

Internal Rules

EPC149-19

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Abstract	This document contains the Internal Rules and complements the EPC By-laws.
Reason for Issue	To replace the existing EPC Internal Rules (EPC205-14) in the context of the “Modular EPC”.
Reviewed by	NGC, EPC Secretariat and Legal Counsel
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1 Introduction

This document sets out the Internal Rules. It complements the EPC By-laws (EPC148-19) and must be read in conjunction with the EPC By-laws (hereinafter referred to as “By-laws”). In the event of a conflict between the By-laws and the present Internal Rules, the By-laws shall prevail. Just as the By-laws are binding on all Members and EPC’s bodies, so are the present Internal Rules. Capitalised terms used in the present Internal Rules without definition shall have the meaning assigned to them in the By-laws.

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 By-laws. 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. The Code of Conduct – Competition Law applies to all EPC bodies as established from time to time, as well as the members thereof and any other participants where they act in meetings organised by the EPC.

3 Requirements for Representatives and Resignation of Representatives

The present section complements Article 4.7 of the By-laws.

3.1 Requirements for EPC Member Representatives

The requirements for Representatives are set forth in Article 4.7 of the By-laws. The following requirements shall also be met by the Representatives:

- (a) 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) Representatives should also demonstrate experience in handling complex, multi-disciplinary issues; and
- (c) In addition, Representatives should support the EPC vision and mission and be able to devote the necessary time to the EPC; and
- (d) Representatives should have broad experience in payments both in their own institution and in the industry; and
- (e) Representatives should be respected within their respective communities and maintain a good dialogue with the institution(s) they represent.

3.2 Resignation of Representatives

Any 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

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



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 Representative meets the requirements for Representatives as set out in Article 4.7 of the By-laws and section 3.1 of the present Internal Rules and, if all requirements are met, shall make a positive recommendation to the EPC 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 Representative is dismissed by the EPC Member he/she represents or does no longer meet the criteria provided in Article 4.7 of the By-laws and section 3.1 of these Internal Rules except that it will be the EPC Member concerned who shall inform the NGC Chair and the Director General.

4 Membership Fees

Pursuant to Article 4.9 of the By-laws, 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 activity modules and the related participation levels;
- the relevant costs; and
- the number of EPC Members and Associate Members taking into account their membership rights and, where applicable, the number of Scheme Participants.

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 Board Composition and Organisation

The present section complements Article 6.2 of the By-laws.

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 Payments statistics 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 “coalition” of National Communities;
- One seat maximum per corporate 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.



6 The EPC Chair and Vice-Chair

The present section complements Articles 7.1.1 and 7.1.2 of the By-laws.

The requirements for Chair and Vice-Chair are set forth in Article 7.1.2 of the By-laws. 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 Representatives mentioned in the By-laws and in the present Internal Rules also apply to any Chair who is not a Representative (“Independent Chair”).

The EPC may grant an Independent Chair a representation allowance and/or an annual travel and expenses budget, as agreed by the General Assembly. The details of such agreement shall be set out in a contract between the EPC and the Independent Chair. The contract shall also set out detailed rules on conflicts of interests.

7 Nominating and Governance Committee

The present section complements Article 9 of the By-laws.

As required by Article 9.2 of the By-laws, the Terms of Reference of the Nominating and Governance Committee (NGC) are appended to the present Internal Rules (Appendix 1).

8 Audit Committee

The present section complements Article 10 of the By-laws.

As required by Article 10.2 of the By-laws, the Audit Committee Terms of Reference are appended to the present Internal Rules (Appendix 2).

9 Composition of Working Groups, Support Groups, Multi-Stakeholder Groups and Task Forces

The present section complements Article 11 of the By-laws.

9.1 Members and Chair

Replacements of members of Working Groups, Support Groups, Multi-Stakeholder Groups and Task Forces during a mandate term are subject to NGC approval only. This rule does not apply to the role of Chair of Working Groups, Support Groups, Multi-Stakeholder Groups and Task Forces, the appointment of which as well as any subsequent changes during the term of their mandate require the endorsement of the Board or the relevant Scheme Management Governance Body.

