



SWIPO Common Governance

for SWIPO Codes of Conduct under the

Article 6 of the Free Flow of non-

personal Data Regulation

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This document sets forth the SWIPO Common Governance. Its main purpose is to create the framework within which various Codes of Conduct (CoCs) can be developed and go into operations on the market with the goal to address the switching and portability dimension of cloud services and support the objectives of the Regulation (EU) 2018/1807 of the European Parliament and of the Council of 14 November 2018. Among other things, the Regulation provides that “the detailed information and operational requirements for data porting should be defined by market players through self-regulation, encouraged, facilitated and monitored by the Commission, in the form of Union codes of conduct” that appropriately address specific and unique technical requirements of specific market segments and service types but that also need to share many common requirements to become credible, functional and ensure fair competition and a balance of interests at all time. The work is based on a common understanding that was developed by the self-regulatory working group SWIPO (SWitching and PORting) which was facilitated by the European Commission and was composed of a broad variety of representatives of cloud service providers and users.

1 SWIPO Bodies

To properly reflect the requirements of a transparent and trusted but also efficient SWIPO Ecosystem (“SWIPO”) including all its Task Forces, SWIPO consists of several governance bodies with distinct powers.

1.1 Executive Board

1.1.1 Composition

- (1) There shall be an Executive Board consisting of at least three representatives representing Customers and Providers respectively, and one “at large” representative. The number can be changed by the decision of the General Assembly, always guaranteeing the balance between customers and providers.
- (2) The Executive Board will elect a Chairman and other officers as appropriate from among its members every two years.
- (3) No more than one Executive Board member shall be an employee, designee or representative of any particular Member at any time, Furthermore, Executive Board members cannot be related to each other in blood or by marriage, nor can they be employees of SWIPO, its Secretariat or any entity providing organizational support or services to SWIPO.
- (4) The Executive Board members serve in an individual and fiduciary capacity and are required to act in the best interests of SWIPO.

1.1.2 Election of the Representatives

- (1) Executive Board Representatives shall be elected by the members of the General Assembly through formal presentation of themselves and after having completed and submitted a formal application form to SWIPO Secretariat to serve a two-year term.
- (2) On request of two-thirds of the members of the General Assembly there shall be a vote whether to replace an Executive Board Representative before the completion of an incumbent's two-year term.

1.1.3 Functions

- The Executive Board is responsible for the oversight of all SWIPO operations and governance, including the finance and administration of SWIPO.
- These functions include decisions about but are not limited to:
 - Making up-front determinations as to the common text of all existing CoCs, permitting different text between or among CoCs only when it has been established that there is a compelling need to differentiate among CoCs for technical reasons, and establishing good practices for information exchanges between Taskforces and/or members;
 - Determining the appropriate membership fees and approving any additional fees. In doing this, to address the needs of SMEs and different interests between providers and customers, the Executive Board can create different types of membership-fees, but the overarching principle of entitlement to vote, and "one Member one vote" shall not be changed;
 - Making decisions that are delegated to the Executive Board by this Common Governance;
 - Proposing amendments to this Common Governance document and any other common documents that are deemed appropriate and necessary for the purposes of SWIPO;
 - Coordinating the process of appointing new Task Forces;
 - Safeguarding the alignment of existing CoCs with market and/or legal developments, taking into account possible unfair competition issues and as otherwise deemed appropriate and necessary for the purposes of SWIPO.
- If the Executive Board, on its own initiative or after a written request of at least 10% of the Members of the General Assembly, concludes that a Task Force is not respecting SWIPO principles, policies and procedures appropriately, the Executive Board shall decide and take appropriate actions to re-align the respective Task Force with SWIPO and remedy any inappropriate actions or situations.
- Related to the Complaints Mechanism, the Executive Board must:

- Ensure that there is adequate expertise of members of the Complaints Body to be able to render a fair, neutral and competent decision when a dispute or complaint is raised.
- If the Executive Board believes that there is sufficient reason to question whether the Complaints Body may not be acting in an independent, objective and unbiased way, it will solicit further information and views from the General Assembly, which must then vote on how to resolve the underlying complaint or otherwise remedy the situation.

1.1.4 Procedures

- (1) The Executive Board shall decide by simple majority.
- (2) The Executive Board shall record and distribute at least once a month its non-confidential decisions and activities to the General Assembly, including an annual summary of the respective reports received from existing Task Forces.
- (3) The General Assembly has the right to initiate a review and revisit a decision of the Executive Board and will do so no later than 10 business days after electronic publication in the dedicated shared environment of such decision if so requested by 10% of the SWIPO Members.

