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Replacing EPC105-09
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EPC INTERNAL RULES

Abstract	This document contains the Internal Rules of EPC and complements the EPC Charter.
Reason for Issue	To replace the existing EPC Internal Rules (EPC105-09) in the context of the “New EPC”.
Reviewed by	NGC, EPC Secretariat and Legal Counsel
Produced by	EPC Secretariat
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0. DOCUMENT INFORMATION

0.1. References

This section lists the documents referred to in the Internal Rules. The principle used throughout is to only provide the reference number, in square brackets.

	Document Number	Title	Issued by:
[1]	EPC203-14	Charter of the European Payments Council	EPC
[2]	EPC207-14	Scheme Management Internal Rules	EPC

0.2. Change History

Issue number	Dated	Reason for revision
Version 0.1	25 July 2014	



1. INTRODUCTION

This document sets out the Internal Rules of the EPC. It complements the EPC Charter [1], and must be read in conjunction with the EPC Charter (hereinafter referred to as “the Charter”). In the event of a conflict between the Charter and these Internal Rules, the Charter shall prevail. Just as the EPC Charter is binding on EPC Members and EPC’s bodies, so are these Internal Rules. Capitalised terms used in these Internal Rules without definition shall have the meaning assigned to them in the Charter.

2. ASPECTS OF COMPETITION LAW

The EPC may on the basis of a mandate from the Board decide to develop and promote industry standards, rules, guidelines, or best practices within the scope of its activities as defined under the Charter. The EPC shall carry out any such activities in accordance with the relevant stipulations of the European Commission's "Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements", as amended from time to time¹ and any other legislation or guidelines in this context.

In order to prevent any 'competition law issues' in the EPC context, the EPC has established a Code of Conduct - Competition Law (EPC212-14), which is included in Appendix 4 of the present Internal Rules.

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2011:011:TOC>

3. REQUIREMENTS FOR EPC MEMBER REPRESENTATIVES AND RESIGNATION OF EPC MEMBER REPRESENTATIVES

The present section complements Article 4.7 of the Charter.

3.1. Requirements for EPC Member Representatives

The requirements for EPC Member Representatives are set forth in Article 4.7 of the Charter. The following requirements shall also be met by the EPC Member Representatives:

- (a) EPC Member Representatives must be fluent in English, with – in particular – the capability to understand complex documents and the ability to express views during meetings; and
- (b) EPC Member Representatives should also demonstrate experience in handling complex, multi-disciplinary issues; and
- (c) In addition EPC Member Representatives should support the EPC vision and mission and be able to devote the necessary time to the EPC; and
- (d) EPC Member Representatives should have broad experience in payments both in their own institution and in the industry; and
- (e) EPC Member Representatives should be respected within their respective communities and maintain a good dialogue with the institution(s) they represent.

3.2. Resignation of EPC Member Representatives

Any EPC Member Representative who intends to resign shall inform, via regular mail or via any other means of written communication (including e-mail), the Chair of the Nominating and Governance Committee (NGC) and the Director General as soon as possible and no later than seven (7) calendar days before the effective date of his/her resignation. The Member concerned by the resignation of its Representative shall find a new candidate Member Representative for the remainder of the term of the Member Representative stepping down.

The NGC shall check that any proposed candidate Member Representative meets the requirements for EPC Member Representatives as set out in Article 4.7 of the Charter and section 2.1 of these Internal Rules and, if all requirements are met, shall make a positive recommendation to the Member concerned.

The latter may only appoint its new Representative upon a positive recommendation of the NGC. The same procedure shall apply *mutatis mutandis* in case a Member Representative is dismissed by the Member he/she represents or does no longer meets the criteria provided in Article 4.7 of the Charter and section 2.1 of these Internal Rules except that it will be the Member concerned who shall inform the NGC Chair and the Director General.

4. MEMBERSHIP FEES

Pursuant to Article 4.9 of the Charter, each year, the amount of membership fees and the calculation method of the membership fees for each EPC Member and Associate Member shall be proposed by the Director General in consultation with the Audit Committee and decided by the General Assembly based on the following criteria:

- the relevant costs;
- the work plan; and
- the number of EPC Members and Associate Members taking into account their membership rights and, where applicable, the number of Scheme Participants which are their members.

EPC Members and Associate Members joining the EPC during a financial year shall pay the amount of membership fees as calculated for their membership category on a pro-rata basis.

