

**EXECUTION VERSION  
Annex 2.5  
to the Cooperation Agreement**

**EUROPEAN ENERGY EXCHANGE AG  
POWERNEXT S.A.**

**ARTICLES OF ASSOCIATION OF  
[SPOT TRADING SE]**

**Linklaters**

Rankestraße 21  
10789 Berlin  
Postfach 30 18 50  
10746 Berlin

Telephone (49-30) 21496-0  
Fax (49-30) 21496-100

**JEANTET ASSOCIÉS**

87, avenue Kléber  
75116 Paris

Telephone +33 1 45058196  
Fax +33 1 47078798

*up*

**ARTICLES OF ASSOCIATION**  
**("STATUTS")**

of

**[SPOT TRADING SE]**

**THE UNDERSIGNED:**

- (1) The **European Energy Exchange AG**, a stock corporation (*Aktiengesellschaft*) under the laws of Germany, having its registered office in Neumarkt 9-19, 04109 Leipzig  
- hereinafter referred to as "**EEX**" -

**AND:**

- (2) **Powernext S.A.**, a stock corporation (*Société Anonyme*) under the laws of France, having its registered office at 5 Boulevard Montmartre, 75002 Paris.  
- hereinafter referred to as "**Powernext**" -  
- hereinafter jointly referred to as the "**Parties**" -

Have adopted, as follows, the Articles of Association of the *Societas Europaea* which they have decided to form:

**I. General Provisions**

**1 Form**

The Company is set up as a *Societas Europaea* ("*société européenne*").

**2 Name**

The name of the Company is

**[Spot Trading] SE.**

**3 Registered Office**

**3.1** The registered office shall be at 5 Boulevard Montmartre, 75002 Paris.

**3.2** The registered office may be transferred to any place in the same "*département*" by decision of the Board of Directors ("*Conseil d'Administration*"), subject to ratification by the next Ordinary Shareholders' Meeting ("*Assemblée Générale Ordinaire*"). In the situation where the Board of Directors decides to effect such a transfer, the Board of Directors is authorised to amend the Articles of Association accordingly.

**4 Object of the Company**

**4.1** The object of the Company is the operation and sponsorship, directly or indirectly through subsidiaries, of one or several of regulated or non-regulated exchanges or multilateral trading facilities (MTF) for electricity spot contracts and other financial or non-financial instruments and products, electronic or otherwise, in France, Germany, Austria,

*up*

## Annex 2.5 to the Cooperation Agreement

Switzerland and other European countries (the "**Exchanges**"), in accordance with the statutory requirements. This includes in particular:

- 4.1.1 the planning, development and implementation of electronic data processing regarding the Exchanges,
  - 4.1.2 the collecting, processing and distribution of information related to electricity or other products in relation with the Exchanges,
  - 4.1.3 the rendering of services (including support, IT and technical) to entities the business of which is related to the Exchanges and energy spot contracts generally.
- 4.2 The Company is entitled to carry out all actions and take all business measures which appear necessary or useful for the fulfilment of the object of the Company. In particular, the Company is entitled to establish branch offices and subsidiaries in France, Germany and other countries, as well as to acquire and participate in other enterprises in France, Germany and other countries.

### 5 Duration

The duration of the Company is 99 years from the date of its registration with the Companies Registry ("*registre du commerce et des sociétés*"), subject to earlier termination or extension.

### 6 Financial Year

- 6.1 The financial year of the Company shall be the calendar year beginning on 1 January and ending on 31 December of each year.
- 6.2 By way of exception the first financial year of the Company shall begin on the date of registration with the Companies Registry ("*registre du commerce et des sociétés*") and shall end on 31<sup>st</sup> December 2008.