1.2 General Assembly

1.2.1 Composition

- (1) Any organization can join SWIPO as a Member provided there is a clear interest and a commitment to adhere to all of the SWIPO rules, decisions, policies and procedures.
- (2) Each Member shall appoint one voting representative to the General Assembly. A voting representative may designate in writing an alternate to act on that representative's behalf if that representative is not able to participate in a meeting, vote or other SWIPO activity. Each Member must declare whether it is a Provider Member or a Customer Member. Any Member having declared its adherence (through at least one of its services) to one of the SWIPO Codes must declare that it is a Provider Member. Individuals not acting in a professional capacity are not allowed to become Members.
- (3) Membership is conditioned on the payment of specific fees, where applicable, as determined by the Executive Board (which could be none). Fees shall be composed of an appropriate compensation of costs of the general administration of SWIPO plus an appropriate compensation of specific costs related to running operations within SWIPO.

- (4) If considered necessary to augment the administrative functions and services provided to the General Assembly, the General Assembly may decide to elect a Chair of the General Assembly among its members and define the Chair's responsibilities.

1.2.2 Functions

- (1) The General Assembly shall represent all Members of SWIPO and is responsible for the overall SWIPO activities.
- (2) The General Assembly shall decide upon any matters as described in this document.
- (3) The General Assembly can decide on any other matters if so requested by the Members in accordance with this document or upon request by the Executive Board.

1.2.3 Procedure

- (1) The General Assembly will conduct the majority of its business electronically, including voting. In addition to any legal obligations, the General Assembly can meet physically, where in person decisions can be made, only if such a meeting is approved by a qualified majority of the General Assembly.
- (2) For all votes of the GA, the balance of interests shall be respected.
- (3) Unless otherwise specified, any decision shall only be accepted by a qualified majority of three quarters of all eligible votes of the Members.

1.3 Task Forces

1.3.1 General

- (1) Members or non-members may propose to the Executive Board to split, merge, disband or establish **Task Forces** that can be tasked with a specific assignment, not necessarily related to Code(s) of Conduct.
- (2) The Executive Board shall approve such a proposal that is made in accordance with 1.3.1 (1), provided that the proposers substantiate the necessity and feasibility of such additional Task Forces and these can be promptly composed according to this Common Governance.
- (3) Once a Task Force is established, any SWIPO member can join and participate.
- (4) Each Task Force shall be managed by an appointed leader or appointed member of the Executive Board.
- (5) Any related activities that happen external to SWIPO after a Task Force is disbanded is forbidden from using SWIPO marks, copyrighted material or other SWIPO intellectual property inappropriately or imply any former affiliation to SWIPO in any activity or communication.

1.3.2 Composition of Task Forces

- (1) Any SWIPO Member can become a member of one or more Task Forces.
- (2) All members of any Task Force must declare whether they are a Provider Task Force Member or a Customer Task Force Member.

1.3.3 Procedures

- (1) Unless explicitly stated otherwise, each Task Force shall make decisions based on a simple majority vote.
- (2) Votes on Codes of Conduct will be by qualified majority as outlined in section 2.1.3 “Majorities, Quora and Balance of Interests for decisions within the bodies of SWIPO”.
- (3) Each Task Force shall present its proposals and activities to the Executive Board and the General Assembly minimum twice per year or whenever such a decision or activity may affect the general alignment of SWIPO.

1.3.4 Common Elements

- (1) All CoC shall incorporate – either literally or by reference – any common provisions, including this governance section, approved by the General Assembly. Task Forces shall adopt procedures to safeguard that any changes to common provisions are incorporated.

1.4 Complaints Body

SWIPO will ensure that an independent body is in place that will decide upon complaints related to infringements of SWIPO CoCs in a fair, unbiased and competent manner. The duties, rights, requirements and any other necessary details related this Complaints Body shall be defined in Annex 1 (Complaints and Appeals) of this SWIPO Common Governance. Annex 1 is an integral element of this SWIPO Common Governance.

1.5 Appeal Board

The Executive Board shall establish an SWIPO Appeals Board to address any concerns in connection with a decision, action or inaction of a SWIPO governance body or authority, and render fair, neutral and competent decisions or resolutions. The duties, rights, requirements and any other necessary details related this Appeals Board shall be defined in Annex 1 (Complaints and Appeals) of this SWIPO Common Governance. Annex 1 is an integral element of this SWIPO Common Governance.

