



Rule of Procedure for Rulemaking Groups	Doc #	WI.RPRO.00045-002
	Approval Date	06/12/2012

## Rule of Procedure for Rulemaking Groups

### **WI.RPRO.00045-002**

	Name	Validation	Date
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**DOCUMENT CONTROL SHEET**

<b>Process Area</b>	Rules development
<b>Main Process</b>	Process a rulemaking task
<b>Scenario</b>	All
<b>Process</b>	All
<b>Main Process Owner</b>	Jules Kneepkens

<b>Reference documents</b>
<b>a) Procedures</b>
PR.RPRO.00001 - Process a rulemaking task PR.RMP.00001 - Annual rulemaking programme WI.RPRO.00044 - Determination of the memberships of Rulemaking groups
<b>b) Internal documents</b>
MB 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 2009/002/F of 23/03/2009 on the general terms and conditions for the reimbursement of travel and subsistence expenses to outside persons.  TE.RPRO.00037 Rulemaking Terms of Reference.

<b>Date of validation Owner level 1</b>
CRD: Comment Response Document MB: Management Board NPA: Notice of Proposed Amendment RAG: Rulemaking Advisory Group RIA: Regulatory Impact Assessment SSCC: Safety Standards Consultative Committee TAG: Thematic Advisory Group ToR: Terms of Reference WI: Work Instruction

<b>Log of issues</b>		
Issue	Issue date	Change description
001	19/11/2010	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



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**I. INTRODUCTION**

The Rulemaking Procedure foresees 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 rules and procedures applicable to rulemaking groups. For the purpose of this document subgroups, as defined in the 'Procedure for Determination of Memberships of Rulemaking Groups' (WI.RPRO.00044) shall be considered as rulemaking groups. The role of rulemaking groups is advisory by nature. As stated above they shall assist in the drafting of, and review of comments on, rules to be issued by the Agency, while the Agency shall make the final decision.

**II. MEMBERSHIP**

Members of rulemaking groups are appointed by the Agency's Rulemaking Director in accordance with the provisions of the Rulemaking Procedure. The following provisions shall be observed:

- a) Membership shall be limited while taking into account the need to include the necessary expertise to execute the tasks specified in the Terms of Reference.
- b) Continuity and consistency in the group's members shall be enabled. This implies to not allow for the nomination and participation of alternate members.
- c) Membership may be changed in case members cannot fulfil their role or additional expertise is needed to execute the tasks of the group. In particular, the Agency has the possibility to replace members not contributing to the work of the group.

**III. CHAIR**

A Chair shall be elected by the members of the group on the basis of his/her personal skills for this role, his/her availability and his/her experience of the EASA system and of the domain relevant to the Terms of Reference of the rulemaking group. Depending on the circumstances (e.g. familiarisation of the members of the group with the Agency's procedures) and as decided by the Agency, the Chair shall be elected at the first or the second meeting of the group. If the Chair is elected at the second meeting, the first meeting shall be chaired by an Agency's group member (e.g. the project manager or the secretary of the group, see below). Any difficulty in choosing the Chair of a rulemaking group must be reported to the Rulemaking Director by the project manager.

The Chair, in coordination with the project manager, is responsible for the efficiency of the group and the fulfilment of its Terms of Reference, as well as for the following tasks:

- a) Organising and scheduling of group meetings according to the time schedule and the tailored rulemaking process indicated in the terms of reference;
- b) Proposing the agendas of group meetings;
- c) Organising the discussions, and notably for ensuring that all representatives may express their opinions;
- d) Adopting the reports of the group's meetings;



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- e) Establishing the synthesis of all the opinions expressed in the rulemaking group, using if necessary the principles of consensus;
- f) Proposing the creation of subgroups according to point II.g) of the 'Procedure for Determination of Memberships of Rulemaking Groups' (WI.RPRO.00044); and
- g) As regards subgroups, the subgroup Chair reports to the Chair of the main rulemaking group.

**IV. PROJECT MANAGER AND THE SECRETARY**

The project manager is the Agency's officer within the Rulemaking Directorate, responsible for managing the rulemaking task from start to end, and appointed at the beginning of the rulemaking task. The project manager will make arrangements for the secretarial support to the group. For the majority of the Agency's rulemaking tasks the project manager and the secretary of the group are the same person.

The project manager shall be responsible for the following tasks:

- a) Represent the Agency's views, as appropriate, in the rulemaking group;
- b) Coordinate with the chair in the development of his/her tasks as described above;
- c) Reporting to the Rulemaking Director any difficulties met in the fulfilment of the tasks of the group and eventually proposing changes to the Terms of Reference and necessary changes in the composition of the group.

The secretary of a group shall be responsible for the practical organisation of the work, including:

- a) Preparing the reports of each meeting of the group;
- b) Distributing reports, minutes, agendas and any other relevant material to the group members;
- c) File retention as necessary to maintain efficiency in the group's work.

**V. ROLE OF MEMBERS**

Participation is on the basis of technical expertise and experience. This, however, does not preclude members to liaise with affected parties and coordinate their position with the organisation/authority that nominated them, so as to ensure that they give the best contribution possible and reflect in the discussions the view of their authority/organisation (as affected stakeholders). The leading goal shall be to allow the group to fulfil its tasks in the best way possible.

