

# APEP Statutes

## **PART I - NAME, LEGAL FORM, REGISTERED OFFICE, TERM**

### *Article 1 - Name, Legal Form, Term*

The name of the association is « Association des Producteurs Européens de Potasse ». It may also use the English name “European Potash Producers’ Association” and the German name “Verband der Europäischen Kaliproduzenten” (hereafter referred to as the “Association”).

The Association is a non-profit association constituted under the provisions of Code of Companies and Associations.

The Association is constituted for an indefinite period. It may be terminated by the unanimous agreement of its members. It shall not terminate i.e. by the resignation or dissolution of a member which is a legal entity or by the retirement of a member.

### *Article 2 - Registered Office*

The registered office of the Association is located in metropolitan Brussels, currently at Avenue de Tervuren 188A (Box 4), 1150Brussels.

The office may be transferred wherever in Belgium by simple decision of the Board of Directors. Transference shall be published within the same month in the appendices to the Moniteur belge.

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## **PART II - OBJECT, ACTIVITIES**

### *Article 3 - Object*

The non-profit objectives of the Association shall be to interact with the European Institutions, Member States and other international organizations, especially to

- a. promote the use of the products based on or containing potash with the exception of matters of a commercial nature,
- b. represent the interests of the Union potash producers in the European Union,
- c. defend the legitimate interests of the Union potash producers against unfair trade practices and anti-competitive behaviour of third country potash producers and processors.
- d. observe the safety, health and environmental legislation in the European Union and act as experienced and competent consultant.

### *Article 4 - Activities/Competition Compliance Rules*

To that effect the Association may develop all activities directly or indirectly related to its objectives. The Association may in particular constitute the following non-exhaustively listed activities:

- a. represent the interests of its members in their relations with any national or international authority and in particular with the European Union's institutions, especially in matters of fair trade,
- b. to take care of advisory, consultancy, technical support services of Union potash producers by experts,
- c. study any question or problem relating to the potash industry, in particular the scientific, technical, environmental at the request of authorities,
- d. organize the exchange of views, conferences, lectures, seminars, information sessions in all their forms for the public and for interested parties.

The Association may engage in any other activity aiming at the accomplishment of the above mentioned objectives. The Association may however neither engage in any profit-making activities nor in any activities likely to restrain or distort competition.

The Association and all its members and the Executive Director commit themselves to comply at all times the Antitrust Law and provide for competition guidelines ("compliance rules"). They further commit to respect these compliance rules as an essential part of the Association and its activities.

### *Article 5 - Membership*

Any natural person or legal entity, constituted according to the laws of its origin country may become member of the Association according to the following accumulative criteria, depending on the question whether the natural person/legal entity is potash producer or potash processor,

for producers:

- a. Engagement in the exploitation of natural potash resources of European Union origin and the manufacturing of potash fertilizers as essential activity in the European Union,
- b. business activities and/or registered office in one of the Member States of the European Union,
- c. regular distribution of its production within the Member States in the European Union.
- d. organize the exchange of views, conferences, lectures, seminars, information sessions in all their forms for the public and for interested parties.

For processors:

- a. regular processing of natural potash originating in the European Union as essential activity in the European Union, reaching at least one hundred thousand tonnes per year
- b. business activities and/or registered office in one of the Member States of the European Union,
- c. regular distribution of processed potash fertilizers within the Member States in the European Union.

The terms "processor" or "processing" refer to the manufacturing of granular potash.

Any company which is part of the same group (the notion "group" shall be defined according to the German term "Konzern") as a company specified in the first paragraph of this article may also become a member as long as its registered office is located in one of the Member States of the European Union and engaged in the industrial production or processing of potash.

### *Article 6 - Admission to membership*

Any applicant to membership of the Association shall submit a written application for admission to membership, addressed to the Board of Directors.

The Board of Directors shall submit this application to the General Assembly of the members, after they have verified that all conditions for membership are complied with.

