

Final Draft Statutes
August 28, 2013

Photonics 21 Association

STATUTES

DEFINITIONS

- **Association** means the international non-profit association under Belgian law, “Photonics 21 Association”, to which these Statutes relate;
- **Board of the Association** means the management body of the Association as described in Part 4 of these Statutes;
- **By-Laws** means the internal regulation of the Association, providing for additional rules governing the Association, its Members and its governing bodies, as described in Article 28;
- **Chairman of the Board of the Association** means the person appointed in accordance with Article 17 c);
- **Photonics 21** means the European Technology Platform as described in the Report EUR 21265 by the *Commission Inter-Service Group on Technology Platforms* of the European Commission, which was established on December 1, 2005 and carries the name “Photonics 21”, having as its mission to promote research, development and innovation in the field of photonics, in order to strengthen the competitiveness of the European industry in this field, and representing industry and other organizations active in this field;
- **Photonics 21 Board of Stakeholders (BoS)** means the main decision-making body of the Photonics 21;
- **Photonics 21 EB Member** shall mean a member of the executive board of Photonics 21;
- **Photonics 21 Matters** means those subjects that are related to the SRIA and to the priority setting towards the Horizon 2020 PPP work programs, derived from the SRIA;
- **Photonics 21 Partner** means any participant of the Photonics 21;
- **General Assembly** means the body of the Association as described in Part 3 of these Statutes, in which the Members are gathered;
- **Member** means a legal entity that is member of the Association;
- **Members agreement** means the contractual arrangement that each Member shall execute or accede to, in accordance with the provisions of that agreement;
- **Membership Fee** means the financial contribution by the Members to the Association;
- **PPP Contract** means the contractual arrangement to be entered into between the Association and the European Commission for the establishment of a public private partnership under Horizon2020;
- **Statutes** means these statutes governing the Association;

- **SRIA** shall mean the Strategic Research and Innovation Agenda of Photonics 21, as determined and decided upon by Photonics 21 BoS in accordance with its internal rules (“Terms of Reference”), and outlining the research and development programme for the years 2014 up to and including 2020, of industry, R&D institutes, universities and other organisations and persons being a Photonics 21 Partner, and indicating the commitment of these participants for executing activities to meet the objectives of the programme both in type of research and development activities as well as in the size and amount of personal, financial and other recourses required to be made available to that purpose.

Part 1

NAME, FORM, HEAD OFFICE, OBJECTIVES, DURATION

Art. 1 Name

Name. The name of the Association is “Photonics 21 Association”.

Art. 2 Form, Head Office

(a) **Form.** The Association is an international non-profit association with scientific purpose governed by the provisions of Title 3 of the Belgium Law of twenty-seventh of June nineteen hundred twenty-one, and its revisions, on non-profit associations, international non-profit associations and foundations.

(b) **Head Office.** The Association has its seat in Brussels, Belgium.

Its first address is at:

c/o VDI-Office Brussels

Rue du Commerce, 31

1000 Brussels

Belgium

The Association may change its seat to any other location in Belgium upon decision of the General Assembly to be published in the Belgian Official Gazette.

Art. 3 Purpose

The purpose of the Association is to enter into the PPP Contract, to execute this PPP Contract and to promote R&D in the Photonics industry in order to strengthen the Photonics industry in the European Union, to foster technology skills in Europe by attracting students and to increase the competitiveness of the European industry by providing new tools and capabilities for manufacturing in Europe.

In execution of the above mentioned purpose, the Association will enter into the PPP Contract and may:

- (i) Confirm the SRIA;
- (ii) Liaise with Photonics 21;

- (iii) Collaborate and communicate with the European Commission with regard to all Photonics 21 Matters;
- (iv) Obtain and use financial contributions or donations that might be received by the Association from other sources than the Members in accordance with the terms and conditions applicable to such contributions or donations;
- (v) Represent and address the legitimate interests of the Members and Photonics 21 towards the European Commission, other public authorities and stake holders, without the authority to legally bind Members or legal entities belonging to Photonics 21;
- (vi) Share information of common interest among the Members and Photonics 21 to the purpose mentioned above, as far as legally permitted;
- (vii) Perform everything that is related to the above.