## II. Share Capital and Shares

### 7 Share Capital

- 7.1 The share capital ("*capital social*") of the Company amounts to EUR 120,000 divided into 1,200,000 par value shares ("*actions*"), each with a nominal value of EUR 0.10.
- 7.2 The total 1,200,000 shares are divided into 600,000 class E preferred shares (the "**Class E Shares**") and 600,000 class P preferred shares (the "**Class P Shares**"). The initial Class E Shares shall be issued to EEX. The initial Class P Shares shall be issued to Powernext. Future new shareholders shall receive common shares (the "**Class NP Shares**" and with the Class E Shares and the Class P Shares, the "**Shares**").

Class E Shares shall only be held by (i) EEX, (ii) a legal entity controlled by EEX or (iii) a board member representing Class E Shares holders upon a share loan (the "**EEX Group**"). Class P Shares shall only be held by (i) Powernext, (ii) a legal entity controlled by Powernext or (iii) a board member representing Class P Shares holders upon a share loan (the "**Powernext Group**"). Control, as used above, means the direct or indirect (i) shareholding and/or (ii) holding of voting rights and/or (iii) holding of other rights, in each case permitting the control of the board of directors, supervisory board or equivalent body or the control of the management of another entity.

## **Annex 2.5 to the Cooperation Agreement**

In the event that and for as long as Class E Shares or Class P Shares shall be held by an entity other than mentioned above (either as a result of a transfer of such Shares or a change of control of such entity), these Shares shall automatically be treated as Class NP Shares.

In the event that Class E Shares or Class P Shares as the case may be would each represent 25% or less of the total number of Shares issued by the Company, then such Shares shall automatically become NP Shares.

**7.3** The contributions in the shares are fully paid-in. The share capital was contributed by way of contribution in cash as follows:

- Powernext: 60,000.00 euros
- EEX : 60,000.00 euros

**Total : 120,000 euros**

### **8 Form of the Shares**

The shares shall be in registered form only.

### **9 Rights and obligations attaching to the Shares**

**9.1** Each Share shall carry with it the right to a proportion of the assets, the right to participate in dividends and the right to a share of the assets available on liquidation, in an amount equal to that part of the capital that the Share represents, unless other preferred shares shall have been created.

**9.2** Subject to the applicable laws and regulation and to the provisions of article 9.4 hereof, every shareholder is entitled to a number of votes in the General Meeting ("*Assemblée Générale*") equivalent to the number of Shares it holds.

**9.3** In a situation, where it is necessary to own more than one Share in order to exercise any right, the owners of single Shares or an insufficient number of Shares must group themselves together in order to exercise such right.

**9.4** Two members of the Board of Directors shall be elected among a list of candidates nominated by the holders of a majority of the Class E Shares. Two other members shall be elected among a list of candidates nominated by the holders of a majority of the Class P Shares.

### **10 Transfer of the Shares**

Ownership of the shares is evidenced by registration in the name of the shareholder(s) in the record books maintained by the Company for such purposes at the registered office.

Any transfer of shares shall be binding upon third parties and the Company, once the share transfer has been recorded in the share transfer register.

### **11 Redemption of Shares; Remuneration**

**11.1** The Company may redeem Shares with the consent of the concerned shareholder(s), in accordance with article L. 225-206 of the French Commercial Code.

