

Association Professionnelle Européenne du Logiciel Libre ASBL

CONSTITUTION

I. Legal Form, Name and Registered Office

Article 1 - Legal form, name

1.1. A not-for-profit association (ASBL) is hereby incorporated under the name of “Association Professionnelle Européenne du Logiciel Libre” (or, in shorter form, ‘APELL’) with the non-official English translation “Open Source Software Business Europe Association” (hereinafter, “**APELL**” or the “**Association**”).

1.2. The Association is governed by the relevant dispositions of the Belgian Code on Companies and Associations of March 23, 2019 (hereinafter, the “**BCCA**”), as amended from time to time.

Article 2 – Registered office

2.1. The Association is registered at its head office, situated in the Brussels Region.

2.2. Without prejudice to the application of the Belgian linguistic legislation, the registered office of the Association can be transferred to any other place in Belgium by simple decision of the Management Board (hereafter, the “**Board**”), each member of which shall be referred to hereafter as a “**Director**”.

2.3. If the transfer of the registered office requires that the language of the present Constitution must be modified pursuant to the applicable Belgian linguistic legislation, only the General Assembly (“**GA**”) is empowered to take such decision, subject to the rules on the amendment of the present Constitution.

2.4. The URL of the website of the Association is : www.apell.info.

II. Purpose, Object, and Duration

Article 3 – Purposes and Object

The Association's mission is to bring national Open Source Software organisations together into a European network and to provide them with peer support, collective marketing, and policy support for public affairs, in order to increase opportunities for the members of the Association's member organisations, and to increase value and advancement for the ultimate customers in both the public and the private sectors.

For the purposes of this Constitution, "**Europe**" means the European Union plus the European Free Trade Association; and where used herein, the adjective "**European**" shall be interpreted accordingly.

3.1. Purposes. The Association will operate as a not-for-profit organisation with the following disinterested purposes:

- a) AWARENESS – to promote public awareness and understanding both of Open Source Software ("**OSS**") and of OSS-related business entities.
- b) ADVOCACY – to raise awareness and generate policies that create an environment conducive to the development of OSS-related businesses in Europe, by promoting the OSS business ecosystem, its software and services offerings, its specific strengths, and its needs, all whilst seeking to avoid any unintended consequences.
- c) REPRESENTATION – to represent and defend the professional fields of OSS and open digital technology in Europe.
- d) EMPOWERMENT – to ensure that the Association's member organisations are better empowered and supported to be active in the European public policy arena, and are provided with opportunities and channels to do so effectively.
- e) ENGAGEMENT – to work closely with the Association's partners and relevant stakeholders in the field, to ensure that a complete spectrum of OSS-related businesses in Europe is represented and considered in policy and decision-making.

3.2. Object: The Association will pursue its purpose by conducting amongst others, but not exclusively, the following activities:

- a) to influence policy makers and legislators in Europe, particularly in the institutions of the European Union, to consider and promote OSS when legislating and through other policy instruments;

- b) to communicate with its members in order to increase their capacity to participate in relevant decision- making processes, and to encourage them to do so;
- c) to establish strong partnerships and alliances with relevant stakeholders in the societal, scientific, political and corporate fields, to assist the Association in reaching its purposes, as set forth at Article 3.2. of the present Constitution; and
- d) to serve as a resource and forum for education, information sharing and networking between the APELL Members by regularly providing information through the organisation of events, media outreach and publications.

3.3. The Association may do anything necessary, appropriate, proper, advisable or desirable in furtherance of the purposes of the Association, including amongst others:

- a) applying for funding through grants, subsidies and the like;
- b) receiving donations and legacies;
- c) disposing of all contributions, grants, loans and other income or funds, whether periodically paid or not; and
- d) acquiring, receiving and managing all categories of assets (including personal assets and real estate).

In addition, the Association may carry out any activity that contributes directly or indirectly to the realisation of the above mentioned disinterested purposes, including the exercise of economic activities on an ancillary and/or isolated and/or exceptional basis the proceeds of which shall at all times be allocated exclusively to the realisation of the above mentioned disinterested purposes.

Article 4 – Duration

4.1. The duration of the Association is unlimited. It can be dissolved at any time in accordance with Article 35 of the present Constitution.

III. Membership

Article 5 – General provision

5.1. The members of APELL (the “**APELL Members**”) shall be European OSS business organisations that uphold similar purposes to those of APELL, provided that they are legally constituted following the laws and customs of their respective countries of origin, registration or domicile.

5.2. The total number of APELL Members is unlimited, but cannot be lower than three (3).

5.3. There are three (3) categories of APELL Members:

- a) Voting Members (each, a “**VM**”);
- b) Advisory Voting Members (each, an “**AVM**”); and
- c) Associate Members (each, an “**AM**”).

The term “**Full Voting Member**” (in short ‘**FVM**’) in the present Constitution refers to any APELL Member which is not an Associate Member.

