

Revised Statutes of OpenPEPPOL AISBL – Adopted at the GA10 of October 30th 2018

Corporate identification number 0848.934.496 (Register of Legal Entities Brussels)

Section I. Designation, Registered Office and Lifespan of the Association

Article 1. Designation

The International Association is designated by the name “Open Pan European Public Procurement Online”, officially abbreviated as “OpenPEPPOL”, hereinafter referred to as “OpenPEPPOL” or “the Association”.

Article 2. Registered Office

The Registered Office of OpenPEPPOL, which is required to be located in Belgium, is at 1040 Brussels, Rond-point Schuman 6, box 5, Brussels Metropolitan Region.

The Registered Office may be moved to any other location within the Belgian territory by the decision of the Managing Committee of OpenPEPPOL.

Article 3. Lifespan

OpenPEPPOL is set up for an undefined period. It can be dissolved at any time by the decision of a qualified majority in a General Assembly.

Section II. Purposes of OpenPEPPOL

Article 4. Purpose of the Association

The primary purpose of OpenPEPPOL is to enable European businesses to easily deal electronically with any European public sector buyers in their procurement processes, thereby increasing opportunities for greater competition for government contracts and giving better value for tax payers’ money, to encourage new and innovative ICT services and to simplify access to larger markets for suppliers (especially small or medium sized enterprises). It will do this by:

1. Striving to promote usage of widely accepted technology standards and specifications from established standards setting organisations (hereinafter referred to as “PEPPOL specifications”) for dealing electronically with any European public sector buyers in their procurement processes.
2. Providing the authoritative point of reference for networks of interoperable, PEPPOL-compliant infrastructure and the organisations that use it.
3. Ensuring the Long-term sustainability of the PEPPOL-infrastructure networks and user communities.
4. Ensuring the Long-term sustainability of the PEPPOL specifications, building blocks and services.
5. Promoting and supporting the ever-wider use of the PEPPOL specifications, building blocks and services.

Business to business use of the PEPPOL-compliant infrastructure and use of PEPPOL-components and services in other areas than procurement is also recognised as important and will be encouraged and supported by the Association. Use of these items outside of Europe should also be encouraged and supported.

OpenPEPPOL is a not-for-profit Association, and any margin of profit generated will be re-invested in activities to further support the purposes of the Association.

As an organisation, OpenPEPPOL will be allowed to become a Member, a partner, or otherwise participate to other organisations, associations and/or consortia, provided that the objectives of such initiatives are in line with its own Mission and Purposes as set forth in the present Article.

OpenPEPPOL will be allowed to initiate or participate in any other type of lawful activity that can support the fulfilment of its Mission, provided that the objectives of such initiatives are in line with its own Purposes as set forth in the present Article.

Section III. Membership Criteria, Subscriptions, Withdrawal, Liability, Intellectual Property Rights (IPR)

Article 5. Membership Criteria, Rights and Obligations

Membership of OpenPEPPOL is open to the following categories of organisation:

- a. End-users of PEPPOL based services; such as, but not limited to, contracting authorities (public sector entities) and economic operators (private sector entities);
- b. PEPPOL Authorities (according to provisions of the PEPPOL Agreements);
- c. Service Providers offering PEPPOL-based services in one or more domains (according to provisions of the PEPPOL Agreements);

Other organisations might be admitted as Observers without voting or representation rights.

As a condition of membership of OpenPEPPOL, a Member shall accept the Statutes of the Association.

Moreover, members who are legal entities must have a separate legal personality and not have been declared bankrupt or wound up by a competent Court or other instance.

The criteria for membership of OpenPEPPOL may vary and will be decided by the General Assembly. These criteria and qualification conditions will be set out in these Statutes. Required material evidence and/or self-declarations to verify eligibility under the above categories will be set out in the Internal Regulations.

Any persons or entities who have been convicted for taking part in criminal organisations, or for criminal acts like corruption, fraud, money laundering and who in general fail to respect moral integrity criteria, as well as fail to respect financial stability criteria, cannot be members of OpenPEPPOL.

The number of Members has no upper limit, but cannot be fewer than two separate, non-affiliated entities.