## **Annex 2.5 to the Cooperation Agreement**

- 11.2** Shares can be redeemed, notwithstanding further grounds specified in these Articles of Association, without the consent of the concerned shareholder if:
- 11.2.1** such Shares have become the object of judicial execution measures, and the judicial execution measures have not been cancelled within six months of the judicial execution measure, but at the latest before any transfer of the concerned Shares to a third party;
  - 11.2.2** insolvency proceedings have been commenced relating to the assets of a shareholder, or the commencement of such proceedings has been rejected due to a lack of sufficient assets (in such a case all of the concerned shareholder's Shares shall be the subject matter of redemption);
  - 11.2.3** there is an "important reason" in the person of the concerned shareholder which justifies his exclusion from the Company, i.e. that it can not reasonably be expected of the Company and/or the other shareholders to continue to accept the concerned shareholder as a shareholder in the Company; such important reason being if the shareholder (i) grossly violates his duties or obligations arising from these Articles of Association or (ii) grossly violates obligations (such as non-competition obligations) it has undertaken to the benefit of the Company in such a way that the Company's corporate interest is or will be substantially affected.
- 11.3** <sup>1</sup>If several co-owners are entitled to one undivided Share, the redemption shall also be admissible if the respective conditions are only fulfilled in the person of one co-owner.
- 11.4** The redemption of Shares requires a shareholders' resolution, which is to be passed unanimously, except, in the situations set out in section 11.2 only, for the Shares concerned. Such redemption, once so decided by the shareholders, shall be declared by the Chairman of the Board or the Chief Executive Officer and shall become effective upon receipt of this declaration by the concerned shareholder. The payment of remuneration shall not be a precondition for the validity of the redemption.
- 11.5** A shareholder Shares of which are redeemed, or which is required to assign Shares pursuant to section 11.6, has a claim to remuneration. The remuneration shall be paid in cash. The redeemed shareholder shall receive the fair market value of his share as remuneration computed in accordance with the provisions of article L229-14 of the French commerce code
- 11.6** Instead of a redemption of Shares, a resolution can be passed to the effect that the concerned shareholder is obliged to wholly or partly assign such Shares to the Company, to one or several other shareholders or to a third party. In this event the purchaser of the Shares shall pay the remuneration for the assigned Shares as specified in section 11.5 with the Company being jointly liable for the payment of such remuneration.

### **III. Governance of the Company**

#### **12 Corporate Organs**

- 12.1** The Company shall be structured in accordance with the one-tier board system ("*système moniste*").

---

<sup>1</sup> In such a case, the pledge or the transfer is void

UP

## Annex 2.5 to the Cooperation Agreement

**12.2** The Company comprises a General Meeting of the Shareholders ("*Assemblée Générale*") (the "**General Meeting**"), a Board of Directors ("*Conseil d'Administration*"), a Chairman of the Board of Directors ("*Président du Conseil d'Administration*") (the "**Chairman of the Board**"), and one Chief Executive Officer ("*Directeur Général*") (the "**Chief Executive Officer**").

### **IV. Board of Directors ("*Conseil d'Administration*") (the "Board" or the "Board of Directors")**

#### **13 Appointment of Members of the Board of Directors**

**13.1** The Company shall be managed by a Board of Directors ("*Conseil d'Administration*") made up of at least four, but not more than eighteen Directors. The first Board of Directors shall comprise four Directors. Only individuals ("*personnes physiques*") may be elected as Directors.

**13.2** The members of the Board of Directors shall be elected by the General Meeting in compliance with the following proceedings. Two members of the Board of Directors shall be elected among a list of candidates nominated by the holders of a majority of the Class E Shares (the "**E Directors**"). Two other members shall be elected among a list of candidates nominated by the holders of a majority of the Class P Shares (the "**P Directors**"). Revocation of an E Director shall require the approval of a majority of the holders of Class E Shares and revocation of a P Director shall require the approval of a majority of the holders of Class P Shares.

**13.3** In the case of resignation or revocation of one or more members of the Board of Directors, for whatever cause, the new members of the Board of Directors shall be elected among a list of candidates nominated by the shareholders of the class of Shares which designated the director who has resigned or has been revoked. However, at all times the Board of Directors shall be composed of an equal number of members elected among the candidates nominated by shareholders of the Class E Shares and by the shareholders of the Class P Shares.

**13.4** Subject to the exceptions provided by law, each Director must hold one (1) share throughout the term of his office, also by way of a share loan agreement or otherwise. Directors may be appointed even though they have not yet become shareholders, but they must become shareholders within three months of their appointment, failing which they will be deemed to have resigned from office. The directors elected among the candidates nominated by shareholders of the Class E Shares may only hold a Class E Share; the directors elected among the candidates nominated by shareholders of the Class P Shares may only hold a Class P Share.

