



**European Academy of
Childhood Disability**

Roadmap to INPA

May 2020

Background

EACD is currently a UK based Charity organisation. Nevertheless, there was unanimity at the GMC to examine what the steps are needed to be taken to be recognised as European charity (NGO) with the associated access to EU benefits in order to be prepared for whatever the outcome of Brexit may be.

Multiple EU countries were considered as possible location for the international NGO. Given its strategic location for the EACD as pan-European organization and stakeholder, and the possibilities and requirements for setting up an 'international not for profit association', there was unanimity by the GMC to work out a road map towards changing the EACD organizational structure into an 'international not for profit association' (INPA) located close to the European Parliament in Brussels. This intention to become an 'international not for profit association' has been presented to the AGM in Paris, May 2019, and proposal to work out a detailed road map towards a new structure was approved by the AGM. This detailed road map, and the official final approval to change the organisational structure of EACD will be made at the Ordinary General Meeting, 19 June 2020.

Strategic approach

The process towards the new INPA will be divided into three Work Packages (see below). Each work package has first been discussed in detail with the Executive Committee (EC). An EC approved version for the roadmap is anticipated by at latest March 31st. Thereafter, the roadmap has been put forward to the GMC. An GMC approved version of the roadmap will be brought forward to the AGM for approval in Poznan, 19 June 2020.

Please find below the three Work Packages:

Work Package 1: Official foundation & Management requirements INPA

An identification has been made of all required documentation and relevant legislation for founding the INPA and the subsequent administrative and financial management requirements in the years after. A step-by-step procedure has been described. In addition, the constitution has been written in Dutch and in English. The Constitution is worked out in such a way that it complies to all legal requirement in Belgium, while effectively remaining the same as the current UK Charity Constitution in terms of governance, etc.

Work Package 2: Online Membership site & Payment system

For the new INPA, it is needed to have a website domain, a membership site and a payment provider. A number of options for a membership site, payment provider, and website domain have been explored. Three possible options per category are identified, and are fully presented in this work package, including arguments for which is arguably the best solution for EACD.

Work Package 3: Financial strategy between UK Charity and INPA & Dissolution UK Charity structure

It is of utter importance to have an optimal strategy and timing between the UK Charity and the new INPA in respect to the finances. Such a strategy has been worked out, taking into account both UK and Belgian legislation, and is presented in Work package 3.

Work package 1 - Official foundation & Management requirements INPA

1. NGOs in Belgium - Overview of legal forms available to NGOs

NGOs in Belgium can use the legal form of a **Foundation** or **Association**

- In Belgium, an NGO with legal personality may assume various legal forms. There are a '**not for profit association**' (**NPA**), a **foundation** (which can either be private or serve a public interest) and an '**international not for profit association**' (**INPA**).
- All Belgian NGOs should (1) serve an altruistic purpose, (2) respect to a certain extent limitations on the development of economic / market activities and (3) are not allowed to distribute profits to their members or other insiders. They are generally described as a generic group of “**non-profit organisations**” (**NPOs**). Under Belgian law the term “NGO” is used to describe NPOs with activities supporting developing countries.
- These NPOs are governed by the law of 27th June 1921 concerning not-for-profit organisations, international not-for-profit organisations and foundations, published in the *Belgian State Gazette* on 1st July 1921, as modified by later laws (**hereinafter referred to as 'NPO-law'**).

Recommendations

Recommendations for a non-EU NGO looking to establish an entity in Belgium would depend on the type of activity and the governance of the NGO in question. In this perspective an **INPA** is advised for Membership organizations with a **cross-border activity**, aiming for **maximum flexibility in their governance**. In addition, for fundraising purposes, the INPA and the public interest foundation have an extra advantage of “**credibility**” given their **recognition by Royal Decree**. It should be noted that no legal form offers more flexibility than others for allowing non-EU staff hires.

2. Setting up an INPA

There are **no specific legal barriers for setting up an NPO under the NPO-law**, other than the requirements relating to formalities and registration (in one of the official languages in Belgium: English can only be the working language, so **translation in Dutch and/or French of official documents is required**).

There are no specific legal barriers for setting up an INPA, other than the requirements relating to formalities and registration. This means that:

- There need to be at least two founding members
- There are no residency or nationality requirements
- The INPA legal form gives NGO the legal capacity to do things in its own name for example employ staff, deliver services, enter into commercial contracts and leases in its own name.
- There is a need for a **physical address in Brussels/Belgium**.

Meetings of the INPA can be held virtually, if provided for in the statutes.

Although in theory the address could be a PO Box that is emptied on a regular basis, there are number of administrative requirements related to the INPA that make such a PO Box practically very difficult (see Section Management Requirements INPA). The physical address can be a public or private address and does not have to be owned or rented by the EACD. Using the address of a public institution (with their permission) seems to be favourable over a private address for practical reasons. In this respect, the following options seem the most obvious:

First preferred option:

- KU Leuven Campus Brussels
 - + located centrally in Brussels
 - + KU Leuven does allow the option for NPO organisation to register on site within specific criteria/regulations (Likely to be possible to fulfil these criteria for EACD)
 - no direct link between KU Leuven Campus Brussels and EACD aims and vision

Other options:

- Université Libre de Bruxelles
 - + located in Brussels
 - + Direct link to EACD via Bernard Dan
 - unknown if ULb allows the option for NPO organisation to register on site within specific criteria/regulations
- Revalidatieziekenhuis Inkendaal
 - + Direct link to EACD via Bernard Dan (Medical and paramedical Board member Inkendaal)
 - Nearby Brussels (<10km), but technically not officially part of the Brussels region
 - unknown if Inkendaal allows the option for NPO organisation to register on site within specific criteria/regulations
- Other KU Leuven location (e.g. Leuven or Bruges)
 - + Direct link to EACD via Elegast Monbaliu (and Bernard Dan, Marco Konings)
 - + KU Leuven does allow the option for NPO organisation to register on site within specific criteria/regulations (Likely to be possible to fulfil these criteria for EACD)
 - INPA not officially based in Brussels region (distance Leuven-Brussels ±25km).