Art. 4 Duration

The Association is established for an indefinite period of time and can be dissolved at any time in conformity with Article 29 of these Statutes.

Part 2

MEMBERSHIP

Art. 5 Members

(a) **Legal Nature of Members.** Membership in the Association is open to and limited to entities with legal personality.

(b) **Members of the Association.**

The Members of the Association are those legal entities that are employing a Photonics 21 EB Member and have entered into the Members agreement.

Each Member shall for the duration of its membership remain a party to the Members agreement.

Art. 6 New Members

Legal entities that are the employer of a newly appointed Photonics 21 EB Member will automatically be a Member of the Association and enter into the Members agreement.

Art. 7 Rights of the Members

Members of the Association will have the rights attributed to them by these Statutes, the By-Laws and decisions taken by the bodies of the Association in accordance with these Statutes and the By-Laws.

Art. 8 Obligations of the Members

The Members shall comply with the applicable law, these Statutes and the By-Laws and the decisions taken by the bodies of the Association in accordance with these Statutes and the By-Laws.

Art. 9 Termination

The membership of any Member shall automatically terminate upon the expiry or termination for whatever reason of the mandate of Photonics 21 EB Member it is employing.

In case the Photonics 21 BoS replaces a Photonics 21 EB Member and provided that the Photonics 21 EB Member is employed by the same legal entity (or its affiliate), there is no change in the membership of that legal entity.

A Member may withdraw as a Member with immediate effect.

Art. 10 Exclusion

If any Member does not comply with these Statutes, the By-Laws, and/or any rules and regulations, issued pursuant to these Statutes or the By-Laws, or any decision of the bodies of the Association, or no longer fulfills the membership conditions, all hereinafter referred to as “default”, it can be excluded as a Member subject to the following:

a) In the event of a default which is irremediable or is not remedied within one month of the date of receipt of a written notice from the Chairman of the Board of the Association, acting on the basis of a decision taken by the Board of the Association with at least 75% majority, not calculating the defaulting Member, such notice requiring that the default be remedied, the Board of the Association may decide to terminate the membership of the defaulting Member. For the avoidance of doubt, the termination of the Members agreement for a Member shall be considered as an irremediable default for the Member concerned.

In case that a member of the Board of the Association has a conflict of interest in any decision taking by the Board of the Association, such a member of the Board of the Association shall abstain from taking part in that decision.

b) Upon a decision to terminate membership taken in accordance with the previous paragraph, the Board of the Association, acting through its Chairman, shall send a notice of decision of termination to the Member concerned, stating the reasons of such termination. Such decision may only become effective after the expiry of a period of 30 days during which the Member concerned shall have had the right to present its defense to the Board of the Association. At the expiry of the 30 days period, the Board of the Association, acting through its Chairman, shall after having considered the defaulting Member’s defense, if any, communicate in writing to the defaulting Member its confirmation of its decision of termination or its withdrawal of the decision of termination.

d) The membership of any Member that is not or not longer a party to the Members agreement, shall be terminated with a written notice from the Chairman of the Board of the Association .Such notice of termination shall have immediate effect.

e) The membership of any Member that judicially has been declared insolvent or bankrupt can be terminated with a written notice from the Chairman of the Board of the Association, acting on the basis of a decision taken by the Board of the Association. Such notice of termination shall have immediate effect.

Art. 11 Effects of termination of membership.

A Member who ceases to be a Member of the Association through withdrawal, exclusion or any other cause shall have no claim to the Association's assets; such Member shall remain liable for its Membership Fee, as far as applicable, in relation to the current financial year. Such termination shall not affect commitments entered into or liabilities incurred by such Member towards the Association prior to such withdrawal or termination.

