decommissioning

The German Contracting Party shall be responsible for the costs of dismantling the European XFEL Facility beyond the sum of twice the annual operating budget which will be based on the average of the last five years of operation.

Article 17  
Amendments to the Annex and to the Technical Documents

(1) The Contracting Parties agree that the Annex to this Convention as well as the Technical Documents can be amended without the Convention to be revised, by decision of the Council of the Company provided that such amendments do not conflict with this Convention. Amendments to the Annex require the unanimous vote of the Council of the Company.

(2) This Convention has as an integral part the following Annex:

Articles of Association of the "European X-Ray Free-Electron Laser Facility GmbH" (European XFEL GmbH).

Furthermore, it refers to the following Technical Documents:

1. Executive Summary of the XFEL Technical Design Report (Part A) and Scenario for the Rapid Start-up of the European XFEL Facility (Part B),
2. Estimated annual incidence of expenditure,
3. Site plan,
4. Basic rules and procedures for in-kind contributions,
5. Preparatory costs.

In witness whereof, the undersigned representatives, having been authorised thereto by their respective Governments, have signed the present Convention.

Done at ..... [Place] this ..... [Date] in the English, French, German, Italian, Russian and Spanish languages, apart from the Technical Documents, which are only done in the English language, all texts being equally authentic, in a single original, which shall be deposited in the archives of the Government of the Federal Republic of Germany, which shall transmit a certified true copy to all Contracting Parties and acceding Governments, and subsequently notify them of any amendments.

For the Government of the Kingdom of Denmark

For the Government of the French Republic

For the Government of the Federal Republic of Germany

For the Government of the Hellenic Republic

For the Government of the Republic of Hungary

For the Government of the Republic of Italy

For the Government of the Republic of Poland

For the Government of the Russian Federation

For the Government of the Slovak Republic

For the Government of the Kingdom of Spain

For the Government of the Kingdom of Sweden

For the Government of the Swiss Confederation

For the Government of the United Kingdom of Great Britain and Northern Ireland

Articles of Association

of the

"European X-Ray Free-Electron Laser Facility GmbH"  
(European XFEL GmbH)

The undersigned

[funding agencies]

Hereinafter referred to as "the Shareholders" ("*Gesellschafter*" in the sense of the German Law on Companies with Limited Liability);

Having regard to the Convention concerning the Construction and Operation of a European X-Ray Free-Electron Laser Facility, hereinafter referred to as "the Convention", signed in [fill in location] on [fill in signing date], between the Contracting Parties defined in the preamble of the Convention and hereinafter referred to as "the Contracting Parties";

Noting that the [fill in Country] organisation and the [fill in Country] organisation have formed a consortium [fill in Name] for their participation in the Company and that the [number and name] organisations have formed a consortium [fill in Name] for their participation in the Company and that, although they have all signed the present Articles of Association, only the consortium [fill in Name] represented by the [fill in Name] and the consortium [fill in Name] represented by [fill in Name] are Shareholders of the Company;

Hereby agree to establish a Limited Liability Company (*Gesellschaft mit beschränkter Haftung – GmbH*), namely the "European X-Ray Free-Electron Laser Facility GmbH" (European XFEL GmbH), hereinafter referred to as "the Company", under German law, in particular the German Law on Companies with Limited Liability (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung – GmbHG*).

Index

Chapter I –	General provisions .....
Article 1	Name, registered office, financial year, definition SHARE .....
Article 2	Relation to DESY .....
Article 3	Objects .....
Article 4	Non-profit character .....
Article 5	Share capital .....
Article 6	Shareholders .....
Article 7	Organs.....
Chapter II –	The Council .....
Article 8	Members of the Council .....
Article 9	Chairperson and Vice-Chairperson of the Council .....
Article 10	Meetings of the Council .....
Article 11	Powers of the Council .....
Article 12	Voting procedure, resolutions .....
Chapter III –	Management of the Company.....
Article 13	Management Board.....
Article 14	Representation of the Company .....
Article 15	Remit of the Managing Directors .....
Chapter IV –	Committees.....
Article 16	Scientific Advisory Committee .....
Article 17	Machine Advisory Committee .....
Chapter V –	Financial matters .....
Article 18	Annual financial statement .....
Article 19	Audit rights of the Shareholders.....
Article 20	Changes in contributions .....
Chapter VI –	Cooperation between the Company and the Shareholders .....
Article 21	Definitions .....
Article 22	Intellectual Property .....
Article 23	Inventions .....
Article 24	Confidentiality .....