Members of OpenPEPPOL will be required to participate in at least one of the Communities, as set out in Article 10 and Article 28.

Members of OpenPEPPOL will be expected to participate, on a voluntary basis, in the activities of internal working groups, which may be set up by decisions of the Managing Committee or the Coordinating Committee(s), and which will perform specific work undertaken by the Association, or to otherwise advance its purposes.

Individuals, academic institutions, learned societies, professional associations, commercial organisations, other European or International Associations, Consortia and Networks, and any other organisation that fails to qualify for membership of OpenPEPPOL under the above criteria, may apply for acceptance as Observers. The entitlements and responsibilities of OpenPEPPOL Observers will be set out in the Internal Regulations.

Applications for membership, or Observer status, shall be made on the prescribed form and can be made at any time.

The Managing Committee shall have the power to decide on the admission of applicants, without any requirement for motivation of the decision made.

OpenPEPPOL may become a Member of any relevant body or consortium with purposes and interests that are in accordance with Article 4 of these Statutes.

Article 6. Categories of Members – Subscription fees

Members of OpenPEPPOL are required to pay an annual subscription fee to support the purposes and activities of the Association.

All Members except Observers enjoy the same voting rights. Observers do not have the right to vote, submit candidates for elections, or be elected to any position. However, to indicate differences in membership categories and for the purpose of calculating the annual subscription fee, each Member subscribes to one or more of the membership categories, depending upon the Membership criteria under which the respective Member has been admitted to the Association as defined in Article 5.

Members will be bound by the subscription fee obligations applicable to each category on a cumulative basis. The criteria for determining and applying different fee levels, the amount of the subscription fee for each category, the dates of the year to which fees apply, and the payment terms shall be determined by the Managing Committee.

Article 7. Withdrawal and Disqualification from Membership

Membership may be terminated in the following cases:

- a. voluntary withdrawal of a Member from the Association;
- b. disqualification of a Member by the Association in case of: (i) material violation of these Statutes when a Member acts against the aims and interest of the association; (ii) non-payment of the membership fee within 3 months after the due date; (iii) material change in the nature, structure or purpose of a Member so that the requirements for membership are no longer met.

In accordance with case a) above, any Member may withdraw from OpenPEPPOL by giving notice of an intention to terminate membership in writing to the Association.

In accordance with case b) above, the disqualification of any OpenPEPPOL Member shall require a formal decision by the Managing Committee.

Members who have withdrawn, or who have submitted a written intention to withdraw, or who are in any way disqualified from the rights of membership by the Managing Committee shall forfeit their rights to the ownership or deployment of any OpenPEPPOL asset and shall not be entitled to claim any compensation or refund of any fee paid.

Article 8. Liability

The liability of OpenPEPPOL Members extends only to the settlement of their own annual membership subscription fees. Members shall not be held individually or jointly liable for any obligations incurred by the Association.

Members who have given notice of their intention to withdraw may, for the period of that notice, remain liable for payment of their annual subscriptions but their liability for payment of the annual subscription for any calendar year subsequent to the calendar year in which their notice was given shall not in any circumstances exceed the amount of the annual subscription in the calendar year in which their notice was given.

Article 9. Intellectual Property Rights (IPR)

The copyright ownership of any contribution made by a Member shall remain with such Member subject to a license being granted to OpenPEPPOL to reproduce, display and prepare derivative works of such contributions. The license shall also give OpenPEPPOL the right to publish and distribute said contributions and derivative works in accordance with the principles set forth in the third paragraph below and to provide relevant parts of the contributions to standardisation organisations for further processing and distribution/publishing.

No patent licenses are required from the Members nor granted by OpenPEPPOL except if required under the third paragraph below. By contributing any material to OpenPEPPOL, the Member represents and warrants to OpenPEPPOL that the contributing Member is legally entitled to grant the license set forth above and will not intentionally include any third-party materials in any contribution. In all other respects the contributions are provided "as is." The entire risk as to implementing or otherwise using the contribution or specification is assumed by the implementer and user.