In addition to membership fees, EPC Members can be subject to the payment of additional contributions. The amount of the additional contributions shall be proposed by the Director General in consultation with the Audit Committee and decided by the General Assembly.

The Board shall decide each year on the invoicing procedure and the time for payment of the membership fees.

5. GENERAL ASSEMBLY MEETINGS AND VOTING PROCEDURES

The present section complements Article 5.4 of the Charter.

If during a voting procedure for regular resolutions one or more Members abstain, the majority quorum stipulated in Article 5.4.2 of the Charter (to be met in order to have a Resolution approved by the General Assembly) shall be calculated as follows: (i) the total number of abstentions shall be subtracted from the total number of Members present or represented, and (ii) the number obtained from such subtraction shall be multiplied by two-thirds ($2/3$).

If during a voting procedure for resolutions on Charter amendments and/or amendments on these Internal Rules one or more Members abstain, the majority quorum stipulated in Article 17 of the Charter shall be calculated as follows: abstentions shall not be subtracted from the total number of Members present or represented but are therefore counted as negative votes. The number of yes votes must represent three-quarters ($3/4$) of the Members present or represented in the General Assembly.

Voting Procedures

Voting may take place by one of the following procedures:

- Use of the General Assembly voting hardware and software.
- Voting by a show of hands. If this shows an uncontested majority, the motion being voted is adopted.
- Voting by role call, supervised by the Chairs of the NGC and the Audit Committee who will record each Member's vote.
- Voting by written procedure as referred to in Article 5.4.2 of the Charter, which may include voting by email or voting through a secure, dedicated voting website application.

The written results of voting results (not individual votes) are made available to the Members along with the meeting minutes of the General Assembly.

Dissenting opinions to Resolutions voted by the General Assembly will be reflected in the meeting minutes upon request.

6. BOARD COMPOSITION AND ORGANISATION

As stipulated in Article 6.2 of the Charter, the Board shall be composed of minimum eighteen and maximum thirty members. The Board shall be elected by the General Assembly and be composed of Representatives from Members. The Chair shall have a seat at the Board due to its office.

The Board composition shall be as follows:

- Maximum 30 members; pursuant to the Charter, the Vice-Chair shall be elected by the General Assembly from amongst the Board members;
- Up to 5 members who are Representatives of different European PSP sector associations;
- The remaining members shall be Representatives of National Communities (or “coalitions” of National Communities).

The members from National Communities shall be elected on the basis of the following volume-based criteria:

- Total volume of non-cash payments of all National Communities (sources: ECB “Blue Book” for EU countries and national central banks for non-EU countries);
- 2.5 % of total volume per seat at National Community level or for a “coalition” of National Communities;
- Cap of 4 seats per National Community from the euro area and 2 seats per National Community from outside the euro area;
- One seat maximum per corporate banking group in order to ensure sufficient diversity and avoid concentration of Board seats;
- “Excess of share” above (a multiple of) 2.5 % cannot be contributed to (another) “coalition”;
- Shared seats allocated to coalitions reaching a cumulative share of 2.5 % with any remaining open seat to be allocated to other coalitions, in descending order of cumulative share (including under 2.5 %, but not less than 1.25 %);
- For a National Community to be able to command the full number of seats allocated to it by the composition formula the EPC Members originating from that community should represent at least a majority of the corresponding country’s payments volume and there should be at least twice as many EPC Members from that community as the number of allocated Board seats; the same principle applies *mutatis mutandis* to shared seats.

Any Board member representing a coalition of National Communities shall ensure that the relevant coalition’s communities are kept up to date on any Board meeting items, and seek a common position on such items. Any dissenting opinion within the coalition may be shared by the Board member at the Board meeting.

Dissenting opinions to decisions voted by the Board will be reflected in the meeting minutes upon request.

7. THE EPC CHAIR AND VICE-CHAIR

The present section complements Articles 7.1.1 and 7.1.2 of the Charter.

According to Article 7.1.1, second paragraph of the Charter “*The Chair at all times represents the EPC’s interests, and not the interests of a specific institution or organization*”.

The requirements for Chair and Vice-Chair are set forth in Article 7.1.2 of the Charter. The following requirement shall also be met by the Chair and Vice-Chair:

- (a) The Chair and Vice-Chair must have the ability to take the EPC forward in meeting its objectives, and evidence skills to build viable consensus;
- (b) The Chair and Vice-Chair shall have the ability of being spokespersons for the EPC;
- (c) The Chair and Vice-Chair must be fluent in English, with – in particular – the capability to understand complex documents and the ability to express views during meetings; and
- (d) The Chair and Vice-Chair should support the EPC vision and mission and be able to devote the necessary time to the EPC.