Chapter VII –	Changes in shareholdings .....
Article 25	Admission of new Shareholders and transfer of SHARES .....
Article 26	Redemption or compulsory assignation of SHARES.....
Article 27	Withdrawal of a Shareholder .....
Chapter VIII –	Termination of the Company.....
Article 28	Liquidation of the Company or change of its objects.....
Chapter IX –	Miscellaneous .....
Article 29	Liability .....
Article 30	Announcements .....
Article 31	Applicable law .....
Article 32	Severability .....
Article 33	Entry into force.....
Article 34	Languages.....

## Chapter I – General provisions

### Article 1

#### Name, registered office, financial year, definition SHARE

(1) The Company is a Limited Liability Company (*Gesellschaft mit beschränkter Haftung – GmbH*) with the name

"European X-Ray Free-Electron Laser Facility GmbH" (European XFEL GmbH).

(2) The Company shall have its registered office in Hamburg, Federal Republic of Germany.

(3) The financial year shall be the calendar year. The first year of business shall be a short financial year ending on 31 December of that year.

(4) In the following text the word "SHARE" (in capital letters) ("*Geschäftsanteil*" in the sense of the *GmbHG*) represents a fraction of the Company which a Shareholder has subscribed in consideration of its primary deposit ("*Stammeinlage*" in the sense of the *GmbHG*). The value of the SHARE shall be in proportion to the corresponding fraction of the share capital (see Article 5) subscribed by the Shareholder.

### Article 2

#### Relation to DESY

The Company and DESY in Hamburg will collaborate on construction, commissioning and operation of the XFEL on the basis of a long-term agreement.

### Article 3

#### Objects

The Company exclusively and directly pursues not-for-profit objects in the field of science and research in the sense of the section headed "Objects qualifying for tax relief" ("*Steuerbegünstigte Zwecke*") of the German Fiscal Code (*Abgabenordnung – AO*). The objects of the Company are as follows:

- a) to design, construct, operate, and develop, for the use of scientific research, a linear accelerator based Free-Electron Laser source and associated instruments (hereinafter referred to as "the European XFEL Facility");
- b) to support the use of the Company's facilities by providing experimental stations to the scientific communities;
- c) to draw up and execute programmes of scientific research using the European XFEL Facility;
- d) to carry out any necessary research and development work on the accelerator, the Free-Electron Laser process and experimental techniques;
- e) to ensure that new technologies and methods of the Company are made available to interested entities in the Contracting Party countries;
- f) to foster general public outreach and knowledge transfer.

#### Article 4

##### Non-profit character

- (1) The Company acts in a non-profitable way; it does not primarily aim at its own economic interests.
- (2) The Company's funds and resources must be used exclusively for the objects set out in Article 3. The Shareholders shall not receive any share of profit and shall not in their capacity as Shareholders receive any other allotment out of the entity's funds.
- (3) Nobody may be favoured through expenditures not related to the objectives of the Company or through disproportionately high remunerations.

#### Article 5

##### Share capital

The share capital ("*Stammkapital*" in the sense of the *GmbHG*) of the Company amounts to €25,000.- (in words: twenty-five thousand Euros).

Article 6  
Shareholders

(1) According to the Convention and the contributions of the respective Contracting Parties, each Shareholder shall subscribe one or more SHARES with the following nominal value altogether ("*Nennbetrag*" in the sense of the *GmbHG*) based on its relative contribution to the construction costs:

Shareholder	Nominal value in Euros and percentage of total share capital
[ _____ ] e.g. DESY represented by its Board of Directors	€ _____ %
[ _____ ]	€ _____ %
[ _____ ]	€ _____ %
[ _____ ]	€ _____ %
[ _____ ]	€ _____ %
[ _____ ]	€ _____ %

(2) Each Shareholder shall deposit at least 1% of the share capital. The primary deposits ("*Stammeinlagen*" in the sense of the *GmbHG*) are to be paid in cash; the full amount is due immediately upon incorporation.