Subject to the relevant terms of reference, the Chair of a Working Group, Support Group, Multi-Stakeholder Group or Task Force will be a senior PSP or association representative with the 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.

When a member of the working Group, Support Group, Multi-Stakeholder Group or Task Force is elected to the role of Chair of that group, his/her alternate may be appointed to the role of member of that group subject to NGC approval. Furthermore, if the person elected Chair of a Working Group, Support Group, Multi-Stakeholder Group or Task Force is the only representative of a National



Community in that group, the relevant National Community may nominate an additional member to that group subject to NGC approval, unless otherwise provided by the relevant terms of reference.

9.2 Alternates

Unless otherwise provided by the relevant terms of reference, one alternate may be appointed to each member of a Working Group, Support Group, Multi-Stakeholder Group or Task Force, subject to NGC approval. An alternate shall be appointed for the duration of the mandate of the relevant group member and may only attend a group meeting when the relevant group member is unable to attend such meeting. The appointment of a replacement alternate during a mandate term is subject to NGC approval.

9.3 Observers

In order to apply for observer status in Working Groups, Support Groups, Multi-Stakeholder 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 or the relevant Scheme Management Governance Body. Observer status is subject to prior approval by the Board or the relevant Scheme Management Governance Body and shall be reassessed on a yearly basis.

The terms of reference of certain Working Groups, Support Groups, Multi-Stakeholder Groups or Task Forces may grant Observer-status as of right to certain third parties (typically the European Commission or the European Central Bank). In such case, no separate application as set out in the first paragraph of this section 10.3 is to be submitted, neither is a yearly re-assessment of the observer-status required.

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 By-laws or the present Internal Rules, except the right to attend the relevant meetings and have access to the corresponding meeting documents. Observers shall be subject to relevant EPC policies as long as they are observers, notwithstanding the possible continuation of certain obligations emanating from such applicable EPC policies after the termination of their observer status, notably in the context of competition law and data protection.

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

However, new nominees (not related to a replacement during the term of a mandate) for Working Groups, Support Groups, Multi-Stakeholder Groups or Task Forces who have been recommended by the NGC, may be admitted as observers to the relevant body until the decision on their nomination has been taken by the Board or the relevant Scheme Management Governance Body.



10 Task Forces

The present section complements Article 11.2 of the By-laws.

Working Groups, Support Groups and Multi-Stakeholder Groups can recommend to the Board and/or the Scheme Management Governance Bodies setting up Task Forces. The setting up of Task Forces is subject to prior approval by the Board or the Scheme Management Governance Bodies. The Board or the Scheme Management Governance Bodies can also set up Task Forces at their own initiative. Task Forces are supported by specific Terms of Reference approved by the Board or the Scheme Management Governance Bodies and report to Working Groups, Support Groups or Multi-Stakeholder Groups or directly to the Board or the relevant Scheme Management Governance Body.

Task Forces can be composed of EPC Members and Associate Members, and where relevant also of representatives of Scheme Participants as set out in the relevant terms of reference. The composition of Task Forces reporting to a Multi-Stakeholder Group can also include representatives of relevant Stakeholders. 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, the Support Group or Multi-Stakeholder Group to which the Task Force reports. However, if a Task Force would directly report to the Board or to a Scheme Management Governance Body, the Board or the relevant Scheme Management Governance Body could appoint a Chair at its own discretion.



APPENDIX 1

Terms of Reference Nominating and Governance Committee



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Terms of Reference Nominating and Governance Committee

The role and activities of the Nominating and Governance Committee (NGC) are covered by Article 9 of the By-laws (EPC148-19). The By-laws take precedence over this document.

1 Mission statement

The mission of the NGC is to advise the General Assembly, the Board and the Scheme Management Governance Bodies 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 By-laws.