All requirements for EPC Member Representatives mentioned in the EPC Charter and in these Internal Rules also apply to any Chair who is not a Representative of a Member.



8. NOMINATING AND GOVERNANCE COMMITTEE

The present section complements Article 9 of the Charter.

As required by Article 9.1 of the Charter, the Terms of Reference of the Nominating and Governance Committee (NGC) are appended to these Internal Rules (Appendix 1).



9. AUDIT COMMITTEE

The present section complements Article 10 of the Charter.

The Audit Committee Terms of Reference are appended to these Internal Rules (Appendix 2).

10. TASK FORCES

Working Groups can recommend to set up Task Forces. The setting up of Task Forces is subject to EPC Board approval. The Board can also set up Task Forces at its own initiative. Task Forces are supported by specific Terms of Reference approved by the EPC Board and report to Working Groups or directly to the EPC Board.

Task Forces can be composed of EPC Members and Associate Members. Third parties may act as Observers, as considered necessary and appropriate for the relevant Task Force's purposes. The Task Force Chair should be a member of the Working Group to which the Task Force reports. However, if a Task Force would directly report to the Board, the Board could appoint a Chair at its own discretion.

11. OBSERVERS IN WORKING GROUPS , SUPPORT GROUPS AND TASK FORCES

In order to apply for Observer status in Working Groups, Support Groups and Task Forces, applicants should provide a justification to the Chair of the body concerned. If the relevant Chair supports the application it shall then go forward to the NGC who, after due consideration (and within a time frame of maximum 15 working days), may recommend acceptance of the Observer - for that body only - to the Board. Observer status is subject to prior Board approval, and shall be reassessed on a yearly basis.

Observers shall comply with the stipulations relating to Observers of the terms of reference of the relevant body.

Observers shall have no further rights pursuant to the Charter or these Internal Rules, except the right to attend the relevant meetings and have access to the corresponding meeting documents.

Neither EPC Members and Associate Members nor parties which fulfill the requirements for EPC membership or associate membership shall be eligible to nominate Observers.

However, nominees for Working Groups or Support Groups, who have been recommended by the Nominating and Governance Committee, may be admitted as Observers to the relevant Working Group or Support Group, until the decision on their nomination has been taken by the Board.



12. SCHEME MANAGEMENT

The EPC produces SEPA Scheme Rulebooks as a contribution towards realising SEPA.

Scheme Management consists of two functions. The first function involves the administration of the Payment Schemes and the process of ensuring compliance with their rules, as set out in the Rulebooks, and the second function involves maintaining and managing the evolution of the Schemes.

The detailed rules for Scheme Management are set out in the Scheme Management Internal Rules [2], a separate document which does not form part of these Internal Rules.

13. AMENDMENTS TO THE CHARTER/DISSOLUTION AND LIQUIDATION OF THE EPC

The present section complements Article 17 of the Charter.

Any proposal of amendment of the Charter must be sent to the Members by the EPC Secretariat, via regular mail or via any other means of written communication (including e-mail), at least two (2) weeks before the date of the EPC General Assembly meeting having to decide on the proposal of amendment.

The date on which amendments to the Charter shall enter into force shall be determined by the decision of the EPC General Assembly regarding the modifications to the Charter.

14. AMENDMENTS TO THESE INTERNAL RULES

These Internal Rules can be amended or revoked by the General Assembly, upon recommendation of the NGC or the Director General. Any decisions of the General Assembly regarding the amendment or revocation of these Internal Rules require that at least two thirds (2/3) of the Members are present or duly represented (quorum of participants) and the approval of a qualified majority of three quarters (3/4) of the voting rights of the Members present or duly represented in the General Assembly (majority quorum).



APPENDIX 1

Terms of Reference Nominating & Governance Committee



APPENDIX 2

Terms of Reference Audit Committee



APPENDIX 3

Template Terms of Reference for Working Groups, Support Groups and Task Forces



APPENDIX 4

Competition Law Code of Conduct

TERMS OF REFERENCE

Nominating and Governance Committee

(Approved by EPC Plenary)

Circulation: EPC
Restricted: Yes

The role and activities of the Nominating and Governance Committee (NGC) are covered by Article 9 of the EPC Charter (EPC203-14). The Charter takes precedence over this document.