Art. 12 Assets of the Association

The assets of the Association shall consist of:

- a) Subsidies;
- b) Membership Fees;
- c) Service fees from the members of Photonics 21 BoS;
- d) Donations, properly obtained in accordance with the applicable law;
- e) Any other assets or income received.

Part 3

GENERAL ASSEMBLY

Art. 13 Powers of the General Assembly

The General Assembly shall have all powers not attributed to other bodies of the Association by law or by these Statutes, to achieve the purpose stated in Article 3. Amongst other things, the General Assembly shall have the powers to discuss and:

1. set Membership Fees, upon proposal of the Board of the Association;
2. approve or reject annual budgets and annual accounts, proposed by the Board of the Association;
3. elect and dismiss the members of the Board of the Association;
4. grant discharge to the members of the Board of the Association;
5. appoint and dismiss the statutory auditors for the Association;
6. approve the PPP Contract;
7. approve all agreements with commitments exceeding one year or exceeding a value of 50.000 €
8. approve or reject the By-Laws of the Association as proposed by the Board of the Association;

9. provide confirmation of the SRIA and any update thereof, upon proposal of the Board of the Association;
10. amend the Statutes, and amend the By-Laws, including decisions pertaining to the change of the seat of Association;
11. dissolve the Association.

Art. 14 Composition of the General Assembly

The General Assembly shall be composed of the Members of the Association.

Each Member is represented by one delegate, hereinafter referred to as the “Member representative”. In case a Member representative cannot attend the General Assembly, the Member can choose to give proxy to a Member representative of another Member.

Provisions concerning the registration of Member representatives and alternates for Member representatives (if any) may be outlined in the By-Laws.

The meetings of the General Assembly shall be chaired by the Chairman of the Board of the Association, or if the Chairman is not available, another member of the Board of the Association. The Chairman shall designate a secretary in charge of establishing the minutes of the meeting of the General Assembly. All members of the Board of the Association shall have the right to attend and speak at the meetings of the General Assembly and shall use their reasonable effort to attend such meetings.

Art. 15 Quorum, Majority

- (a) **Quorum.** Unless otherwise provided by these Statutes, the General Assembly can only take decisions if a majority of the Members is represented at the meeting. If this condition is not met at a meeting, the Chairman of the Board of the Association shall call another meeting pursuant to Article 16 with the same agenda within the following three months, which meeting shall constitute a quorum regardless of the number of Members represented, provided, however, that this has been clearly stated in the convocation of this second meeting.
- (b) **Majority.** Each Member shall have one vote in the General Assembly. For decisions of the General Assembly a simple majority the votes of the Members represented is required, unless stated otherwise in these Statutes.
- (c) For amendments to the Statutes, dissolution of the Association and approval or rejection of the By-Laws or amendments to the By-Laws, the provisions of Article 29 of these Statutes apply.

Art. 16 Meetings, Agenda, Resolutions

16.1 The General Assembly shall take decisions in ordinary or extraordinary meetings. At least one General Assembly shall be organized per year.

The Chairman of the Board of the Association shall each year call an ordinary meeting of the General Assembly (the “annual meeting of the General Assembly”) with at least the following

points on the agenda: (1) approval of annual accounts for the past financial year, (2) approval of annual budgets for the current financial year, (3) election and dismissal of members of the Board of the Association, (4) discharge to members of the Board of the Association for the execution of their mandate during the past financial year and (5) appointment of the statutory auditor .

The Chairman of the Board of the Association shall further call extraordinary meetings of the General Assembly whenever he or she deems this appropriate and is obligated to convene an extraordinary meeting upon written request to the Board of the Association from at least 20% of all Members.