**13.5** The Directors shall hold office for a period of 6 years. However, the first Directors shall hold office for a period of three years, according to Article L. 225-18 of the French Commercial Code. They are always eligible for re-election once or more than once for the aforementioned period.

**13.6** Any Director may resign from his office by written notice to the Chairman of the Board of Directors giving four weeks notice. In case of an important reason the Director may resign with immediate effect.

**13.7** In the case of resignation or other cases, resulting in a lack of Directors (i.e. death of Director), the Board of Directors or the last Directors if the remaining Directors are under 3

## **Annex 2.5 to the Cooperation Agreement**

shall without undue delay convene a General Meeting in order to elect new Director(s) to fill the vacant seats in the Board of Directors.

### **14 Chairman of the Board of Directors**

- 14.1** The Board of Directors shall elect a Chairman chosen by and from among the E Directors. The elections shall take place in a Board meeting to take place without special notice directly following the General Meeting in which the members of the Board of Directors were elected.
- 14.2** The Chairman shall be elected for the duration of his office term as member of the Board of Directors. If the Chairman ceases to hold office before expiration of the office term, then the Board of Directors shall without undue delay hold new elections according to the provisions set out in section 14.1. In the interim, until the new Chairman is elected, the other E Director shall be the acting Chairman with all rights and duties of the Chairman.
- 14.3** The Chairman organises and oversees the work of the Board of Directors, which he reports to the General Meeting. The Chairman ensures that the Directors are in a position to fulfil their duties.

### **15 Proceedings of the Board of Directors**

- 15.1** The Meeting of the Board of Directors shall be called at any time by the Chairman of the Board of Directors (or the P Directors if the Chairman of the Board has failed to do so within one week from a demand to this effect from the P Directors) giving at least one week's written notice. For purposes of calculation, the day of the notice is sent and the day of the Meeting shall be disregarded. In emergency cases, the Chairman may call a meeting subject to a shorter notice period by any method of communication, including verbally, by telephone, facsimile, e-mail, provided no member of the Board objects against a meeting with a shorter notice period.
- 15.2** The Meetings of the Board of Directors shall take place at least once every three months (i.e. once per calendar quarter) to discuss the progress and foreseeable development of the Company's business. If any Board of Directors didn't take place during the last two months, notice of a Meeting of the Board of Directors shall also be given if the Directors representing at least one-third members of the Board of Directors or the Chief Executive Officer request such giving the purpose and grounds for such.
- 15.3** The agenda items shall be provided with the Notice of the Meeting. The agenda shall include any item requested to be put on the agenda by the CEO.
- 15.4** The Meeting of the Board of Directors shall be conducted at the registered office or, with the agreement of both the Chairman and the CEO, at any other location specified in the notice, whether in France, Germany or in another European country.

### **16 Resolutions of the Board of Directors**

- 16.1** The resolutions of the Board of Directors shall be generally adopted in meetings. Members of the Board of Directors attending by telephone or videoconference shall be deemed to be present except for decisions specified to Articles L.232-1 and L.233-16 of the French

UP

## **Annex 2.5 to the Cooperation Agreement**

Commercial code<sup>2</sup>. Members of the Board of Directors who are absent from the meeting may give a written proxy to another member of the Board of Directors.

- 16.2** The Board of Directors shall have a quorum, if the half of the members have been given notice at their last known addresses and all members comprising the Board of Directors are present or represented. In case the quorum has not been reached, the Chairman of the Board shall immediately call a new meeting of the Board of Directors with the same agenda as given for the meeting not having reached the aforementioned quorum by giving a short notice of at least three days. In the meeting of the Board of Directors held upon the new notice the Board of Directors shall have a quorum, if at least half of the members comprising the Board of Directors are present or represented.
- 16.3** Resolutions of the Board of Directors shall be adopted by a simple majority of the votes cast unless mandatory law or these Articles of Association require otherwise. In the event of a tied vote, unless mandatory law or these Articles of Association require otherwise, the Chairman of the Board of Directors shall cast the deciding vote.
- 16.4** The proceedings and resolutions adopted by the Board of Directors shall be recorded in minutes drawn up in a special register and signed by the Chairman and one of the Directors designated by the Class P shareholders who attended the meeting.
- 16.5** Copies or extracts of the minutes of meeting of the Board of Directors may be signed by the Chairman, the Chief Executive Officer or any representative specifically authorised for such purpose.