In general, setting up an INPA will take between 6 - 10 weeks. Down below a step-by-step procedure has been worked out:

Step 1. Authentic deed before notary public

The official set up of a NPO is made by a **deed of incorporation** (“Oprichtingsakte”). This deed of incorporation of a NPO typically follows the following structure: “At date X, the following people decided to set up an INPA of which the statutes are as follows ..”. where other legal NPO forms allow this deed to be based on individual agreements between the involved parties (without notary public), an INPA requires an **Authentic deed before notary public**. The authentic deed needs to be signed by all founding members. Cost of the notarial deed is estimated to be between **€1.500 and €2.500 (excluding VAT)**. All founding members need be in Belgium at notary, and a minimum of two founding members are required. As such, the current planning is to have the Executive Committee members coming over to Brussels, ideally as soon as possible after AGM approval, to sign the authentic deed before notary public as founding members. The fallback strategy, if this is not possible due to whatever reason (e.g. travel restrictions, etc.), will be to have the two or more GMC members for whom it would be the most convenient to be present at the notary in Belgium to act as founding members for the INPA.

As mentioned above, the **statutes** (i.e. Constitution) are part of the deed of incorporation. These statutes are the fundamental principles of the NPO organisation, and provide information on the aim and structure of the organisation. The most important part of the statutes is the description of the **altruistic purpose(s)** (“Belangeloze doel(en)”) of the organisation. This is because resources of the INPA can only be utilised to pursue its stated altruistic purposes. Therefore, one has to be careful in

not describing its altruistic purposes too narrowly: it must be tuned as closely as possible with the mission and strategy of the organization.

A draft of the Statutes for the EACD can be found in *Supplement A1* (in English) and *Supplement A2* (in Dutch). The Statutes are worked out in such a way that it complies to all legal requirement in Belgium, while effectively remaining the same as the current UK Charity Constitution in terms of governance, etc. For this reason, the Statutes do include a number of sections (e.g. Daily Management Committee; Statutory auditor) that are not directly relevant to the organisation in the near future but are incorporated to ensure maximum flexibility in governance where possible.

Step 2. Submit required documentation to gain recognition by Royal decree

This step is typically performed by the acting notary.

Whenever an INPA must be set up, the federal Minister of Justice ('FOD Justitie') must be involved: INPAs can only obtain legal personality after approval by Royal Decree. INPAs will be granted legal personality if they pursue a non-profit purpose of an international nature. The INPAs is officially granted legal personality at the day the approval by Royal Decree is signed.

The following document need to be submitted to the federal Minister of Justice ('FOD Justitie'):

- A) The authentic deed of incorporation before notary public of the INPA and, if applicable, additional attachments.
- B) An appeal addressed to the federal Minister of Justice, with the request to grant legal personality to the INPA (but attached to the other documents)
- C) The list of members of the General Management Committee ('Bestuur'): Last name, First name, place of birth, date of birth, address; (for legal entities: Name, legal form, address)
- C) is only required in case this is not included in the Authentic deed.

These document should be send to:

Federale overheidsdienst Justitie
Board memberaat-generaal Wetgeving en Fundamentele rechten en Vrijheden
Internationale verenigingen en stichtingen
Waterloolaan 115
1000 Brussel

At the moment all required documentation has arrived, the administration submits the draft decision for signature to the King. When the Royal Decree has been made, the administration will provide four transcripts of the royal decree to the acting notary (or the counsellor of the INPA).

Step 3. Deposit required documentation to the registry of the Commercial Tribunal

This step is likely to be performed by the acting notary.

The following document need to be submitted to the registry of the Commercial Tribunal within the judicial district of the INPA (address can be found at <https://gerechtelijke-adressen.just.fgov.be/>):

- A) One of the four transcripts of the Royal decree to grant legal personality to the INPA.
- B) The Statutes, and the minutes of the Annual General Meeting in which the GMC Members are appointed for the INPA (see *Supplement B* for draft example), and the persons authorised to represent the INPA.
- C) Form I ('formulier I'; see *Supplement C*) with the aim of **publication in the attachments of the Belgian State Gazette**, and **registration at the Crossroads Bank for Enterprises** ('Kruispuntbank van Ondernemingen').



Form I - Luik A: needs to be submitted in triplicate.

Form I - Luik B: needs to be submitted in triplicate. In this part the text of the authentic deed will be incorporated.

Form I - Luik C: needs to be submitted in triplicate.

An INPA is not allowed to publish their statutes in the attachments of the Belgian State Gazette prior to be granted legal personality by the approval of Royal decree. If this would

happen, a new publication in the attachments of the Belgian State Gazette is required to correct the first publication.

- D) Proof of payment for the publication in the attachments of the Belgian State Gazette. Costs for publication are 196,14 euro (in February 2020), to be transferred to bank account BE 48 6792 0055 0227 of the Belgian State Gazette including the name of the INPA.

The deposit of the file to the registry of the Commercial Tribunal within the judicial district of the INPA can be done on site (typically there is a separate desk for (I)NPAs), or via by post via an accompanying letter (see *Supplement D* for a draft example letter).

The registrar will check if all deposited documents are included and correct. After acceptance by the registrar, the INPA will be officially registered in the legal personality registry ('rechtspersonenregister') at the Crossroads Bank for Enterprises ('Kruispuntbank van ondernemingen'). For this purpose the INPA will be assigned a company number. From this moment the organization is officially an INPA. The registrar will ensure also that the required content is published in the Belgian State Gazette.

Step 4. Open a bank account

After the deposit of the required documentation to the registry of the Commercial Tribunal, the INPA will receive an own transcript of the statutes, provided with the required official stamps. With this document it is possible to go to a bank, and to open a (professional) bank account for the INPA.

Step 5. Visit the local VAT-office

Finally, it is required to visit the local VAT-office ('btw-kantoor'). The local VAT-office will determine if it is needed to make the company number VAT active, and if it taxable for VAT purposes. More on this can be found in section 3.2 *Taxes and VAT*.

3. Financial and administrative management requirements INPA

3.1 Administrative management requirements INPA

3.1.1 Externally stored documentation

At the registry of the of the Commercial Tribunal within the judicial district of the INPA an **association dossier** ('verenigingsdossier') will be updated and retained.

