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Updated 18 November 2014

## **EBIC BYLAWS**

### **PREAMBLE**

#### **Section 1. Vision**

In the context of agriculture, biostimulants will play a critical role in achieving the three pillars of *Europe 2020: A strategy for smart, sustainable and inclusive growth*, *Communication from the European Commission*:

- Smart growth: developing an economy based on knowledge and innovation;
- Sustainable growth: promoting a more resource efficient, greener and more competitive economy;
- Inclusive growth: fostering a high-employment economy delivering social and territorial cohesion.

#### **Section 2. Mission**

The purpose of the European Biostimulants Industry Council (EBIC) is to promote the capacity of biostimulants to help to meet growing global demand for agriculture in a sustainable manner. This means:

- Securing regulation to create a truly European market that is predictable, provides a strong base for investment and fosters continuing innovation;
- Raising awareness about what biostimulants are, how they function and how they can contribute to more sustainable agriculture;
- Fostering high standards of business operations in the biostimulants sector.

### **ARTICLE 1 NAME AND LOCATION**

#### **1.1. Name**

The organization is named "European Biostimulants Industry Council". The acronym of the association is EBIC.

#### **1.2. Location**

The organization is based in Antwerp, Belgium.

## ARTICLE 2 MEMBERSHIP

### 2.1. Qualification

The Association is composed of manufacturers of biostimulants fulfilling one of the following criteria:

- Based in the European Union, the European Free Trade Area (EFTA) or the European Economic Area (EEA) regardless of where they are sold;
- The European representative of companies producing biostimulants elsewhere, with Europe being defined as the European Union, the European Free Trade Area (EFTA) or the European Economic Area (EEA).

As specified in Article 5.1 of the statutes, only legal entities with responsibility for placing biostimulant products on the European market according to EU rules are eligible to join EBIC.

In exceptional circumstances the General Assembly can admit a member not fulfilling these criteria, notably, biostimulant producers from outside Europe may join EBIC if they provide eligible evidence that they are a bona fide producer and have a legitimate interest in the European market.

Examples of “eligible evidence” include:

- Product registration in a non-European member of the Organisation for Economic Co-operation and Development;
- Demonstration of the agronomic merits of the company’s products, notably by meeting the standards for justifying product claims as outlined in EBIC’s proposals to the European Commission:
  - Scientific literature (unlikely to be sufficient alone except for basic substances);
  - Field trials by one or more research centres accredited for good experimental practices (GEPs);
  - Field trials conducted by non-GEP accredited research universities;
  - Bioassays.

Examples of “legitimate interests” include:

- Manufacturing biostimulants within the European Union, the European Free Trade Area (EFTA) or the European Economic Area (EEA);
- Blending biostimulants with other products within the European Union, the European Free Trade Area (EFTA) or the European Economic Area (EEA);
- Manufacturing biostimulants outside Europe, but maintaining corporate headquarters within the European Union, the European Free Trade Area (EFTA) or the European Economic Area (EEA);
- Importing and distributing biostimulants for a non-European producer as long as the importer/distributor has responsibility for all aspects of commercializing the products in Europe, including registration;

- Building/converting manufacturing facilities to produce biostimulants as outlined above, or being in the process of commercializing biostimulant products in Europe.

The Association does not admit private individuals as Members.

## 2.2. Admission

All applicants for admission as a Member shall address a request in written or electronic form to the President. The decision on admission of new Members is made by the Board of the Association, in accordance with the provisions in Article 5.1 of the Statutes.

All deliberations regarding membership applications must take into account all relevant provisions of competition law.

## 2.3. Member Rights

(a) Voting Rights. All members in good standing have the right to vote according to the modalities outlined in Article 3.2.

(b) Meeting Access. Members are entitled to attend and observe all meetings of the Association; and meetings and sessions of all Association, committees, task forces, work groups, and other subgroups. Meetings of the Board of Directors are closed, but notes of those meetings are made available to members in a reasonable time frame. The Association may establish fees for some in-person meetings.

(c) Citing EBIC membership and using the member logo. EBIC members in good standing have the right to mention that they are members in good standing and to use the EBIC member badge for the current year on their communication and marketing materials, subject to the conditions of Article 2.4.b.