1. Mission statement

The mission of the NGC is to advise the General Assembly, the Board and the Scheme Management Board (SMB) in matters relating to nominations to EPC offices and bodies and to good governance in general.

2. Scope of work

The scope of the NGC is laid down in Article 9.1 of the EPC Charter.

In the execution of its remit the NGC will endeavour to maintain a careful balance between transparency, independence and confidentiality.

3. Deliverables

The NGC will notably:

- From time to time formulate recommendations to revise part or all of the Charter and the Internal Rules, either at the request of the Board, the General Assembly, or on its own initiative, as a result of observations made on the functioning on the EPC,
- From time to time formulate recommendations to revise part or all of the Terms of Reference or procedures of any standing EPC body, either at the request of the Board, the General Assembly or on its own initiative, as a result of observations made on the functioning on the EPC,
- Assess the profiles of, and requirements for Member Representatives on the General Assembly and members of the Board and other standing bodies, assess whether the candidates and nominees meet these requirements, and advise the General Assembly, the Board and the SMB accordingly. Formulate recommendations to revise profiles and requirements when appropriate (e.g. upon the formation of a new Working Group or Support Group, or the evolution of the assignments of an existing one),
- Evaluate on an ongoing basis whether governance issues are hampering the functioning of the various standing EPC bodies, and submit a recommendation to the Board where remedial action is required,

- Evaluate from time to time the contribution of EPC Member Representatives (on the basis of their profile requirements, e.g. as regards their participation in EPC activities, or their effective support of EPC objectives), and submit if necessary a recommendation to the General Assembly,
- Evaluate from time to time the contribution of all Governance Bodies of the EPC, including their respective chairs.

4. Composition

The NGC members shall be appointed by the General Assembly from amongst its Member Representatives.

Board members, members of the Audit Committee or the SMB or chairs of EPC Working Groups or Support Groups shall not be eligible to be members of the NGC.

The Chair is elected for a 2-year term, renewable once.

5. Work organisation and Code of Conduct

All NGC members must comply with the NGC Code of Conduct (EPC216-14), and respect independence and confidentiality requirements.

The NGC meets physically or by telephone conference. Meetings are called by the NGC Chair. Calls for meetings, meeting agendas and documents for meetings should be normally issued to members at least one week in advance. All meetings are minuted.

To be validly constituted a meeting of the NGC requires the presence of at least two of its members. No alternates or substitutes are permitted. However an NGC member can give proxy to another NGC member – this counts towards the quorum.

In the absence of the NGC Chair, one of the NGC members present will chair the meeting.

In all its work the NGC will strive to achieve consensus amongst its members in formulating conclusions and recommendations. In - the exceptional - circumstances where such consensus cannot be achieved as appropriate, the NGC concludes and recommends on the basis of a vote. In such a situation, for conclusions and recommendations to be brought forward to the General Assembly, the Board or the SMB, a majority of 2/3 of the NGC members present or represented is required. If such a majority is not achieved, the decision on the matter will be postponed to the next meeting of the NGC. In the meantime, the NGC Chair will consult further with the relevant EPC bodies, as appropriate. In the event of no overall majority being then achieved, in such circumstances the NGC Chair has a casting vote.

6. Reporting

The NGC regularly reports to the General Assembly, as appropriate (within the constraints which may be set by confidentiality obligations).

The NGC will also liaise with the EPC Chair, the Director General and Board on routine matters as appropriate through its Chair. The Chair of the NGC may participate if necessary to a Board meeting.



7. Review

These Terms of Reference will be reviewed from time to time by the General Assembly and in the event of a material change in the Charter or activities of the EPC.

TERMS OF REFERENCE

EPC Audit Committee

(Approved by EPC Plenary)

Circulation: EPC

Restricted: No

The role and activities of the Audit Committee are covered by Article 10 of the EPC Charter (EPC203-14). The Charter takes precedence over this document.

1. Mission statement

The Audit Committee is appointed by the General Assembly to assist it in monitoring:

- the integrity of the members of all bodies of the EPC and the Secretariat;
- the respect of corporate compliance;
- the efficiency of the use of resources of the EPC; and
- the correct application of relevant internal procedures of the EPC as applicable.