As mentioned above, when setting up an INPA, the authentic deed of incorporation and the appointments of General Management Committee members need to be deposited at the registry (and published the Belgian State Gazette via the registrar). Hereafter, any change in the statutes and/or appointment (or change / end of an appointment) need to be deposited at the registry (and published



the Belgian State Gazette via the registrar). In concrete terms this entails the following actions/decisions:

- Set up of the INPA:
 - Authentic deed of incorporation (signed by the founders), including the statutes.
 - Appointment of GMC members (at the first AGM meeting)
- Minutes of the AGM, signed by the Chair, including the following decisions:
 - ✓ Amendments in the statutes (by the AGM)
 - ✓ Appointment of new GMC Member(s) (by the AGM) OR (notification of) end/renewal of mandate GMC member (due to end of term, death, or legal reasons) (by the AGM) OR resignation of GMC member during period of mandate (acceptance by AGM) OR dismissal/resignation of GMC member by the AGM
 - ✓ If applicable: Appointment / end or renewal of mandate (due to end of term, death, or legal reasons) / dismissal / resignation of Daily management body members* (usually by GMC; or AGM if stated as such in statutes).
 - *Daily management body does not exist in the current EACD organizational structure and is not expected to be installed in the near future.
 - ✓ If applicable: Appointment / end or renewal of mandate (due to end of term, death, or legal reasons) / dismissal / resignation of permanent representatives* (usually by GMC; or AGM if stated as such in statutes).
 - *Permanent representative(s) do not exist in the current EACD organizational structure and are not expected to be installed in the near future.
 - ✓ If applicable: Appointment / end or renewal of mandate (due to end of term, death, or legal reasons) / dismissal / resignation of a Statutory auditor* (usually by GMC; or AGM if stated as such in statutes).
 - Statutory auditor do not exist in the current EACD organizational structure and are not expected to be installed in the near future
- If applicable: Decision on dissolution of INPA (approved by AGM)
- Deposit of Annual account

As Microvzw's, the INPA can deposit their annual account for free at the Registry of the of the Commercial Tribunal. This needs to be done within 30 days after approval by the AGM!

In addition: the Annual account needs to be deposited at the National bank, via the full, shortened, or micro model, depending on the size of the INPA (EACD will almost certainly be able to use the Micro model, however this template is not yet available until 2021, up until that point one needs to use Shortened model – see *Supplement E*). Costs of depositing the Annual account at the National Bank depended on the used file:

XBRL	72,10 euro	PDF	128,20 euro	Paper	134,40 euro
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3.1.2 Internally stored documentation

The following documents need to be stored at the physical address of the INPA:

- Minutes of GMC ('Bestuur') and AGM ('Algemene Vergadering')
- All Annual accounts, Budget plan upcoming year, and inventory

3.2 Taxes and VAT

From legal perspective, INPAs are allowed to engage in unlimited economic activities (with or without profit motive), but not allowed to distribute profits directly or indirectly to their members or other insiders. From a fiscal perspective, INPAs are in principle subject to a favorable income tax regime (meaning the legal entities tax regime, almost a zero-taxation except for certain types of income of wealthy NGOs), except when they are developing considerable economic activities (with profit motive). In practice, this means the following:

Taxes

- There is a small **Patrimony tax** of 0.17 % on the total reserves (= the amount of profit which is capitalized and not used for the activities during the year) of the INPA.
- An INPA could be subject to **Legal personality tax** ('rechtspersonenbelasting'). However, this is only applicable to some specific, by legislation decided, income elements and other elements which will be taxed. This legal personality tax is likely to be zero for the EACD in the upcoming years, as it is primarily related to real estate and financial investments.
- An INPA could be subject to **Corporation tax** ('vennootschapsbelasting') if it carries out a business exploitation or an activity of profitable nature, even if it does not distribute profits directly or indirectly to their members or other insiders.

To decide whether the INPA exploits a business the altruistic purposes of the INPA are irrelevant, the actual performed activity is what counts in this respect. If this activity profoundly looks like a company with a profit motive, it can be qualified as a business exploitation. An activity of profitable nature appears to assume that it involves a succession of transactions on a regular basis which thereby enter into a professional activity. However, the lawmaker has clarified that the above mentioned does not apply to isolated or exceptional activities, like a once a year event designed to increase the budget of an INPA. As such, EACD is most likely not subject to Corporation tax as long as it does not develop itself into a Professional Conference Organizing company (with a profit motive).

Corporation tax is from 2020 onwards in Belgium a tax on the profit made in that particular financial year of 25%.

- There is no equivalent of the Charity Commission of England & Wales, but INPAs wanting to accept tax deductible gifts from donors need to respect the specific conditions of tax deductibility. In general, recognition by the tax authorities is not granted for a start-up INPA. However, certain organisations have an "umbrella" recognition allowing them to team up with start-up NGOs so that the latter can obtain tax deductible gifts.

VAT

Is an INPA taxable for VAT purposes?

An INPA (and any legal type of company/organization) is subject to VAT in case it performs at a regular basis an economic activity (with or without profit motive) in which it delivers goods or services. Whether this is a core or supplementary activity is not important. In case the INPA does not deliver any goods or services, but only received donations, it is not subject to VAT and does not need a VAT number. Furthermore, Article 44 of the VAT-tax code determined a number of activities which will be exempted from VAT. Finally, if an INPA engages in economic activities taxable for VAT purposes (in Belgium) leading to an income of less than 25.000 euro/year, the INPA needs a VAT number but can opt for tax exemption.

Are membership fees of an INPA taxable for VAT purposes?

In principle, an activity is taxable for VAT purposes if it is provided for the supply of services (“onder bezwarende titel”). As such, if there is a direct link between the delivered services and the performance in return (e.g. membership fee), this performance in return is taxable for VAT purposes unless an exemption has been foreseen in the VAT-tax code. In this respect, Art. 44, §2, 11° of the VAT-tax code states the following:

“Exempted from VAT are:

11° the supplied services, as well as closely related delivered goods as part of this, in the common interest of their members, performed in return of a contribution as stated in the statutes, by non-profit organisations who pursue objectives of political, syndical, religious, ideological, patriotic, philanthropic or civil nature. The King of Belgium could add additional conditions to the exemption to prevent unfair conditions of competition.

The EACD INPA seems to fulfill the requirements of Art. 44, §2, 11°, in which case the INPA is not required to charge VAT on the membership fees. However, whether this interpretation is indeed correct needs to be checked with an accountant prior to the AGM in Poznan given the potential implications.

How do I apply for the “less than 25.000 euro/year” VAT exemption?

Visit the local VAT-office (‘btw-kantoor’). The local VAT-office will determine if it is needed to make the company number VAT active, and if it is taxable for VAT purposes. If you fulfill the ‘income economic activity of less than 25.000 euro/year’ criteria’, the only other thing you need to do is mention at the bottom of your invoices: *“bijzondere vrijstellingsregeling kleine ondernemingen” (special exemption scheme small companies)*.