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 By-laws 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, one of the Scheme Management Governance Bodies or on its own initiative, as a result of observations made on the functioning on the EPC,
- Assess the profiles of, and requirements for EPC 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 Scheme Management Governance Bodies accordingly. Formulate recommendations to revise profiles and requirements when appropriate (e.g. upon the formation of a new Working Group, Support Group, Multi-Stakeholder Group or Task Force, or the evolution of the assignments of an existing one),
- Approve replacements of members of Working Groups, Support Groups, Multi-Stakeholder Groups and Task Forces during a mandate term,
- Evaluate on an ongoing basis whether governance issues are hampering the functioning of the various standing EPC bodies, and submit a recommendation to the relevant governance body 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.

The NGC, at its sole discretion, may delegate certain powers and tasks to the Director General and oversee this. Any such delegation of powers shall be duly documented.

4 Composition

The NGC members shall be appointed by the General Assembly, as far as possible, from amongst the Representatives of the EPC Members and, if need be, from amongst the Alternates of the EPC Members by the General Assembly. The following rules shall apply to the composition of the Nominating and Governance Committee:

- Only one (1) member of the Board or member of a Scheme Management Governance Body may be a member of the Nominating and Governance Committee;
- The members of the Audit Committee, the chairs of the Working Groups, the chairs of the Support Groups, the chairs of the Multi-Stakeholder Groups, and the chairs of the Scheme Management Governance Bodies shall not be eligible to be members of the Nominating and Governance Committee; and
- Where relevant, the Alternate of an EPC Member may only become a member of the Nominating and Governance Committee if the Representative of the same EPC Member is not a member of the Nominating and Governance Committee.

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 Scheme Management Governance Bodies, 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 By-laws or activities of the EPC.

8 Data protection

Members of the NGC should as a matter of principle refrain from processing any personal data accessed or obtained through their membership of the NGC, unless and to the extent required to fulfil their normal EPC duties, as described in the present terms of reference, the By-laws, the Internal Rules or in any other relevant procedural or policy document.

The EPC Data Protection and Privacy Policy (document EPC024-18) provides further guidance in this context.



APPENDIX 2

Terms of Reference Audit Committee



Approved

Terms of Reference EPC Audit Committee

The role and activities of the Audit Committee are covered by Article 10 of the By-laws (EPC148-19). The By-laws take 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 By-laws.

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 By-laws.

4 Composition

- The Audit Committee members shall be elected by the General Assembly, as far as possible, from amongst the Representatives of the EPC Members and, if need be, amongst the Alternates of the EPC Members. The following rules shall apply to the composition of the Audit Committee:
- Only one (1) member of the Board or member of a Scheme Management Governance Body can be member of the Audit Committee;
- The members of the Nominating and Governance Committee, the chairs of Working Groups, the chairs of the Support Groups, the chairs of the Multi-Stakeholder Groups, and the chairs of the Scheme Management Governance Bodies shall not be eligible to be members of the Audit Committee;
- Where relevant, the Alternate of an EPC Member can only become a member of the Audit Committee if the Representative of the same EPC Member is not a member of the Audit Committee; and
- If, following a call for candidates, there are no sufficient candidates members for the Audit Committee so that the Audit Committee be composed of three (3) members should said candidates be elected, a natural person being an expert proposed by a EPC Member can be elected as member of the Audit Committee. However, a natural person being an expert



can only become a member of the Audit Committee provided that neither the Representative nor the Alternate of the EPC Member that has proposed his/her candidature is a member of the Audit Committee.

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.

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 By-laws or activities of the EPC.

8 Data protection

Members of the Audit Committee should as a matter of principle refrain from processing any personal data accessed or obtained through their membership of the Audit Committee, unless and to the extent required to fulfil their normal EPC duties, as described in the present terms of reference, the By-laws, the Internal Rules or in any other relevant procedural or policy document.

The EPC Data Protection and Privacy Policy (document EPC024-18) provides further guidance in this context.



APPENDIX 3

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

Note: The Board may amend the Template Terms of Reference for Working Groups, Support Groups, Multi-Stakeholder Groups and Task Forces from time to time at its discretion, as necessary.