Unless otherwise agreed (between OpenPEPPOL and the Members) on a case by case basis, any and all software components contributed to OpenPEPPOL or distributed by OpenPEPPOL shall be subject to the European Union Public License (EURL) and/or the Mozilla Public License (MPL) open source software license. Guidance material, informative texts and other written documentation created by Members and published by OpenPEPPOL, shall be licensed under Creative Commons BY-NC-ND license in accordance with the principles of openness and transparency of ownership and use.

Further details regarding contributions and publications for OpenPEPPOL, including applicable versions of the above-mentioned licenses, will be set out in the Internal Regulations.

Section IV. Organisational Structure

Article 10. The Structure and Governance of OpenPEPPOL

The structure of OpenPEPPOL consists of the following bodies:

- a. The General Assembly (Section V)
- b. The Secretary General (Section VIII)
- c. The Election Committee (Section VI)
- d. The Managing Committee (Section VII)
- e. The Coordinating Committee(s) (Section IX)
- f. The Communities (Section X)
- g. The Change Managements Boards (Section XI)

The General Assembly appoints the members of the Managing Committee, the Election Committee and the Secretary General. These are compulsory bodies.

The Managing Committee will, at its sole discretion, determine the number and composition of Communities, Coordinating Committee(s) and Change Management Boards.

Governance arrangements shall be common for all of the above bodies, except if otherwise provided herein. The details of these governance arrangements will be further defined in the Internal Regulations.

Article 11. Election procedures

Any person representing a Member of OpenPEPPOL may be elected to any role in a body of OpenPEPPOL, as set out in Article 10.

The election procedures will be set out in the Internal Regulations.

Article 12. Decision-making procedures

Decision making in OpenPEPPOL bodies, except if otherwise provided for herein, shall be normally made by consensus (i.e. unanimity amongst all attending Members). Should consensus not be reached by the attending Members, then the chair of the relevant body, or any two members present or represented, can submit an agenda item to a majority vote. In the case of parity, the chair shall have a casting vote.

Article 13. Escalation

The highest authority of the OpenPEPPOL AISBL is the General Assembly. It has the powers as set out in Article 15.

The powers of the other bodies are further defined in these articles (see Sections VI to XI) and the Internal Regulations.

All the above-mentioned governing bodies have the right to:

- Delegate specific tasks within their jurisdiction to Work Groups or dedicated taskforces
- Escalate disputes or open issues according to the common escalation path in the Association, as set out in the Internal Regulations.

The escalation path in the organisation follows an upward line, defining the highest authority for escalation according to the default General Assembly. Only unresolved issues of a strategic or principle nature can be escalated to the General Assembly. Other types of issues will need to be settled at a lower level in the Association.

Section V. The General Assembly

Article 14. Composition of and Representation at the General Assembly

The General Assembly is composed of all the Members of OpenPEPPOL.

Members who are not private individuals shall appoint a formal representative to attend the General Assembly, who will validly exercise the rights of the Member without the Association having to verify the representative's credentials, which must nevertheless remain on record within the Member organisation to be supplied upon request.

Each OpenPEPPOL Member holds one vote in the General Assembly. Members may vote physically, or electronically as described under Article 17.

Members are expected to ensure that their formally appointed representatives are of a sufficiently high level within their organisations and at a higher level than those who may have a more operational role. A Member can be represented by a person substituting the formal representative or by an external person of their choice, subject to prior notification.

A Member may represent one or more other Members at the General Assembly, and a letter or electronic communication to that effect may constitute proof of appointment. Such a letter proving an appointment as a representative of a Member is only valid if it is communicated prior to a meeting of the General Assembly through the communications channel which is designated in the notification of the General Assembly, identifying at least the member organisations concerned, the scope of the power of representation, and the time of appointment.

Such a letter proving an appointment as a representative of a Member may appoint that representative for a single meeting of the General Assembly or for a limited number of meetings, and it may be given for a single agenda item or for multiple agenda items. The appointment of a representative by a Member can always be revoked by that Member.

If a Member who has issued an appointment as a representative chooses to participate in a meeting, their participation and their votes and opinions expressed during that meeting will take precedence over any power of representation that that Member may have given to another person prior to that meeting.

In principle, a Member can only appoint one representative in relation to the same General Assembly agenda item. If a Member has however issued multiple appointments as a representative to different persons in relation to the same General Assembly agenda item, the appointment with the most recent time shall take precedence.

