

EXECUTIVE COUNCIL 2023

A LEGAL FRAMEWORK TO SUPPORT THE ASIA PACIFIC POST COOPERATIVE

(Document prepared by the APPU/UPU Reform Working Group, in conjunction with the Chair of the APP Cooperative Management Board and the Bureau)

1. Subject	References/paragraphs
<p>Informing the EC on</p> <ul style="list-style-type: none"> - the present circumstances impacting the APP Cooperative that prevent it from having legal personality and employing staff - the options studied by the APP to resolve the present circumstances and conclusions reached - the action taken by the Reform Working Group to work with the Bureau and APP to identify a solution - the proposed solution, an amendment to the APPU treaties, and a workplan to continue to refine the solution after the 2023 EC - options for timing, including the possibility of an Extraordinary Congress, and associated resolutions - draft text of the treaty amendment, for initial comment 	<p>§§ 3</p> <p>§§ 4</p> <p>§§ 5</p> <p>§§ 6</p> <p>§§ 7, Add 2, Add 3</p> <p>Add 3</p>
<p>2. Decisions expected</p> <p>The EC is asked to:</p> <ul style="list-style-type: none"> - note the present circumstances facing the APP Cooperative - note the work undertaken by the APP Cooperative, Bureau and Reform Working Group to identify solutions - agree the preferred path forward is to amend the General Regulations of the Asian-Pacific Postal Union to permit the creation of user-funded subsidiary bodies - comment on the draft text of the treaty amendment - instruct the Reform Working Group to continue refining the draft treaty text in conjunction with member countries, for consideration by a future Congress - instruct the APP CMB to develop a draft Basic Framework, including the APP’s governing documents, for possible adoption following the passage of the treaty amendment - instruct the Reform Working Group to review the APP CMB’s proposed Basic Framework and provide advice to a future EC - establish a closed working group, led by the Secretary General, to finalise the APPU’s legal status in the APP’s preferred location - instruct the Secretary General to work with the Chair of the APP CMB and the APP Managing Director on operational transition arrangements and to report annually to the EC - agree the EC’s preferred timeframe, including, if desired, the holding of an Extraordinary Congress 	<p>§§ 3, Add 1</p> <p>§§ 4 - 5</p> <p>§§ 6, Add 1</p> <p>Add 3</p> <p>§§ 6.7, Add 1</p> <p>§§ 6.16 – 6.20, Add 1</p> <p>Add 1</p> <p>Add 1</p> <p>Add 1</p> <p>§§ 7, Add 2</p>

1. Purpose of document

1.1 This document has been prepared to:

- (i) update the Executive Council on the difficulties facing the Asia Pacific Post Cooperative (APP);
- (ii) outline the conclusions of the extensive studies undertaken by the APP Cooperative Management Board (CMB) and the APPU/UPU Reform Working Group to provide the APP legal personality in order for it to continue operations and employ staff; and
- (iii) recommend preferred next steps for decision by the 2023 Executive Council.

2. Understanding the role of the APP

2.1 The APP is a body that consists of 28 postal operators of APPU member countries. It was established by a resolution of the Executive Council in 1998 that built on progressive changes made by the Executive Council between 1993 and 1998 to respond to changing market conditions.

2.2 In establishing the APP in decisions between 1993 and 1998, the Executive Council:

- (i) recognised that the APP should be the driving force and play a key role in the realisation of the APPU Strategic Direction; and
- (ii) agreed the APP should aim to assist its member postal operators to enhance their respective market shares, improve the quality of their services; and address the overall operational, technical, commercial and economic issues pertaining to postal services in the Asia Pacific region.¹

2.3 The mandate of the APP was designed by the Executive Council to focus on developing practical, operator led, and dynamic solutions to business problems facing postal operators in the region to enhance their capability. Over the past 25 years, the APP's mandate has been developed by postal operators under the ultimate oversight of the Executive Council, with the APP providing services including postal research, improving data tracking, enhancing postal capability and sustainability, and the APP regional ePacket product.