Article 7  
Organs

The organs of the Company shall be:

- a) The Shareholders' Assembly ("*Gesellschafterversammlung*" in the sense of the *GmbHG*), hereinafter referred to as "the Council";
- b) The Management Board ("*Geschäftsführung*").

## Chapter II – The Council

### Article 8

#### Members of the Council

The Shareholders of one Contracting Party may be represented in the Council by up to two delegates, representing all Shareholders of that Contracting Party. Delegates to the Council shall be appointed and have their appointments terminated by all Shareholders of each Contracting Party. The Shareholders of each Contracting Party shall inform the Chairperson of the Council in writing of any appointment or termination of appointments of its delegates to the Council without undue delay.

### Article 9

#### Chairperson and Vice-Chairperson of the Council

The Council shall elect a Chairperson and a Vice-Chairperson from the delegations of the Shareholders of different Contracting Parties for a period not exceeding two years. With their election the Chairperson and Vice-Chairperson become supra partes and leave their delegations. Consecutive re-election is permitted only once for a second term of up to two years.

### Article 10

#### Meetings of the Council

- (1) The Council shall meet at least twice a year.
- (2) Meetings of the Council shall be convened by the Chairperson of the Council.
- (3) Meetings of the Council shall also be convened at the request of at least two Shareholders of different Contracting Parties. Extraordinary meetings of the Council may also be convened at the request of the Chairperson of the Management Board, if it is required in the interest of the Company.

Article 11  
Powers of the Council

(1) The Council shall be responsible in all cases provided by law, unless these Articles of Association provide otherwise. The Council may issue instructions to the Management Board.

(2) The following matters shall require the approval of the Council by unanimous vote:

- a) Admission of new Shareholders;
- b) Share capital increases;
- c) Amendment of these Articles of Association;
- d) Mergers or splits of the Company;
- e) Dissolution of the Company;
- f) the Financial Rules of the Company;
- g) Arrangements for long-term use of the European XFEL Facility by Governments or groups of Governments not acceding to the Convention, or by establishments or organisations thereof;
- h) the repartition scheme of operating costs in accordance with Article 5(5) of the Convention;
- i) Decisions on questions of Intellectual Property Rights.

(3) The following matters shall require the approval of the Council by a qualified majority:

- a) Election of its Chairperson and Vice-Chairperson;
- b) Medium-term scientific programme;
- c) Annual budget and medium-term financial estimates;

- d) Adoption of the annual financial statement ("*Jahresabschluss*" in the sense of the *GmbHG*);
  - e) Appointment, employment and termination of the appointment of the Directors (in the sense of Article 13(1));
  - f) Establishment of committees and their terms of reference;
  - g) Policy for the allocation of beam time;
  - h) Short and medium-term arrangements for use of the Company's scientific equipment and facilities by national or international scientific organisations;
  - i) Procurement Rules;
  - j) Rules of Procedure of the Council;
  - k) Transfer ("*Übertragung*" in the sense of the *GmbHG*) of SHARES or parts thereof between Shareholders of different Contracting Parties; redemption ("*Einzahlung*" in the sense of the *GmbHG*) or assignation of SHARES or parts thereof;
  - l) Instructions to the Management Board;
  - m) Appointment and termination of the appointment of a proxy holder ("*Prokurist*" in the sense of the German Commercial Code (*Handelsgesetzbuch – HGB*)).
- (4) All other resolutions of the Council shall require the simple majority unless mandatory law or these Articles of Association provide otherwise.
- (5) Decisions on matters related to the regulatory requirements of the Federal Republic of Germany for public health and safety, permits and for the protection of the environment shall not contravene German law.