### **17 Powers of the Board of Directors**

- 17.1** Without prejudice to the powers expressly reserved by law for shareholders' meetings, the Board of Directors manages the business and affairs of the Company and ensures that its decisions are implemented.
- 17.2** The Board of Directors decides whether the management of the Company is to be carried out by the President of the Board of Directors or if it is to be carried out by another individual carrying the title of Chief Executive Officer. From the beginning and unless otherwise resolved by the Board of Directors the management of the Company is carried out by the Chief Executive Officer. The shareholders and third parties will be informed of any decision of the Board of Directors to change this management responsibility in the manner provided by the laws and regulations in force. The Board of Directors will make a decision by way of a simple majority vote of the members that are present or represented. The change in the mode of management of the Company may be made at any moment.
- 17.3** The following legal transactions and business measures shall require the express decision of the Board of Directors:
- 17.3.1** Approval of annual budget for the respective next business year comprising the investment plan, the budget, the profit plan and a staffing schedule as well as a consolidated medium-term plan covering a period of 5 years and rolled forward annually until 31 October of any given year at the latest;
- 17.3.2** Amendments to the budget, as far as individual measures are concerned whose totals exceed the planned total expenditure by 1 percent, or exceed the planned total investment by 10 percent;

---

<sup>2</sup> financial statements and reports

UP

## Annex 2.5 to the Cooperation Agreement

- 17.3.3 investments/divestments (including but not limited to acquisitions and disposals of shareholdings in other companies, including silent participations or acquisition, disposals of assets, acquisition, disposal and encumbrance of real estate and equivalent land rights) not included and referred to in the budget of the Company;
- 17.3.4 establishment and liquidation of branches;
- 17.3.5 issue of sureties, guarantees or taking over of similar liabilities not included and referred to within the budget of the Company;
- 17.3.6 granting of loans, including inter-company loan not included and referred to in the budget of the Company;
- 17.3.7 liquidation of subsidiaries;
- 17.3.8 Conclusion, amendment and termination of contracts for services, licence, tenancy, lease and service agreements not included and specifically referred to in the budget of the Company with a probable annual total burden of more than EUR 100,000 for each specific case;
- 17.3.9 conclusion, amendment and termination of IT service agreements and clearing services agreements except to the extent otherwise already specifically approved and referred to by the Shareholders holding Class E shares and the Shareholders holding Class P Shares;
- 17.3.10 conclusion, amendment or termination of contracts with a value of the service or the consideration of more than EUR 500,000 not included and referred to within the budget of the Company;
- 17.3.11 granting of general power of attorney;
- 17.3.12 acquisition of new IT systems provided such do not serve the purpose of the maintenance or modernization of office operations within the general usual framework;
- 17.3.13 all essential business transactions between the Company on the one hand and the members of the management board as well as persons close to them or companies with which they are personally affiliated on the other hand;
- 17.3.14 entering into and termination of enterprise agreements, such as domination and/or profit and loss pooling arrangements;
- 17.3.15 (i) the offering of New Products, (ii) the termination of existing lines of products and contracts, (iii) the entering into New Markets, (iv) the exit from an existing markets territory by the Company or one of its subsidiaries, including, but not limited to, the total or partial sale of shares of its German spot trading subsidiary where "New Products" means contracts for the delivery of electricity with a term of up to two days (including the second day) not already offered by the Company when the decision is considered and "New Markets" refers to any market territory where the Company does not carry out activities when the decision is considered, and/or (v) decisions on the membership fees and trading fees for the Spot Businesses of the Company and its subsidiary (a decision with respect to any such proposal being a **"Market Strategy Decision"**).
- 17.3.16 introduction and amendment of management stock option and other incentive plans and employee stock option plans;

