



Determination of the Memberships of Rulemaking Groups

WI.RPRO.00044-005

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**DOCUMENT CONTROL SHEET****Reference documents****a) Procedures**

PR.RPRO.00001 - Rules development

b) Internal documents

[Management Board Decision 01-2012 of 13/03/2012, amending and replacing Decision 08-2007, concerning the Procedure to be applied by the Agency for the issuing of Opinions, Certification Specifications and Guidance Material \("Rulemaking Procedure"\), and in particular Article 4 and 7 thereof.](#)

[ED Decision 2010/140/E of 30 September 2010 adopting implementing rules concerning data protection at the European Aviation Safety Agency.](#)

WI.RPRO.00045 - Rule of Procedure for Rulemaking Groups

FO.RPRO.00028 - Contact details of candidate for rulemaking group Form

FO.RPRO.00071 - Specific declaration of interests of members of Rulemaking Groups

TE.RPRO.00037 - Rulemaking Terms of Reference

PO.HR.00180 - Code of Conduct for the staff of EASA

Acronyms/abbreviations

MB: Management Board

NPO: Non-profit Organisation

RAG: Rulemaking Advisory Group

SDoI: Specific declaration of interests

SME: Small Medium-sized Enterprise

SSCC: Safety Standards Consultative Committee

TAG: Thematic Advisory Group

ToR: Terms of Reference

WI: Work Instruction

Log of issues

Issue	Issue date	Change description
001	11/11/2010	First issue
002	06/12/2012	Second issue to incorporate EASA MB Decision 01-2012 of 13/03/2012, amending and replacing MB Decision 08-2007.
003	21/05/2013	Third issue to address the requirements of the Conflict of interest and refer to the Form for 'Specific declaration of interest'. This WI is applicable as of 1 September 2013.
004	17/07/2013	Forth issue to fine-tune the requirements of the Conflict of interest, including paragraphs on the mandatory training and on breach of the procedure.
005	23/06/2014	Alignment of the document with the convergence project





I. INTRODUCTION

The Rulemaking Procedure foresees, inter alia, in its articles 4 and 7 the establishment as appropriate of groups to assist in the drafting of, and review of comments on, rules to be issued by the Agency. It then requires the Executive Director to establish, after having consulted the Rulemaking Advisory Group (RAG), the Thematic Advisory Group (TAG) and the Safety Standards Consultative Committee (SSCC), the necessary internal procedures for the implementation of the Rulemaking Procedure, in particular the provision of standard procedures for such groups.

The present document specifies the procedures applicable to the determination of the membership of rulemaking groups.

II. RULEMAKING GROUPS

a) When the draft Terms of Reference are submitted for consultation towards the RAG, TAG and SSCC, the respective Director shall invite these groups to nominate proposed members for each rulemaking group where the establishment of such a group is foreseen. Only nominations provided by RAG, TAG and SSCC members are accepted. Such nomination shall be made within the three weeks following the invitation using the dedicated form (FO.RPRO.00028 - Contact details of candidate for rulemaking group). The nomination of alternate members is not allowed.

b) When nominating members for rulemaking groups, National Aviation Authorities/National Supervisory Authorities and stakeholders shall take into account:

- the group profile established in the draft Terms of Reference; and
- that they will have to facilitate the work of the members by allocating them enough time for preparing, participating in and following up the meetings as well as consulting the authority/organisation they belong to. The draft Terms of Reference contain appropriate information.

c) During the nomination process and before starting their activity, the proposed members have to declare their interests by using a dedicated form (FO.RPRO.00071 – Specific declaration of interests of members of Rulemaking Groups) to be submitted together with the form for nominations (FO.RPRO.00028 - Contact details of candidate for rulemaking group). For further information on the handling of this procedure see the Annex I to this work instruction.

d) The respective Director shall determine the membership of the group, following the group profile established in the Terms of Reference. The respective Director is entitled to invite experts other than those nominated by the RAG, TAG and SSCC as members of the group. The size of a rulemaking group should normally not exceed eight persons, plus the project manager/secretary.

e) When international agreements or working arrangements so commit the Agency, the composition of the group may be expanded to include the experts appointed by the foreign partners, as provided in the applicable agreements or arrangements¹.