Article 6 – Voting Members

6.1. Each VM is a legal entity and must be a national OSS business association in Europe that is legally constituted following the laws and customs of its country of origin. In the case of any country where no specific national Open Source business association exists, a VM may also be an international organisation which includes European members or a regional organisation, which represents the specific country. For the avoidance of doubt, consistent with the provisions of Article 13.2, no organisation which is a VM shall be entitled to more than one (1) vote in the GA, even if it represents more than one country.

6.2. Each VM shall have the following rights:

- a) to receive regular information updates concerning APELL, to no less an extent than other VMs;
- b) to be invited to participate in all activities of the Association;
- c) to participate and vote in the GA, provided that the VM is not in arrears with regard to the payment of its full membership fee; and
- d) to stand for election to the Board and to all other committees and functions within the Association.

6.3. Each VM shall have the following membership duties:

- a) to comply with: the present Constitution; the Association’s Internal Rules; the policies and other governing rules of the Association; and the decisions of its governing bodies;
- b) to nominate and notify the Association in writing the name of one (1) Member Representative (or any replacement thereof);
- c) to pay the annual membership fee as determined by the GA pursuant to Article 12 of the present Constitution; and

- d) to participate actively in APELL activities.

Article 7 – Advisory Voting Members

7.1. Each AVM is a not-for-profit legal entity which is legally constituted following the laws and customs of its country of origin and that is generally respected for its competence on OSS-related issues, but is not an OSS business association of any kind.

7.2. Each AVM shall have the following rights:

- a) to receive regular information updates concerning APELL, to no less an extent than other AVMs;
- b) to be invited to participate in all activities of the Association;
- c) to participate and vote in the GA, provided that the AVM is not in arrears with regard to the payment of its full membership fee; and
- d) to stand for election to the Board and to all other committees and functions within the Association.

7.3. Each AVM shall have the following membership duties:

- a) to comply with: the present Constitution; the Association's Internal Rules; policies and other governing rules of the Association; and the decisions of its governing bodies;
- b) to nominate and notify the Association in writing the name of one (1) Member Representative (or any replacement thereof); and
- c) to participate actively in APELL activities.

Article 8 – Associate Members

8.1. Associate Membership shall be open to any other legal entity which is a national OSS business association legally constituted following the laws and customs of its country of origin (whether or not that country is in Europe) and/or which is not in a position to incur liability for (or to commit to pay) full Association membership fees.

In addition, the Board may at its discretion invite any individual or organisation (wherever located) who or which is recognised for the outstanding support which he / she / it has provided to furthering the purposes and object of the Association, to apply for admission as an Associate Member.

8.2. Each AM shall have the following rights:

- a) as deemed appropriate by the Board, to receive regular information updates concerning APELL; and
- b) upon invitation of the Board, to attend the GA meeting in an Observer capacity, in accordance with Article 14 of the present Constitution.

8.3. Each AM shall have the following duties:

- a) to comply with: the present Constitution; the Association's Internal Rules; policies and other governing rules of the Association; and the decisions of its governing bodies;
- b) if the AM is a legal entity rather than a natural person, to nominate and notify the Association in writing the name of one (1) Member Representative (or any replacement thereof); and
- c) to pay the annual membership fee as determined by the GA pursuant to Article 12 of the present Constitution.

Article 9 – Full Voting Members

9.1. Each FVM shall nominate an appropriate, well-qualified, representative of its organisation, who has to be a natural person (the “**Member Representative**”). Such nominated Member Representative shall represent the FVM in the Association and, in particular, at the GA. The Board may at its discretion formulate criteria for such representatives, and include the criteria in the Association's Membership Policy.

9.2. Each FVM shall be entitled to be represented on APELL's Board, further to the provisions of Article 19.4 of the present Constitution.

Article 10 – Admission conditions and criteria – Applications for membership

10.1. Any organisation which applies to be a VM or an AM shall include the following documentation in its written application to the Association's Board, in order to enable the Board properly to consider the application:

- a) proof of its constitution;
- b) proof of its registration; and
- c) any other document(s) requested by the Board.

Applications may be submitted by mail, posted to the Association at its registered address, or as otherwise indicated from time to time on the Association's website.

10.2. AVMs may be admitted at any time, provided that: (i) each applicant has first been invited by the Board of APELL to apply for admission as an AVM; and (ii) after considering the applicant's submission, the Board has concluded that the applicant satisfies (or will satisfy) the requirement for the applicant to make a substantial advisory contribution to APELL upon its admission as AVM.

10.3. The Board shall consider each new application for admission as an APELL Member against the following criteria:

For any application for admission as a VM:

- The applicant must be a legal entity which is legally constituted following the laws and customs of its country of origin, and must be a national OSS business association in Europe.

Note: no application will be valid or can be accepted if any of the Association's existing VMs is an OSS business association for the same country as that which the applicant seeks to represent.

- In the case of any country where no specific national Open Source business association exists, a VM may also be an international organisation which includes European members, or a regional organisation, which represents the specific country, subject to the provisions of Article 13.2.

For any application for admission as an AVM:

- The applicant's submission must follow an invitation issued to it by the Board within the preceding twelve (12) months to apply for admission as an AVM.
- The applicant must be a not-for-profit legal entity which is legally constituted following the laws and customs of its country of origin.
- The applicant must be generally respected for its competence on OSS-related issues.
- The applicant must not be an OSS business association of any kind.