Members should:

- attend all group meetings from beginning to end on a regular basis, in order to ensure harmony and efficiency;
- participate in discussion whenever relative views and/or information could be given and contribute proposals for the planned deliverables, as appropriate;
- assist in the efficient planning of the meeting, inform the Chair and secretary before the meeting of non-availability for a group meeting.



## VI. REPORTING

Progress reports shall be made available to the Rulemaking Director. After each meeting, the project manager shall provide the Rulemaking Director with the approved minutes of meeting.

For subgroups the provisions of point III.g) above apply.

## VII. WORKING METHODS

Based on the timetable set for the task in hand, the Chair and the project manager, in consultation with the group, will determine a suitable meeting schedule.

The Agency will provide the necessary administrative and logistical support for the fulfilment of its tasks. Meetings shall be held at the Agency's head office, except in exceptional circumstances, subject to agreement with the Rulemaking Director. The working language of all meetings shall be English, unless specific alternative arrangements are made for acting differently.

The group will perform its work by means of correspondence and/or meetings.

The work of the group shall be in accordance with its Terms of Reference. Without prejudice to the provisions of the Rulemaking Procedure, such Terms of Reference may be amended, as appropriate, in the light of progress with the task.

In the development of their work and in fulfilling their advisory role to the Agency, the group should try, as far as possible, to reach consensus as defined in the Annex. In the case of subgroups, any disagreements should be brought up to the main group.

When drafting a Notice of Proposed Amendment (NPA) the group shall assist the project manager in establishing alternative options for the Regulatory Impact Assessment (RIA). Once the Agency has selected one of those alternative options, the group will then assist the project manager in the development of the RIA to be included in the NPA. In relation to the draft explanatory note and the proposed rule, the group will support the project manager in the review of technical aspects.

When reviewing comments, the group shall assist the project manager in adapting the RIA accordingly.

If the group is not able to complete its tasks within the given timeframe, it may make suggestions on how to resolve the problem.

The Rulemaking Director may also decide to close the group if in his/her opinion the required input has been received enabling the Agency finalising the NPA including the RIA.

## VIII. MEETINGS

The number of meetings shall be kept to a minimum. In most cases, a maximum of six meetings per task should be envisaged, including four meetings to draft the NPA and two meetings for the Comment Response Document (CRD), Opinion and Decision. The following example provides a typical meeting schedule:

- The objective of the first meeting is to kick-off the work. The Agency presents the rulemaking process, the Terms of Reference (ToR) with the objectives of the task, the legal framework, the tasks of the group members, and initiates the discussion on the rulemaking task including safety risk and mitigating measures.



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- The objective of the second and the third meeting is to jointly develop key mitigating measures and to finalise regulatory options.
- The fourth meeting should be used to review the draft RIA prepared by the project manager based on the inputs received. In addition the draft NPA produced by the project manager, based on the results of the RIA and the ideas put forward by the group should be reviewed. In exceptional circumstances, depending on the controversy or complexity of the task, more or fewer meetings may be considered here. This should be decided by the Chair and the project manager, in consultation with the group. The task of finalising the NPA, taking into account the comments of the group, falls on the Agency, as well as the publication of the NPA for public consultation.
- The fifth and sixth meetings should be used, as necessary, to review the draft CRD prepared by the project manager based on a preliminary review of the comments received and to review the final deliverable (Opinion, Decision), prepared by the project manager. These meetings could be replaced by a written consultation, in cases where the final deliverable follows closely, after the review of comments, the proposals of the NPA.

**IX. DOCUMENTATION**

Each group will be provided with the appropriate reference documents, e.g. rulemaking procedures, internal documents and procedures relevant to the task in hand.

**Annex**

**RESOLUTION OF CONFLICTS/ USE OF CONSENSUS**

1. Consensus is agreement by all members that a specific course of action is acceptable. Consensus can be unanimous or near-unanimous. Consensus does not mean 'majority rule'.
  - Full consensus means that agreement among members is unanimous. All members of the group agree fully in context and principle and all members fully support the specific course of action.
  - General consensus means that, although there may be disagreement among the members of the group, the group has heard, recognised, acknowledged and reconciled the concerns or objections to the general acceptability of the group. Although not every member fully agrees in context and principle, all members support the overall position of the group and agree not to object to the proposed recommendation.
2. When consensus cannot be achieved, each member has the right and responsibility to have its objections considered. The following guidance is provided for those situations where consensus cannot be obtained:
  - The dissenting member(s) must present written objections to the group in a format that can be understood clearly by all members. To ensure communication and understanding, the group's position, relative to the objections, must be documented with reasons why the group chose to retain its position. The documentation of objections and positions offers additional opportunity for meaningful communication among all group members in the hope of attaining consensus. By this means, disagreements can, through compromise, be resolved. If consensus still cannot be attained, the group



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has the documentation required to refer the disagreement to the Agency. In such case, the position of the Agency shall be considered as providing a consensus for the continuation of work.

- Sometimes reaching a consensus is a matter of ensuring that all avenues of the problem have been explored and investigated. At times it is advantageous to bring in a group facilitator to help with the process.
- If all above attempts to reach consensus fail and major opposition to the group’s position still exists, the proponents of the existing opposition must document their position, summarise their understanding of the group’s position and state why they believe their opposing position is superior. The group must document its position, summarise the opposition’s position and state why the group believes its position is superior and why the opposing position should not be accepted. This documentation must be part of the group’s report.



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**RECORDS**

**Appendix A : Operational Documents**

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

**Appendix B : External Documents**

<b>Record</b>	<b>Step / Related to</b>