

Modification of the Statutes of OpenPEPPOL AISBL

Explanations on proposed amendments

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Draft



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Introduction

New Belgian Code of Companies and Associations

Since 1st January 2020, the new [Belgian Code of Companies and Associations](#) (“BCCA”) has entered into force.

All legal entities, including international non-for-profit organisations (“INPO”) such as OpenPEPPOL governed by the BCCA will need to amend their articles of association (i.e. the Statutes for OpenPEPPOL).

Amendment of the Statutes to bring them in line with the BCCA is due **before 1st January 2024**.

In that context, it was required to amend the Statutes of OpenPEPPOL in order to comply with the law.

Introduction

New Belgian Code of Companies and Associations

Rules on internal regulations

When updating the Statutes of OpenPEPPOL, special attention is needed regarding the use of internal regulations. Under the old legal regime, the use of internal rules was, although widely spread, not regulated by law.

Under BCCA, the **use of internal regulations is regulated** and therefore subject to certain restrictions and formalities provided by Article 2:59 BCCA. As a result of this article and of some case law, **it is prohibited to include certain provisions in the internal regulations**, namely:

- Provisions that would **contradict the Statutes** or the mandatory law
- **Obligatory elements** to be included in the Statutes, such as:
 - Rights and obligations of members
 - Powers, decision-making process composition and functioning of the management body
 - Powers, decision making process of the general assembly

As a result of this, it was necessary to analyse which provisions provided in the Internal Regulations of OpenPEPPOL needed to be removed from it and placed in the Statutes.





Introduction

New Belgian Code of Companies and Associations

Rules on remote general assemblies

INPO can now hold remote general meetings. However, such possibility is limited and INPO must comply with certain conditions

According to article 10:7/1 BCCA, the management body of a INPO can suggest holding a general meeting remotely provided that **electronic communication means used for the general meeting fulfil the following requirements:**

- the electronic communication means used for holding the general meeting must at least enable the board of directors to **control and confirm the capacity and the identity of the members** using the electronic communication means.
- The electronic communication means must, in addition, enable the shareholders to:
 - **Follow directly, simultaneously and continuously the discussions** in the general meeting;
 - **Exercise their voting rights** on each point on the agenda;
 - **Actively participate** in the meeting and raise questions.

Introduction

Good practices related to Statutes

Statutes are the fundamental rules that govern the INPO. The BCCA, in its article 2:10 enumerates a series of provisions that must be included in the Statutes.

Statutes are information that is shared publicly as anyone can consult the statutes of any company or INPO. It is thus important to have statutes that are aligned with the law and the practices of the INPO but it is also important not to provide too much details on the internal management of the INPO since this is not legal required and should not be disclosed publicly.

It is **good practice to be concise** in the content of the Statutes and only include what is necessary and leave the internal management procedures for internal regulations or other internal documents.





Introduction

Suggested modifications to OpenPEPPOL's statutes

When reviewing the Statutes of OpenPEPPOL's, we have proceeded to 2 types of modifications:

- **Mandatory modifications:** modifications that are required by the law
- **Non-mandatory modifications:** modifications that are good practices in Belgian law or to align with the OpenPEPPOL actual way of working. Our approach here was to :
 - Simplify the text of the Statutes to provide for **more clarity and ensure alignment** with the current practices, the Internal Regulations and other internal documents (such as the framework agreements).
 - Provide for **more flexibility** as regards purely internal procedures to avoid a paralysis of the INPO or breach to the statutes.

Please note that the content as such of the Statutes has not been amended (even though simplification of the wording and consolidation of the articles has been performed here and there) unless specified in these slides. The following slides give an overview of the suggested amendments.

Suggested modifications

Mandatory amendments

Article	Amendment	Justification
Article 2.2	Addition that the registered office of the Association can be transferred by decision of the Managing Committee subject to the application of the laws on the use of language.	Mandatory due to regulation on the use of language.
Article 7	Admission procedure related to Members described in the Internal Regulations has been moved to the Statutes.	Mandatory due to Article 2:59 BCCA.
Article 15	Addition of powers to the General Assembly: appointment and dismissal of the auditor.	Mandatory due to Article 10:5 BCCA.
Articles 16 and 17	Provisions regarding the General Assembly (participation and admission to the General Assembly) provided in the Internal Regulations have been moved to the Statutes.	Mandatory due to Article 2:59 BCCA.
Article 16.1	Clarification that the General Assembly meets once a year to approve the annual accounts of the Association.	Mandatory due to Article 10:5 BCCA.