3. The legal issues facing APPU member countries regarding the APP

3.1 The legal issues facing the APP have been extensively covered in documents of the Reform Working Group prepared by its Chair in December 2022 and March 2023. For present purposes, it can be summarised as:

- (i) The Executive Council took the 1998 decision to create the APP through a process that occurred outside the strict framework of the APPU treaties. This resulted in the creation of a body ultimately owned jointly by all Executive Council members but which was not a formal organ under the APPU's treaties, similar in structure to the EMS cooperative in a UPU context.
- (ii) This **does not** mean the creation of the APP was illegal or that the APP does not exist. However, the effect of this decision-making process means that the APP currently does not have any *legal personality* and therefore cannot hold funds in its own name, sign contracts, employ staff, or do other things in the normal course of its activities.

3.2 These unintended issues have been largely out of sight from APPU member countries as a result of the generosity of Singapore Post to host the APP, employ its staff, and carry much of the liability for its activities. In December 2022 Singapore Post indicated it was unable to continue

¹ 1998 EC Doc 30B/Rev 1

this arrangement following an internal review that identified many of the associated operational issues.

- 3.3 The complexities of the APP have not been entirely unknown. Indeed, the 2018 Executive Council sought to explore these difficulties. However, as it has no power under the APPU treaties to rationalise the APP's legal status as an organ of the APPU (the organs of the APPU being expressly defined in Article 8 of the APPU Constitution), this effort did not resolve the legal difficulties.
- 3.4 Short-term workarounds to keep the APP operational are in place, but it requires a long-term solution as soon as possible. For reasons outlined below, the only practical course is to amend the APPU's General Regulations to give the Executive Council the power to rationalise the APP's legal status as a formal part of the APPU.

4. The options studied

4.1 The APP commenced studying options for its future legal status in April 2022 following notification that the current arrangement utilising Singapore Post would need to cease, and the subsequent uncovering of the legal complexity associated with the APP's establishment.

4.2 The APP CMB identified that any solution must:

- (i) maintain the APP's independence, impartiality, inclusivity, and its equal treatment of all members;
- (ii) ensure that APP members have a sense of ownership of the APP, and the CMB maintains oversight of the APP's strategy;
- (iii) ensure that the APP Managing Director has the ability to control the day-to-day activities of the APP and manage its resources and finances; and
- (iv) ensure that the APP operates on the basis of a not-for-profit entity.

4.3 The APP has studied a range of options independently. All the options considered have not resulted in a solution that resolves the matter in a manner that is cost-effective, that maintains ultimate member country oversight as intended by the 1998 Executive Council decision, and that resolves the issues associated with the status-quo. Options studied include (but were not limited to):

- (i) **To be sponsored by another member post**, in a similar manner to the support previously provided by Singapore Post. However, no suitable host was identified by the APP. From an APPU reform perspective, this approach still leaves member countries open to difficulties, and this option has been disregarded.
- (ii) **To incorporate as its own company and adopt a PostEurop model (i.e. become its own restricted union)**. This option was extensively studied by the APP. However, concerns were raised by some members about their ability to continue to participate in a separate commercial entity (for domestic legal reasons) and the costs associated with this approach (both to incorporate, and on an ongoing basis to duplicate existing business support functions).

From an APPU member country perspective, this outcome would result in a fractured regional voice, undermining our ability as a region to influence global postal policy, and the loss of member country oversight of the APP's activities.

5. The proposed pathway forward for APPU member countries

5.1 Since late 2022 (with work gathering pace in 2023), the APPU/UPU Reform Working Group Chair and the Working Group as a whole have worked with the Bureau and the CMB Chair to develop

a solution. It was quickly realised that APPU member countries had three pathways:

- (i) **Option 1:** Amend the Acts of the Union to give the Executive Council the power to create the APP, based on the solution developed by the UPU for its user-funded subsidiary bodies, such as the EMS Cooperative, and for the Executive Council to retake decisions to establish the APP under the new power.
- (ii) **Option 2:** Amend the Acts of the Union to establish the APP as an organ of the APPU.
- (iii) **Option 3:** Create a separate treaty for the APP.