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Terms of Reference

Template EPC Working Groups/ Support Groups/ Multi-Stakeholder Groups/ Task Forces

0 Introduction

This document serves as a template for the terms of reference (TORs) of all EPC working groups, support groups, multi-stakeholder groups and task forces (hereafter collectively referred to as “Groups”), 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.

The Board may amend the present document from time to time at its discretion, as necessary.

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 and annual work plan as necessary.
- Provide overview of delivery and approval process (including relevant Scheme Management Governance Body and/or Board/ General Assembly approval).
- [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 where relevant of representatives of Scheme Participants as set out in the related terms of reference,] as well as of other qualified nominees, as applicable.

Group members will be experienced in [....]. They will be senior PSP or association representatives 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 Group will be well balanced in terms of skills and experience, geographic representation and types of institution represented. As appropriate, the Group will contain at least one representative from each SEPA country, one Payment Institution and one Electronic Money Institution (unless any community declines to be directly represented).

[Note: The Multi-Stakeholder Groups may be composed of representatives of EPC Members and Associate Members, ***as well as of representatives of relevant stakeholders as set out in the relevant terms of reference***. The composition of the Multi-Stakeholder Groups shall seek to achieve a fair and diverse representation of relevant stakeholders and types of players while taking into account the particular objectives and the mandate of each Multi-Stakeholder Group.]

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 Groups related to Scheme Management may be approved by the relevant Scheme Management Governance Body] The same procedure will apply to subsequent additions. Replacements of Group members during a mandate term are subject to NGC approval only. This rule does not apply to the role of Chair, the appointment of which as well as any subsequent changes during the mandate term require the endorsement of the Board or the relevant Scheme Management Governance Body. A limited number of observers may be appointed according to the procedure defined in the Internal Rules of the EPC (EPC149-19).

One alternate may be appointed to each Group member, subject to NGC approval. An alternate shall be appointed for the duration of the mandate of the relevant Group member and may only attend a Group meeting when the relevant Group member is unable to attend such meeting.

The Group Chair will be elected by the [Board/relevant Scheme Management Governance Body] 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 or association representative 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.

When the alternate to a member of the Group who has been elected to the role of Group Chair is subsequently appointed to the role of member of the Group, or when an additional member of the national community of the Group Chair is nominated to the Group in accordance with the provisions of Section 9.1 of the Internal Rules, the Group Chair is expected to remain neutral during meetings of the Group, and not to express the views of his/her institution or national community.

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 approved 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 and/or relevant Scheme Management Governance Body] 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, as soon as possible and within one month of the meeting.

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 By-Laws. 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 and/or relevant Scheme Management Governance Body] for advice and guidance.

When reporting the outcome of Group deliberations to the [Board and/or relevant Scheme Management Governance Body], 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 and/or relevant Scheme Management Governance Body] meetings.

[MSGs: Membership list and minutes made public on EPC website].

6 Mandate

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

The members of the 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.

7 Data protection

Members of the [name of EPC body] should as a matter of principle refrain from processing any personal data accessed or obtained through their membership of the [name of EPC body], unless and to the extent required to fulfil their normal EPC duties, as described in the present terms of reference or in any other relevant procedural or policy document (e.g. By-laws, Internal Rules).

This principle shall apply mutatis mutandis to any observers, guests or other third parties (partly) attending one or more meetings of the [name of EPC body].

The EPC Data Protection and Privacy Policy (document EPC024-18) provides further guidance in this context.



APPENDIX 4

Competition Law Code of Conduct



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European Payments Council (EPC) Competition Law Code of Conduct

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1 Background and Objectives

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 potential “competition law issues” in the EPC context, these policy guidelines aim 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. If a competition law issue is identified, it provides guidance on the process to be followed in order to address it.

2 Competition Law Guidelines

EU and national competition law contain two basic prohibitions:

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

In principle, EU competition rules apply only where trade between Member States is affected to an appreciable extent. However, 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.