1.6 Secretariat

1.6.1 General

- (1) The Executive Board is responsible for ensuring effective Secretariat functions. This function could be performed internally and/or sub-contracted.
- (2) The Executive Board or a contracted Secretariat shall handle all tasks of SWIPO which are relevant for the overall functioning of SWIPO, especially all core administrative matters such as hosting the General Assembly and supporting the General Assembly, or the Executive Body with the performance of their functions, including accounting and membership management. It may also maintain a Public Register and being first point of contact for Providers, Customers or any other interested party.
- (3) The Executive Board may determine further details what functions shall be performed by the Secretariat.
- (4) The Secretariat shall operate in a manner that is as efficient and lean as possible in order to reduce administrative costs to the overall SWIPO Membership.

1.6.2

2 Procedures

2.1 Principles of procedures

2.1.1 Voting Rights

- (1) Each Member shall have voting rights or have the possibility to delegate the voting rights. Proxies are only allowed at physical meetings and good for one single meeting. An attending Member is limited to carrying up to 2 proxies, which must be communicated in writing to the Secretariat prior to the meeting.
- (2) In case of votes in a physical meeting, the agenda shall be announced at least one week in advance.

2.1.2 Convening the bodies of SWIPO

- (1) Members may participate either physically or remotely via electronic means or conference calls, whereas for latter all members shall always be able to hear each other and at the same time. Upon request of one third of the members or where the respective chair of that body deems it appropriate, members shall meet physically.

- (2) Each body may be convened by email sent with at least 14 days' prior notice – unless agreed otherwise by the rules of the respective body - and, including the agenda and purpose of the meeting. A Member shall be deemed to have been notified if the notice is sent to the email address on record for the Member.

2.1.3 Majorities, Quora and Balance of Interests for decisions within the bodies of SWIPO

2.1.3.1 Quora

Unless otherwise provided by this Common Governance, the required quorum for any meeting of any body of SWIPO shall be 50% of the respective members, and 1/3rd of Providers and 1/3rd of Customers.

2.1.3.2 Majorities

- (1) Unless otherwise provided by this Common Governance, each body's decisions shall only be validly taken with a majority of cast votes of all the members of the respective body, provided that two-thirds of the Customer Members and Providers voted.
- (2) Unless otherwise provided by this Common Governance, a qualified majority is two third of cast votes.
- (3) Abstentions shall count towards establishing a quorum, but shall neither positively nor negatively be counted as a vote.

2.1.3.3 Unanimous decisions

Each body may pass unanimous decisions in writing or hold a meeting without any prior formalities, provided that all Members of the respective body are present (either physically or remotely) and express their agreement; in case of a vote such agreement shall entail both the agreement to the call for vote and to the respective decision.

2.1.3.4 Balance of Interests

If, within any body of SWIPO and decision-making process, the potential number of votes related to Customers are less than the potential number of votes related to Providers by at least 15% - or vice versa, the general procedures laid down in this Common Governance shall not apply. Instead, the General Assembly shall develop and implement a mechanism that addresses the imbalance and balance issues accordingly and safeguards that a balance of interests is guaranteed.

2.1.4 Amendments to SWIPO Common Governance

- (1) This SWIPO Common Governance must be approved by the General Assembly.
- (2) Amending the SWIPO Common Governance shall be by qualified majority.

2.2 Additional Rules of Procedure

- (1) Any formal body of SWIPO may adopt rules of procedure to address the specific needs of such body and to keep the performance of dedicated functions as efficient as possible provided they do not contradict the SWIPO Common Governance.
- (2) Rules of procedure must not adversely deviate from relevant provisions and must not undermine the principles of SWIPO as provided by the SWIPO Common Governance and any other applicable common documents. The Executive Board shall determine both the provisions that are considered to be relevant against this background and the principles that must not be undermined.

2.3 Review and approval of a Code of Conduct

Before proceeding to a final approval, SWIPO must conduct a public review period that shall last at least 60 days and must address the comments received from the public review.

3 Membership General Assembly

3.1 Eligible Members

- (1) With its application a Member shall acknowledge and accept the principles of SWIPO and any legitimate changes thereof, and agrees to abide by SWIPO governance documents, procedures and policies.
- (2) With its application a Member shall support the principles, further development and positive attribution in the public that SWIPO creates and strives for.
- (3) Members must not use mere membership in SWIPO in any external communication in a way that is likely to create an improper impression that such Member is compliant with the substantive provisions of any CoC.