2. Scope of work

The scope of the Audit Committee is laid down in Article 10.1 of the EPC Charter.

As a complementary task, the Audit Committee will support the Nominating and Governance Committee (NGC) in conducting General Assembly voting processes and verifying the voting results. Voting disputes which have not been resolved by the NGC as the first escalation level are handled by the Audit Committee.

3. Deliverables

The deliverables of the Audit Committee are laid down in Article 10.1 of the EPC Charter.

4. Composition

The Audit Committee members shall be appointed by the General Assembly from amongst its Member Representatives.

The NGC will advise the General Assembly on the suitability of the candidates for Audit Committee based on their qualifications, experience and the non-existence of possible conflicts of interest.

Board members, members of the NGC or the SMB or chairs of EPC Working Groups or Support Groups shall not be eligible to be members of the Audit Committee.

5. Work organisation

The Audit Committee meets physically or by telephone conference. Meetings shall be held well scheduled in advance of every Board meeting with as a minimum two physical meetings per annum. Meetings are called by the Audit Committee Chair. Calls for meetings, meeting agendas and documents for meetings should be normally issued to members at least one week in advance. All meetings are minuted.

To be validly constituted a meeting of the Audit Committee requires the presence of at least two of its members. No alternates or substitutes are permitted. However an Audit Committee member can give proxy to another Audit Committee member – this counts towards the quorum.

In the absence of the Audit Committee Chair, one of the Audit Committee members present will chair the meeting.

The EPC Chair may be invited to attend all or part of meetings as observer at the discretion of the Chair of the Audit Committee.

Decision making shall be made by consensus of all the members of the Audit Committee. In the event of failure to reach a decision, the Chair of the Audit Committee must report to the EPC Chair or, if the latter is personally involved, the Vice-Chair and to the next meeting of the General Assembly.

6. Reporting

The Audit Committee will report to the General Assembly through its Chair. The Chair of the Audit Committee shall, where appropriate, have the right to address all meetings of the General Assembly.

The Audit Committee will also liaise with the EPC Chair, the Director General and Board on routine matters as appropriate through its Chair. The Chair of the Audit Committee may participate if necessary to a Board meeting.

7. Review

These Terms of Reference will be reviewed from time to time by the General Assembly and in the event of a material change in the Charter or activities of the EPC.

Template EPC Working Group/ Support Group/ Task Force

Terms of Reference

(Approved by Plenary)

Circulation: NGC

Restricted: Yes

0. Introduction

This document serves as a template for all EPC working group, support group and task force terms of reference (TORs), including specific text for common sections and guidance on elements to be included in group-specific sections.

It should therefore be referenced in all TORs derived from it.

1. Mission and Objective

Essential elements:

- Description of group responsibilities

2. Scope of Work

Essential elements:

- Description of scope of work including documents to be developed/maintained. List these if appropriate.
- Include liaisons with other EPC bodies.
- Include external liaisons if appropriate.

3. Deliverables

Essential elements:

- List key deliverables and link these to the Scope as necessary.
- [Include statement on IPR: The intellectual property rights, copyright and rights of development and disposal related to the deliverables of the Group reside exclusively with the EPC.]

4. Group Composition

The Group will consist – ideally – of a maximum of [30] members drawn from representatives of EPC Members and Associate Members, and other qualified nominees.

Group members will be experienced in [...]. They will be senior PSP or association executives with the ability and mandate to properly represent their institutions and their communities, and in the case of association representatives, have a mandate from their membership. They will fully subscribe to the EPC SEPA vision, maintain active links with their communities in relation to their EPC work, be able to devote the necessary time to the Group and be proficient in English as the working language.

The composition of the Working Group will be well balanced in terms of skills and experience, geographic representation and types of institution represented. In particular, the Working Group will contain at least one representative from each EEA (+ Switzerland) country, one Payment Institution and one Electronic Money Institution (unless any community declines to be directly represented).

The composition of the Group will be initiated by the Nominating and Governance Committee (NGC), with a call for candidates published through the EPC Secretariat. The Board will approve the final composition. [The final composition of Task Forces related to Scheme Management may be approved by the Scheme Management Board.] The same procedure will apply to subsequent vacancies and additions. A limited number of observers may be appointed according to the procedure defined in the Internal Rules of the EPC (EPC205-14).