As a general rule, all sales and supplied services taxable for VAT purposes (in Belgium) should be taken into account for the determination of the threshold amount, in order to check if you are applicable to the special exemption scheme for small companies. In case that you would exceed the threshold of 25.000 euro/year you need to inform your VAT-office as soon as possible. If it is an exceptional year and the income is still below 27.500 euro/year, you might be exempted. In any other case, you will be transferred immediately to the regular VAT declarations and be required to charge VAT.

What are the requirements of the INPA in case it is subject to VAT?

The INPA is required to (similar to all others subject to VAT):

- To submit regular VAT declarations (every three months)
- To pay the VAT that is charged to members and potential clients

In this case, the INPA can deduct VAT according to the normal VAT rules in Belgium.

If the INPA belongs to the exempted categories as described above, it means that it is subject to VAT, but not required to charge VAT. If this is case, paid VAT cannot be deducted.

3.3 Personal liability of INPA

The general rule is as follows: "If members or (daily) board members commit certain shortcomings, only the INPA can be called upon to rectify and / or compensate for these shortcomings". In other words: the members and the (daily) board members run in principle no risk.

If the INPA cannot fulfil a contractual agreement, one can in principle only appeal to the INPA. If they make mistakes in their assignment, these mistakes will in principle be attributed to the association. The general rule states that the INPA is responsible for shortcomings of her members.

This general rule regarding members and board members is a consequence of two important characteristics of an INPA:

The legal person: Because the INPA is a legal person, the association exists legally as an entity. INPA can therefore participate in legal transactions as if the INPA were a man of flesh and blood (concluding contracts, employing people, etc.). The INPA also has its own liability (which is separate from the members of the INPA and its own assets (which means that it can own).

The organ theory. To be able to effectively participate in legal transactions, the INPA must appeal to the members and board members of the INPA. It is the members and the board members who will conclude contracts in the name and for the account of the association.

Personal liability of board members INPA

As stated above, the general rule states that the INPA is responsible for shortcomings of her Board members. However, this general rule must be nuanced. The Board members of an INPA have the task of controlling it, thereby having access to the assets of the organization. If the board of the INPA were free of any risk, the Board members could use the assets of the INPA carelessly and thereby take unnecessary risks. This would of course not benefit the organization. For that reason, a number of personal liability grounds have been introduced for the Board members of an INPA, which means that in certain cases a Board member can be held personally liable.

In the first place, the Board member can be hold personally liable by the INPA itself (Internal liability). In addition, there are cases where third parties can hold Board member(s) personally liable (External liability).

Internal liability.

Liability for management errors is a contractual liability. After all, Board members are appointed by the annual general meeting, after which they accept their mandate. This confirmation creates a contract between the association and the Board member. That contract is a "mixed contract" with certain mandate characteristics and will have to be performed properly. If the Board member does not comply with this contract, the Board member can be held personally liable for this by the association itself.

➤ When is there internal liability?

in three cases there will be internal liability for Board members:

▪ Due to management errors

An management error occurs when a Board members, in the exercise of his mandate, falls short of the obligation to carefully manage the INPA, as can be reasonably expected from a normal and careful Board member in that position. An management error can consist of a decision, action, lack of action, carelessness, obliviousness, etc. When the judge assesses the management error, he will have to stand in the place of the Board member at the time of the "error". In addition, the judge can take into account various elements, such as the training/experience of the Board member, the remuneration of the mandate, etc.

Examples of management errors are:

- ✓ Signing contracts with clearly disadvantageous conditions for the INPA
- ✓ Use of goods for a purpose that is not related to the altruistic purpose(s) of the INPA
- ✓ Neglecting the board
- ✓ Lack of arranging a mandatory insurance contract

✓ ...

- By violation of non-profit law

The INPA must be able to demonstrate the violation, as well as the damage and the causal link between the violation and the damage. Whenever a Board member violates the obligations in the legislation, the association can hold him/her liable for this.

The most important violations are:

- ✓ Not adapting the articles of association / statutes to (changes in) non-profit law
- ✓ Not keeping the correct and mandatory bookkeeping
- ✓ Not keeping a INPA dossier at the physical address of the INPA
- ✓ ...

- ✓
▪ By violating the statutes

The INPA must be able to demonstrate the violation, as well as the damage and the causal link between the violation and the damage. The articles of association / statutes may contain additional obligations.

The most important violations are:

- ✓ not respecting strict majorities and/or attendance quorum
- ✓ non-compliance with additional obligations imposed in the articles of association
- ✓ the appointment of a day-to-day management or a body of representation, if the statutes do not provide for this
- ✓ ...

Every Board member is in principle individually liable. Indeed, one can only address the Board member who has committed the management error or has violated non-profit law and / or statutes. However, there are two exceptions to this principle:

Mutual error

Multiple Board member together, or the entire Board, make certain mistakes. In this case they can be addressed in solidum. By this is meant that the INPA can appeal to each of them for the entire amount of the damage. The addressed Board member(s) can then reclaim the remaining part from the other Board member(s) afterwards. In practice this will often occur, since the Board exercises its powers as a college. By this we mean that some powers can be exercised together with all Board members.

Examples of mutual errors are:

- ✓ Decide together to enter into contracts that the association is unable to meet
- ✓ Neglect the board of the INPA by not coming together anymore
- ✓ ...

Concomitant errors

We speak of concomitant errors if several Board members make mistakes and without the fault of one of the Board members, the fault of another Board member would not have been sufficient to cause the damage.

- Who can claim against the Board member?

The internal liability claim can only be initiated by the INPA itself. The annual general meeting must decide on this. The INPA must always be able to demonstrate an error, damage and the causal link between the two.

- How can a Board member respond?

In the first place, it can be demonstrated that they had no share in the error or violation.

Subsequently one can prove that the Board member has cited the error or violation to the Board and has it recorded in the minutes. The Board member cannot defend himself by stating that he/she is not aware of his/her obligations and/or the articles of association of the INPA.

External liability.

A Board member can also be held liable by a third party. The Board member has no contractual relationship with this third party personally. This third party must therefore address the Board member on the basis of the non-contractual liability.

➤ When is there external liability?

In two cases there will be external liability of the Board member.

▪ Liability due to a non-contractual shortcoming to third parties

To be able to speak of a non-contractual shortcoming, the following must be met:

- ✓ the third party must prove a personal mistake on the part of the Board member

The personal error can consist of the violation of a legal norm or the violation of a general standard of care. Examples of this are: keeping “off-budget” accounts, not paying taxes, violating environmental legislation, ...