### *Article 7 - Expiry of membership*

A member shall lose its membership by decision of the General Assembly:

- a. upon its resignation as member which must be given by registered letter at the end of the Association's financial year, subject to a period of at least six months' notice,
- b. in the event that the member has ceased to satisfy the qualifying criteria set out in Article 5 of the Statutes,
- c. in situation of insolvency, judicial reorganization, dissolution or liquidation,
- d. in the event of the exclusion of a member under the conditions set out in Article 8.

### *Article 7bis – Assuming an exit from the European Union*

The general assembly of members may decide that any member of the association from a State which ceases to be a Member State of the European Union retains this status.

This proposal must be approved under the same quorum and majority conditions as those laid down for an amendment to the articles of association.

It will be the responsibility of the member to send an express request to this effect to the association's board of directors by registered letter with acknowledgement of receipt, and this at the latest within six months of the effective termination of the status of Member State of the European Union by the head of the State from which the member of the association in question originates.

If the member of the association fails to send its application within the required time limit and in accordance with the required formalities, it will be deemed to have resigned.

The Board of Directors shall have six months from the date of receipt of the request to convene a general assembly of members. Failing this, the member of the association requesting the maintenance of its membership may itself convene the general assembly of members.”

### *Article 8 - Exclusion*

A member may be excluded from membership, upon proposal of the Board of Directors, on good grounds by a unanimous decision of the General Assembly of members, not taking into account the vote of the member proposed for exclusion, but after this member has been invited to make its comments heard.

The following reasons shall be considered good grounds:

- a. Failure to comply with the articles of Association, where this represents a serious infringement; or
- b. behaviour likely to prejudice this Association, its members, its objectives or its interests; or
- c. declaration of insolvency, application for composition or more generally any procedure which indicates that the member is unable to pay its debts as they fall due or is insolvent; or
- d. for any other reasonable cause.

### *Article 9 - Consequences*

A member which, in whatever way or for whatever reason, ceases to belong to the Association shall

- a. have no right whatsoever to the assets of the Association which shall continue to be used to the exclusive advantage of the remaining members constituting the Association,
- b. remain liable for its obligations towards the Association, including for the payment of its subscription and/or additional contribution to the financing of the budget for the financial year in which the cease of membership takes place.

### *Article 10 - Compliance with the articles of Association/no personal liability*

The acceptance of membership in the Association shall imply the acceptance of the articles of the Association.

Members, regardless of whether or not they are directors, shall have no personal liability in respect to third parties for any obligations undertaken by the Association.

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## **PART IV - ORGANISATIONAL STRUCTURE**

### *Article 11 – Bodies and offices*

The bodies and the offices of the Association are

- a. The General Assembly;
- b. The Board of Directors;
- c. The President/the Vice-President;
- d. The Treasurer.
- e. Executive Director

### *Article 12 - General Assembly*

(a) Composition

The General Assembly consists of all members of the Association.

Each member shall have one vote at the General Assembly.

(b) Powers

The General Assembly of members shall hold all powers not expressly reserved in these articles of Association for other organs of the Association.

The scope of activities of the General Assembly shall include in particular:

- a) Election of the President and the Vice-President of this Association;
- b) Election of the members of the Board of Directors including the Treasurer;
- c) Appointment and dismissal of the Executive Director;
- d) If necessary, appointment of individuals or legal entities as administrators for the management of the Association and to undertake Secretariat functions within the Associations.
- e) Amendment of the articles of Association;
- f) Any decision relating to the dissolution of this Association;
- g) Approval of the annual budget and the annual accounts;
- h) Establishment of the subscriptions/contributions and the terms of its payment by the members in order to cover the costs and expenses of the Association;
- i) Admission and non-admission of members;
- j) Exclusion of members;

(c) Meeting, Convocation and Agenda

The General Assembly shall meet at least once a year upon convocation by the President or the Board of Directors.

The General Assembly shall be called by 14 days' notice at the latest. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given and shall specify the place, the day and the hour of the meeting.

An extraordinary General Assembly shall be convoked at any time by the President or the Board of Directors whenever required by the interests of the Association. For this purpose the period of notice shall be reduced by the President/the Board of Directors. The grounds for this decision must be explained at the beginning of any meeting held in this manner.