The Group Chair will be elected by the Board following a recommendation by the NGC that the candidate(s) meet(s) the profile for the role. In particular the Chair will be a senior PSP manager with wide strategic and practical experience of the payments market and with the available time and commitment. The Chair will be responsible for proactively guiding the Group in meeting its deliverables and ensuring coherence with EPC objectives.

The Secretary of the Group will be provided by the EPC Secretariat. The Secretary supports the Chair and is accountable for ensuring compliance with EPC processes.

5. Group Organisation

The Group will meet physically or by telephone conference, according to the demands of its work programme. A draft meeting schedule should be proposed in the November of each year for the following year. This should be carefully constructed so that enough time is allowed for key decisions to meet the Board schedule.

Calls for meetings and agendas will be issued at least two weeks in advance and meeting papers will be provided at least one week in advance. Minutes will be made available by the EPC Secretariat to all Group members and as appropriate to observers.

The Group manages [*list task forces*].

[This Task Force, and any other Task Forces required to advance work on specific issues, will be established in accordance with Article 11.2 of the EPC Charter. Task Forces will be set concrete objectives and timescales to meet their assigned deliverables.]

The Group is ultimately responsible for all proposals and recommendations of its task forces.



The Group will develop its conclusions and recommendations on the basis of broad consensus. In circumstances where such consensus is not achievable, and the matter is appropriate for the conduct of a vote, a vote may be taken and, for this to be binding on the group, a 2/3 majority on the basis of a quorum of 2/3 of the Group membership must be obtained. In the event of a serious divergence of views, reference will be made to the Board for advice and guidance.

When reporting the outcome of Group deliberations to the Board, and recording them in minutes, reference will be made to both majority and minority positions. The Chair of the Group may be invited to attend Board meetings.

6. Mandate

The Group holds its mandate from and is accountable to the Board. The Group will operate under these [*revised*] Terms of Reference from [*insert date*]. It will hold its mandate until otherwise directed by the Board.

The members of the Working Group will at all times execute their mandate in accordance with the stipulations of the EPC Code of Conduct on competition law (EPC212-14), as amended from time to time.



EPC212-14
v 1.0
8 October 2014

European Payments Council Code of Conduct - Competition Law

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1. Background and Objective

The European Payments Council (EPC), an international non-profit association (Association Internationale Sans But Lucratif, AISBL) established under and governed by Belgian law, is subject to EU and national competition law requirements.

In order to address 'competition law issues' in the EPC context, this policy aims at helping EPC Members and their representatives, EPC Office Holders, Working and Support Group Chairs and any participants in meetings organised by the EPC to prevent and / or identify potential competition law issues; and if a (potential) competition law issue is identified to specify the process to be followed in order to address it.

2. Competition Law Guidelines

EU and national competition law contain two basic prohibitions:

1. Prohibiting anti-competitive agreements between two or more undertakings;
2. Prohibiting abuses of a single or collective dominant position (which may apply both to unilateral conduct and to agreements involving a dominant party).

EU competition rules apply only where trade between Member States is affected to an appreciable extent, but since national competition law applies even in the absence of cross-border effects, the EPC and EPC Members when acting in meetings organised by the EPC commit to always comply with the rules even if arrangements or discussions involve EPC Members from one country only, or cover only one country.

Infringement of EU and national competition law can lead to fines, civil liability for damages, and in some countries even to criminal liability. It is the responsibility of the EPC and of each EPC Member individually to ensure compliance with these Guidelines. Liability under the competition laws may be strict - a trade association member may under certain circumstances be held liable for infringement by the rest of the association.

The following Guidelines apply to the EPC, including all its standing bodies, working groups, support groups, Office Holders, individual EPC Members, and any sub-groups or task forces within the association, as established from time to time where they act in meetings organised by the EPC.

3. Prohibition of Anti-competitive Agreements – General

As a matter of principle, no EPC meeting participant shall ever discuss or be involved in any of the following activities:

- Discussions on customer prices of products and services; including and not limited to the coordination of pricing elements, discounts, bonuses, surcharges, accounting procedures or profit margins;
- Market partitioning such as the allocation of customer groups or territories between competitors;

- Exchange of competitively sensitive information, for instance, on pricing elements, business plans, customer relations or ongoing or planned bids;
- Any other agreement restricting competition such as, for instance, a collective boycott, joint negotiations, (except after legal review) joint selling or joint buying, any arrangement to avoid direct competition, resale price maintenance, pricing policies designed to isolate national markets or joint action to exclude competitors or new entrants.