For any application for admission as an AM:

- The applicant must be a legal entity which is legally constituted following the laws and customs of its country of origin (whether or not that country is in Europe)
- The applicant must be a national OSS business association
- The applicant must not be in a position to incur liability for (or to commit to pay) full Association membership fees.

10.4. After considering each such APELL Membership application against the above criteria, the Board will either accept or reject each such application. In the case of applications accepted by the Board, the appointment of the new APELL Member shall be subject to ratification at the next meeting of the GA of the Association. In the case

of rejected APELL Membership applications, the Board will provide the next meeting of the GA of the Association with a summary of the reasons for which it rejected the application, in the light of the criteria set forth above. Each GA meeting shall vote on whether to ratify any decision taken by the Board after the previous GA to accept an APELL membership application, and the new APELL Membership, in the selected APELL Membership category, will be effective on the date of the ratification by the GA.

For a new APELL Membership to be ratified by a GA, it must be approved by a two-thirds majority of the votes cast by those FVMs present, represented or participating remotely in the GA meeting which considers that ratification decision application. The GA shall not be required to justify its decision. No notice of appeal can be given against the decision of the GA by the applicant.

Article 11 – End of APELL Membership

11.1. APELL Membership in the various membership categories ends: (i) in accordance with Articles 11.2. and 11.3 of the present Statutes; (ii) by death or loss of legal capacity, if the relevant Member is a natural person; (iii) by dissolution, merger without any clear legal successor, splitting, nullity, bankruptcy or insolvency, if the relevant Member is a legal entity; or (iv) upon the dissolution of the Association.

Each APELL Member the membership of which has ended is nevertheless required to fulfil its obligation according to Article 11.4. of the present Statutes.

11.2. Any APELL Member is free to resign from the Association at any time by submitting written notice of its resignation to the Board.

11.3. The Board (having considered the matter and formed a view), or at least one-fifth (1/5) of all FVMs, may propose the expulsion of any APELL Member if they have concluded or can demonstrate that the actions or behaviour of that APELL Member are no longer consistent with the stated requirements for membership of the Association, including (but without limitation):

- a) upholding purposes similar to those of the Association;
- b) actively participating in or supporting agreed Association activities;
- c) making timely payment of the applicable membership fee; or
- d) complying with the present Constitution, the Association's Internal Rules, the policies and other governing rules of the Association as well as with the decisions of its governing bodies.

The final decision to expel any APELL Member may only be taken by the GA. The proposed expulsion of the APELL Member must be mentioned in the convening notice. Such decision shall require approval in accordance with the quorum and voting requirements prescribed for the amendment of the Association's Constitution, and provided that the APELL Member concerned: (i) is excluded from eligibility to vote on its own expulsion; (ii) is given not less than fourteen (14) calendar days' notice of the

motion for its expulsion; and (iii) has been given the opportunity to be heard at (or to submit its own observations to) the GA meeting.

11.4. The end of any APELL membership during the course of the Association's financial year shall not affect the relevant APELL Member's obligation (if applicable) to pay the membership fees overdue as well as the membership fees for the current calendar year or any other sum due on the date of the end of membership. The APELL Member whose membership ended shall not be entitled to claim any of the Association's assets, any reimbursement of its membership fees or any other compensation in respect of the termination of its membership.

Article 12 – Membership fees

12.1. Annual membership fees (a) for VMs and (b) for AMs shall be determined each year by the GA, following a written proposal from the Board, but shall not exceed the following maxima (which shall be reviewed by the GA at least every three (3) years and may be increased by the GA provided that the motion to increase is carried by a majority of at least two-thirds (2/3) of the votes cast):

- a) for VMs: the amount of €1,500 per year; and
- b) for AMs (whether legal entities or natural persons): the amount of €500 per year.

AVMs shall not pay an annual membership fee.

12.2. After the Association has operated for no fewer than twelve (12) months following the incorporation of the Association, the GA may in specific cases and following a proposal from the Board decide to allow a temporary initial fixed-term rebate in the applicable membership fee, so as to encourage other national associations and individuals to join as new VMs or AMs.

12.3. The financial commitments and liabilities of the Association shall be exclusively covered by and limited to the assets of the Association. Neither (a) APELL Members nor (b) any of their nominated Member Representatives shall be held personally liable for any debt or financial obligations of the Association.

IV. General Assembly

Article 13 – General provisions

13.1. The GA is the supreme body of the Association, and shall be composed of the FVMs of the Association.

13.2. Each FVM has one (1) vote in the GA.

13.3. Although AMs may attend GA meetings in a consultative capacity as Observers, as laid down in Article 14 of the present Constitution, they shall have not have any right to vote at GA meetings.

13.4. Guests invited by the President, by the Board or by the GA may attend the GA meeting, without any right to vote, but with the right to speak.