3.2 General

- (1) After joining SWIPO, a Provider becomes Provider Member of the General Assembly (“**Provider Member**”); a Customer becomes Customer Member of the General Assembly (“**Customer Member**”), accordingly.

- (2) A Member can join, and subsequently leave a Task Force at any time upon written notice to the respective Task Force leader.

3.3 Automatic Removal of membership

Any member shall have their membership of SWIPO removed under the following circumstances:

- (1) Failure to pay outstanding dues, 60 days after the last payment fell due. Two reminders shall be sent to the member by the Secretariat to give warning.
- (2) Failure to participate in meetings, for a consecutive period of six months. Members attending any SWIPO meeting, sending an alternate, or providing a proxy to another member are deemed to have participated for the purpose of this rule.

Memberships which are lost due to these reasons can be automatically restored by payment of any outstanding fees and following the normal joining process.

4 Declaration of Adherence and Complaints

4.1 Declaration of Adherence

4.1.1 Eligibility and Confirmation of Compliance

- (3) Any Provider, whether a Member of SWIPO or not, may declare one or more services as adhering to a Code in accordance with the procedure at 4.1.2 below. Members that have declared themselves as a Provider, shall declare at least one (1) service adherent to a SWIPO CoC, within 90 days.
- (4) Providers, which declare services adherent, confirm to be fully compliant with all provisions of the applicable Code. Fees may be charged to declare adherence, which may differ based on being a Member of SWIPO or not.

4.1.2 Declaring a Service Adherent

- (1) Any declaration of adherence shall be submitted to the relevant Secretariat through the template as provided and published by the secretariat, from time to time. Any such template shall entail at least the following information:
 - Legal name of the Provider
 - full name of the declared service
 - which CoC the declared service adheres to

- a binding declaration of conformity of the Provider that the declared service is fully compliant with all provisions laid down in the respective CoC the service is declared adherent to by the submitted declaration of adherence.
- (2) The relevant Secretariat shall process submitted declarations of adherence according to the applicable procedures. Any such procedures shall entail at least the following:
- plausibility verification process regarding the provided information (legal name of the Provider, declared service, applicable CoC);
 - documentation of the provided information and the performed verification process;
 - enlisting of the declared services in a Public Register.
- (3) A Public Register shall provide interested parties with a sufficient level of transparency. The information necessary for that purpose shall be determined by the applicable procedures. A Public Register shall provide at least the following information:
- Name of the service adherent
 - legal Name of the Provider
 - day of declaration of adherence
 - date of expiration
- (4) Providers shall inform the relevant Secretariat about changes to their service that have been declared adherent that may relate to the provisions of any applicable CoC the service has been declared adherent to. Where such changes have been material, the Provider shall submit an updated declaration of adherence for the service concerned.
- (5) A declaration of adherence is valid for not more than 36 months.
- (6) Any new declaration of adherence may only be done against the latest version of a developed SWIPO Code: but older declarations of adherence against prior versions will still be valid as declarations against the prior version, within their 36 months validity period.

4.2 Appeals

SWIPO shall establish a process to address appeals in connection with an action or inaction related to this SWIPO Common Governance and related documents. Within this process, fair, neutral and competent decisions shall be ensured at any time. Further details related to this appeals-process shall be defined in Annex 1 (Complaints and Appeals) of this SWIPO Common Governance. Annex 1 shall be an integral element of this SWIPO Common Governance.

5 Evaluation

The SWIPO CoCs and their governance structure shall be evaluated 24 months after the launch of the first CoC under these principles. The evaluation may focus on:

- the impact of these principles regarding the levels of interest of Customers and Providers for any SWIPO Code(s);
- the efficiency of the structure and potential obstacles for non-members to join them;
- the complaints raised to Complaints Committees

Based on the outcome of an evaluation, the Executive Board could consider the necessity of implementing a more elaborate check of compliance for services that are declared adherent before such services are enlisted in SWIPO CoC Public register(s), as well as the necessity of a constant monitoring of compliance – e.g. based on samples – and/or adjusting the list of applicable sanctions and remedies that can be imposed by the Complaints Body. Such considerations could be further developed by a Task Force and submitted to SWIPO members/General Assembly to be approved.