To be prohibited by competition law, an agreement or a decision of an association of undertakings need not to be written or binding. A verbal information exchange or an informal agreement can be considered an infringement even if it is merely a "gentleman's agreement". On the other hand, an agreement does not need to be exercised or implemented in order to infringe competition law. The potential anti-competitive effect is sufficient.

4. Specific Rules for the EPC

There are two specific areas that require particular attention in the light of the competition rules:

4.1 Industry Standards

The EPC or the working groups within the association may develop and promote industry standards, rules, guidelines, codes of practice or standard terms and conditions for agreements, in accordance with the relevant stipulations of the European Commission's "Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements", as amended from time to time.¹ These standards are allowed where they improve the quality of EPC Members' products or services; however, neither EPC nor EPC Members are allowed to develop or to use them to restrict competition. Accordingly

- Standards must be related to specified legitimate objectives, and no more detailed or restrictive than reasonably necessary. Standards should not be used to raise barriers to entry to the market or to exclude competitors.
- Specifications for standards should be publicly accessible, also for non-members.
- Compliance should be voluntary (unless required by law). Standards must not prohibit use of competing products or services.
- Fees should be cost-based. The use of standard agreements should not be made compulsory, and standard terms and conditions should not attempt to harmonize "price-related" clauses.

4.2 Information Exchange

EPC Members must never, neither at formal EPC gatherings nor at other informal meetings in an EPC context, exchange confidential or otherwise competitively sensitive business information. Subjects which must never be discussed are:

- Prices, discounts, or price-related contractual terms. This includes planned or implemented price increases (whether or not a precise amount of the increase is included), the dates of

¹ [http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52011XC0114\(04\)](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52011XC0114(04)).

planned price increases or announcements, mark-ups, rebates, allowances, credit terms, promotions, or any other data that would have a bearing on price;

- Client relations and customer credit risk, including among others the identities of individual customers or sales territories;
- Contract tenders, ongoing bids or plans to bid for business as well as the corporate procedures for responding to tenders;
- Business plans or commercial strategy and forecasts of market evolution;
- Competitive strengths/weaknesses in particular areas;
- Product development or investment in research programs which is not yet publicly known;
- Individualised market share data.

Benchmarking, i.e. compilation and circulation of statistical data and/or exchange of information is allowed, if and only if, the following conditions are respected and advice from the EPC legal counsel is sought:

- The entity collecting, aggregating and circulating the data is neutral and bound by confidentiality, and
- only aggregated data is circulated to participants and competitively sensitive information such as market shares remain anonymous. Individual company data must not be circulated and it must not be possible to derive individual company data from the aggregated data circulated (i.e. to disaggregate it).

If you are part of an information or benchmarking 'pool' or other market survey, ensure that individual institutions are not identifiable from the data, avoid meetings to discuss the results of the information gathering exercise without the presence of the EPC legal counsel, and allow open and voluntary participation in the exchange.

It is acceptable to discuss public policy, regulatory matters of general interest, demographic trends, generally acknowledged industry trends, publicly available information and historical information that have no impact on future business. EPC Members may demonstrate new or existing products, but not discuss non-public R&D or production plans.

5. Prohibition of Abuse of a Dominant Position

An undertaking may be in a dominant position if it can act to an appreciable extent independently of its customers and suppliers in a given market. A dominant position is not in itself anti-competitive, but if the undertaking exploits this position to eliminate competition, it is considered to have abused it. Undertakings that have the economic power to act independently and set prices regardless of customers' or suppliers' demands or competitive pressure, have a special duty to not to restrict competition and not to exploit their customers. Dominance is, in essence, the power to overprice, which is assumed if a firm accounts for a dominant share of supply or demand (normally 40% or more).

Even if individual EPC Members may not be dominant, EPC Members may be considered collectively dominant in a particular product market if they account for a large share of supply and if they have contacts with each other through the trade association. Dominant positions can be

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held by single firms and, in certain circumstances, held collectively. In other words, Article 102 TFEU can apply to oligopolies. In such an oligopolistic market, parallel behaviour that restricts competition or exploits customers might be found abusive even if there is no evidence of active collusion.

As soon as a dominant undertaking's behaviour has an anti-competitive object or effect, without objective justification, fines and civil liability may result. There is no need to demonstrate the existence of an agreement or collusion.