13.5. The specific powers which are reserved by this Constitution to the GA are set forth in Article 15 below.

Article 14 – General Assembly Observers

14.1. Any AM may be invited by the Board to nominate an Observer (a natural person) to attend the Association's GA meeting; such nominated Observers may at the discretion of the Chairman of the GA participate in discussions in the GA to which they have been invited. In addition, the Board may also at its discretion select one (1) or more individuals or organisations, who or which are not Association members (or associated with any Association member) but are recognised for the outstanding support which they have provided to furthering the purpose and object of the Association and who or which agree to act as such, to attend (during the term of their appointment) the Association's GA meetings in an Observer capacity, on the basis that they will not have a vote.

14.2. Each appointment as a GA Observer shall be for a fixed term not exceeding two (2) years. Once appointed, a GA Observer may resign at any time and without liability by serving written notice to the Board.

In addition, the Board may at any time without liability revoke any appointed GA Observer if the Board concludes that the GA Observer: (i) has failed to attend sufficient or any GA meetings; (ii) has contributed to such meetings in a manner that has not been constructive or acceptable; or (iii) is on record as having acted outside GA meetings in a manner that is not supportive of the Association or its purposes.

Article 15 – General Assembly Powers

15.1. The GA shall have the powers explicitly conferred on it by law or the present Constitution.

15.2. The following powers are reserved to the exclusive competence of the GA:

- a) making amendments to this Constitution;
- b) approving: (i) the Association's annual accounts for the previous financial year; (ii) the budget; and (iii) as the case may be, the Board's management report;

- c) granting discharge of any Director and the statutory auditor(s) (if applicable), as well as, if necessary, the launching of action by the Association against any of the Directors and the statutory auditor(s);
- d) the voluntary dissolution of the Association;
- e) the expulsion of any APELL Member;
- f) ratifying the Board's decision to admit any new APELL Member;
- g) electing and dismissing of Directors and, if applicable, determining their remuneration;
- h) appointing the statutory auditor(s) and, if applicable, determining their remuneration;
- i) approving the disposal or acquisition of any business or activity as payment in kind (in Belgian: "*universalité*"); and
- j) the transformation of the Association as a not-for-profit organisation into an international not-for-profit organisation, into a cooperative company that is authorised to act as a social enterprise, or into a cooperative company that is recognised as a social enterprise under the BCCA.

15.3. All other matters shall be of the responsibility of the Board.

Article 16 – General Assembly Meeting rules

16.1. The GA shall meet at least once a year. The ordinary GA meeting must take place in the first semester of the calendar year.

All APELL Members shall be informed of the place, date and hour of the meeting, by means of a "**convocation**". The Board shall convene the meeting by ordinary letter or e-mail, addressed to each APELL Member, Directors and statutory auditor(s) at least twenty-one (21) calendar days before the meeting, signed by the President (or by another Director). Each convocation shall include all materials required by law, including the agenda, proposed resolutions and any essential background / working documents.

16.2. The Association may meet in Extraordinary GA upon decision by the Board or at the request of at least one quarter (1/4) of the aggregate of all FVMs.

As the case may be, the statutory auditor(s) may convene the GA meeting. They must convene the GA meeting upon request of at least one-fifth (1/5) of the aggregate of all FVMs.

Any Extraordinary GA shall be convened at least twenty (20) calendar days prior to the date of the meeting by written notice. The convening notice shall contain the information and material laid down in Article 16.1., Para. 2 of the present Constitution.

16.3. The GA may only deliberate on the items on the agenda. Within ten (10) calendar days of the issuance of any GA convocation, one twentieth (1/20) or more of the FVMs may by notice in writing require the Board to add matters to the agenda for the GA's meeting, and propose resolutions to be adopted at that meeting. The Board must communicate the respective agenda modifications to all APELL Members, the Directors and the statutory auditor(s) at least five (5) calendar days before the relevant GA meeting.

16.4. All meetings of the GA are held physically. However, where the circumstances justify it, as an alternative to a physical meeting, any GA meeting may take place either partially or entirely by telephone or video conference, web-conference or any other electronic means, provided that requirements concerning convocation and other provisions concerning physical meetings shall continue to apply.

All FVMs, Directors, statutory auditor(s) and, as the case may be, GA Observers or guests who participate in any GA meeting via a conference call, a video conference, a web-conference or by any other electronic means which offers them the possibility: (i) to hear each other at the same time; (ii) to speak to each other; and (iii) as far as the FVMs are concerned, to cast their votes on agenda items definitively (although not simultaneously) shall be deemed present at any such GA meeting.

16.5. The GA shall be presided over by the President of the Board or, in default (in the following order) by the Vice-President of the Board, by any other member of the Board, by the delegate of any AVM, or by the delegate of any VM.

Article 17 – General Assembly Voting and quorum

17.1. A GA meeting shall be considered quorate and validly constituted if at least two thirds (2/3) of the aggregate of the FVMs are present, represented by proxy or participating remotely in the meeting.

17.2. Each decision of the GA shall be made by a simple majority of the votes cast by the aggregate of the FVMs present, represented or participating remotely in the meeting, unless the present Constitution or the law specifically stipulates otherwise.