## Article 12

### Voting procedure, resolutions

- (1) For every 1 (one) € of share capital the holder is entitled to one vote. Each Shareholder may only cast all of its votes indivisibly and combined, exercisable by the delegates designated for this purpose by the relevant Shareholder. Shareholders nominated by a single Contracting Party may only jointly cast their votes, indivisibly and combined.
- (2) A "simple majority" means 50% of the share capital and the Shareholders of not more than half of the Contracting Parties voting against.
- (3) A "qualified majority" means a majority of at least 77% of the share capital and the Shareholders of not more than half of the Contracting Parties voting against.
- (4) A "unanimous vote" means at least 90% of the share capital and no unfavourable vote, all Shareholders having had the opportunity to vote.

## Chapter III – Management of the Company

### Article 13

#### Management Board

- (1) The Management Board of the Company is composed of
  - a) at least two Managing Directors ("*Geschäftsführer*" in the sense of the *GmbHG*) and,
  - b) if appropriate, additional Scientific/Technical Directors,in these Articles of Association collectively called "Directors".
- (2) Among the Managing Directors, one shall be a scientist and at the same time the Chairperson of the Management Board; another one shall be an Administrative Director. The division of responsibilities of the Directors shall be established by the Council in Rules of Procedure for the Management Board.

(3) The Directors shall be appointed for a period not exceeding five years. Appointment, employment and termination of the appointment of the Directors as well as any amendment or enlargement of their contracts of employment shall be subject to the approval by the Council and shall be signed by the Chairperson of the Council on behalf of the Company.

#### Article 14

##### Representation of the Company

The Company shall be represented by two Managing Directors acting jointly or by one Managing Director acting jointly with a proxy holder ("*Prokurist*" in the sense of the *HGB*).

#### Article 15

##### Remit of the Managing Directors

(1) The Managing Directors are obliged to manage the Company conscientiously and with due diligence in the interest of the Company, and in accordance with

- a) the Convention and the statutory law of the Federal Republic of Germany, insofar as it does not contradict the Convention,
- b) the relevant valid version of these Articles of Association,
- c) the Rules of Procedure for the Management Board decreed by the Council,
- d) the directions and resolutions of the Council, and
- e) the agreements between the Contracting Parties.

(2) The authorisation of management comprehends all activities entailed by standard operation of the Company. Management activities beyond such authorisation shall be in each case subject to a resolution of the Council.

## Chapter IV – Committees

### Article 16

#### Scientific Advisory Committee

- (1) The Scientific Advisory Committee consisting of outstanding scientists shall advise the Council and the Management Board in scientific matters of fundamental importance.
- (2) The Scientific Advisory Committee monitors one or several Expert Panel(s) set up to evaluate the proposals for the realisation of experiments and the use of the European XFEL Facility in accordance with Article 6 of the Convention.
- (3) The Council shall appoint the members of the Scientific Advisory Committee by qualified majority. It shall comprise up to 15 members.

### Article 17

#### Machine Advisory Committee

- (1) The Machine Advisory Committee consisting of outstanding experts shall advise the Council and the Management Board in machine-related technical matters of fundamental importance.
- (2) The Council shall appoint the members of the Machine Advisory Committee by qualified majority. It shall comprise up to 10 members.

## Chapter V – Financial matters

### Article 18

#### Annual financial statement

- (1) Within three months after the end of the financial year, the Management Board must prepare the annual financial statement and the management report ("*Lagebericht*" in the sense of the *GmbHG*). The rules of the *HGB* regarding the preparation and audit of the annual financial statement and the management report for large-scale corporations shall apply *mutatis mutandis*.

(2) The annual financial statement and the management report must be verified by a certified independent auditor ("*Abschlussprüfer*" in the sense of the *HGB*). The auditor shall be appointed by way of a resolution of the Council before the end of the financial year to be audited. The appointment of the auditor shall be made on an annual basis. An auditor may be re-appointed.