Article 15. Powers of the General Assembly

The General Assembly is the supreme power of the Association. It holds all the powers that are expressly reserved by law and these Articles of Association, and that are not devolved to the Managing Committee or any other governing body by the current Statutes.

The General Assembly has the power to:

- a. modify the Statutes of the Association
- b. elect or dismiss members of the Managing Committee
- c. elect or dismiss members of the Election Committee
- d. elect or dismiss the Secretary General
- e. approve a broad programme of activities and initiatives for the forthcoming years to further develop the purposes of the Association,
- f. approve a budget for the forthcoming fiscal year
- g. approve the accounts of the previous fiscal year
- h. dissolve the Association

Article 16. Frequency of General Assemblies, Notification, Agenda and Minutes

The General Assembly shall meet at least once every year, as determined by the Managing Committee, and is chaired by the Secretary General. The Managing Committee may call for a special General Assembly at any time whenever it is in the interests of the Association. A majority (50%+1) of the Members can require the Managing Committee to call a special General Assembly. Procedures for Member petitions for special General Assemblies under this Article will be set out in the Internal Regulations.

Members shall be notified of a General Assembly one month in advance, in writing or electronically, by the Secretary General on behalf of the Managing Committee. Notifications shall inform Members of the date, venue, time and agenda of the meeting. The Managing Committee shall determine the agenda for the meetings of the General Assembly, but all proposals made by the Members that have been presented in writing to the Secretary General and agreed by at least three Managing Committee Members, shall also be placed on the agenda.

The agendas, minutes, voting records, and related papers, reports, and accounts, shall constitute part of the formal records of the Association and shall be made available to the Members, upon their request.

Any General Assembly, other than the statutory General Assembly that meets every year, may be held entirely virtually by electronic means. In addition, wherever the notification of the General Assembly expressly states this, the Members have the right to participate remotely in the General Assembly by the electronic means of communication designated in the notification. These electronic means of communication must enable them to take note of the discussions at the General Assembly simultaneously and without interruption, and to exercise the right to vote in respect of all points on which the General Assembly must decide, as well as to participate in the deliberations and to exercise their right to ask questions. When a Member participates remotely in the meeting through such means, he is deemed to be present at the General Assembly. The notification will show the agenda, date, time and place of the Assembly as well as relevant information to enable Members and Observers to participate.

Further operational details about the General Assemblies will be set out in the Internal Regulations.

Article 17. Decision Making at the General Assembly

The only items subject to decision making shall be those on the agenda.

The decision making at the General Assembly shall be by unanimity, irrespective of the number of Members present or represented. Should a unanimous vote not be reached by the attending Members, then the Secretary General can submit an agenda item to a majority vote. In the case of parity, the Secretary General shall have a casting vote.

The General Assembly may only approve modifications to the Statutes, or the dissolution of the Association, if such items are on the agenda, and if 50% + 1 of the Members are attending or are validly represented. Should this attendance quorum not be reached, the attending Members can call for a second Assembly which may validly debate on such items, regardless of the number of Members attending or validly represented. Should a unanimous vote not be reached by the attending Members, then the Secretary General can submit an agenda item to a majority vote. In the case of parity, Secretary General shall have a casting vote.

Modifications to the Statutes shall be ratified, when and where necessary, by Royal Decree, and published in the Annexes of the Moniteur Belge.

Section VI. The Election Committee

Article 18. The Election Committee

The Election Committee consists of three Members, each representing separate OpenPEPPOL membership categories that hold voting rights at the General Assembly. The Election Committee is appointed by the General Assembly.

The Election Committee ensures the availability of eligible and qualified candidates for elections of the Secretary General and members of the Managing Committee.

Section VII. The Managing Committee

Article 19. Appointment or Election and Resignation of Members of the Managing Committee

The Managing Committee shall be composed of the Secretary General and a minimum of three and a maximum of nine members elected by the General Assembly. The General Assembly shall decide upon the number of the Managing Committee members. All membership categories shall be equally represented in the Managing Committee.

Managing Committee members may resign at any time, following which the Managing Committee has the option to nominate a replacement to serve until the next General Assembly.