Abstentions, blank or invalid votes will not be taken into account (either in the numerator, or in the denominator) when calculating whether a decision has been approved by a majority, and will consequently not be considered as votes against.

17.3. In the event of an equal vote on any resolution, the person presiding over the GA meeting shall have a casting vote.

17.4. Voting can be done by show of hands, by roll-call or by electronic means in real time. One third (1/3) of the FVMs present, represented or participating remotely in the

GA meeting may request secret balloting by ballot paper or by use of an electronic solution which provides for secrecy. Voting about personal issues (for example, appointment and dismissal of Directors, expulsion of an APELL Member, etc.) shall always be done by secret ballot.

17.5. Each FVM has the right to be represented at a GA meeting by another FVM, which may vote as its proxy, except on any resolution that is to be decided by secret ballot. No APELL Member may cast a proxy vote on behalf of more than five (5) other APELL Members. A proxy vote shall be valid only if it is given in writing by ordinary mail, fax or email, and presented to the GA meeting.

17.6. Except for resolutions recorded in a notarial deed [and only in urgent cases], the GA may adopt all resolutions within the powers of the GA by unanimous written consent. To this end, a document setting out the proposed resolutions must be sent to all FVMs (together with copies of all documents that must be made available to them pursuant to the Code on Companies and Associations) by letter, fax, e-mail or any other means of communication provided for by Article 2281 of the Civil Code, with the request to return the document, dated and signed, to the registered office of the Association or to any other address specified in the document. The signatures can be placed either on one (1) single document or on more than one original of such document. The written resolutions are deemed to have been adopted on the date of the last signature or on the date specified in the aforementioned document setting out the proposed resolutions.

Article 18 – Minutes of General Assembly meetings

18.1. Decisions of the GA shall be recorded in formal minutes, signed by the person presiding over the meeting and by a Director. The originals of the minutes are to be kept in a separate physical register at APELL's registered office or in an electronic register (wherever that register is hosted). Every APELL Member shall have the right to access the register and all associated documents, on condition that no document in physical form may be removed from APELL's registered office premises.

18.2. The minutes of a GA are to be approved at the following GA, and copies of both draft and approved minutes shall be sent to APELL Members by ordinary letter, e-mail or fax.

V. Administration & Management Board

Article 19 – Composition of the Board

19.1. The Association is to be managed by the Board, composed of natural persons appointed by the GA according to Article 19.3 below.

19.2 In any case, the Board cannot comprise fewer than three (3) Directors or more than seven (7) Directors.

19.3. The appointment of Directors will be decided upon by the GA by a simple majority vote of the FVMs present, represented or participating remotely in the GA meeting.

19.4. After a Director has been elected to the Board by the GA, the FVM which nominated that Director can propose a replacement delegate to the GA. Such replacement delegate shall only take up his or her position as Director in case of vacancy of the position of the Director for which he or she had been designated as a replacement delegate in accordance with Article 20.2. of the present Constitution.

19.5. Each Director shall be elected for a term of two (2) years, and is eligible for re-election no more than twice, for a maximum cumulative period of six (6) years on the Board. At that point the Director must step down for at least two (2) years before being eligible again for nomination and election to membership of the Board.

19.6. Unless decided otherwise by the GA or by the present Constitution, each Director shall not be entitled to receive a remuneration for exercising his or her mandate within the Association. Directors may however be reimbursed for all reasonable travelling, hotel and other expenses properly incurred by them in connection with the proper discharge of their duties to the Association, subject to compliance by them with the Association's then current travel expense policies and procedures.

Article 20 – End of tenure

20.1. The mandate of any Director will end upon:

- a) the expiration of the term of the Director's mandate;
 - b) the death or the legal disqualification of the Director;
 - c) the Director's resignation from the Board at any time upon written notice to the Board; however, the resigning Director must remain in service until his/her replacement can be reasonably ensured and in any event if his/her resignation implies that the number of Directors would otherwise falls below the minimum number stipulated in Article 19.2. of the present Constitution;
- or

- d) the dismissal of the Director by the GA, if he or she fails to comply with the present Constitution, the Internal Rules and other relevant Association policies and procedures (for example, the Association's Terms of Reference for Directors, or its Code of Conduct). Any such dismissal requires a simple majority of the votes cast by the FVMs present, represented or participating remotely in the GA meeting, following a proposal of the Board decided upon by at least a two-thirds majority (2/3) vote of the other Directors present, represented or participating remotely in the relevant Board meeting.

20.2. If a position on the Board becomes vacant before the expiration of its term, the relevant FVM that had nominated the relevant Director whose mandate has ended may propose that the replacement delegate designated by such FVM pursuant to Article 19.4. of the present Constitution or another named natural person (to be approved by the remaining Directors) be co-opted to fill the vacancy. Such appointment is to be ratified at the next GA, for the remainder of the term of office of the Director who has been replaced.

20.3. If no replacement is proposed within ninety (90) days of a Board position becoming vacant, any FVM may nominate a new individual as a candidate for election by the next GA as a Director for a full two (2) year term.