¹ EASA-FAA rulemaking cooperation guidelines; EU-Canada rulemaking cooperation guidelines





f) The final composition of the group shall be communicated to the RAG, TAG and SSCC, and shall be published in the Official Publication of the Agency.

g) The composition of a group may be modified when a member does not fulfil his/her duties (e.g. by not contributing to the work,) or when the implementation of the task shows the need for additional or different expertise. In such case the Chair and the project manager shall co-ordinate to find an acceptable new composition, and the respective Director shall inform the RAG, TAG and SSCC on such composition.

h) Exceptionally, a rulemaking group may be supported by subgroups. Subgroups may be established in strictly justified cases (e.g. rulemaking in new areas, or a task involving complex, multidisciplinary subjects), either when the main group is established, or later on at the request of the Chair and/or the project manager. There should be at least one representative from the main group in each subgroup. The respective Director may invite the RAG, TAG and SSCC to nominate subgroup members. The respective Director shall determine the membership of the subgroup, applying the same principles as for the main group composition. For further information on the handling of subgroups see the Annex II to this work instruction.

III. REVIEW GROUPS

a) A review group is established, if needed, to review the comments received towards the Notice of the Proposed Amendment.

b) A review group is

- a rulemaking group augmented by additional members. These additional members may be persons involved in standardisation inspections or certification experts in the domain affected by the task of the group. The additional members may also be chosen to ensure that dissenting views, as they appear in the consultation, are duly represented in the review of comments and the drafting of the final proposal of the group; or
- a rulemaking group with no additional members.

c) The respective Director shall co-ordinate with the project manager of the rulemaking task and seek the opinion of the RAG, TAG and SSCC on the composition of the review group.

d) The final composition of the group shall be communicated to the RAG, TAG and SSCC, and shall be published in the Official Publication of the Agency.

e) The provisions of point II. f) are applicable to the modification of the composition of a review group.

IV. COSTS

Costs associated to the participation in rulemaking groups are to be borne by the employers of the members. In exceptional cases the Agency may reimburse the participation of experts from micro, small or medium-sized enterprises (SME) or non-profit organisations (NPO). In such cases the reimbursement is made in accordance with the applicable Executive Director Decision.

In this connection SME and NPO are defined as follows:



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- SME: Micro, small and medium-sized enterprises consist of enterprises which employ fewer than 250 persons and which have either an annual turnover not exceeding 50 million euro, or an annual balance sheet total not exceeding 43 million euro. For further details visit the European Commission website on SME definition: http://ec.europa.eu/enterprise/enterprise_policy/sme_definition/index_en.htm.
- NPO: A non-profit organisation (also called not-for-profit) is a legally constituted organisation whose objective is to support or engage in activities of public or private interest without any external commercial or monetary profit.

The request for eligibility for reimbursement must be made at the time of nomination of the expert to the rulemaking group. The dedicated form (FO.RPRO.00028 - Contact details of candidate for rulemaking group) should be used for this purpose.



Annex I

SPECIFIC DECLARATION OF INTERESTS (SDoI)

Before starting their activity, the candidates have to declare to the Agency their interests related to the scope of the Rulemaking task concerned. This declaration of interests is needed in order to ensure the impartiality and independence of Rulemaking Group members when performing their functions. The reason is to prevent and mitigate the risk that private interests², or any outside influences of whatever kind, might improperly influence the performance of the candidate. In this respect the declaration shall allow the Agency to prevent or mitigate the risk of Conflict of Interest situations. This procedure is in accordance with the PO.HR.00180 - Code of Conduct for the staff of EASA.

Situations of Conflict of Interest can arise when:

- there is a link between Rulemaking Group members' work and their private interest, or those of their close family members;
- Rulemaking Group members find themselves in a situation that could reasonably lead to allegations being made of bias or partiality, in the light of their private interest.