16.2 Meetings shall be called by the Chairman of the Board of the Association, acting on behalf of the Board of the Association, with at least one month prior written notice to every Member. The notification shall contain an agenda for the meeting. An item has to be included on the agenda of the General Assembly on the request from at least 10% of the Members. Members may put additional points on the agenda, provided that all Members are present and agree with such addition . Notwithstanding the foregoing, the call for the first meeting of the General Assembly is not subject to the one month prior written notice and the first meeting of the General Assembly may be called with three days prior written notice to every Member. A General Assembly meeting shall be held at the seat of the Association or such other venue within the European Union as may be specified in the invitation.

16.3 General Assembly meetings can be held in physical form, or via electronic means of communication, including but not limited to telephone or video conference, provided that the form of the meeting is so announced in the written notice calling for the meeting. In all cases the General Assembly may be held and decisions in such meetings taken through any electronic means of communication provided that the Member representatives via the electronic means of communication can be identified, can participate directly to the deliberations held during the meeting and can exercise their voting right.

When indicated by the Board of the Association acting through its Chairman or on the request from at least ten per cent (10%) of the Members, the General Assembly may make decisions by a written procedure.

To that effect, the Chairman of the Board of the Association shall send the proposed resolution(s) with a written notice to all Members via regular mail and/or via e-mail. The proposed resolution(s) shall be accompanied by a memorandum of the Board of the Association signed by the Chairman of the Board of the Association, setting forth (1) the reasons which have led to the use of the written procedure, as well as (2) the context of the proposed resolutions and (3) the specific requirements of the written procedure as provided for herein.

The proposed resolutions shall be deemed approved if within thirty days after having been sent, 75% of all the Members have approved the proposed resolution through duly completed written and signed communications returned to the Chairman of the Board of the Association. For the avoidance of doubt, Members not replying to the proposed resolution within the period of 30 days shall be deemed not to have expressed an opinion on the to proposed resolution.

16.4 The proceedings at every meeting of the General Assembly shall be laid down by the secretary or another person designated by the Chairman in minutes.

The opinion of the Chairman expressed at the meeting of the General Assembly about the outcome of a vote shall be decisive. The same shall apply to the contents of a resolution passed, in so far as a vote was taken about a proposal not laid down in writing.

If, however, immediately after the utterance of the opinion referred to in the paragraph above its correctness is contested, a new vote shall be taken if the majority of the Members represented at the General Assembly or, if the original vote had not been taken as a poll or in writing, one Member desires this. As a result of this new vote the legal consequences of the original vote shall be cancelled.

The minutes shall be submitted for approval to the Members within a period of 30 days after the date of the meeting of the General Assembly. The minutes shall be brought to the knowledge of the Photonics 21 BoS.

The resolutions shall be registered and kept in a minute book at the seat of the Association at the disposal of all Members.

Part 4

BOARD OF THE ASSOCIATION

Art. 17 The Board of the Association

(a) **Functions.** The Board of the Association shall have the powers to:

1. propose for confirmation to the General Assembly the SRIA and any update thereof ;
2. monitor the progress of the Association's activities;
3. terminate membership of defaulting Members, in accordance with the provisions of 10;
4. propose to the General Assembly Membership Fees;
5. prepare and file for acceptance by the General Assembly annual budget and annual accounts pursuant to Article 26;
6. propose for resolution by the General Assembly the By-Laws pursuant to Article 28;
7. decide about the opening of offices for the Association, and decide upon the participation in other legal entities, except for profit associations;
8. manage the Association.

(b) **members of the Board of the Association** The members of the Board of the Association shall be elected by the General Assembly. Each of the Members shall have the right to propose one candidate. There will be minimum three members of the Board of the Association.

The first members of the Board of the Association shall be the persons listed in the deed of constitution of this Association.

- (c) **Chairman of the Board of the Association.** The Chairman of the Board of the Association will be the President of the Photonics 21 EB.

The Chairman of the Board of the Association shall be appointed in his/her role by the General Assembly.

(d) **Term.** The term of the mandate of the members of the Board of the Association shall be undetermined.

A member of the Board of the Association shall immediately resign, if the Member having nominated such a member of the Board of the Association is no longer is a Member.