Article 21 – President, Vice-President and Treasurer

21.1. The Board shall choose from among its members a President, Vice-President, and Treasurer. Their mandate will end in accordance with Article 20 of the present Constitution.

If the President is absent from any Board meeting, his or her functions shall be assumed by the Vice-President or, in default, by any other Director present.

In the event that the position of President, Vice-President or Treasurer becomes vacant, the Board may choose another Director to fulfil the functions of the previous Director whose departure resulted in the vacancy.

Article 22 – Board Meeting rules

22.1. The Board shall meet as required, but at least twice a year, at the request of at least two (2) members of the Board or of the President alone. Each Board meeting *convocation* shall be sent by ordinary letter, fax or e-mail at least fourteen (14) calendar days before the date of the relevant meeting. Each such *convocation* shall include the proposed meeting agenda, as well as the time and, unless the meeting is

to be an entirely virtual meeting (as provided for by Article 22.3 of the present Constitution), the physical location of the meeting.

22.2. Subject to the provisions and limitations stipulated in the present Constitution, in addition to the Directors (who are expected to attend the Board meeting), APELL Members and any experts or guests who are invited by the President may also attend.

22.3. Any meeting of the Board (or if applicable of any Board committee or sub-committee), can take place with or without a physical location being designated as the place of the meeting, and participation in the meeting can take place by means of a teleconference, video conference, web-conference or similar communications method or other electronic means, provided that all those participating in the meeting can: (i) hear and understand each other at the same time; (ii) speak to each other; and (iii) and as far as Directors are concerned, definitively (although not simultaneously) cast their votes actively in a direct way on agenda items. Participation by such means shall be deemed to constitute presence in person, and any business so transacted shall for all purposes be deemed as effective as business transacted at any meeting of the Board (or Board committee, or sub-committee) which is duly convened and takes place with such persons physically present.

22.4. Each Director has one (1) vote. Members, experts and guests may attend Board meetings without any right to vote. Each Director may be represented at the meeting by a Director who holds a special written proxy, however no Director may only hold more than one (1) proxy.

22.5. The Board may only deliberate and vote validly if at least fifty (50) % of the Directors are present, represented or participating (whether physically or remotely) in the meeting.

22.6. Unless otherwise stated in the present Constitution, decisions of the Board at Board meetings shall be taken by a simple majority of the votes cast by the Directors present, represented or participating (whether physically or remotely) in the meeting.

Abstentions, blank or invalid votes will not be taken into account (either in the numerator, or in the denominator) when calculating whether a decision has been approved by a majority, and will consequently not be considered as votes against.

In the case of an equal vote, the Board's President shall have a casting vote.

22.7. Alternatively, decisions of the Board (other than in relation to a proposal to expel a member) may be taken in writing by e-mail or by exchange of written letters, subject to the unanimous consent of all the Directors.

To that effect, the proposed resolution as well as copies of all supporting documents shall be sent by the President to all Directors via a clear, secure and confidential means of written communication, including via electronic means. Each such mailing shall be accompanied by an explanatory note specifying the reasons for using the written procedure, and Directors shall be allowed at least seven (7) clear calendar days following the date of receipt of the written notice before votes are due. Any Director not responding by duly completed written communication to the Board within this period shall be considered as not having participated in the vote.

Article 23 – Minutes of Board meetings

23.1. Minutes of each Board meeting, including a record of all decisions taken by the Board, shall be drafted under the responsibility of the chair of the meeting, and once approved by all Directors who attended the relevant meeting, shall be signed by the President or his or her deputy.

A copy of the signed minutes shall be sent to all Directors within twenty-one (21) calendar days of the meeting. Copies for third parties are to be signed by one (1) or more Directors who have external representation powers under Article 24 below.

23.2. The original minutes shall be kept in a separate physical register at the registered office of the Association or in an electronic register accessible by the Association's Directors (wherever that register is hosted), and available for consultation by the Directors and the FVMs at any time on not less than five (5) clear business days' prior written notice.

Article 24 – Powers

24.1. The Board shall act as a collegial body. It shall be vested with the broadest management, administration and representation powers and all authority to decide and implement all of its acts, in order to achieve the disinterested purpose and object of the Association.

The Board has the residual powers. All matters not expressly reserved by the law or this Constitution to the GA shall fall under the competency of the Board, which shall deal with any such issue on behalf of the Association, and in the broadest sense carry out (or cause to be carried out) all activities of the Association, and ensure that the decisions of the GA are fulfilled; this includes, if necessary, the establishment or revision of any Internal Rules or other governing rules which the Board shall consider necessary for the proper functioning of the Association.

24.2. The Board may delegate the powers of daily management, as defined in article 9:10 BCCA, to one (1) or more Directors, APELL Members or third parties, who can each exercise the powers of daily management alone. The Board can revoke the delegation of daily management powers at any time. In addition, the Board may

delegate any of the special management or representation powers which is conferred on it under this Constitution for legal acts or legal actions involving the Association: (a) to one (1) or more Directors; or (b) to a committee comprised of one or more Directors and/or appointed employees or agents of the Association, APELL Members or third parties. In this case, the scope of the delegated powers and term of the mandate must be specified in writing by a special proxy. Directors must from time to time consider whether the powers or functions which they have so delegated should continue to be delegated.