## 2.4. Member responsibilities

(a) EBIC positions. When EBIC members agree on consensus strategies, positions, definitions, etc., any member taking a public position that could undermine the agreed consensus will be considered to be acting in a way that is prejudicial to the Association's moral and/or material interests. As outlined in Article 5.3 of the Statutes, this could lead to exclusion of the member from EBIC as the ultimate sanction is corrective action is not taken by the company in question.

(b) Use of EBIC's name. No member shall act in EBIC's name or claim to represent EBIC without an explicit mandate from the Association. Nor shall any company misrepresent its individual interests as being endorsed by EBIC when such is not the case. Misusing EBIC's name in such ways will be considered to be acting in a way that is prejudicial to the Association's moral and/or material interests. As outlined in Article 5.3 of the Statutes, this could lead to exclusion of the member from EBIC as the ultimate sanction is corrective action is not taken by the company in question.

(c) Providing data and other input. Members commit to put technical data and other information necessary to achieve EBIC's objectives at the disposition of the association at no cost. Members should mention the need for confidentiality at the time the information is submitted to the secretariat or other agent mandated to act on EBIC's behalf.

(d) Conflict of interest. Incoming members are required to declare any potential conflict of interest with the purposes or operations of EBIC (competing activities, membership in another organization that is opposed to EBIC's positions, etc.). Members should abstain from voting on any issues related to their conflict of interest. Any inappropriate behavior related to a conflict of interest will be referred in a first instance to EBIC's Board of Director, which shall endeavour to resolve the issue amicably. If the conflict of interest continues to be problematic, it will be referred to the General Assembly to decide whether the company's membership should be terminated.

(e) Codes of conduct. Agreement with any agreed codes of conduct are a condition of EBIC membership, and members are obliged to respect the provisions of any EBIC codes of conduct in force.

## 2.5. Annual Dues

(a) Annual dues shall be proposed by the Board of Directors and subject to a vote of the General Assembly in advance of the membership year in question.

(b) Membership year. The full membership year shall run from 1 January to 31 December. Dues must be paid for the entire membership year for any company joining on or before 30 June. Companies joining after 30 June will be subject to a reduced flat membership rate the year of admission and will not enjoy any membership benefits before 1 July of the year in question.

(c) Cancellation. Members may cancel their membership at any time as outlined in the statutes. However, cancellation does not nullify the obligation to pay dues for any membership year begun.

(d) Refunds. No dues shall be refunded to any member whose membership terminates for any reason.

## 2.6. Admission Fee

Members joining for the first time or rejoining after a lapse in their membership shall be subject to an Admission Fee. A "lapse" shall be defined as not having paid membership dues for six months or more.

The level of the Admission Fee shall be proposed by the Board of Directors and subject to a vote of the General Assembly in advance of each membership year.

## 2.7 Duration of Membership; Resignation/Removal

Membership is effective for the duration of the calendar year for which dues have been paid (or the remainder of the calendar year in the case of a partial-year membership).

(a) Resignation. Any member may resign according to the procedure outlined in the statutes.

(b) Removal. Any member may be removed from membership according to the procedure outlined in the statutes.

## ARTICLE 3 MEETINGS

### 3.1. General Assembly

The Association shall conduct at least one General Assembly per year. The Annual General Assembly will be the occasion for the election of Board directors and officers, and to conduct Association business, particularly approval of the following year's budget and membership dues.

Other General Assemblies shall be held throughout the year as necessary, according to the notification provisions detailed in the statutes.

### 3.2. Voting

(a) Eligibility. Each member company shall name its voting delegate in writing in advance of each General Assembly.

(b) Double majority. Except where noted elsewhere in the statutes or these bylaws, all Association decisions will be subject to a double majority vote: a majority of member companies voting and a majority of votes cast are necessary to approve any Association decision.

(c) Allocation of Votes. For the calculation of the number of votes cast, each member company has a weighted number of votes in accordance with the level of dues it pays:

Membership category	Number of votes
Micro	1
Small	2
Medium	3
Large	4
Very Large	5

(c) Calculating majorities. Prior to each General Assembly, members will be informed of the total number of votes being cast on the basis of members attending, proxies granted and members that have waived their right to vote. Members that do not attend and do not designate a proxy will implicitly be considered to have waived their right to vote. On the basis of the total number of votes being cast, members will also be informed of the thresholds for a simple majority of companies and the weighted majority of votes cast.