Infringements of EU and national competition law can lead to fines, civil liability for damages, and in some countries even to criminal liability. It is precise 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-group or Task Force within the association, as established from time to time, where they act in meetings organised by the EPC.

3 General Prohibition of Anti-Competitive Agreements

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

- Customer prices of products and services, including (but not limited to) the coordination of pricing elements, discounts, bonuses, surcharges, accounting procedures or profit margins, price discrimination based on data obtained or provided;
- Market partitioning such as the allocation of customer groups or territories between competitors;
- Exclusive licensing or exclusive access to an important data set, especially if considered “essential facility”;



- Access to and usage of data, if intended to restrict/limit interoperability or foreclose access;
- 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 doesn't need to be written or binding. **A verbal information exchange or an informal agreement can be considered an infringement even in the form of a "gentleman's agreement".**

Furthermore, an agreement doesn't need to be exercised or implemented in order to infringe competition law. Its potential anti-competitive effect is sufficient.

4 Specific Rules for the EPC

There are two specific areas that require particular attention for the EPC, in the light of the competition framework:

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.

These standards are allowed where they improve the quality of EPC Members' and Scheme Participants products or services. However, neither the EPC nor the 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 always publicly accessible, also for non-members.
- Compliance should always be voluntary (unless required by law). Standards must not prohibit the 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 shall 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 the context of the EPC, 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 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 historical 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 and business models,
- 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 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).

An undertaking may be in a dominant position also with specific reference to the data that are owned. The accumulation of data is not, in itself, problematic under competition law. However, under certain circumstances, a refusal to supply access to data might constitute an abuse of dominant position, especially in the case of refusal to grant access to information where there is an objective necessity for access to a particular input.

In other words, the limitation or refusal of access to data violates competition law if the data constitute an "essential facility" for the activities of competitors and if the refusal prevents the emergence of a new product for which consumer demand exists.

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 held by single firms and, in certain circumstances, held collectively. In other words, Article 102 TFEU can apply also 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.**

In order **to minimize** such risk:

- i) check the meeting agenda sent in advance, and
- ii) object in advance to inappropriate discussion items;
- iii) at the day of the meeting, 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, demand that the corresponding discussion be stopped, request that advice be sought from or directly 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.

In any case, 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.

In practice, therefore, the EPC undertakes the following:

- The EPC shall post this Code of Conduct on its extranet so that all EPC Members, Associate Members have access to it and/or share it in advance of each meeting, along with the meeting's documentation.
- This Code of Conduct shall be shared with any person accessing the extranet, along with any other relevant policy document.
- The mandates for the EPC Working Group and Support Group activities shall be reviewed by the EPC legal counsel prior to their approval by the EPC Board.
- Written agendas of 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 Chair 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 in chronological order.
- 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's Meetings

DOs

- Carefully read the EPC Competition Law Code of Conduct that precedes this Annex.
- Identify clearly the specific legitimate purpose of each EPC project, meeting and conference call.
- Object to any discussion, activity or conduct that may infringe competition law rules and inform the EPC Legal Counsel accordingly.
- Stay on topic during meetings, within the scope of the approved agenda and the terms of reference of the body concerned.
- Stop any meeting when the participants insist on discussing matters that may lead to violations of competition law rules.
- Return commercially sensitive information you receive, without keeping copies, and explain in writing that you do not wish to obtain such information.
- 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

- Don't reach understandings or agreements or even hold discussions (especially with a competitor) on anything relating to commercially sensitive topics such as (but not limited to) prices, credit terms and billing practices, sales, costs, future business plans, bids or matters relating to individual suppliers or customers.
- Don't attend meetings without clear indication of the purpose and/or written agenda, circulated in advance.
- Don't attend unscheduled gatherings, unless you know that they are for a *bona fide* purpose or purely social gatherings.
- 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.
- 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.
- Don't participate in information exchanges, market surveys, or benchmarking exercises without the advice of your and/or EPC's legal counsel.
- 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 Instant 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.