Suggested modifications

Mandatory amendments

Article	Amendment	Justification
Articles 20 and 21	Provisions regarding the Managing Committee (composition and powers) provided in the Internal Regulations have been moved to the Statutes.	Mandatory due to Article 2:59 BCCA.
Article 20.4	Clarification that the members of the Managing Committee are not remunerated unless specifically mentioned by the General Assembly.	Mandatory due to Article 2:10,§2 BCCA.
Article 33	Addition of an article regarding the Internal Regulation, the way to amend them and reference to the latest version of such internal regulations.	Mandatory due to Article 2:59 BCCA.

Suggested modifications

Non-mandatory amendments

Article	Amendment	Justification
Article 1.2	Modification of the denomination of the Association from “Open Pan European Public Procurement Online” to “OpenPEPPOL”.	Request from management to align with actual practice.
Article 2.3	Addition that the Managing Committee can establish administrative offices, operating offices, branches whereas abroad or in Belgium.	Clarification of the role of management body – good practice.
Article 3	Slight amendment of the text of the disinterested purpose and object, including namely the removal of reference to “European businesses”.	Request from management to have the possibility of a larger reach.
Article 5.3 (see also Article 11.2)	Slight amendment of the definition of End-Users membership category.	Request from management to align with actual practice.
Article 5.4	Clarification that a Member can be part of more than one membership category.	Request from management to align with actual practice.

Suggested modifications

Non-mandatory amendments

Article	Amendment	Justification
Article 6 (see also Article 7.5)	Deletion that Members must have a separate legal personality.	We understand that in practice Members do not need to have a separate legal personality and can be an organization or a department which is not a legal entity.
Article 6.7	Addition that services provided by Members to and for the Operating Office can be remunerated if specifically provided upon in a contract.	Legal certainty.
Article 7.2	Delegation of power from the Managing Committee to the Operating Office for the admission of certain Members.	To align with current practice. Such delegation of power will only be provided for Services Providers.
Articles 7.6 and 7.7	Precision on the timing and details for admission procedure which are delegated to the Managing Committee.	Legal certainty.
Article 8	Precision that the Managing Committee can delegate the approval of Observers.	To align with current practice. This will be further described in the Internal Regulations.

Suggested modifications

Non-mandatory amendments

Article	Amendment	Justification
Article 8.3	Precision that the Observers have the right to participate in activities of the Communities and internal working groups.	For more clarity.
Article 9	Precision that in the event of bankruptcy, dissolution etc the Member will be deemed to have withdrawn from the Association.	Good practice – in order to avoid unclear situation and to have to follow a specific procedure for such Members.
Article 10.1	Exclusion of a Member can be pronounced if it does not pay its membership within 1 year.	The current version of the Statutes provides for 3 months but we understand this is too short.
Article 10.1	Exclusion of a Member can be pronounced if he is sanctioned by the UN or EU	Request from management.

Suggested modifications

Non-mandatory amendments

Article	Amendment	Justification
Article 10.2	The Managing Committee delegates to the Operating Office the power to pronounce the exclusion of Members for certain reasons (non payment of membership fee for more than 1 year and material change in nature, structure or purpose).	To align with current practice. The Internal Regulations will further detail the conditions under which the Operating Office can exclude Members. Operating Office will only be able to do so for membership categories it is entitled to accept as Members, i.e. only for Services providers.
Article 11.3	Addition that the Managing Committee can decide to suspend the voting rights of a Member in the event such a Member has more than 6 months delay in the payment of the membership fees.	To mitigate the fact that the term to exclude a Member is 1 year delay in payment of the membership fees.

Suggested modifications

Non-mandatory amendments

Article	Amendment	Justification
Article 13	Removal provisions regarding the Election Committee, the Coordinating Committees, the Communities and the Change Management Boards from the Statutes to put them in the Internal Regulations.	Those bodies are non-mandatory bodies of OpenPEPPOL. It is good practice to only put in the Statutes what is necessary and to reserve the rest (such as your internal way of working) in the Internal Regulations. This will also enable the association to gain on flexibility.
Article 15	Addition of new powers for the General Assembly: the discharge to be granted to the auditor and members of the Managing Committee.	Good practice.
Article 15.2	Removal of the powers for the General Assembly to appoint members of the Election Committee	As we do not refer to the Election Committee in the Statutes, this will be included in the Internal Regulations.
Article 16.4	Precision that Members' proposal for GA agenda needs to be sent to the Secretary general at least 6 weeks in advance.	For sake of clarity and to ease organisation of GA.