24.3 The Board may create special Board committees or sub-committees (composed of Directors, representatives of APELL Members and/or other natural persons who agree to such appointment) for supporting the Board with its duties and tasks and to which the Board can delegate special management or representation powers in accordance with Article 24.2 of the present Constitution.

Article 25 – Conflict of interest

25.1. If the Board is required to take a decision or a view on any operation within its field of powers for which any Director has any direct or indirect patrimonial interest that is contrary to the interests of the Association, that Director is required to inform the other Directors of the potential conflict of interest before the Board takes a decision or a view. The Director's declaration, as well as the explanations provided about the nature of the possible conflict of interest, must be recorded in the minutes of the respective Board meeting. It is not allowed that the Board delegates any such decision.

If the majority of the Directors declare that they have a conflict of interest, the decision or the operation will be submitted to the GA for approval. If the latter approves the decision or the operation, the Board may execute them as approved by the GA.

25.2. Any Director having a conflict of interest as laid down in Article 25.1. of the present Constitution shall leave the meeting and shall participate neither in the deliberations nor in any vote of the Board on the associated decision or the operation.

For the rest, the other provisions of article 9:8 BCCA shall apply.

Article 26 – Confidentiality

26.1 Each Director shall be subject to strict confidentiality in relation to his or her Association-related activities.

26.2 Where the deliberations of the Board, or any of the documents which it reviews, is or are stated to be (or identified as) confidential, and any proven breach of that

obligation of confidentiality is found to result from the act or default of any identified Director, the Board may propose to the GA to have the Director dismissed.

Article 27– Executive functions

27.1. For the avoidance of doubt, the Board is empowered to recruit or appoint one or more suitable individuals (whether from inside the Association and its membership or not), in order to discharge specific executive functions for the Association.

VI. Representation

Article 28 – Representation

28.1. Unless otherwise stipulated in the present Constitution, and without prejudice to Article 24.2. of this Constitution, the Association is validly represented with respect to all legal acts towards third parties by (i) the Board or (ii) the President and at least one (1) Director jointly, who will not have to justify to third parties the powers conferred to this end.

28.2. Within the framework of the daily management (if applicable), the Association is validly represented by each of the person(s) entitled (including under Article 24.2 of this constitution) with such daily management alone.

28.3. Without prejudice to Article 24.2 of this Constitution, the Association shall be validly represented in all legal actions or arbitration implicating the Association as a plaintiff or as a defendant before courts, tribunals or other jurisdictions by its then President alone, or by one (1) Director alone who has been appointed by the then President for that specific purpose.

VII. Finance, Accounting and Assets

Article 29 – General provision

29.1. The Association is not established or conducted for private gain, and the income and property of the Association shall be applied solely for the purposes of the Association.

Article 30 – Accounting

30.1. The Association's financial year shall commence on 1st January and shall end on 31st December each calendar year.

30.2. The accounting shall be drawn up pursuant to article 3:47 BCCA and the Royal Decree of 29 April 2019 as well as any other applicable sector regulations.

According to Article 3:47 §1 BCCA, the annual accounts for the previous financial year and the budget of the financial year following the financial year to which relate this annual accounts shall be prepared each year by the Board, and are to be submitted for approval to the GA within six (6) months after the end of the financial year.

30.3. All other financial policies and procedures are to be outlined in the Association's Internal Rules and written policies, which are framed within the context of this Constitution.

Article 31 – Financial resources

31.1. The financial resources of the Association shall be composed *inter alia* of the following:

- a) Membership fees; and
- b) any legally allowed financial resource that might be paid or granted to the Association. The Association can accept such financial resources, provided that they do not affect the independence or reputation of the Association and that the latter remains free to determine its purpose.

31.2. Besides this, the Association is allowed to raise funds in any other manner that does not violate the law.

Article 32 – Supervision by statutory auditor(s)

32.1. The Association is not required to appoint a statutory auditor, as long as it does not fall within the scope of application of article 3:47, §6 BCCA for the last completed financial year, in which case the GA may nevertheless entrust the audit of its annual accounts to one (1) or several statutory auditor(s) ("commissaires") or to one (1) or several auditors ("vérificateurs aux comptes"), whether or not members of the Association.

32.2. The GA must appoint one (1) or several statutory auditor(s) among the members of the Belgian Institute of Company Auditors, as soon as the Association falls within the scope of application of article 3:47, §6 BCCA for the last completed financial year. Such statutory auditor(s) shall be responsible for auditing: (i) the Association's financial situation; (ii) the Association's annual accounts and regularity

in the light of the law and the statutes; and (iii) the operations which must be stated in the Association's annual accounts.

The GA shall also determine the remuneration of the statutory auditors(s).

VIII. Language

Article 33– Language

33.1. All documents shall be written in English.

However, in the event (but to the extent only) that mandatory applicable law so requires:

- a) the official language of the Association shall be French; and
- b) the French language version of any Association document shall prevail to the extent of any conflict between the English and French language versions of that document.