5.2 This document outlines the implementation pathway of option 1, the simplest model, for consideration by the Executive Council. Options 2 and 3 were discarded as they created additional complexity for member countries without introducing additional benefits. Further reasons can be found in the documents considered by Meetings 2 and 3 of the APPU/UPU Reform Working Group.

6. What is the effect of Option 1?

6.1 Implementation of option 1 has two parts – a legal (treaty) component, and a functional (governing documentation) component.

6.2 There are three key decision points in this pathway: the 2023 Executive Council, the next Congress or Extraordinary Congress, and the associated Executive Council. The 2023 Executive Council needs to:

- (i) provide comment on the legal (treaty) component, and
- (ii) agree a work program to develop the functional (governing documentation) component, noting that a decision on the functional (governing documentation) component can only be taken after a Congress amends the APPU treaties.

6.3 The legal (treaty) component requires only a technical change to the treaties. In other words, it requires Congress to formally give a power to the Executive Council under the APPU treaties to retake the 1998 decisions in a manner that brings the APP into the APPU formally.

Designing the solution

6.4 Option 1 requires a treaty amendment. In developing this amendment and after careful study, it was identified that the UPU faced similar concerns prior to the 2012 Doha Congress around bodies being created in an inconsistent manner. Its solution, contained in Article 153 of the UPU General Regulations, was instructive in developing the proposed amendment to the APPU treaties. For this purpose, the APPU/UPU Reform Working Group obtained the benefit, expertise and advice of the UPU legal adviser and the head of the EMS Cooperative.

6.5 The UPU legal adviser explained that the EMS cooperative was started in 1998, however in 2012 the UPU adopted changes to enable the creation of user-funded bodies. The legal adviser outlined how the Postal Operations Council has the power in the UPU treaties to create bodies with a separate budget but that do not have a separate legal personality. The legal adviser explained in practice the EMS cooperative was independent day-to-day, with some reporting requirements to the UPU and the approval of its internal governance rules being the responsibility of a UPU Council. The legal adviser noted that as staff were employed under the United Nations staff system and employed as international civil servants, they were under the management of the Director General and not the relevant board.

6.6 The proposed amendment is to the General Regulations of the APPU, specifically to amend the functions and powers of the Executive Council. No amendment to the Constitution is required to implement this solution.

- 6.7 The text of the proposed amendment is included at Addendum 3. For clarity, this is only *draft* text to facilitate member comment on the proposal. It is proposed that the text be refined, in consultation with member countries, by the APPU/UPU Reform Working Group, with work to be finalised a minimum of 6 months prior to the relevant Congress. This will enable sufficient time for members to consult Capitals, with the aim of achieving an amendment that can be adopted by consensus.

How does the proposed amendment work?

- 6.8 The amendment would insert Article 107bis into the General Regulations of the APPU.
- 6.9 This would give the Executive Council the power to establish user-funded subsidiary bodies, funded by voluntary means, in order to organise operational, commercial, technical and economic activities within the competency of the APPU.
- 6.10 Any bodies established **could not be funded by the regular budget**. Consistent with practice at the UPU, funding for any bodies established could be raised from any source (such as designated operators who opt-in to the body, as is the case with the APP presently).
- 6.11 The provision would also allow the Executive Council to decide on a Basic Framework for the body. That framework would establish the statutes of the body. This is the same as current practice, where the Executive Council has endorsed the APP's current statutes and governing rules, or delegated such powers to the CMB.
- 6.12 Any subsidiary body established under this new power would obtain the benefit of the legal personality of the APPU, resolving the issues of contracting, bank accounts, and member country liability for the subsidiary body's activities. Subsidiary bodies would be independent insofar as their approach to delivering their mandate and day-to-day operations. It would be to the discretion of the Executive Council to determine how the responsibilities are arranged.
- 6.13 Staff would become staff of the APPU Bureau, but would remain functionally independent. The Secretary General (as the Bureau's legal representative) would oversee these staff under the conditions agreed by the Executive Council. Day-to-day operations of the APP would remain independent. This would include any powers of the Secretary General so delegated (as the Executive Council may decide) to the Managing Director for the purpose of facilitating the APP. Day-to-day oversight, the setting of strategic direction for the APP, and its other existing powers could remain with the CMB if the Executive Council so chose under the new Basic Framework. These matters are explained further below.