Suggested modifications

Non-mandatory amendments

Article	Amendment	Justification
Article 17.1	Precision that the members must be registered in the register of Members to exercise their voting rights during the General Assembly.	Good practice.
Article 17.3	Precision that the Observers may attend the General Assembly.	To align with current practice. We understand it was already the case and provided for in the internal regulations.
Article 18.3	Addition that if all Members present or represented at the General Assembly agree, the General Assembly can deliberate on items that were not mentioned in the agenda.	In order to provide for more flexibility.
Article 18.4	Clarification regarding the decisions making process within the General Assembly. Decisions are taken by a majority vote (unless otherwise mentioned in the Statutes or in the law).	Process was not clear. Reference to consensus has been removed as legal not necessary.

Suggested modifications

Non-mandatory amendments

Article	Amendment	Justification
Article 18.6	Simplification of the wording regarding remote General Assembly.	In order to provide for more flexibility in the event the legislator offers some relaxations in specific case scenario (e.g. during covid, conditions were eased)
Article 18.7	Addition of the possibility for Members to vote remotely before the General Assembly.	Good practice. Possibility provided for by article 10/7, §2 BCCA that is optional.
Article 19.1	Addition that at the beginning of the General Meeting, a scrutineer and a minute taker are appointed.	For practical issues.
Article 20.2	Precision that members of the Managing Committee must have a substantial working relationship with a Member.	To align with current practice.

Suggested modifications

Non-mandatory amendments

Article	Amendment	Justification
Article 20.5	Addition that in the event the mandate of member of the Managing Committee expires or terminates before term, the replacement must be a member of the same membership category.	Clarification required to ensure an equal representation of the categories of Members within the Managing Committee.
Article 20.7	Specification of the process in the event the mandate of a member of the Managing Committee ends before its term, the Managing Committee can nominate a replacement to serve until the next General Assembly.	Legal certainty.
Article 21.2	Clarification of the powers of the Managing Committee in case of emergency. It can only suspend a member of the Managing Committee, Election Committee or Secretary General and not decide on their dismissal. The Internal Regulations will provide further information and guidelines on how to tackle such situations.	Allowing the Managing Committee to decide on the dismissal of a member of the Managing Committee, Election Committee or the Secretary General is taking too much power out of the GA.

Suggested modifications

Non-mandatory amendments

Article	Amendment	Justification
Article 22	Provisions regarding Secretary General have been moved under the Managing Committee provisions.	Clarification. The Secretary General is part of the Managing Committee it is more logic to explain his powers under this title.
Article 22.6	Clarification that the powers of the Secretary General is to appoint the Operations Manager in charge of the day-to-day management of the Association and supervision of the day-to-day management performed by the Operations Managers and the Operating Office. Definition of the day-to-day management as been added.	To align with current practice. Clarification regarding the delegation of the day-to-day management powers from the Secretary General to the Operations Manager was necessary.
Article 23.3	Addition that the Managing Committee can be convened by 3 members of the Managing Committee asking for a meeting.	Good practice.

Suggested modifications

Non-mandatory amendments

Article	Amendment	Justification
Article 24.2	Addition that any member of the Managing Committee can give a proxy to another member of the Managing Committee to represent him during a meeting of the Managing Committee.	Good practice to provide for such a possibility.
Article 24.4	Addition that the meetings of the Managing Committee can be held remotely.	Good practice. Offers more flexibility to the Managing Committee that does not need to convene physically.
Article 24.5	Clarification regarding the decisions making process within the Managing Committee.	Process was not clear. To align with current practice.
Article 25.1	Clarification that the minutes are taken by a minute taker and validated by the Secretary General.	Good practice.
Article 25.2	Clarification that corporate documents of the Association must be kept at the registered seat or electronically.	Good practice.