Any Managing Committee member can be replaced or dismissed by means of a resolution adopted by the General Assembly in accordance with the rules for amendment or modification of the Statutes of the Association as described under Article 17.

Managing Committee members may stand for more than one term of office.

The term of office for Managing Committee members may not exceed two years. Nonetheless, after expiration or termination of their mandate, Managing Committee members shall remain in office until the next meeting of the General Assembly.

The detailed electoral and termination or dismissal procedures will be set out in the Internal Regulations.

Article 20. Frequency of Meetings of the Managing Committee, Notification, Agenda and Minutes

The Managing Committee shall decide on its own meeting frequency, which shall not be less than twice a year. Meetings shall be chaired by the Secretary General. Members of the Managing Committee shall be notified of a Meeting at least one week in advance, in writing, by the Secretary General. Notifications shall inform Members of the date, venue, time and agenda. For especially urgent matters, the Secretary General may call Managing Committee members to an extraordinary meeting on a notice of 3 days.

The Secretary General shall determine the agenda for Meetings of the Managing Committee, but all proposals, made in writing by a Managing Committee member, shall also be placed on the agenda.

The agendas, minutes, voting records, and related papers, reports and accounts, shall constitute part of the formal Records of the Association.

Further operational details about the meetings of the Managing Committee will be set out in the Internal Regulations.

Article 21. Decision Making at Meetings of the Managing Committee

The only items subject to decision making shall be those on the agenda unless all Members of the Managing Committee attending agree to consider an issue not on the agenda.

Meetings of the Managing Committee shall require a quorum of 50% either through attendance or valid representation.

As set out in article 12, the decisions of the Managing Committee are taken by unanimity amongst all attending Members. Should a unanimous vote not be reached by the attending Members, then the Secretary General can submit an agenda item to a majority vote. In the case of parity, the Secretary General shall have a casting vote.

Article 22. Responsibilities of the Managing Committee

The Managing Committee is responsible for the overseeing of the affairs of the Association and the promotion of its purposes. It holds all the powers of representation not specifically reserved for the General Assembly by law or these current Statutes.

In an emergency the Managing Committee can take a provisional decision on matters that would normally lie within the responsibilities of the General Assembly. Such a decision will stand until it is reported in writing to the next meeting of the General Assembly and will have to be ratified by the General Assembly.

The Managing Committee is responsible for:

- a. the strategic governance of The Association

- b. considering and determining applications for membership and related procedures, including Member withdrawal, disqualification and censure
- c. considering and determining applications for Observer status, and setting out the entitlements and responsibilities of Observers
- d. determining the amount of the subscription fee and the terms of payment thereof for each Membership category and for the OpenPEPPOL Observers
- e. setting out a broad programme of activities and initiatives for each forthcoming year to further the purposes of the Association, for consideration by the General Assembly
- f. ensuring the implementation of the decisions taken by the General Assembly
- g. setting out and approving a budget for each forthcoming year, for consideration by the General Assembly
- h. authorising, controlling and monitoring expenditure in accordance with the approved budget, and keeping accounting and other related records
- i. disqualifying any Member according to provisions in Article 7
- j. establishing a contingency fund, in accordance with the law, in order to cover any future expense, exceptional or not
- k. establishing Internal Regulations according to the provisions of these Statutes
- l. generally furthering the purposes, activities and initiatives of The Association

Expenditure may only be authorised, and liability incurred, in accordance with the approved budget.

Further operational details about the procedures to be run according to the provisions of this Article will be set out in the Internal Regulations.

Article 23. Delegations

The Managing Committee may, as part of its exclusive responsibilities, delegate part of its powers to one or several of its Members, to the Secretary General, and to special proxyholders.

Article 24. Legal Representation

Representation in law, as plaintiff as well as defendant, may be conducted in the name of the Association by either the Secretary General or his appointed representative, acting alone, or by anyone appointed for the purpose by the Managing Committee acting in accordance with the powers granted to that person by the Managing Committee.

Article 25. Personal Liabilities

The Members of the Managing Committee may act on behalf of The Association, but their liability shall only extend to the implementation of their mandate. They shall not be liable for the liabilities or financial obligations of the Association.