- ✓ the third party must prove his damage

- ✓ the third party must prove the causal link between the error and the damage

▪ Liability for non-compliance with contracts by the INPA

If the third party concludes a contract with an INPA, that INPA is, in principle, bound to fulfill that contract. There is nevertheless a situation where a Board member of an INPA could be held personally liable to fulfill the consequences of the contract with the INPA.

The conditions for this are: the third party must be a contracting party to the INPA, the contract between the INPA and the third party is not being properly executed, causing damage to the third party (this can be recovered from the INPA); at the same time there is non-contractual shortcoming committed by the Board member in question, which causes a certain amount of damage for the third party, but the damage is not the same damage as that the damage described above (this damage cannot be recovered from the INPA) and the Board member in question must have an executive task.

➤ Which Board member is at risk?

The Board member is in principle individually liable. For the exceptions to this principle, we refer to the internal liability section.

➤ Who can make a claim against the Board member?

Third parties can file an external liability claim against a Board member. Third parties are (regular) members of the INPA, the suppliers, the tax authorities, the government, ...

Criminal liability.

If a Board member commits crimes, he/she will be held personally responsible for this.

➤ If the Board member is criminally liable together with a natural person

If the following conditions are met, both the INPA and the natural person concerned will be held criminally liable:

- The natural person who carried it out has been identified. If this is unsuccessful, the INPA remains solely liable under criminal law.

- the legal person is held responsible solely for the sake of the natural person's carrying it out
- the natural person has knowingly committed the infringement

➤ If only the Board member is criminally liable

Under certain conditions, the INPA escapes criminal liability, even although the above conditions are met. It will then be the natural person who is held criminally liable.

This will be the case when the following conditions are met:

- the natural person who carried it out has been identified
- the legal person is held responsible solely for the sake of the natural person's carrying it out
- the natural person has knowingly committed the infringement
- the natural person made the most serious mistake (the mistake that played the decisive role in the creation of the crime)

Liability for fiscal and social debts of the association.

As a Board member you can, under certain conditions, be held personally liable for tax and social debts of the association.

Fiscal debts

➤ Non-transferred company tax

In certain cases, an INPA is obliged to pay payroll tax to the tax authorities (e.g. when someone is employed). If the INPA does not do this, a tax debt will arise. Under certain conditions, Board members of large and very large INPAs (unlikely for EACD in near future), charged with the day-to-day and effective management, can be held personally liable to pay this tax debt.

Board members can only be approached to the extent that they have made a management error. Simply not paying the payroll tax on earned income is **not** sufficient in itself to decide on liability. However, from the moment that this happens repeatedly, an error is suspected by the Board member. This suspicion is rebuttable, so that the Board member can prove the contrary.

Repeated non-payment means:

- the INPA, which is required to pay quarterly, has not paid at least two due debts within a period of one year
- the INPA, which is obliged to pay monthly, has not paid at least three due debts within a period of one year

There is no presumption of error if the non-payment was the result of financial difficulties that led to the opening of the judicial agreement or judicial dissolution.

This is joint and several liability. In other words: every Board member can be approached to pay the total sum.

The authorized recipient must send a notification by registered letter to the Board member(s) requesting that measures be taken to pay the payroll tax or to prove that the non-payment is not the result of his/her mistake. At least one month later, a legal claim for liability for the Board member can be filed and he can be summoned before the court.

➤ Unpaid VAT

A taxable INPA must pay the VAT to the tax authorities. If this is not done, a tax liability will arise. Under certain conditions, a Board member of a large or very large INPA charged with the daily and effective management can be held personally liable to pay this tax debt. The conditions (management error) are the same as for non-payment of the payroll tax.

Social debts

➤ Social Security debts ('RSZ-schulden') in the event of bankruptcy

There is also a personal, and joint and several liability for managers and Board members for outstanding social security debts in the event of bankruptcy. However, this will not be applicable to INPA, given that an INPA cannot be declared bankrupt.

➤ Social Security debts for non-compliance with communication obligation

An INPA is obliged to make the necessary information available to the Social Security Office if requested. If the association does not do this, the Board member can be held personally liable for certain social contributions. This has been introduced to prevent tax fraud.

If an INPA has debts with the National Social Security Office, it can request the details of customers and third parties, as well as the outstanding amounts that customers and third parties still owe. This allows the Social Security Office to seize the customers and third parties for the debts that the

employer still owes. If the INPA does not correctly comply with this obligation to communicate, the Board members of large and very large INPAs can be held accountable for the social contributions due, contributions made redundant, interest for late payment and compensations for not communicating the no longer employing employees subject to social security obligations.

There is in this case not a rebuttable presumption of error. As soon as the INPA has not paid the social security contributions of two claimable quarters in the last twelve months and has no amicable repayment arrangement for this, the RSZ is entitled to request the aforementioned information.

If this information is not transferred or is transferred incorrectly, the Board member is automatically liable. This again concerns personal, and joint and several liability.

This liability, together with any other liability arising from the WVV or other laws or regulations, as well as the liability for the debts of the legal person referred to in Articles XX.225 and XX.227 of the Economic Law Code is limited to amount included in the art. 2:57 of the WVV (i.e. max. 125,000 euro).

Protection of the INPA

In certain cases, an INPA can receive serious financial blows when it is held liable. In some cases this can even lead to the end of the association. All the more reasons to protect the INPA against potential liability grounds.

First of all, the organization should of course aim to ensure a financially healthy INPA. Everyone has an interest in being financially healthy. Firstly, the activities for which the association was established can then be continued. Furthermore, third parties will be less inclined to look for opportunities to hold Board members personally liable. Furthermore, just like every good citizen, an INPA must ensure that no criminal offenses are committed.

On top of this the INPA is advised arrange adequate cover by insurance(s). The INPA will be liable for errors that can be attributed to, for example, its members and Board members. These errors can cause damage to outsiders. That is why it is of the utmost importance that the INPA is insured. After all, the damage will then, at least in part, be covered by the insurance. In other words: the assets of the INPA remains (largely) unaffected.

In this respect, every INPA that works with volunteers must have a civil liability insurance ('burgerlijke aansprakelijkheidsverzekering'), with the exception of contractual liability. This insurance covers damage to third parties caused by errors by volunteers. In addition, the objective liability insurance after fire and explosion ('verzekering objectieve aansprakelijkheid na brand en ontploffing') is also a compulsory insurance, but only if you own/hire any real estate.