Functional (governing documentation) component

- 6.14 Amending the General Regulations to permit the Executive Council to create user-funded subsidiary bodies does not fully address the matter of the APP specifically. Further decisions of the Executive Council will be required to exercise that power once the power is adopted.
- 6.15 Adopting this two-part approach has a number of advantages, including:
- (i) the Executive Council could take decisions in the future to create other bodies that may become desirable to create without the need for treaty amendments;
 - (ii) the APP could have its mandate and governing documentation updated from time to time by the Executive Council without the need for additional treaty amendments; and
 - (iii) the details of future arrangements for the APP do not need to be immediately decided, allowing time for a full review to be undertaken around the APP's governing documentation, reporting, financial contributions, internal approval procedures, and recruitment practices.
- 6.16 Once adopted, to re-establish the APP the Executive Council will need to adopt a new resolution

setting out the detail of the Basic Framework for the APP, including:

- (i) the mandate;
- (ii) the body’s location within the member countries of the Union;
- (iii) the constituency, including the categories of members participating;
- (iv) the body’s internal structures;
- (v) composition of staff of the body and management structure, the internal processes for the management of such staff and the body’s relationship with the remainder of the Bureau and with other Union organs;
- (vi) voting and representation principles;
- (vii) financing.

6.17 A number of other decisions, for example, to update arrangements in relation to the APP’s bank account to reflect the new arrangements, will also be required by the Executive Council at that point.

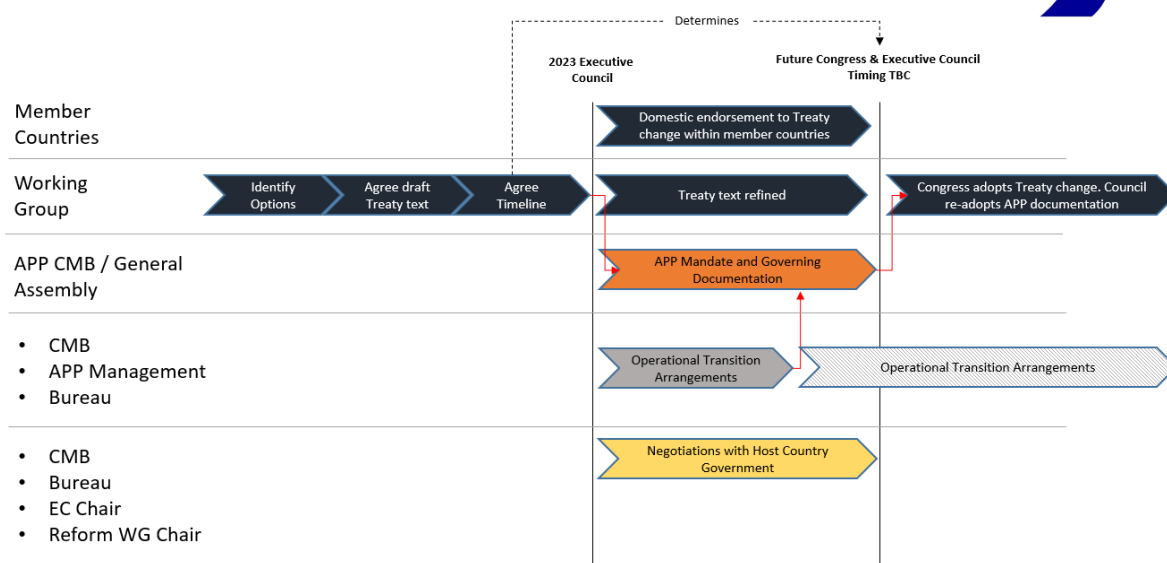
Developing the functional (governing documentation) component