Suggested modifications

Non-mandatory amendments

Article	Amendment	Justification
Article 26.1	Addition regarding the people entitled to represent the Association: the appointed representative of the Secretary General or 2 members of the Managing Committee acting jointly.	Good practice to provide for an additional people being able to represent the Association in the event the Secretary General is not available.
Article 27	Precisions as regards the audit of the Association. Distinction is made between internal audit and external audit.	Good practice to make such a distinction. In the event of internal audit, the internal auditor will be appointed by the Managing Committee. In the event the law requires an external auditor to be appointed or if the general assembly would like to have an external auditor to report on the financial situation of the Association, the general assembly can appoint an external auditor.

Suggested modifications

Non-mandatory amendments

Article	Amendment	Justification
Article 28	Inclusion of provision regarding the composition of the Operating Office.	To align with current practice. Further information will be provided in the Internal Regulations.
Article 30	Inclusion of provision regarding the powers of the Operating Office.	To align with current practice. Further information will be provided in the Internal Regulations.
Articles 31.1. and 31.2.	Precisions as regards the operations to be performed by the Managing Committee related to the closing of the year and annual accounts.	Good practice to provide additional information in that respect in the Statutes to ensure the obligations of the Managing Committee in that respect are clearly established.
Article 33	Addition of a specific article regarding Internal Regulations, explaining how they can be amended.	The way the Internal Regulations can be amended is established by Belgian law.

Suggested modifications

Non-mandatory amendments

Article	Amendment	Justification
Article 37	Addition of a disposition regarding the election of domicile.	Good practice, even more so in an international context.
Article 9 (current version)	Removal of article 9 regarding intellectual property rights from the Statutes to include it in the Internal Regulations.	It is good practice to only put in the Statutes what is necessary and to reserve the rest for the Internal Regulations. This will also enable the Association to gain on flexibility regarding its IP policies.
Article 13 (current version)	Removal of article 13 regarding escalation path from the Statutes to include it in the Internal Regulations.	It is good practice to only put in the Statutes what is necessary and to reserve the rest for the Internal Regulations. Escalation path within the Association is typically something that is internally and which should not be shared with third-parties.

Suggested modifications

Non-mandatory amendments

Article	Amendment	Justification
Article 18 (current version)	Removal of article 18 regarding Election Committee from the Statutes to include it in the Internal Regulations.	It is good practice to only put in the Statutes what is necessary and to reserve the rest for the Internal Regulations. Escalation path within the Association is typically something that is internally and which should not be shared with third-parties.
Article 31 (current version)	Removal of article 31 regarding the financial operation from the Statutes to include it in the Internal Regulations.	It is good practice to only put in the Statutes what is necessary and to reserve the rest for the Internal Regulations. Financial operations within the Association is typically something that is internally and which should not be shared with third-parties.

Suggested modifications

Non-mandatory amendments

Article	Amendment	Justification
Article 32 (current version)	Removal of article 32 regarding the treasurer as it has been replaced by the function of auditor as described in the new article 27.	Good practice to make a distinction between an internal auditor and an external auditor rather than appoint a treasurer which is a Member of the Association.