IX. Amendment of the Constitution

Article 34 – Amendment of the Constitution

34.1. Without prejudice to Article 16.2 above or article 9:21 BCCA, each proposal that calls for an amendment to this Constitution must be made either by the Board or by at least one fifth (1/5) of the aggregate of all FVMs.

The Board shall send any such proposal in writing to the FVMs together with the *convocation* at least sixty (60) days prior to the GA meeting at which the proposal shall be voted upon.

34.2. The extraordinary GA may validly decide on any proposal for amendments to this Constitution only if at least two thirds (2/3) of the FVMs are present, represented or participate remotely in that extraordinary GA.

If an extraordinary GA meeting does not attain the attendance quorum at the first meeting, a new extraordinary GA meeting shall be called, to be held on a date no earlier than fifteen (15) calendar days after that first extraordinary GA meeting and on the same basis as previously described. This GA shall be empowered to decide

definitively and validly upon Constitution change proposals pursuant to the majority requirements laid down in Article 34.3 below, regardless of the actual number of FVMs present, represented or participating remotely in the meeting.

34.3. Unless otherwise foreseen by law, in order to be adopted, any resolution to amend this Constitution shall require at least two-thirds (2/3) of the votes cast by the FVMs present, represented or participating remotely in the meeting. With the exception of the foregoing, in order to be adopted, any resolution to amend any of the purposes or the objects of the Association requires at least a majority of four fifths (4/5) of the votes cast by the FVMs present, represented or participating remotely in the meeting.

Abstentions, blank and invalid votes will not be taken into account (either in the numerator, or in the denominator) when calculating whether a decision has been approved by a majority, and will consequently not be considered as votes against.

X. Dissolution

Article 35 – Dissolution

35.1. Any proposal calling for the dissolution and liquidation of the Association must be made by: (i) the Board; (ii) by at least one-fifth (1/5) of the FVMs; or (iii) the statutory auditor(s), upon the request of at least one-fifth (1/5) of the FVMs. The proposed dissolution must be explicitly mentioned in the *convocation* to be sent to the FVMs.

35.2. The Board must bring any such proposal together with the *convocation* to the attention of the FVMs at least sixty (60) calendar days prior to the date of the GA that will deliberate on the proposal.

35.3. The GA convened to deliberate and vote on the proposed dissolution of the Association shall be deemed properly constituted and to have a quorum to resolve the proposals provided that at least two-thirds (2/3) of the FVMs are present, are represented or participate remotely in the meeting. In order to be adopted, any resolution to dissolve the Association requires at least a majority of four fifths (4/5) of the votes cast by the FVMs present, represented or participating remotely in the meeting.

35.4. However, if at least two-thirds (2/3) of the FVMs are not present, represented or participating remotely in the first meeting, a second GA meeting will be convened according to the same conditions as those mentioned above, and may decide definitely on the said proposed dissolution of the Association pursuant to the majority requirements laid down in Article 35.3 above, regardless of the number of FVMs present, represented or participating remotely in the meeting. The second meeting may not be held less than fifteen (15) calendar days after the date of the first meeting.

35.5. If any resolution for dissolution of the Association is adopted by the GA, then the GA will also appoint one (1) or more liquidators, determine their powers and indicate the allocation of the net assets of the Association.

35.6. Upon dissolution of the Association, the net assets must be allocated (following a decision requiring a simple majority of the votes cast of the FVMs present, represented or participating remotely in the meeting) to another not-for-profit organisation of good standing which pursues any similar or related disinterested purpose as the Association or, by default, to a private non-profit-making corporate body with a disinterested purpose, which will have to use such net assets exclusively for the achievement of its disinterested purpose.

35.7 In the event that the GA resolves to dissolve the Association, the Board shall be responsible for the execution of the GA's decision.

XI. Internal Rules

Article 36 – Internal Rules

36.1. The Board may adopt Internal Rules for the Association, and may subsequently amend them, in order further to supplement this Constitution as permitted by Belgian law. The most recent version of the Internal Rules dates from [.....].

36.2. Once adopted or confirmed by the Board, the Association's latest Internal Rules will be available to all APELL Members and communicated to them in accordance with the provisions of article 2:32 BCCA.

36.3. The Internal Rules complement, but shall always be subordinate to, this Constitution. In the event (but to the extent only) of any contradiction or conflict between the Internal Rules and the Statutes, the latter shall prevail.

XII. General dispositions

Article 37 – Governing Law

37.1. Any matter that has not been dealt with in this Constitution, as well as all publications that have to be made in the Annexes of the Belgian State Gazette, will be settled in accordance with the BCCA and other applicable Belgian legal provisions.

Article 38 – Jurisdiction

38.1. Any dispute in connection with this Constitution, the Internal Rules, the policies of the Association and/or any decision of any of its governing bodies which cannot be resolved by agreement of the relevant parties shall be first submitted to an agreed mediator. If the mediation procedure does not resolve the dispute, the matter shall be brought before the competent Brussels Court.

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