It should be noted on the one hand that having an interest does not necessarily mean having a conflict of interest. In particular, high quality of expertise is by nature based on prior experience. Declaring an interest does therefore not automatically disqualify a proposed member or limits his/her participation in the Rulemaking Group. In this context it should be emphasized that it is the intention of the Agency having different views and opinions represented in each Rulemaking Group, based on the individual background and interest of the different members. The leading goal shall be to allow the group to fulfil its tasks in the best way possible, while ensuring transparency on the interests of the group members.

On the other hand it should be emphasised that this Declaration of Interests form does not contain an exhaustive list of potential interests and that all other elements that might jeopardise the independence of a Rulemaking Group member shall thus also be indicated.

The administrative procedure concerning the declaration of interests is as follows:

1. When the respective Director invites RAG, TAG and SSCC to nominate proposed members for a Rulemaking Group the dedicated form (FO.RPRO.00071 – Specific declaration of interests of members of Rulemaking Groups) is distributed together with other documents for the nomination of members.
2. The proposed member, after having filled out the form, shall send the form directly to the project manager responsible for the specific Rulemaking Task. The form is processed according to the Agency's policy for protection of personal data and in accordance with Regulation (EC) No 45/2001³.
3. The project manager does an assessment and decides whether the candidate can be accepted as a member of the Rulemaking Group. In this respect the decision shall be based on the information

² Private or personal interest is a material and/or an immaterial interest of a Rulemaking Group member that may influence his/her decision-making while discharging duties of public interest. This means personal interests which can bring advantages to the member in his/her personal capacity, or to others he/she may wish to benefit or cause disadvantage. Private or personal interest does not include the interests that a Rulemaking Group member has as a consequence of being member of the body, organization or association which has nominated him/her as rulemaking group member for a specific Rulemaking task.

³ REGULATION (EC) No 45/2001 of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001).





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provided by the candidate and shall take into account the criteria described above concerning interests of proposed members of Rulemaking Groups.

4. If the project manager needs advice for making a decision he/she shall contact his/her superior(s) to come to a final conclusion. If a decision still cannot be made, the superior(s) shall bring the matter to the attention of his/her management lines and, if necessary, to the Executive Director, who may then request a reasoned opinion from the Agency's Ethical Committee.
5. At the end of the process the superior of the project manager shall inform the proposed member on the decision made. The assessment shall be recorded in a note to the file to be stored together with other personal data of the proposed members.
6. The proposed member is requested to follow training on the Conflict of interest policy. The training shall be made available prior to the first Rulemaking Group's meeting. The Rulemaking Group's members will be requested to declare that they have followed the training prior to the start of the first meeting. The project manager shall record this in the minutes of the meeting.
7. An omission in declaring relevant interest in the SDoI resulting in a potential or actual Conflict of interest may be considered a breach of the Code on Conduct policy. When the project manager, in consultation with his/her superiors, confirms the breach, the Executive Director shall take appropriate decisions which may result in the termination of the participation in the Rulemaking Group.

Annex II

HANDLING OF SUBGROUPS

The establishment of subgroups should be **exceptional** and well considered.

The project manager/secretary and the rulemaking group prepare the ToRs for the subgroups (there are no draft subgroup ToRs, only final versions, because these subgroup ToRs just reflect the actual task and how the related work should be divided)

Subgroup ToRs shall contain a paragraph which explicitly points out the relation between subgroup and main group: Subgroups are to report to the main group, as agreed between the two groups, and the work of subgroups is only finalized by the acceptance of the main group.

The subgroup ToRs are submitted to the respective Directorate in charge. it will communicate to the RAG, TAG and SSCC these subgroup ToRs **for information only** and ask them to nominate candidates for the subgroups in question.

In this communication to the RAG, TAG and SSCC the relation between subgroup and main group shall be stated again shortly to place an emphasis on it.

The criteria for selecting members for a subgroup are more or less the same as for a regular group. The subgroup should include one member from the main group; the other members should add additional expertise and therefore constitute an added value.





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The subgroup compositions will later on be published on the Agency's website.





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RECORDS

Appendix A : Operational Documents

Record	Step / Related to
Contact details of candidate for rulemaking group	
Specific declaration of interests of members of Rulemaking Groups	

Appendix B : External Documents

Record	Step / Related to
Terms of Reference (incl. Group Composition)	Publication of the Terms of Reference on EASA website