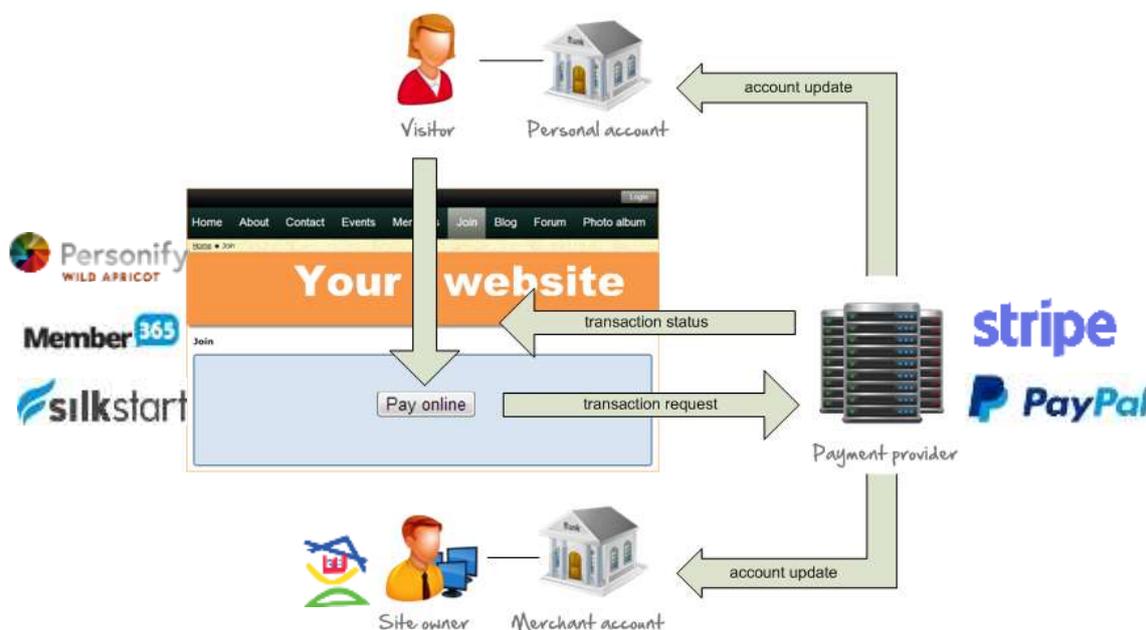
Every organization is free to take out additional insurance policies. The following insurance policies are recommended and potentially of interest for the EACD, but not required by law:

- Civil liability insurance for members / board members ('burgerlijke aansprakelijkheidsverzekering voor leden/bestuurders')
- Insurance for Board members' liability ('verzekering voor bestuurdersaansprakelijkheid')

- insurance organized voluntary work ('verzekering georganiseerd vrijwilligerswerk') – *if work you with volunteers*
- fire insurance ('brandverzekering') - *if you own/hire any real estate*
- legal insurance ('rechtsverzekeringen')
- insurance for temporary events ('verzekeringen voor tijdelijke evenementen')
- legal counsel ('rechtsbijstand')

Work package 2 – Website domain, online Membership site & payment system

For the new INPA, it is needed to have a website domain, a membership site and a payment provider (see Figure below). A number of options for a membership site, payment provider, and website domain have been explored. Three possible options per category are identified, and are fully presented in this work package, including arguments for which is arguably the best solution for EACD.



➤ Online membership management software (and website)

An online membership management system is an online system which provides associations, clubs and other membership organizations with the functionality they require to provide their services to their members.

It normally includes at least the following:

1. Storing and editing member information in a database.
2. Creating, renewing, upgrading and downgrading memberships.

Membership organizations have diverse needs and structures, and this is reflected in the additional features membership software sometimes includes:

1. Communicating with members by (automatic) emails, social media, telephone and/or post.
2. Online payments and payment processing
3. Event registration
4. Website builder software
5. Providing the options
6. Facilitating interaction and collaborative file sharing between members.
7. Providing the option to raising supplementary income from donations.

The smallest associations and clubs often create their own ecosystem of services to offer some of the same functionality as membership software. They do this by using generic database or spreadsheet software, and adding on external options as they need them (e.g. event registration, online payments, or email newsletters). The membership software market spans the rest of the industry, from small and medium-sized organizations with limited resources, to very large and complex multi-chapter organizations of national and international renown, to association management organizations which manage multiple associations using a single product. There are many products available from a wide

variety of different commercial providers and open source projects. Most are generic, but many are also targeted at very particular segments (e.g., non-profit organisations).

An exploratory analysis has been made on the most recommended/highest scoring membership software providers. The outcomes of this exploratory analysis, in combination with the specific characteristics/requirements of the EACD organisation, led to a shortlist of three possible membership software providers.

Option 1 - Wild Apricot (Preferred option)



Wild Apricot is web-based software for small associations and non-profits to help manage membership, website, events and other activities. It's powerful, easy-to-use and affordable.

Product Details

Wild Apricot is a complete membership management system, designed to fit your organization's needs. Easily manage your contacts, process payments, send out emails, register event attendees, create a website and more. With a self-serve design and a user friendly interface, you have the freedom to customize every aspect of your membership management system. If you need help at any step of the way, their support team and community of experts are ready to help guide you and share their best practices. Founded in 2000, Headquarter located in Canada, globally active. If you have a WordPress site, you can use their WordPress plugin to include members-only content (such as Board memberships and member-only events) by embedding widgets.

Note: Although the Education website currently uses Drupal (instead of WordPress), it is possible to migrate a Drupal website into a WordPress website.

Features

1. Storing and editing member information in a database.
2. Creating, renewing, upgrading and downgrading memberships.
3. Communicating with members by (automatic) emails.
4. Online payments and payment processing
5. Event registration
6. Website builder software (very user-friendly)
7. Facilitating interaction and collaborative file sharing between members.
8. Providing the option to raising supplementary income from donations.
9. Possibility to create a Mobile app
10. Up to 5 administrators
11. Create polls and surveys

Contact Details: <http://www.wildapricot.com>

All cost inclusive price for EACD (estimated): ±1500-1600 Euro/year

(price of Professional plan - allows up to 2000 members)

Option 2 - SilkStart



Their customers include trade, non-profit, maker spaces, angel groups, faith based organizations, alumni groups and multi-chapter associations of all sizes. Founded in 2000, Located in Canada

Product Details

SilkStart is a leading provider of cutting edge software for member-based organizations. SilkStart's Association Management Software (AMS) streamlines operations, so whether it's one chapter or one thousand, you're connected to your members through one central cloud database. SilkStart creates beautiful and functional websites that are mobile friendly and can also integrate with existing sites built with WordPress, SquareSpace, and more. Founded in 2010, Headquarter located in Canada, globally active.