(3) Within six months after the end of the financial year, the Managing Directors must present to the Council a copy of the annual financial statement, the original of which must bear the legally binding signatures of the Managing Directors, as well as the management report together with the audit report ("*Prüfungsbericht*" in the sense of the *HGB*) including a written statement. The Council decides upon the adoption of the annual financial statement within the first six months after the end of the financial year.

#### Article 19

##### Audit rights of the Shareholders

Each Shareholder has the right to audit if required by national law for public funding.

#### Article 20

##### Changes in contributions

(1) Increases of contributions from Shareholders or contributions from new Shareholders designated by Governments acceding to the Convention in accordance with Article 14 thereof shall first and foremost be used

- a) to secure the funding of the start-up configuration of the European XFEL Facility as described in Part B of Technical Document 1 to the Convention, and
- b) to enhance the start-up configuration towards the complete European XFEL Facility as described in the XFEL Technical Design Report.

(2) Once this latter objective is achieved, additional contributions shall be used to reduce the contributions of the other Shareholders. The reduction shall be made by amounts proportional to the then committed contribution of each Shareholder, unless the Council decides otherwise.

(3) In the event of any change of financial contributions the Shareholders involved are committed to execute the corresponding transfer of SHARES or of parts thereof.

## Chapter VI - Cooperation between the Company and the Shareholders

### Article 21

#### Definitions

The following definitions shall apply in the context of Articles 22 and 23:

- a) "Knowledge" means information, technical documentation, know-how, software and materials, regardless of the form or medium in which they are disclosed or stored and whether they are protected or not.
- b) "Background" means the knowledge generated prior to the signature of the Articles of Association.
- c) "Foreground" means the knowledge generated by the work carried out since the signature of the Articles of Association in the framework of the Company's activities.
- d) "Invention" means the knowledge, for which utility models or patents can be obtained, i.e. is industrially applicable, displays an element of novelty and exhibits an inventive step.

### Article 22

#### Intellectual Property

(1) The Shareholders shall grant the Company, free of charge and without any restriction, a non-exclusive and non-transferable licence for the use of their Background, protected or not, of which they can legally dispose, and which is needed for the purposes of their cooperation in the Company.

(2) The Shareholders shall also grant the Company, free of charge and without any restriction, a non-exclusive and non-transferable licence for the use of their Foreground and further improvements, protected or not, of which they can legally dispose, and which they have generated in the framework of their cooperation in the Company.

- (3) All Intellectual Property produced by staff employed by the Company is owned by the Company, except where covered by separate contractual agreement.
- (4) On request, the Company shall grant the Shareholders and publicly-funded research institutions designated by them, free of charge, a non-exclusive and non-transferable licence for the use of its Intellectual Property for their research activities. For other than research purposes, the licence may be granted to the Shareholders on conditions more favourable than those of licences granted to third parties. Subject to approval of the Shareholder concerned, the Company may grant to any natural or legal person in the country or countries of that Shareholder a licence on fair and reasonable terms for purposes other than research, except where the Council decides otherwise.
- (5) In case the Company intends to obtain a licence for the use of Intellectual Property from a third party, the Company shall use its best efforts to obtain the right under such licence to grant sub-licences to any of the Shareholders as set out in paragraph 4 above.

### Article 23 Inventions

- (1) In the case of Inventions made by the Company's staff, the Company shall apply the rules of the German Law on Inventions by Employees (*Gesetz über Arbeitnehmererfindungen – ArbNErfG*). If the Company decides not to apply for a patent in one or more countries, the employee who obtained the Invention may, with the consent of the Company, apply for such protection in his or her own name, at his or her own cost and for his or her own benefit.
- (2) In the case of Inventions made by staff seconded to the Company by a Shareholder in the course of their work at the Company, the following provisions shall apply:
- a) Subject to legislative or contractual provisions applicable to Inventions of employees, the seconding Shareholder shall be the owner of all rights in the Inventions made solely by the seconded employee. The seconding Shareholder shall have the right to apply in any country in its own name, at its own cost and for its own benefit for patents necessary for the protection of such Inventions. The Company and the other Shareholders shall have free of charge the right of use of the Inventions for research purposes and the right to a licence for purposes

other than research on conditions more favourable than those of licences granted to third parties. In addition, the Shareholder owning the rights shall not refuse to grant a licence for purposes other than research on fair and reasonable terms to any natural or legal person in the country or countries of the Shareholders at the request of another Shareholder. By contractual agreement between the Shareholders concerned and the Company, or by decision of the Council, certain Inventions may be determined, in respect of which the Shareholder is not obliged to grant a licence to the Company, to other Shareholders or at the request of another Shareholder to any natural or legal person in that Shareholder's country.