- (f) **Dismissal.** The General Assembly can dismiss the members of the Board of the Association at any time.

Art. 18 Meetings

The Board of the Association shall meet at least two times a year. The meetings of the Board of the Association shall be chaired by the Chairman of the Board of the Association. The Chairman of the Board of the Association shall duly notify the Board of the Association of such meeting at least (14) fourteen days before the date of the meeting, together with an agenda specifying for which item of the agenda a vote will be required. Further details may be regulated in the By-Laws. Meetings of the Board of the Association can be held in physical form or through any electronic means of communications provided that the form of the meeting is so announced in the written notice calling for the meeting.

When the meeting is held by any electronic means of communications, the following requirements need to be met: via the electronic means of communication the members of the Board of the Association can be identified, can participate directly to the deliberations held during the meeting and can exercise their voting right.

Notwithstanding the foregoing, the call for the first meeting of the Board of the Association is not subject to the fourteen days prior written notice and the first meeting of the Board of the Association may be called upon, upon written notice of minimum three days.

Each member of the Board of the Association can be represented by another member of the Board of the Association, provided, however, that no Board member can represent more than one other member of the Board of the Association For this purpose, the member of the Board of the Association shall communicate a written power of attorney to the Chairman of the Board of the Association, at least three days prior to a meeting of the Board of the Association Resolutions of the Board of the Association shall be kept by the Chairman of the Association of the Board of the Association in a minute book.

A dated and detailed document signed by the members of Board of the Association and recorded or inserted in the register of minutes shall equal a decision of the Board of the Association.

Resolutions of the Board of the Association shall be filed by the Chairman at the seat of the Association.

Art. 19 Quorum, Majority

- (a) **Quorum.** The Board of the Association is properly convened if at least two-thirds of the members of the Board of the Association are present or duly represented.

- (b) **Majority.** In case of voting, each member of the Board of the Association shall have one vote. A simple majority of the votes of the members of the Board of the Association present is required for taking decisions, unless stated otherwise herein.

Art. 20 Representation of the Association

The Association will be legally represented towards third parties and in legal proceedings, by two members of the Board of the Association acting together.

More specific and more limiting rules for the representation of the Association, including with regard to the representation of the Association for the daily management, may be laid down in the By-Laws.

The Board of the Association may grant general or specific powers of attorney to any person it deems appropriate.

The Board of the Association is authorised to delegate or outsource parts of its tasks, but not its responsibilities, to an external party. The tasks that can be outsourced are:

- bookkeeping and accounting
- secretarial work
- collecting Membership fees
- any other tasks as the Board of the Association deems fit

PART 5

CHAIRMAN TREASURER, SECRETARY

Art. 21 Chairman of the Board of the Association

The Chairman of the Board of the Association shall be responsible for :

- Having a coordinating role between the Board of the Association and the Photonics 21 EB Members and the Photonics 21 BoS.
- Being the primary contact person of the Association towards the EU Commission, Photonics 21 and third parties within the framework of the daily management, in due consideration of decisions of the Board of the Association and the General Assembly and the provisions of the By-Laws.
- Reporting to Photonics 21 on a /regular basis, on all matters related to Photonics 21, including the communication in that respect with the European Commission

Art. 22 Treasurer, Secretary

The following persons will be appointed and dismissed by the Board of the Association from within the membership of the Board of the Association:

- The Treasurer
- The Secretary

The powers of the Chairman, Treasurer and the Secretary are defined in the By-Laws.

The Treasurer and the Secretary are appointed for a term of 2 years and their mandate can be renewed. However, the Board of the Association can at any time dismiss the Treasurer or the Secretary.

Part 6

MEMBERSHIP FEES, FINANCIAL YEAR, ANNUAL ACCOUNTS

Art. 23 Membership Fees and other Contributions

The Membership Fees are determined by the General Assembly upon proposal of the Board of the Association for each financial year. Such proposal shall divide the amount of the budget for each financial year that shall be covered by Membership Fees over the Members.