(d) Conducting Votes. Voting on all matters, including amendment of bylaws and the election of Executive Board directors or officers, may be conducted by any means allowable by law, including mail, telephone call, telegram, cablegram, e-mail, or any other means of electronic or telecommunication transmission; provided that any such means of voting must either set forth or be submitted with information from which it can be determined that such vote was authorized by the member.

### 3.3. Quorum

Quorums for General Assembly votes are defined in the statutes.

### 3.4. Proxies

(a) Voting. Every company has the opportunity to delegate its voting power by written proxy to another member for each General Assembly, whether being held in person, via electronic means, in writing or another channel. As provided in Article 6.7 of the statutes, the vote by proxy is accepted as a means of representation (but not participation) of a Member in the General Assembly.

(b) Executing a Proxy. Every proxy shall be executed in writing by the member company in question by mail, other courier, or any means of electronic or any other form of transmitted or recorded communication, (1) to the Secretary/Treasurer or (2) to the Association's designated secretariat or (3) to such other location as the Board of Directors may provide in the notice accompanying a proxy.

(c) Timing of Return. Every proxy form distributed by EBIC shall provide members with not less than 15 days (from the date of mailing) to return the proxy as outlined in Article 3.4.b. Only proxy forms received before the start of the meeting in question may be counted or otherwise treated as valid so that the voting thresholds can be adjusted accordingly.

(d) Proxy Revocation. Any proxy shall be revocable at will by the granter of the Proxy, notwithstanding any other agreement or any provision in the proxy to the contrary, but the revocation of a proxy shall not be effective until notice of the revocation has been actually delivered in person, or by mail, other courier, or any means of electronic or any other form of transmitted or recorded communication, to an authorized recipient as specified in Article 3.4.b.

(e) Proxy Expiration. Unless it specifically states otherwise, a proxy shall be valid only for the next meeting after it is given, after which time it expires. No unrevoked proxy shall be valid for longer than 11 months after its execution. A proxy shall not be revoked by the death or incapacity of the maker unless, before the vote is counted or the authority is exercised, written notice of such death or incapacity is actually delivered to an authorized recipient as specified in Article 3.4.b.

### **3.5. Cancellation or Postponement**

The Board of Directors may, by a two-thirds vote, cancel or postpone any Annual General Assembly or other General Assembly.

## **ARTICLE 4 BOARD OF THE ASSOCIATION**

### **4.1. Authority and Responsibility**

(a) Scope of Authority. The Board of the Association shall have supervision, control, and direction of the affairs of the Association; determine its policies or changes therein within the limits of law, these bylaws, and the Statutes; actively pursue the Association's mission; and supervise disbursement of its funds. The Board of the Association may adopt such rules and regulations for the conduct of its business as it deems advisable, and may delegate certain of its authority and responsibility to the officers, a designated secretariat, or to other committees or persons.

(b) Special Assignments. The President may, at his or her discretion, assign special projects to directors as determined from time to time by the Board of the Association, and designate their duties and responsibilities. Directors managing special assignments shall, with the consent of the Board, form committees, work groups, or task forces of any size, as necessary to accomplish their duties. Any such committee, work group, or task force members shall serve at the pleasure of the Board of the Association, without remuneration.

### **4.2. Board Composition**

The Board of the Association shall consist of three (3) to seven (7) directors: the President, the Vice President, the Secretary/Treasurer and directors-at-large. Each director shall be a representative of a member company and shall occupy a senior management position in the company he/she represents. Every attempt will be made to ensure broad representation of the Association's various constituencies among the directors.

Election is strictly personal and does not confer the right to designate a successor from the Director's company in the case of vacancy before the end of the term. Because election is personal, a Director who changes jobs during the Board term will continue to serve on the Board of EBIC as long as he or she is immediately engaged to occupy a senior management position in another EBIC member company.

Nominees for directorships may be drawn from submissions by any source, including self nomination.