The formalities governing the General Assembly of members may be disregarded if all members are present or represented at the meeting and if they agree to deliberate on the proposed agenda at this meeting.

The convocations shall be notified to the members via regular mail or via any other means of written communication (including email).

The agenda and the material documents necessary for the discussion shall be attached to the convocation. The agenda of the meetings shall be established by the President or the Board of Directors.

The General Assembly shall be chaired by the President or, if he is unable to attend, by the Vice-President.

(d) Quorum, Votes and Proxies

The General Assembly shall be validly constituted when at least 60% of the members are present or represented.

Each member present may hold only one proxy to present an absent member.

If 60% of the members are not present or represented at the first meeting, a second meeting of the General Assembly may be convened immediately by the President, the Board of Directors by sending another invitation containing the same agenda to the members at least two weeks in advance by registered letter.

The second meeting of the General Assembly shall validly deliberate, irrespective of the number of members present or represented. This fact shall be specifically indicated in the invitation.

However the second General Assembly must always be composed of at least two members present.

Unless otherwise stipulated in these articles of Association, the General Assembly of members shall pass its resolutions by a simple majority calculated on the basis of all the members present or represented at the meeting.

Members are not entitled to vote at any General Assembly unless all money presently payable to the Association has been paid, unless all present or represented members renounce on this requirement.

Minutes shall be drawn up at each General Assembly meeting and signed by the President and the Vice-President. They shall be kept in a register of minutes. Copies of the minutes shall be sent to each member.

In all other respects meetings of the General Assembly shall deliberate the organs with the standard rules of practice for General Assemblies, in particular in relation to commercial companies.

(e) Videoconference and conference call

A meeting of the General Assembly or of the Extraordinary General Assembly may consist of a videoconference and/or a conference call between members, who are not all in one place, but of whom each is able, whether directly or by telephonic communication, to converse with each of the others simultaneously. A member taking part in such a conference shall be deemed to be present in person at the meeting and shall be entitled to vote and be counted in a quorum accordingly. Such a meeting shall be deemed to take place where the largest group of those participating in the conference is assembled, or, if there is no group, at the registered office of the Association.

(f) Decision taken by written procedure.

In exceptional circumstances, when the urgent necessity and the interest of the Association require so, the decisions of the General Assembly can be taken by unanimous written consent of the members. To this end, it is required that the members come to a unanimous agreement on proceeding by way of written decision-making. Written decision-making supposes in any case that a deliberation per e-mail, video or phone conference took place.

## *Article 13 - The Board of Directors*

(a) Composition

The Association shall be administered by a Board of Directors. The maximum number of the members of the Board of Directors shall be determined by the Association in the General Assembly. Unless decided otherwise, it shall be composed of three members. There shall be no maximum number. The minimum number of members of the Board of Directors shall be three.

The three members of the Board of Directors consist of a President, a Vice-President and a Treasurer.

The Board of Directors shall be elected by the General Assembly which shall determine the functions to be performed by each of the members. It shall be composed of natural persons. Their mandate shall be non-remunerated.

The Board of Directors shall be elected for three years. Its members may be re-elected. The mandate of a Director may be revoked by the General Assembly at any time.

The functions of the members of the Board of Directors are non-remunerative.

(b) Powers

The Board of Directors shall have all powers necessary to accomplish the purpose of the Association, except for the powers that are specifically granted to the General Assembly or to other bodies of the Association.

The Board of Directors shall particularly:

- determine and control the policies, activities and transactions of the Association;
- appoint and dismiss its personnel
- prepare resolutions for the General Assembly;
- execute the decisions taken by the General Assembly;
- perform any special tasks with which the General Assembly may charge the Board of Directors;
- determine and control the additional functions of the Executive Director

(c) Convention, Agenda, Minutes

The Board of Directors shall meet as often as the interests of the Association demand, under the chairmanship and under the invitation of the President or, if he is unable to attend, by the Vice-President.

The Board of Directors shall meet by invitation of the President of this Association at least once a year at any place indicated in the invitation which is sent by email to each member at least 10 days before the meeting. The invitation shall include the agenda, date, time and venue. The meeting of the Board of Directors may be combined with the meeting of the General Assembly.