Amendment of the Statutes

Rules to be followed

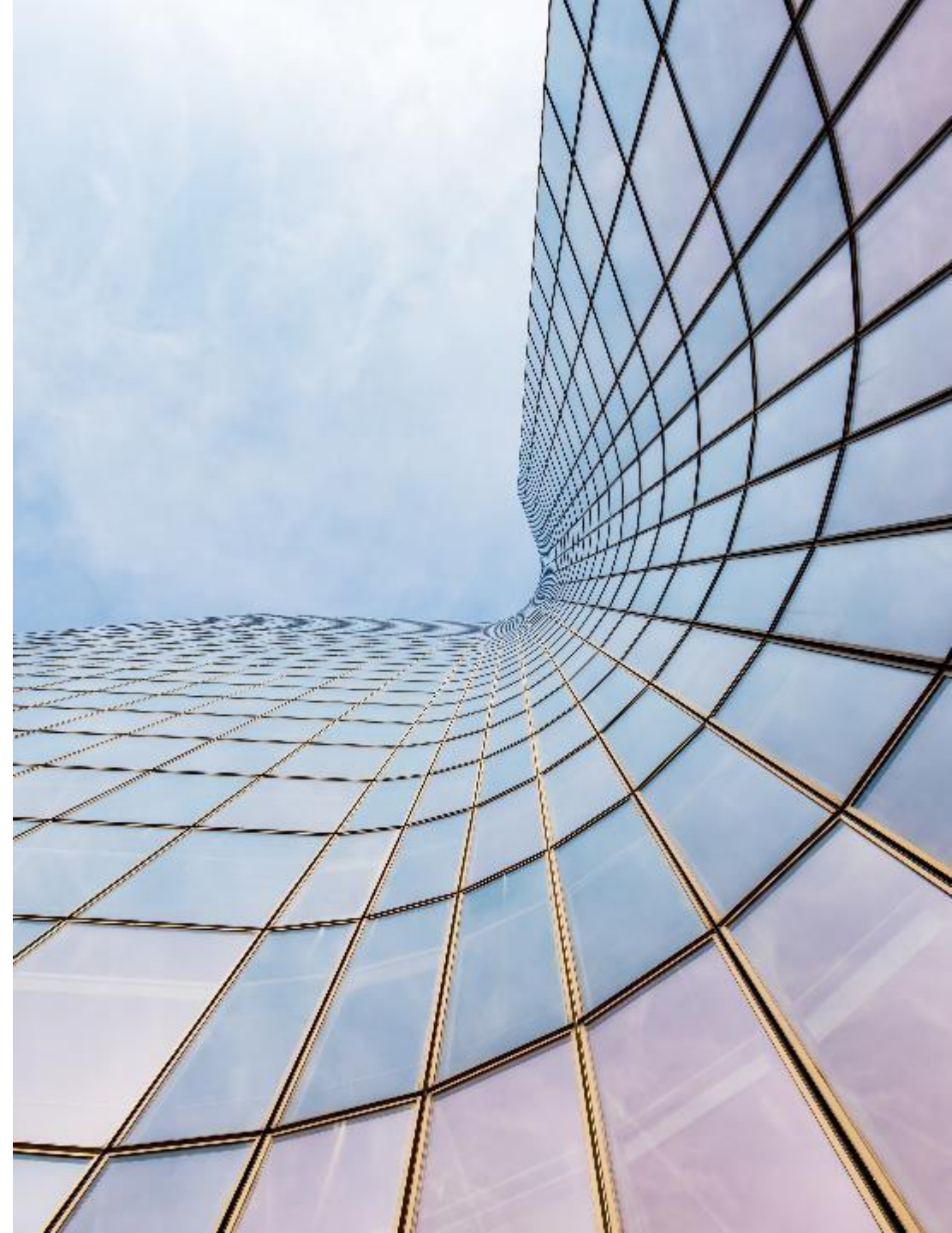
As already mentioned, the amendment of the Statutes of an INPO can only be decided by the General Assembly.

According to the current Statutes of OpenPEPPOL (article 17), the Statutes can only be amended provided that:

- **Presence quorum:** At least 50% + 1 members are attending the General Meeting deciding on the modification of the Statutes;
- **Required majority:** The decision to amend the Statutes is taken at the simple majority (50% +1) of Members present.

In addition, according to Belgian law, any modification of provisions of the Statutes related to (i) the powers, the convocation system and decision system of the General Assembly (ii) the conditions to amend the Statutes (iii) the dissolution and liquidation of the INPO, **requires an authentic deed.**

Lastly, any amendment to the purpose of an INPO must be **approved by Royal Decree.**





Amendments of the Statutes

Modification of OpenPEPPOL's Statutes in practice

An informative session will take place on **May 24th 2023** from 9am to 11am Brussels time. This will be the opportunity to raise any questions as regards, among other, the amendments suggested to the Statutes.

The General Assembly of OpenPEPPOL has been convened on **the 8th of June 2023**, from 9 am to 12.30pm. Such General Assembly, if the presence quorum is reached, will deliberate on the approval of the modifications to the Statutes.

After having discussed the accounts of FY2022 and the plan and budget for FY2023, there will be some time for Members to raise their potential additional questions on the Statutes.

The votes on the appointment of a Secretary General, members of the Managing Committee and Election Committee will then take place.

After that, **a Belgian notary public will arrive at 12pm** in order to hold **the formal vote** for the approval of the amendments to the Statutes.

Once approved, the Operating Office (together with the Belgian notary public) will take care of all administrative burden to receive approval of the amendments via Royal Decree.