6. What to do if you Suspect a Breach of this Code of Conduct?

Presence at meetings where anticompetitive conduct takes place or where commercially sensitive information is exchanged, can be enough to infringe the competition rules. Check the agenda, object in advance to inappropriate discussion items. In case the agenda contains inappropriate discussion items, express your concerns at the start of the meeting when the agenda is presented for approval. As soon as you become aware of a potential infringement, request that the corresponding discussion be stopped, request that advice be sought from or contact the EPC Legal Counsel (legalcounsel@epc-cep.eu), express your disagreement, ensure that a record is kept of your disagreement. In case the discussion continues, leave the meeting.

If you are uncertain whether a particular agreement, discussion or information exchange between competitors is allowed, immediately request that the opinion of the EPC Legal Counsel will be sought, who will take appropriate steps.

7. Procedure for EPC Meetings

The Chairs of each EPC meeting and the EPC Secretariat shall take every reasonable precaution to ensure that meetings are managed in such a way as to ensure that the risks of inappropriate discussion taking place are minimised.

As a practical matter, therefore, the EPC undertakes the following:

- EPC shall post this code of conduct on its extranet so that all EPC Members, Associate Members and Scheme Participants have access to it.
- The mandates for EPC Working Group and Support Group activities shall be reviewed by EPC legal counsel prior to their approval by the EPC Board.
- Written agendas for each EPC meeting must be drafted and circulated prior to each EPC meeting.
- Minutes of each meeting or as the case may be meeting summaries will be drafted and any comment or request for amendment will be notified to the meeting chairman and to the EPC Secretariat person in charge as soon as possible following receipt of the minutes.
- EPC shall keep agendas, minutes and attendance lists of every meeting chronologically.
- The Chairs of EPC Working Groups and Support Groups shall follow a competition law training organised by EPC legal counsel within the first four months of their chairmanship.

ANNEX I: Guidelines on Participation in EPC Meetings ("Dos and Don'ts")

DO's

1. **Do** carefully read the EPC Competition Law Code of Conduct that precedes this Annex.
2. **Do** identify clearly the specific legitimate purpose of each EPC project, meeting and conference call.
3. **Do** object to any discussion, activity or conduct that may infringe competition law rules and inform the EPC Legal Counsel accordingly.
4. **Do** stay on topic during meetings, within the scope of the approved agenda and the terms of reference of the body concerned.
5. **Do** stop any meeting when the participants insist on discussing matters that may lead to violations of competition law rules.
6. **Do** return commercially sensitive information you receive, without keeping copies, and explain in writing that you do not wish to obtain such information.
7. **Do** inform your company counsel and the EPC Legal Counsel of any approaches seeking to exchange non-public information or coordinate conduct on the market.

DON'Ts

1. **Don't** reach understandings or agreements or even hold discussions (especially with a competitor) on anything relating to commercially sensitive topics such as prices, credit terms and billing practices, sales, costs, future business plans, bids or matters relating to individual suppliers or customers.
2. **Don't** attend meetings without clear indication of the purpose and/or written agenda, circulated in advance.
3. **Don't** attend unscheduled gatherings unless you know that they are for a bona fide purpose or purely social gatherings.
4. **Don't** use EPC as a venue to engage in conduct that could be construed as intended to exclude competitors from the market or create a barrier to market entry.
5. **Don't** accept written non-public information or agree to the exchange of oral non-public information with EPC Members who market competing products or services.
6. **Don't** participate in information exchanges, market surveys, or benchmarking exercises without the advice of your and/or EPC's legal counsel.
7. **Don't** exclude competitors or engage in collective boycotts.

Definitions

EPC	means the European Payments Council AISBL.
EPC Board	means the EPC Board as described in Article 6 of the EPC's Charter.
EPC Member	means EPC Member(s) as described in Article 4.1 of the EPC's Charter.
Associate Member	means Associate Member as described in Article 4.2 of the EPC's Charter.
EPC Office Holders	means each of the following: the EPC Chair, the EPC Vice-Chair, the EPC Director General, the Chairs of the NGC, the Scheme Management Board, the Audit Committee and the Chairs of the EPC Working Groups and Support Groups.
Schemes	means the SEPA Credit Transfer Scheme, or the SEPA Direct Debit Core Scheme, or the SEPA Direct Debit Business-to-Business Scheme, or such other payment schemes as the EPC may establish from time to time.
Scheme Participant	means an entity that has adhered to a Scheme.