- b) The Company shall receive a share of the net returns from all licences granted by the owner of the rights for purposes other than research, the said share to be determined having regard to the respective contributions to the Inventions of the Company and of the seconded person.
- c) When applying for Intellectual Property Rights and granting licences, the Company and the Shareholders shall consult each other in cases of doubt and shall refrain from actions which may prejudice the Company or the Shareholders.
- d) The Company shall be the sole owner of all rights in those Inventions made by employees seconded by a Shareholder within the in-kind contribution to the creation of the Company together with employees of the Company or together with employees seconded by other Shareholders within the in-kind contribution to the creation of the Company.
- e) In case the Inventions are made by a seconded employee of one Shareholder jointly with seconded employees of another Shareholder, these joint Inventions belong to both partners, who have to agree in each case on the sharing and the joint exploitation of the Invention. The provisions of paragraph 2 a) are applicable to such Inventions.
- f) The Company shall be the sole owner of all rights in those Inventions made by employees seconded by a Shareholder together with Company staff or with employees seconded by another Shareholder within the in-kind contribution to the creation of the Company, unless determined otherwise by contractual agreement.

(3) In case of Inventions made by staff of the Company jointly with staff of a Shareholder not seconded to the Company, these Inventions belong to both partners, who have to agree in each case on the sharing and the joint exploitation of the Invention. This agreement should follow the provisions laid out in paragraph 2 above.

#### Article 24 Confidentiality

(1) The Shareholders are committed to confidentiality against third parties for all information and objects that have not been published and are conveyed in confidence by any other Shareholder or the Company. The receiving Shareholder shall not use any such information and objects for any purpose other than in accordance with the terms of these Articles of Association and for non-commercial purposes. The disclosure of confidential information or objects requires the express written consent by the conveying Shareholder or the Company.

(2) The confidentiality clause mentioned above excludes objects or types of information that

- a) have been developed or are being developed by the receiving Shareholder independently of the information;
- b) are part of the generally accessible state of technology or that reach this status without the fault of the receiving Shareholder;
- c) were already in the possession of the receiving Shareholder at the time of the announcement; or
- d) were lawfully disclosed to a Shareholder from a third party who is in lawful possession thereof without any commitment to confidentiality.

(3) The above-mentioned confidentiality clause ends after five years following the day when the dissolution of the Company has been recorded in the commercial register. The Shareholders shall impose the same confidentiality on all of their affiliates and sub-contractors, their employees and any other personnel working for a Shareholder, who may have access to confidential information.

## Chapter VII – Changes in shareholdings

### Article 25

#### Admission of new Shareholders and transfer of SHARES

- (1) The Company shall be open to the admission of new Shareholders designated by the relevant Contracting Party/ies.
- (2) Unless otherwise agreed by the Council in the context of an increase of the share capital, a new Shareholder shall acquire SHARES or parts thereof from one or several of the existing Shareholders.
- (3) The acquisition of SHARES or parts thereof from an existing Shareholder requires the approval of the Council by qualified majority. Such approval shall be presumed if the acquiring Shareholder has been designated by the same Contracting Party as the ceding Shareholder(s).
- (4) Any decision on the transfer of SHARES or parts thereof shall become conclusive upon recording of the Council's resolution and be declared by the Managing Directors.