## **Annex 2.5 to the Cooperation Agreement**

- 17.3.17 commencement of litigation with a value of more than 100,000 Euro or with shareholders;
- 17.3.18 the entering into employment agreements with a Director;
- 17.3.19 the entering into agreements and arrangements contemplated by section L225-38 of the Commerce code;
- 17.3.20 the exercise of shareholders' rights in subsidiaries of the Company, e.g. the voting rights in shareholders' meetings; and
- 17.3.21 delegation of persons into the boards of subsidiaries or removal of delegated persons.

17.4 Decisions on any new shareholder joining the Company through an increase of capital shall require a resolution of the General Meeting including the favourable votes of a majority of, respectively, the holders of Class E Shares and Class P Shares.

### **18 Compensation**

- 18.1 Each member of the Board of Directors shall receive an adequate compensation, which shall be determined by resolution of the General Meeting. The Board of Directors shall freely distribute such amount among its members.
- 18.2 The Company reimburses all members of the Board of Directors all expenses within the limits acceptable as compensation of expenses and not additional income under French tax laws (including VAT, to the extent the Directors are subject to VAT).

## **V. Chief Executive Officer ("*Directeur Général*")**

### **19 Appointment of the Chief Executive Officer**

- 19.1 Unless the Board of Directors has resolved otherwise, with respect to the mode of management of the Company, the responsibility for the general management of the Company is borne by an individual appointed by the Board of Directors carrying the title of Chief Executive Officer. Subject to Article 19.2, this decision is made by applying quorum and majority rules applicable to the meetings of the Board or Directors. The Chief Executive Officer must be an individual. The Board of Directors determines the remuneration of the Chief Executive Officer.
- 19.2 The Chief Executive Officer shall be appointed by and from among the P Directors. The Chief Executive Officer shall be appointed for a maximum of six years. However, the Chief Executive Officers duration of functions cannot exceed the duration of his office as Director. The Chief Executive Officer can only be revoked by a Board majority decision including at least one of the P Directors or by a decision of the General Meeting including the consent of the holders of a majority of the Class P Shares.

### **20 Management and Representation**

- 20.1 The Chief Executive Officer shall manage the current business of the Company and shall represent the Company in or out of court.

## **Annex 2.5** **to the Cooperation Agreement**

- 20.2** The Chief Executive Officer has to observe the restrictions stipulated in section 17.3 above. The Board of Directors may give the Chief Executive Officer instructions with regard to the Company's management.

### **VI. General Meetings ("*Assemblées Générales*")**

#### **21 Place and Notice of the General Meetings**

- 21.1** General Meetings shall be convened by the Board of Directors. The Chairman or the Chief Executive Officer can require the Board of Directors to convene a General Meeting and to specify points that shall be put on the agenda.
- 21.2** General Meetings shall be held at the registered office or such other place within France, Germany or another European country as may be specified in the Notice of the Meeting.
- 21.3** The Notice of the Meeting – stating the items of the agenda – has to be sent by [registered] mail to all shareholders registered in the Company's share register to their addresses entered in the share register giving notice of at least 15 days before the General Meeting. The General Meeting may pass resolutions without adhering to the provisions as to form and time for the notice of the Meeting, if all shareholders are present or represented to the extent that no shareholder raises any objections and that other legal requirements are complied with.
- 21.4** A General Meeting shall be held at least once each calendar year, within six months of the end of its financial year. The first General Meeting of the Company may be held at any time within six months after the end of the first financial year of the Company determined in accordance with section 6.2 of these Articles of Association.