### **4.3. Quorum**

(a) As provided in Article 7.4 of the statutes, a quorum of the Board of the Association shall consist of half of the members. The Board may validly meet if at least half of the Board members are present or represented.

When a quorum is present at any meeting, a majority of the Board of Directors in attendance thereat shall decide any question brought before such meeting unless otherwise specified in the statutes or these bylaws. If a quorum is not present, the meeting may proceed and any action taken shall become valid if subsequently confirmed by unanimous approval in writing of the Board directors and officers.

(b) With permission of the Board President, Board directors may participate in any meeting of the Board by means of videoconference, conference telephone, Internet conferencing, or other similar communications or collaborative conferencing equipment or software that enables all persons participating in the meeting to hear and speak with each other. Participation in a meeting by means of such equipment shall constitute presence in person at the meeting.

#### **4.4. Board Meetings**

(a) Meetings of the Board. The Board shall meet at least once during each year at such time and at such place as the Board President may prescribe. Meetings may be convened by means of videoconference, conference telephone, Internet conferencing, or other similar communications or collaborative conferencing equipment or software that enables all persons participating in the meeting to hear and speak with each other. Participation in a meeting by means of such equipment shall constitute presence in person at the meeting.

(b) Notice of Board Meetings. Notice of in-person Board meetings shall be given to Board directors and officers, not less than 30 days before the meeting is held. Notice of virtual and special meetings shall be given to Board directors and officers not less than 72 hours before the meeting is held. Notice may be sent by mail or any means of electronic or any other form of transmitted or recorded communication, provided the member has consented to such method of notification.

(c) Delegated Authority. No alternate member or director may be designated to vote or debate on behalf of, or otherwise take the place of, a director absent from any meeting of the Board.

(d) Proxy. No director who is unable to attend a meeting of the Board may grant a proxy to another member of the Board or to any other member.

#### **4.5. Closed Session**

(a) To foster frank discussion, meetings of the Board are generally closed, but members may request to attend with regard to specific issues. The Board will grant such requests, unless there is a compelling reason to refuse; such refusal must be made in writing with a justification of the grounds for refusal.

(b) Attendance and Access to Records. The only persons entitled to be present during, or review the records of a closed session are those entitled to vote thereat; others who, although not entitled to vote, are entitled or required under provision of law, EBIC policy, or

these bylaws to be present at the meeting; and those invited by the Board President or with the consent of the Board.

#### **4.6. Compensation**

No member of the Board of the Association shall receive any compensation for their services as a Board member.

### **ARTICLE 5 BOARD OFFICERS**

#### **5.1. Officer Qualifications**

Officers shall be a representative of a member company and shall occupy a senior management position in the company they represent. Every attempt will be made to ensure broad representation of the Association's various constituencies among the officers. Election is strictly personal and does not confer the right to designate a successor from the Officer's company in the case of vacancy before the end of the term.

#### **5.2. Officer Nominations**

Nominees for offices may be drawn from submissions by any source, including self nomination.

#### **5.3. Officers' Term of Office.**

The officers are elected according to the procedure in the Statutes for a term of two (2) years, effective immediately after the General Assembly. Terms of office may be renewed twice. For continuity, it is preferable if not all offices are renewed the same year.

#### **5.4. Officers**

Candidates for officers are indicated when the nominees are submitted to the General Assembly for election. If any of the offices are not filled, the General Assembly will choose a replacement from among the duly elected directors.

(a) President. The President shall be the chief elected officer of the Association; exercise general supervision over executive affairs of the Association; preside at all Annual and Special Assemblies of the Association; preside at all Board meetings; appoint and serve as an ex-officio member of all Association committees; appoint all committee chairs, except as otherwise provided by these bylaws; and represent or appoint a representative of the Association at meetings of other organizations and at public affairs.

(b) Vice President. The Vice President shall have duties assigned by the President and by these bylaws; act in the absence of the President; oversee long-range planning activities for the Association; and represent the Association in the absence of the President.

(c) Secretary/Treasurer. The Secretary/Treasurer shall have duties assigned by the President and by these bylaws; serve as chief financial officer for the Association; chair the Finance

Committee; oversee the preparation of an annual budget and dues recommendations for the Association; review full and interim financial reports as directed by the Board; and sign all certified copies of acts of the Association.