### Article 26

#### Redemption or compulsory assignment of SHARES

- (1) Any redemption of SHARES or parts thereof of a Shareholder is permitted subject to the agreement of the Shareholder.
- (2) Any redemption of SHARES or parts thereof of a Shareholder without the agreement of the Shareholder is permitted, if
  - a) the assets of the Shareholder become part of insolvency proceedings or the petition to open insolvency proceedings has been dismissed due to the lack of assets,
  - b) the SHARE/SHARES of the Shareholder becomes/become the target of execution proceedings, provided that such proceedings have not been

discontinued within a period of three months and/or the SHARE/SHARES has/have not already been realised in that period,

- c) the Shareholder violates its fundamental obligations under these Articles of Association or under the bylaws with respect to the Company, including if it is longer than three years in arrears with making its cash or in-kind contributions.

In these cases, the Shareholder affected shall have no voting right in the decision on redemption, and its votes will not be taken into consideration when the achieved majority is determined. Nevertheless, the Shareholder is authorised to attend the respective Council meeting and has the right of justification before the resolution concerning the redemption or assignation is taken.

(3) Upon redemption the Shareholder concerned receives a settlement payment from the Company amounting to the nominal value of its SHARES. In the cases of 2 a) and 2 b), a potential acquirer shall not become Shareholder, but receive a settlement payment amounting to the nominal value of the respective SHARES.

(4) Instead of redemption of SHARES the Council may decide by qualified majority that the SHARES be assigned

- a) to one or several of the remaining Shareholders which are willing to take over the same in addition to their respective SHARES or
- b) to a new Shareholder in the sense of Article 25(1)

against a settlement payment of the same amount as foreseen in paragraph 3 above. This is also possible in the form that a part of the SHARE/SHARES is redeemed and the other part is assigned. The settlement shall be paid by the Shareholders to which the SHARES or parts thereof are assigned.

(5) The validity of the redemption/assignation shall not be subject to the payment of the settlement.

(6) Any decision upon the redemption or assignation of SHARES or parts thereof shall become conclusive upon recording of the Council's resolution and be declared by the Managing Directors.

Article 27

Withdrawal of a Shareholder

A Shareholder withdrawing from the Company without the Company being liquidated can only claim a settlement payment limited to the nominal value of its SHARES.

Chapter VIII – Termination of the Company

Article 28

Liquidation of the Company or change of its objects

- (1) In case of the Company's dissolution or if its objects cease to qualify for tax relief, the Shareholders may not retrieve from the Company's assets a higher value than the sum of the share capital and of their contributions in cash and in kind.
- (2) In both cases, the Company's assets, to the extent that their value exceeds the amount paid out to the Shareholders, shall be transferred to DESY or, in consultation with the competent German tax authorities, to another publicly funded body, which shall use the assets directly and exclusively for non-profit objects.

Chapter IX – Miscellaneous

Article 29

Liability

- (1) The Shareholders shall ensure that the Company procures sufficient insurance which covers damages to persons or goods caused by personnel seconded and scientists and experts invited to the Company, unless the liability is already covered through other insurances. Excluded are damages which are caused by wilful misconduct or gross negligence.
- (2) Concerning questions related to liability, which cannot be solved in the sense of paragraph 1, the Shareholders shall immediately consult each other for claim settlement.

Article 30  
Announcements

Announcements of the Company required by law shall be published in the German Electronic Federal Gazette (*Elektronischer Bundesanzeiger*), on the website of the Company and in addition in an appropriate EU Gazette.

Article 31  
Applicable law

These Articles of Association shall be subject to the law of the Federal Republic of Germany.

Article 32  
Severability

- (1) Should any provision of these Articles of Association be or become void or invalid in whole or in part, the validity of the other provisions thereof shall not be affected.
- (2) The invalid provision shall be replaced by a valid provision that to the extent possible fully implements the spirit and purpose of the invalid provision.
- (3) The same shall apply in the event that these Articles of Association fail to cover an issue that was meant to be part hereof.

Article 33  
Entry into force

These Articles of Association shall enter into force upon signature by the Shareholders and notarisation.

Article 34  
Languages

These Articles of Association are drawn up in the English, French, German, Italian, Russian and Spanish languages. The German version shall be submitted to the relevant German registration Court for entry in the Commercial Register.