Minutes shall be taken of the meetings of the Board of Directors. The Minutes shall be kept in a register at the registered office.

(d) Quorum, Votes

The Board of Directors shall be validly constituted when at least three of its members are present in person. Members may not be represented.

The decisions in the Board of Directors shall be taken unanimously. If a unanimous decision is not achievable, the members of the Board of the Directors will attempt a compromise. If a compromise is not achieved, the BoD will remit the decision to the General Assembly.

This procedure may not be used for the approval of the annual accounts.

(e) Virtual meeting

A meeting of the Board of Directors may consist of a conference call or webinar between members.

A member taking part in such a conference shall be deemed to be present in person at the meeting and shall be entitled to vote and be counted in a quorum accordingly. Such a meeting shall be deemed to take place where the largest group of those participating in the conference is assembled, or, if there is no group, at the registered office of the Association.

(f) Decision taken by written procedure

In exceptional circumstances, when the urgent necessity and the interest of the association require such, the decisions of the Board can be taken by unanimous written consent of the Directors. To this end it is required that the Directors come to a unanimous agreement on proceeding by way of written decision making.

## *Article 14 President and Vice-President*

(a) Appointment

The General Assembly shall appoint a President and a Vice-President amongst the Directors. The mandates are non-remunerated. The term of office is a 3-years-term, indefinitely renewable.

(b) Functions

The President and in his/her absence the Vice-President shall have the following functions:

- a. sending the convocation of the General Assembly and the Board of Directors;
- b. deciding the dates of meetings of the General Assembly and the Board of Directors;
- c. finalising the Minutes of the meetings of the General Assembly and the Board of Directors
- d. deciding on the public relations of the Association, particularly regarding communication with third parties;
- e. in the event of a tie, having the casting vote within the General Assembly or the Board of Directors.

(c) External presentation of the Association

The Association shall be validly represented vis-à-vis third parties with regard to all judicial and extra-judicial proceedings by the President or by two Directors.

(d) Registration

The appointment, resignation and revocation of the President, as well as the duration of his mandate, must be filed with the clerk's office of the Commercial Court of the judicial district in which the Association's registered office is located, in order to be included in the Association's public records and published in the annexes to the Belgium Official Gazette.

## *Article 15 - Treasurer*

(a) Appointment, Functions and Powers of the Treasurer

The General Assembly shall appoint its Treasurer amongst the Directors. His term of office is a 3-years-term, indefinitely renewable. In derogation to the Statutory rules that prevent any remuneration for the members of the Board of Director while undertaking their mandate and functions in the Board (article 13, par. 3 and 5) and following the agreement of the General Assembly, the mandate of the Treasurer may be remunerated.



The Treasurer shall oversee the financial affairs of the Association and report in this respect to the General Assembly/Board of Directors.

## *Article 16 – Executive Director*

### (a) Appointment, Functions and Powers of the Executive Director

The Executive Director is appointed by the General Assembly.

The Executive Director is responsible in particular for:

- the daily management of the Association;
- the continuous execution of the decisions of the General Assembly and the Board of Directors;
- the preparation and dissemination of the draft agendas and of the draft minutes of the Association's meetings;
- the supervision of the observance of the APEP's Antitrust Compliance Code in relation to the agendas and the minutes of the meetings of APEP's institutions and Expert working group, in coordination with the Company Compliance Officers of APEP's members.
- the supervision of the observance of the APEP's Antitrust Compliance Code during the meetings of APEP's Institutions and Expert Working Groups.
- any other responsibility, delegated by APEP's General Assembly or Board of Directors to the Executive Director

The General Assembly can delegate to a third party or to an appointed legal entity the recruitment of the Executive Director. Regardless, only the Association's General Assembly can decide on the final appointment (or dismissal) of the Executive Director.

The Executive Director may take care of the Secretariat functions and the daily management of the Association together with any other individual or legal entity appointed by the General Assembly

APEP General Assembly and/or APEP Board of Directors can delegate to the Executive Director and the Association's Secretariat additional authorities, functions and tasks. Such conferral must be provided by the General Assembly or by the Board in writing, specifying its terms and conditions.