The Membership Fee shall be payable at such time and in such manner as shall be determined by the General Assembly.

Art. 24 No individual liability for the Members

Members of the Association do not incur by their membership any individual or joint and several liability for the Association's undertakings and the obligations of Members are strictly limited to the amount of their Membership Fee.

Art. 25 Financial Year

The financial year begins on the first of January and ends on the thirty-first of December of each year. The first financial year of the Association shall run from the date of establishment of the Association until December 31, 2014.

Art. 26 Annual Accounts

Each year the annual accounts for the past financial year and the budget for the current financial year shall be submitted to the annual meeting of the General Assembly.

Together with the annual accounts, the Board of the Association shall submit to the General Assembly a "management report" in which it shall account for its management actions and provide all legally required information.

Art. 27 Audit

If required by law, the General Assembly appoints one or more statutory auditors or any other person fulfilling the requirements imposed by law, who will be charged with the audit of the financial status of the Association, the annual accounts and the regularity of the Association's transactions reflected in these annual accounts ("the Audit"). The statutory auditor(s) will draw up a comprehensive written report (the 'supervision report'), which will be submitted to the annual General Assembly.

Part 7

BY-LAWS

Art. 28 Issuing of By-Laws

The General Assembly on specific proposal from the Board of the Association shall adopt By-Laws compatible with the provisions of these Statutes, in order to ensure the functioning of the Association and its administration, containing but not limited to provisions regarding:

- Representation at meetings of the General Assembly;
- Representation at meetings of Board of the Association;
- Representation of the Association;
- delegation of task and/or authorisations to one or more members of the Board of the Association or third parties.

Part 8

AMENDMENTS, DISSOLUTION, EFFECTIVE DATE

Art. 29 Amendments to the Statutes, Adoption and Amendments to By-Laws Dissolution,

- (a) Amendments of Statutes, Dissolution.** Decisions to amend the Statutes and/or to dissolve the Association require a majority of 75% of the Members represented in the General Assembly, while for these purposes, the General Assembly shall not be deemed to be properly convened unless three quarters of the Members are represented at the meeting.
- (b) Adoption and Amendments of By-Laws.** Decisions to adopt the By-Laws and decisions on amendments of the By-Laws require a majority of 75% of the Members represented in the General Assembly, while for these purposes, the General Assembly shall not be deemed to be properly convened unless a simple majority of the Members are represented at the meeting.
- (c) Liquidation.** In the event of a decision by the General Assembly to dissolve the Association, the General Assembly shall decide on the method of liquidation, and will designate the liquidator or liquidators and determine their powers. The General

Assembly will also decide upon the destination of Association's funds remaining after liquidation, taking into consideration that the assets must be disposed of to the benefit of an organisation pursuing a similar and non-profit objective. All decisions shall be taken with the same quorum and majority requirements as are set forth in Article 29 (a).

- (d) In case a General Assembly is not properly convened for the resolutions referred to in paragraphs (a) (b) and (c) above, the Chairman shall call another meeting with the same resolutions on the agenda, within the following three months, which meeting shall constitute a quorum regardless of the number of Members represented, provided, however, that this has been clearly stated in the convocation of this second meeting. The majority requirements shall be as set forth in Article 29 (a).

Part 9

GENERAL PROVISIONS

Art. 30 Miscellaneous

All matters which are not covered by the present Statutes, shall be settled in accordance with applicable law or, if not covered in applicable law, by a decision of the Board of the Association.

Art. 31 Settlement of disputes

- (a) All disputes or differences arising directly in connection with these Statutes, the By-Laws, and the decisions taken by the bodies of the Association which cannot be settled amicably, shall be subject to the jurisdiction of the competent court of Brussels, Belgium. Such court shall have jurisdiction in the event of a counterclaim made by the defendant in any legal action.
- (b) The Members concerned and the Association may instead elect unanimously to seek to resolve by mediation any dispute or difference which cannot be settled amicably by them.