Features

1. Storing and editing member information in a database.
2. Creating, renewing, upgrading and downgrading memberships.
3. Communicating with members by (automatic) emails
4. Online payments and payment processing
5. Event registration
6. Providing the option to raising supplementary income from donations.
7. Up to 5 administrators
8. Create polls and surveys

Contact Details: <http://www.silkstart.com>

All cost inclusive price for EACD (estimated): >2400 Euro/year

(price of Premium Plan as mentioned on their website only specifies up until 500 active members)

Option 3 – Member365



Their customers include Professional Associations, Trade Associations, Greek Lettered organizations, Alumni, Non-profits, Charities, Business Networking

Product Details

Member365 combines the functionality of your email campaign manager, financial software, and CRM to create a platform custom-made for Membership Managers. Automate busy work to spend less time managing member data, and more time understanding member needs. Create email campaigns in seconds by building lists from your Member365 CRM.

Features

1. Storing and editing member information in a database.
2. Creating, renewing, upgrading and downgrading memberships.
3. Communicating with members by (automatic) emails.
4. Online payments and payment processing
5. Event registration
6. Providing the option to raising supplementary income from donations.
7. Unlimited administrators
8. Create polls and surveys

Note: Creating a new public website using their pro-service team cost another \$3,500 + Website hosting fee \$25/month.

Contact Details: <https://member365.com/>

All cost inclusive price for EACD (estimated): ± 2700 Euro/year (price of Plan up to 2000 contacts)

Conclusion - online membership management software and website

Based on the three options, and the free trials periods, **Wild Apricot** seems to be the best option for the EACD as membership website system (www.wildapricot.com). During the 30-day trial period, it was possible to create a fully functioning website (eacd.wildapricot.org; please contact MK if you would like to see this created website → pages currently under restricted access), which can be placed upon on your preferred domain name (e.g. eacd.org). Moreover, WildApricot is compatible with the “best” Payment provider, and could in time create a seamless interface between the “Home” page and the Education site.

➤ Online Payment System

An online payment system is an Internet-based method of processing economic transactions. It allows a vendor to accept payments over the web or over other Internet connections, such as direct database connections between retail stores and their suppliers--a common method of maintaining

just-in-time inventories. Online payment systems greatly expand the reach of a business and its ability to make sales.

Online payment systems typically are run by third-party corporations, such as PayPal, Google or Stripe. These companies make a profit by taking a small percentage of every transaction, or by signing contracts with institutions that need to make a large number of transactions.

Again, an exploratory analysis has been made on the most recommended/highest scoring online payment system providers. The outcomes of this exploratory analysis, in combination with the specific characteristics/requirements of the EACD organisation and the compatibility with the membership software, led to a shortlist of three possible online payment system providers.

Option 1 – Stripe (Preferred option)



Stripe is an online payment processing service that allows you to accept online credit card payments on your membership website. Stripe supports recurring payments (aka subscriptions) and does not require you to set up a merchant account. Wild Apricot supports Strong Customer Authentication (SCA) for Stripe as required within the European Economic Area (EEA).

Once you've integrated Stripe with your membership site, visitors to your site can pay online for membership fees and event registrations, and make donations. When a visitor fills out an integrated online form on your membership website (e.g. membership application or event registration) and chooses to pay online, they will be redirected to a Stripe Checkout payment screen to make the payment. On the form, the payer fills out their credit card details and their billing information, then click the Pay button to complete the payment.

Contact details: <https://stripe.com/en-be>

Payment features

- Credit and debit cards - Integrated per-transaction pricing means no setup fees or monthly fees.

- Visa
- Mastercard
- Maestro
- American Express
- Apple Pay
- Google Pay

- Local payment methods - Support dozens of popular payment methods around the world with a single integration, including iDEAL, Bancontact, Sofort, SEPA Debit, Giropay, Alipay, WeChat Pay

- 3D Secure authentication - authentication method used to verify a customer's identity before an online card purchase.

Pricing

1.4% + €0.25 for European cards 2.9% + €0.25 for non-European card

If currency conversion is required, an additional 2% fee will apply.

Option 2 - PayPal Standard Checkout



PayPal Payments Standard is PayPal's easiest and most popular way to accept credit cards online. PayPal Payments Standard enables merchants and partners to offer a streamlined checkout experience to customers using mobile devices.

PayPal Payments Standard takes the customer to PayPal's site AFTER the ENTIRE checkout in order to make payment. The customer can pay without having a PayPal account. After the payment is completed, your store is notified of the completed payment, after which time the order is stored in your database. However, if there is any problem in PayPal's ability to communicate to your server, you will never see the order in your store (or receive the confirmation email from your store), because it relies entirely on PayPal's server being able to talk to your server in order to store the order.

Contact details: https://www.paypal.com/be/webapps/mpp/standard?locale.x=nl_BE

Payment features

- Credit and debit cards - Integrated per-transaction pricing means no setup fees or monthly fees.
 - Visa
 - Mastercard
 - Maestro
 - American Express
 - PayPal
- 3D Secure authentication - authentication method used to verify a customer's identity before an online card purchase.

Pricing

3,4% + €0,35 per transaction or 2,9% + €0,35 per transaction*

(* Depending on average income per month - i.e. <2500EUR per month (3,4%) or 2500-10,000EUR per month (2,9%))

Option 3 - PayPal Express Checkout



PayPal Payments Standard is PayPal's easiest and most popular way to accept credit cards online. PayPal Payments Standard enables merchants and partners to offer a streamlined checkout experience to customers using mobile devices.

Express Checkout has all the same features as Website Payments Standard, but is more reliable because it completes the transaction directly while the customer is actively engaged on your site. It supports all the currencies, payment methods, etc, just the same, but more efficiently. There is no monthly fee for using Express Checkout.

PayPal Express Checkout gives the customer two options: They can jump over to the PayPal site to login to their account BEFORE completing checkout on your store (which allows them to select their address information there and never have to re-type their address details on YOUR site, thus the "express" part of the transaction) and then choosing shipping choices and discounts/coupons etc before completing the order OR they can go to the PayPal site to login to their account AFTER making shipping/payment/coupon selections on your site (and creating an account on your store and typing their address info on your store), much like they do with Standard.

With Express Checkout, the customer can pay without having a PayPal account. One important benefit is that Express Checkout does not rely entirely on the communications to your store in order to release the order. Instead, it stores the order immediately when payment is completed. It doesn't have to rely on the PayPal server to talk to your server in order to store the order.