## ARTICLE 6 DUTIES OF OFFICERS, DIRECTORS, AND OTHERS

### 6.1. Good faith.

Every director and officer of EBIC, in exercising the powers and discharging the duties of a director or officer, shall act honestly and in good faith in the best interests of the Association, and shall exercise the care, diligence, and skill that a reasonable, prudent person would exercise in comparable circumstances.

### 6.2. Limitation of Liability.

Subject to the foregoing, no director or officer shall be liable for the acts, receipts, neglects, or defaults of any other director, officer, or employee; or for joining in any receipt or other act for conformity; or for any loss, damage, or expense happening to the Association through the insufficiency or deficiency of title to any property acquired for or on behalf of the Association; or for the insufficiency or deficiency of any security in or upon which any of the moneys of the Association shall be invested; or for any loss or damage arising from the bankruptcy, insolvency, or tortuous acts of any person with whom any of the moneys, securities, or effects of the Association shall be deposited; or for any loss occasioned by any error of judgment or oversight on the part of the director or officer; or for any other loss, damage, or misfortune that shall happen in the execution of the duties of such office or in relation thereto; provided that nothing herein shall relieve any director or officer from the duty to act in accordance with law and the regulations thereunder or from liability for any breach thereof.

### 6.3. Indemnity.

Subject to law and the Statutes, the Association shall indemnify a director or officer, a former director or officer, or a person who acts or acted at the Association's request as director or officer of a body corporate of which the Association is or was a shareholder or creditor, and such person's heirs and legal representatives, by insurance or other means, against all costs, charges, and expenses, including an amount paid to settle an action or satisfy a judgment reasonably incurred in respect of any civil, criminal, or administrative action or proceeding to which such person is made a party by reason of having been a director or officer of the Association or such body corporate; provided that such person (1) acted honestly and in good faith with a view to the best interests of the Association, and (2) in the case of a civil, criminal, or administrative action or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing that such conduct was lawful. The Association shall also indemnify such person in such other circumstances as law permits or requires. Nothing in this bylaw shall limit the right of any person entitled to indemnity to claim indemnity apart from the provisions of this bylaw.

## ARTICLE 7 COMMITTEES

### 7.1. Selection Criteria.

Committee, work group, and task force members, however designated, shall be selected primarily on the basis of competency criteria established by EBIC, with consideration for geographic and other considerations of diversity that are relevant for the Association's work. Except as otherwise provided by these bylaws, the Board President shall appoint chairpersons of all committees, work groups, and task forces, however designated.

### 7.2. Finance Committee.

(a) Appointment and Composition. A Finance Committee shall be appointed by the Board President. The Secretary/Treasurer, as chief financial officer, shall chair the Committee; other members may include the Board President at his or her discretion, and shall include the Board Vice President, a director selected by the Board President, a director elected by the non-officer directors, and other members at the President's discretion.

(b) Duties. It shall be the duty of the Finance Committee to review regular financial results; to oversee preparation of an operating budget for the fiscal year adopted by the Board of the Association; to annually review EBIC's policy on reserves; and to recommend reserve amounts. The Finance Committee may from time to time submit amendments to the budget for the current fiscal year, which may be adopted by a majority vote of the Board of the Association, and shall report as defined in EBIC policy.

### 7.3. Other Standing Committees, Special Committees, and Task Forces.

The Board President shall appoint such other committees, subcommittees, task forces, work groups, or advisory bodies, however designated, as are necessary and which are not in conflict with other provisions of these bylaws; and shall prescribe their duties. The Board of the Association may delegate to any such committee any of the powers of the Board, subject to any rules and procedures imposed from time to time by the Board. Members shall serve at the pleasure of the Board, without remuneration. All such committees, subcommittees, task forces, work groups, or advisory bodies, however designated, shall be accountable to the Board as defined in EBIC policy.

## ARTICLE 8 FINANCE

### 8.1. Authority

The Board of Directors shall have supervision, control, and direction of the receipts, expenditures, and assets of EBIC.

### 8.2. Fiscal year

The fiscal year of the Association shall be adopted by the Board of Directors.