6.18 The review and redevelopment of these documents, and discussion and agreement by all parties (APPU member countries, APP members and the CMB, the Bureau, APP staff, and other affected parties) will take some time. These matters should be carefully studied to ensure that the APP remains fit for purpose, with clear governing documentation that complements the role of the APPU and the needs of APPU member countries and designated operators.

6.19 It is proposed that the 2023 Executive Council agree to a workplan to study the required issues and prepare the necessary documents. This approach ensures that members are able to move as quickly as possible to take the required decisions in full knowledge of the final outcome.

6.20 This workplan is outlined in a draft resolution of the Executive Council at Addendum 1. It can be summarised by the diagram below. The dotted line reflects the decision to be taken by members on the timing of future changes, as discussed in section 7.

APP Cooperative – Indicative Timeline



7. Timing

- 7.1 The current situation is presently directly impacting the operations of the APP, to the detriment of its members, APPU member country designated operators. The current situation also poses challenges to APPU member countries, as the ultimate 'owners' of the APP. The CMB has a desire to resolve the situation as quickly as possible.
- 7.2 The APPU/UPU Reform Working Group considered three options for timing:
- (i) **Option 1:** An Extraordinary Congress in late 2023/early 2024.
 - (ii) **Option 2:** An Extraordinary Congress in conjunction with the 2024 Executive Council meeting.
 - (iii) **Option 3:** The regular Congress in 2026.
- 7.3 After initial discussion, the APPU/UPU Reform Working Group determined that option 1 is not feasible due to a range of other priorities for members, including the 2023 UPU Extraordinary Congress and November 2023 UPU Councils session. It was also considered that further time would be required to finalise the functional (governing documentation) component of the solution to ensure its effective implementation.
- 7.4 The APPU/UPU Reform Working Group therefore agreed to present two timing options to the Executive Council. The first (i.e. option 2 in paragraph 7.2) would see an Extraordinary Congress held under Article 10 of the Constitution in conjunction with the 2024 Executive Council meeting. The second timing presented (i.e. option 3 in paragraph 7.2) would see the matter deferred to the regular Congress in 2026.
- 7.5 Due to the operational impacts on the current situation, the CMB saw option 2, an Extraordinary Congress, as the most practicable of the remaining options.
- 7.6 The holding of a small, single issue, Extraordinary Congress in conjunction with a meeting of the Executive Council would not incur additional costs for the host country, member countries, or the APPU Bureau. Some additional documentation (for example formal instruments of accreditation) would be required from member countries.
- 7.6 In accordance with Article 10 of the Constitution, an Extraordinary Congress can be held with the consent of two-thirds of APPU member countries. In practice, this means 22 members must support holding an Extraordinary Congress. This decision does not need to be taken by the Executive Council, although it may be a convenient time to do so.
- 7.7 To facilitate this, a resolution calling for an Extraordinary Congress is at Addendum 2. It is proposed that the Executive Council discuss the matter, and if it considers an Extraordinary Congress is the appropriate timing and sufficient members are present and voting, adopt the resolution or otherwise seek the consent of member-countries.
- 7.8 If no decision is taken on timing, the matter will be presented to APPU member countries by correspondence following the conclusion of the 2023 Executive Council.

8. Conclusion

- 8.1 The APP requires an urgent, permanent resolution to its legal status.
- (i) The recommended solution is to amend the General Regulations of the APPU to empower the Executive Council to create user-funded subsidiary bodies. The Executive Council can then retake its original decision to create the APP in the members' preferred manner after a full review of the APP and its role and purpose within the APPU.