Section VIII. The Secretary General

Article 26. Function and Responsibilities of the Secretary General

The Secretary General is the highest authority of the Association between General Assemblies. The Secretary General is elected by the General Assembly. The Secretary General may stand for more than one term of office.

The General Assembly has the power to elect and appoint the Secretary General and shall determine his term of office, which may not exceed two years. Nonetheless, after expiration or termination of his mandate, the Secretary General remains in office until the next General Assembly which can also be called on purpose to appoint a replacement. Failure by the General Assembly to specify the term of office shall be construed as an election for a term of office of two years. The election procedures, including voting by electronic means and/or casting absentee votes, will be set out in the Internal Regulations.

The Secretary General may resign at any time, though he shall remain in office until the next meeting of the General Assembly, which may be called to appoint a replacement.

The Secretary General can be replaced or dismissed by means of a resolution adopted by the General Assembly.

The responsibilities of the Secretary General include:

- a. the day-to-day management of the Association
- b. promoting the purposes and the approved programme of activities and initiatives of the Association
- c. taking action on behalf of the Association as directed by the General Assembly and/or the Managing Committee
- d. chairing the Managing Committee
- e. implementing the decisions of the General Assembly and the Managing Committee, supervising the executive and administrative officers and personnel who may be undertaking day-to-day tasks of running the Association and otherwise supporting its function
- f. representing the Association in accordance with Article 24, all of which is under the authority and exclusive responsibility of the Managing Committee

The Secretary General is accountable to the General Assembly regarding the implementation of the mandate given by the General Assembly.

Section IX. The Coordinating Committee(s)

Article 27. Purpose

The mandate of the Coordinating Committee(s) is to ensure alignment of PEPPOL specifications and services between the Communities.

The Coordinating Committee(s) is composed of the Leaders of the Communities, who are elected by the relevant Community and any other person as determined by the Managing Committee. The Coordinating Committee(s) have only an advising role.

Further operational details about the procedures of the Coordinating Committee(s) will be set out in the Internal Regulations.

Section X. The OpenPEPPOL Communities

Article 28. Purpose

The OpenPEPPOL Communities are the bodies responsible for maintenance and further development of the PEPPOL specifications and agreements through interaction between OpenPEPPOL Members.

The OpenPEPPOL Communities are composed of Members of the Association and have only an advising role.

Further operational details about the procedures of the OpenPEPPOL Communities will be set out in the Internal Regulations.

Section XI. The Change Management Boards

Article 29. Purpose

The Change Management Boards make decisions on issues related to Requests for Change for PEPPOL specifications and agreements and make recommendations to the Coordinating Committee(s) for issues affecting more than one Community.

The Change Management Board members are elected by the relevant Communities.

Further operational details about the procedures of the Change Management Boards will be set out in the Internal Regulations.

Section XII. Fiscal Year, Financial Management and Language

Article 30. Fiscal year and Accounting

The fiscal year starts on 1 January and ends on 31 December of the same calendar year.

Article 31. Financial Operation

In accordance with Article 22, expenditure beyond that delegated to the Secretary General under Article 23 may only be incurred with the joint signature of any two of the Secretary General and an appointed representative of the Treasurer or an appointed representative of the Managing Committee, up to a maximum sum agreed by the Managing Committee.

Article 32. Treasurer

Financial support services shall also be provided by a Member of the Association, designated as Treasurer. The Treasurer will oversee the preparation of all required budgets and accounts.

Article 33. Language

The working language of OpenPEPPOL AISBL is English. The bylaws and other formal documents regarding the Association are translated into French. In case of conflict the English documents prevail.

Section XIII. Dissolution and Liquidation

Article 34. Dissolution

Notice of intent to dissolve the Association shall be circulated to Members no less than 120 days prior to the meeting of the General Assembly at which a resolution to dissolve the Association is to be voted upon.

In the event of the voluntary dissolution of the Association, the General Assembly or, by default, the competent court, will appoint official receivers to define the entitlements of any creditors and the liquidation of the assets of the Association. The General Assembly or the competent court will define the powers and terms of remuneration of the receivers.

Any remaining financial assets after the settlement of all debts will be distributed to one or several not-for-profit organisations, as determined by the General Assembly, in further pursuit of the purposes and activities of OpenPEPPOL.