### 8.3. Budget

In advance of each fiscal year, the Board of Directors shall submit an operating budget covering all activities of the Association to members for approval.

### 8.4. Financial Reserves

The Board of Directors shall develop polices and shall retain or develop financial reserves it deems adequate to provide reasonable financial stability of the Association and continuity of EBIC operations. The amount of the operating reserve fund shall be reviewed annually by the Finance Committee and ratified by the Board of Directors.

## ARTICLE 9 POLICIES

The Board of the Association may establish rules, regulations, and policies related to governance, management, operation, and administrative procedures of, and provision of services and conferring of honors by, the Association. These rules, regulations, and policies shall in no instance contravene or be inconsistent with applicable laws, these bylaws, or the Statutes.

## ARTICLE 10 AFFILIATION AGREEMENTS

10.1 Becoming an affiliated organization. EBIC may accord affiliation agreements to relevant trade associations and other organizations, including national associations dealing with biostimulants, other sectoral organizations with common interests, and industry-related research institutions, among others. EBIC board is entrusted with approving organizations for affiliation (hereafter "affiliates"). Becoming an affiliate does not bestow membership on the affiliate and affiliates do not enjoy voting rights. Becoming an affiliate is subject to a nominal annual fee, to be set by EBIC's General Assembly.

10.2 Responsibilities of affiliates. Affiliates must respect the following rules:

- Not undermining official EBIC positions on biostimulant-related issues;
- Respect confidentiality of information (e.g. not circulating draft positions externally without prior written approval from EBIC);
- Refrain from using information gained from EBIC to compete with or undermine EBIC or the work it conducts.

10.3 Benefits accorded to affiliates. Affiliates will receive the following benefits:

- Affiliates will be kept current on EBIC's work through appropriate communication channels;
- On an ad-hoc basis, affiliates will be consulted on specific topics;
- On an ad-hoc basis, affiliates will be invited to participate in technical meetings and discussions;
- Affiliates will be invited to send 1 participant to open sessions of EBIC's General Assemblies;

- Affiliation with EBIC can be mentioned in the organization's communication materials as long as there is no implication that the organization is a member of EBIC nor any implication that the organization or any of its positions are endorsed by EBIC unless the later explicitly mirror EBIC positions (e.g. a translation in the national language that EBIC has sanctioned).

10.4 Termination of affiliation agreements. Either party can end the affiliation agreement without cause with three months' written notice. EBIC can unilaterally end an affiliation agreement without notice if the affiliate violates its responsibilities under paragraph 10.2. EBIC's board has the power to terminate the affiliation under these latter conditions. The terminated affiliate has the right to appeal the decision within three months with the final decision being taken by EBIC's General Assembly at its following meeting. The affiliation will be suspended until the appeal is considered.

#### ARTICLE 11 AMENDMENT OF BYLAWS

These bylaws may be amended at a General Assembly by a two-thirds vote of the member companies and of the votes cast, provided that copies of proposed changes have been delivered in writing to member companies no later than 15 days prior to the voting date. Amendments must receive approval of the Board of the Association prior to submission for vote.

#### ARTICLE 12 CONFIDENTIALITY

12.1. Any non-public information (communicated in writing as non-public by the proprietor) submitted by members to the Association will be treated by the Board, Secretariat (or contractor fulfilling the role of Secretariat) and other members as confidential. They will use such information only for the stated purposes of the Association's operations and restrict the disclosure of the confidential information solely to the persons who require access to it for the stated purposes. All Parties will take all reasonable measures to preserve this confidentiality.

12.2. All confidential information made available to other Parties within the framework of the Association's operations are, and shall remain, the sole, and exclusive, property of each Party.

12.3. None of the Parties will reproduce or diffuse, directly or indirectly, partially or fully, orally or in writing, any confidential information without the prior consent of the proprietor, except for the purposes of the Association's operations or unless legally compelled to do so pursuant to a valid order by a court or other governmental body or as otherwise required by law.

12.4. Each Party has a duty to protect the confidential information disclosed under this article for five (5) years from the date of receipt of the confidential information unless the owner of the information explicitly releases another Party from this such or extends the period of confidentiality in writing .