All staff members in the Secretariat are under the control of the Executive Director.

The Board will fix the goals and objectives of the Secretariat and of the Executive Director for the year to come and evaluate previous year's achievements.

## *Article 17 - Working Groups*

### (a) Special Committee(s)/Working Group(s)

The General Assembly or President jointly with the Vice-President may establish one or more Committee(s)/Working Group(s). The General Assembly or the President or the Vice-President may determine among others the mission, composition, powers, conduct of meetings and governance, convocations, modalities and drafting of agendas/minutes of the Committee(s) and/or Working Group(s).

If the decision has been taken by the President and the Vice-President, this decision has to be approved on the next meeting of the General Assembly.

(b) Composition

The Committee(s) and/or Working Group(s) may compose of members and non-members. The Committee(s) and/or Working Group(s) shall always act under the responsibility of the Executive Director, who shall report on the actions and activities to the Board of Directors.

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## **PART IV - FINANCIAL YEAR, ACCOUNTS, BUDGETS, CONTRIBUTIONS**

### *Article 18 - Financial Year*

The financial year of the Association shall run from 1st of January to 31st December.

### *Article 19 - Subscriptions/Contributions*

The total subscription shall be decided by the General Assembly. The individual subscriptions are calculated by the Treasurer by dividing the budget by the number of members.

Any additional contribution may be imposed on the members at the discretion of the Board of Directors. This decision has to be taken unanimously by the Board of Directors.

For the proposal the Board of Directors shall take into consideration publicly available information concerning the members.

Subscriptions and contributions shall be payable under the terms specified in the General Assembly without prejudice of Article 9 (b) of these Statutes.

### *Article 20 - Accounts, Budgets*

Each year, prior to the ordinary General Assembly, the Board of Directors shall draw up the accounts for the previous financial year and the budget for the following year.

These documents/considerations shall be submitted to the members of the Association for approval together with the invitation to the ordinary meeting of the General Assembly. The General Assembly may make any amendments which it deems necessary.

The accounts shall be kept in accordance with the rules of good accounting practice. Each member shall have full power of investigation and verification with respect to the Association's accounts and relating documents. This power shall be exercised at the registered office of the Association only by the person designated by the member in question from within or outside the member's organisation.

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## **PART V - AMENDMENTS OF THESE ARTICLES, DISSOLUTION, LIQUIDATION**

### *Article 21 - Amendments*

The Articles of the Association may be amended by the General Assembly if

(a) all members are present or represented and

(b) a three quarter (3/4) majority in accordance with the quorum conditions specified in Article 12 (d) has been obtained.

Any amendments of the Articles of the Association should be presented to the Ministre de la Justice and have to be published in the annexes of the Moniteur belge.

### *Article 22 - Dissolution*

The General Assembly may decide to dissolve the Association by a unanimous vote and in accordance with the quorum conditions specified in Article 13.

Article 23 (2) shall also apply.

### *Article 23 - Liquidation*

In the event of the dissolution of the Association, the General Assembly shall set the terms of its liquidation. It shall appoint one or more liquidators who shall have all the powers required to effect its liquidation subject only to those restrictions specified by the General Assembly.

The General Assembly shall determine the allocation of the money remaining after the settlement of all the debts and obligations of the Association. The assets after liquidation have to be used for an altruistic purpose.

## **PART VI - GENERAL PROVISIONS**

### *Article 24 - Notification*

Where required, the relevant notification pursuant to the provision of the Associations' Statutes shall be made by registered mail. The date of dispatch shall be deemed to be the date of the post stamp.

### *Article 25 - Official Version*

Only the French version submitted to the Ministre de la Justice for approval shall be considered as the official and authentic version. The Board of Directors shall draw up an English version of the articles of Association.

### *Article 26 - Supplementary Applicable Law*

Anything that is not provided for in these articles of Association, if any, shall be governed by the provisions relevant to the Code of Companies and Associations. In the event that there is a conflict between these articles of Association and any other kind of rules of the Association, these articles of Association shall prevail.