- (ii) The recommended timeframe to address the urgency of the problem is to hold an Extraordinary Congress in conjunction with the 2024 Executive Council.

8.2 Resolutions to give effect to these recommendations are located at Addendums 1 and 2.

EXECUTIVE COUNCIL

Resolution of a general nature

04

APPU/UPU REFORM WORKING GROUP

Resolution

Progressing a legal framework for the Asia Pacific Post Cooperative

The Executive Council,

noting its decisions of 1993, 1994 and 1998 concerning the creation of the Asia Pacific Post Cooperative (APP Cooperative),

recognising the complexities that have subsequently emerged that are presently impacting the operations of the APP Cooperative,

recalling the work undertaken by the Executive Council in the 2017-2022 Tehran cycle on this matter,

recognising the work undertaken by the APP Cooperative, Bureau and APPU/UPU Reform Working Group to identify solutions, including those that do not involve amending the Acts of the Union,

committed to maintaining the APP Cooperative as an essential part of the Union,

mindful that amending the Acts of the Union represents the best solution to provide long-term stability to the APP Cooperative,

aware that improving the legal framework for the APP Cooperative presents an opportunity to ensure it continues to align with the needs of member countries and designated operators,

Decides to:

- (i) **note** the text of the draft amendment to the General Regulations of the APPU presented to the 2023 Executive Council.
- (ii) **instruct** the APPU/UPU Reform Working Group to continue to develop the text of the amendment to the General Regulations of the APPU in consultation with APPU member countries, and to communicate a final proposed version to all APPU member countries no later than 6 months prior to the relevant Congress.
- (iii) **instruct** the APP Cooperative Management Board to establish a taskforce or similar body consisting of such APP Cooperative members as may be desired by the Board, to develop a proposed 'Basic Framework' for the integration of the APP into the APPU, as outlined in the text of the draft amendment, and to provide their proposed 'Basic Framework' to the Chair of the APPU/UPU Reform Working Group no later than 6 months prior to the 2024 Executive Council meeting.
- (iv) **instruct** the APPU/UPU Reform Working Group to analyse the proposed 'Basic Framework' in cooperation with the APP Cooperative Management Board and provide the 2024 Executive Council with advice on its suitability for adoption.

- (v) **establish** a working group to commence negotiations with the government of the APP's preferred host country (when such a preference is communicated to the Bureau by the Chair of the APP Cooperative Management Board), and commence discussions on any changes (noting none may be required) to that country's domestic law to facilitate recognition of the APPU's legal status as an intergovernmental, multilateral, treaty-based organisation and restricted union of the Universal Postal Union.

The working group shall be chaired by the Secretary General. In view of the subject matter, membership of the working group shall be closed and consist of the Chair of the Executive Council (presently Thailand), the Chair of the APP Cooperative Management Board (presently Singapore), and the Chair of the APPU/UPU Reform Working Group (presently Australia). It may be assisted by the Reform Consultant or members of the Bureau as decided by the Chair. It is to report annually to the Executive Council until such time as the matter is concluded.

- (vi) **instruct** the Secretary General to work with the Chair of the APP Cooperative Management Board and the APP Managing Director on operational transition arrangements as required, with the Chair of the Cooperative Management Board to report annually to the Executive Council on such activities.

Reasons – see EC 2023 Doc 13.7.