#### **22 Ordinary and Extraordinary General Meetings**

- 22.1** All decisions to be made by the General Meeting other than the amendment of the Articles of Association of the Company (or other decisions the law shall require be made otherwise) shall be made by the Ordinary General Meeting.
- 22.2** Decisions, by which the Articles of Association of the Company are directly or indirectly amended or which authorise another organ or third parties to directly or indirectly amend the Articles of Association of the Company (or other decisions the law shall require be made accordingly) are made by the Extraordinary General Meeting.

#### **23 Chairman of the General Meetings**

- 23.1** The Chairman of the General Meeting shall be the Chairman of the Board of Directors or, if he is unable to attend, the other E Director or, if he is unable to attend, an individual being present in the General Meeting and elected by the attending shareholders.
- 23.2** The Chairman of the General Meetings shall chair the meetings.

#### **24 Right to participate in the General Meetings and Voting Rights**

- 24.1** The right to attend general meetings is conditional upon registration of the shareholder on the Company's share register at least five days before the date of the meeting.
- 24.2** When a General Meeting is convened, any shareholder can participate in that General Meeting by videoconference or by electronic telecommunication or transmission in the

## **Annex 2.5 to the Cooperation Agreement**

manner provided by the laws and regulations in force. That Shareholder is deemed to be present at that General Meeting for quorum and majority purposes.

**24.3** Each Share shall represent one vote.

**24.4** Shareholders can, under the conditions imposed by the laws and regulations, send in a proxy form or postal voting form by any means of transmission in relation to every General Meeting, either in paper form or any other written form, and mentioned in the Notice of the Meeting.

### **25 Resolutions**

**25.1** Unless mandatory law or these Articles of Association provide otherwise, resolutions of the Ordinary General Meetings as defined in section 22.1 of these Articles of Association shall be adopted with simple majority of the votes cast.

**25.2** Unless mandatory law or these Articles of Association provide otherwise, resolutions of the Extraordinary General Meeting shall be adopted with a two-thirds majority of the votes cast. Resolutions on the admission of new shareholders through an increase of capital shall, in addition to the majority of the votes, also require the consent of the majority of the Class E shareholders and of the Class P shareholders respectively.

**25.3** If there is a tied vote in an Ordinary General Meeting, there shall be a second vote. If the second casting of the votes results in a tied vote, the proposal shall be deemed rejected.

**25.4** The votes cast shall not include votes attaching to Shares in respect of which the shareholder has not taken part in the vote or has abstained or has returned a blank or void ballot paper.

**25.5** The proceedings and resolutions adopted by the General Meetings shall be recorded in minutes drawn up and signed by the Chairman of the General Meeting, one E Director, one P Director and one secretary.

## **VII. Statutory Auditors ("*Commissaires aux Comptes*")**

### **26 Statutory Auditors**

One or more Statutory Auditors and one or more Deputy Statutory Auditors shall be appointed by the General Meeting for a term of [six] financial years. Their term of office shall expire after approval of the financial statements for the [sixth] financial year.

## **VIII. Annual Financial Statements ("*Comptes Annuels*")**

### **27 Annual Financial Statements**

**27.1** At the end of each financial year and as soon as possible – in any case within the periods prescribed by law, the Chief Executive Officer shall prepare the Annual Financial Statements for the financial year then ended (including the balance sheet, profit and loss statement and an annex) and a Management Report in writing and submit these documents to the Board of Directors.

**27.2** The Board of Directors shall without undue delay examine and close the Annual Financial Statements and the Management Report together with the proposal for the resolution of the General Meeting concerning the distribution of profits.

**27.3** The Annual Financial Statements shall be submitted for approval to the General Meeting.

## **28 Distribution of Profits**

**28.1** The difference between the profits and the charges for the financial year, once provisions have been made, constitutes the profits or losses for the financial year, such as it appears in the profit and loss account as part of the Annual Financial Statements. Five per cent (5%) of the profits shall be allocated to the legal reserve account, except if the carried forward losses exceed the amount of the profits. When the legal reserve account equals ten per cent of the share capital, this deduction is no longer compulsory. If, for any reason, the legal reserve no longer equals ten per cent of the share capital, a new deduction has to be made.