Contact details: https://www.paypal.com/be/webapps/mpp/express-checkout?locale.x=nl_BE

Payment features

- Credit and debit cards - Integrated per-transaction pricing means no setup fees or monthly fees.
 - Visa
 - Mastercard
 - Maestro
 - American Express
 - PayPal
- 3D Secure authentication - authentication method used to verify a customer's identity before an online card purchase.

Pricing

3,4% + €0,35 per transaction or 2,9% + €0,35 per transaction*

(* Depending on average income per month - i.e. <2500EUR per month (3,4%) or 2500-10,000EUR per month (2,9%))

Conclusion – Online payment system provider

Based on the three options, **Stripe seems to be the best option for the EACD** as online payment system provider. This is due to its payment features, relatively low transaction fee, and compatibility with the WildApricot membership software.

➤ **Domain hosting, website hosting and email hosting**

Domain Hosting and Registration

Domain hosts store domain names and facilitate their registration. First, you register a domain like yourdomain.com with a domain registrar, and just like a street address, the URL directs people to your website's location. If you're using a domain registered through a third-party provider, that company is your domain host. For example, you may use Namecheap for your hosting, but have a domain registered elsewhere.

For your website to appear online, you need actual file hosting. You'll often find domain and web hosting offered as a package, with most companies offering domain, email, and web hosting as a bundle.

Web Hosting

Web Hosting is a service that provides computer resources such as server space, memory, and bandwidth needed for your website files to live on the internet. Users can create and store website content on a web hosts servers so it can be viewed online via a web browser.

If you imagine a website plus all its content as a store, a web host simply provides the physical space to display the store's products—in this case, the website content including the text, images, videos and anything else that make up the site's content.

There are different styles of hosting available to reflect the needs of different websites. Web hosting plans range from shared hosting with multiple sites sharing a single server to dedicated hosting, in which one customer uses an entire server's space and bandwidth.

Email Hosting

Email hosting is a service in which your email messages and associated files are all stored on a server. When you receive an email to your website's domain address, the email is routed across the internet and stored on the recipient server. At this point, the server administrators will determine which action to take (reply or ignore) bearing in mind any spam filters, re-routing requests and if the sender is on any blacklists.

The server hosting email can be the same server that's hosting your website content, a server managed by another host, or two different servers managed by the same hosting company. Email hosting providers might specialize in offering only email hosting services, but it's more typical for companies to offer bundled emails and web hosting packages these days.

Present situation:

Currently, the above-mentioned factors are taken care of by Repeatmedia. The most obvious option would be to keep eacd.org as domain hosting name, and to keep using the services from Repeatmedia in regard to web hosting and email hosting.

Alternative options for domain hosting name:

eacd.online: 5.99 \$/year

eacd.info: 3.99 \$/year

eacd.eu and eacd.com are currently not available.

Work package 3 - Financial strategy between UK Charity and INPA & Dissolution UK Charity structure

It is of utter importance to have an optimal strategy and timing between the UK Charity and the new INPA in respect to the finances. Such a strategy has been worked out, taking into account both UK and Belgian legislation, and is presented in this Work package.

Strategy on how to transfer the EACD UK Charity funds to the EACD INPA.

It is likely beneficial to transfer the great majority of funds to the EACD INPA before 31 December 2020 to avoid the need to pay substantial "Gift tax". i.e. According to Belgian law, donations/gifts from one non-profit organization to another only require a lump-sum of €100 as long as both organizations are based in the European Economic Area (EEA)

- Until 31 December 2020, UK will be part of the European Economic Area (EEA) as of the current withdrawal agreement. If this is still the case after this date depends on the ongoing UK-EU negotiations.
- In case a donation/gift is made from EACD UK Charity to EACD INPA when the UK is not part of the European Economic Area (EEA) anymore, it will likely be subject to the Belgian Gift tax which is 7% of the total sum

There is no maximum limit to the amount that can be donated, however, if it is more than € 100,000 (over a period of 3 years) one is obligated to ask permission from the Belgian Minister of Justice.

From UK perspective, GOV.uk (<https://www.gov.uk/guidance/work-with-other-charities>) states the following on giving money to other charities:

Your charity may wish to raise funds for or give money to other charities, for example if they can use it for a particular cause more effectively.

Grants and donations. Your charity can fund another charity as a way of meeting its charitable purposes. You must be sure that this is in your charity's best interests. This includes checking that any money you give is used as you expected it to be.

Check your governing document to make sure that it doesn't prevent you giving money to another charity.

Record your decision to fund another charity in the minutes of your meeting.

Strategy on (financial) contracts/subscriptions EACD with third parties (e.g. local meeting organisers, GoToMeeting)

At the end of the transition period (June 2022), all (financial) contracts/subscriptions of EACD UK Charity with third parties should ended and/or transferred to the EACD INPA. In practice, this will imply that all contracts between EACD and Annual Meeting organisers for EACD event taken place after June 2022 will need to be signed between the EACD INPA and the local organisers.

Furthermore, annual subscriptions to services alike GoToMeeting should be ended by EACD UK Charity (and initiated by EACD INPA) by at latest June 2021.

Strategy on EACD membership transfer

The new online membership website for the EACD INPA should be fully operational and online by at latest January 1st 2021. From (at latest) January 1st 2021, it will no longer be possible to register online as either new or renewing member for the EACD UK Charity. In order to streamline the transfer

of member to the INPA as easily and fast as possible, it is advised to propose at the Ordinary General Meeting the following actions for approval:

- 'From the moment the new INPA is officially awarded legal personality, anyone who is a member of the EACD UK Charity organization will be granted automatically also a membership of the EACD INPA organization without any additional costs. This granted membership of the INPA will be fully aligned to the EACD UK Charity in terms of expiration/renewal date of the membership. An individual can object to this automatically granted membership of the INPA organization via a written statement to the EACD Secretary'
- All former EACD UK Charity members whose membership has expired by the date of the Ordinary General Meeting, will be given the opportunity to transfer their membership data to the new EACD INPA organization without any additional costs (but their membership will remain inactive as long as they do not pay their membership fee). This transfer will only be done with explicit consent.
- 'From the moment the new INPA is officially awarded legal personality, anyone who is a (co-opted) GMC member of the EACD UK Charity organization will receive a mandate to become a GMC member of the EACD INPA organization. The end/renewal dates of the mandate of a GMC member of the EACD INPA organization will be aligned to end/renewal dates of the mandate of a GMC member of the EACD UK Charity organization'