EXECUTIVE COUNCIL

Resolution of a general nature

05

APPU/UPU REFORM WORKING GROUP

Resolution

Holding of an Extraordinary Congress

The Executive Council,

recognising the urgent need to resolve the legal status of the Asia Pacific Post Cooperative in order to ensure its continued operations for the benefit of postal operators in the region,

considering the need to address this issue in a manner that provides sufficient time for member countries to consider amendments to the Acts of the Union while minimising costs and resourcing impacts on the Union,

noting the need for amendments to the Acts of the Union to fully address this issue,

decides under Article 10 of the Constitution to hold an Extraordinary Congress in order to address the issue of the legal status of the Asia Pacific Post Cooperative, as well as other urgent postal sector issues,

further decides under Article 105(8) of the General Regulations that the Extraordinary Congress will be held in conjunction with the 2024 Executive Council at the place so nominated to host the Executive Council, and

instructs the Bureau to work with the host country of the 2024 Executive Council to take all the necessary measures to organise the Extraordinary Congress.

Reasons – see EC 2023 Doc 13.7.

Note to members: The holding of an Extraordinary Congress under Article 10 of the Constitution requires a request or the consent of at least two-thirds of the member-countries, presently 22. To adopt this resolution either:

- at least two-thirds of member countries must be present when a decision is taken by the Executive Council, and such a decision be taken by consensus; or
- an expression of consent by at least two-thirds of member countries, which can be taken online, by a vote of the Executive Council, by a show of hands, or by another means.

While this proposal is presented to the Executive Council, the Executive Council is not required to take this decision. As such, the Rules of Procedure of the Executive Council are not required to be followed in considering this proposal. To ensure inclusivity, if the proposal cannot be agreed by consensus, it is proposed that the Executive Council pause its deliberations and the membership be asked to communicate its consent via another means (to enable those participating solely online to express an opinion). The place and date of the assembly of the Extraordinary Congress is required to be fixed by the Executive Council in accordance with Article 105(8) of the General Regulations.

[Congress to be agreed]**DRAFT FOR NOTING ONLY**

General Regulations – Proposal

XX

EXECUTIVE COUNCIL

Create a new Article as follows.

Article 107bis**Organisation of user-funded subsidiary bodies**

1. The Executive Council may establish user-funded subsidiary bodies, funded by voluntary means, in order to organise operational, commercial, technical and economic activities which fall within the competence of the Union, but which may not be financed from the regular budget of the administrative section.
2. Upon the creation of such a body by the Council, the Council shall decide on the basic framework of the rules of procedure of the body, taking due consideration of the fundamental rules and principles of the Union as a restricted union of the UPU. The basic framework shall include the following elements:
 - 2.1 the mandate;
 - 2.2 the body's location within the Asia-Pacific region;
 - 2.3 the constituency, including the categories of members participating;
 - 2.4 the body's internal structures and the body's relationship with the remainder of the Bureau and with other Union organs;
 - 2.5 composition of staff of the body, management structure and the internal processes for the management of such staff;
 - 2.6 voting and representation principles;
 - 2.7 financing.
3. A user-funded subsidiary body shall organise its activities in an autonomous manner within the basic framework decided by the Council, and shall prepare an annual report on its activities for consideration by the Council.
4. The Council shall establish the rules concerning support costs that user-funded subsidiary bodies must contribute to the regular budget of the administrative section, which shall include any expenditure on behalf of the subsidiary bodies. Notwithstanding Article 117, the expenditure of each user-funded subsidiary body will be in accordance with a separate budget approved in the manner set out in the basic framework for the user-funded subsidiary body.

5. The staff of the subsidiary bodies shall be an integral part of the Bureau, assigned to the administrative section. The Director of the Bureau² will administer the staff of the user-funded subsidiary bodies in the manner specified by the basic framework for the user-funded subsidiary body. The Executive Council may agree to departures from the Staff Regulations and General Regulations of the Bureau of the Asian-Pacific Postal Union for such staff if the circumstances so require.
6. Information concerning user-funded subsidiary bodies established in accordance with this article shall be reported to Congress following their establishment.

Reasons – see EC 2023 Doc 13.7.

² From the 2017 Tehran Congress, members agreed to title the Director of the Bureau the ‘Secretary General’. As this change is yet to be fully incorporated into the treaties, the former nomenclature is used for the formal treaty amendment and will be updated along with other references within the Acts at a later date.