**28.2** If distributable profits, as defined by law, are evident from the Annual Financial Statements as approved by the Board of Directors of the General Meeting as the case may be, the General Meeting shall decide whether to transfer the profit to one or more reserves, to carry it forward or to distribute it.

**28.3** Moreover, the General Meeting may decide to distribute any funds available for distribution taken from the reserves. In such a case, the resolution should expressly indicate from which section of the reserves the funds have been taken.

**28.4** The Annual General Meeting approving the accounts is empowered to give each shareholder, as regards all or part of the distributed dividends or of the advance on dividends, an option between the payment of the whole dividend or of the advance on dividends either on cash or by payment in shares.

**28.5** The shareholders shall participate in the distributable profits of the Company in proportion to their share in the share capital.

## **IX. Miscellaneous**

### **29 Dissolution of the Company**

Upon the dissolution or the anticipated dissolution of the Company, one or more liquidators shall be appointed by an Extraordinary General Meeting of shareholders, which shall also define the liquidator's powers and determine the method of liquidation. The liquidator will exercise his powers in accordance with the applicable law.

### **30 Fees and other Costs**

All expenses, fees and disbursements related to the present articles and any consequent formalities shall be assumed by the Company once it has been registered with the Companies Registry.

### **31 Appointment of the First Directors**

The following persons are appointed as first directors of the Company for a period of three years which shall expire at the end of the Ordinary General Meeting at which the accounts for the financial year 2009 are considered and which shall be held during the course of 2010:

## Annex 2.5 to the Cooperation Agreement

- First E Directors:
  - Dr. Hans-Bernd Menzel, whose address is Neumarkt 9-19, 04109 Leipzig
  - Iris Weidinger, whose address is Neumarkt 9-19, 04109 Leipzig
- First P Directors:
  - Jean-François Conil-Lacoste whose address is 5 Boulevard Montmartre, 75002 Paris
  - Thierry Morello, whose address is 5 Boulevard Montmartre, 75002 Paris

each of whom has stated, that he will accept the office to which he has just been appointed, and has confirmed that no conflict of interest arises in relation to his appointment and that he is not disqualified from being so appointed.

### 32 Appointment of the First Statutory Auditors

#### 32.1 Incumbent Statutory Auditor

[ ] *[INSERT NAME AND ADDRESS OF INCUMBENT STATUTORY AUDITOR]*

is appointed as First Incumbent Statutory Auditor of the Company for a period of [six] financial years, their term of office expiring at the end of the Ordinary General Meeting at which the accounts for the sixth financial year are considered.

The appointed First Incumbent Statutory Auditor stated, that he will accept the office to which he has just been appointed, and has confirmed that no conflict of interest arises in relation to his appointment and that he is not disqualified from being so appointed.

#### 32.2 Deputy Statutory Auditor

[ ] *[INSERT NAME AND ADDRESS OF DEPUTY STATUTORY AUDITOR]*

is appointed as First Deputy Statutory Auditor of the Company for a period of [six] financial years, their term of office expiring at the end of the Ordinary General Meeting at which the accounts for the sixth financial year are considered.

The appointed First Deputy Statutory Auditor stated, that he will accept the office to which he has just been appointed, and has confirmed that no conflict of interest arises in relation to his appointment and that he is not disqualified from being so appointed.

### 33 Applicable law

These Articles of Association are subject to French law.

\* \* \* \* \*

**Annex 2.5  
to the Cooperation Agreement**

Executed in [•] on [•] 200[•] in as many original copies as requested by law;

For Powernext

By Jean-François Conil-Lacoste

Chief Executive Officer

For EEX

By Dr. Hans-Bernd Menzel

Chief Executive Officer