

RULES OF PROCEDURE OF THE EUMETSAT APPEALS BOARD

[Adopted by the Board on 17 September 2010 in accordance with Paragraph 12 of Article 38 of the EUMETSAT Staff Rules]

Rule 1

Languages

- a) The official languages of the Board shall be English and French.
- b) Claims and interventions may be submitted in English or in French. All documentary evidence shall also be submitted in English or French together with the original version if this is not in either of these two languages. The written comments of the Director General shall be submitted in the language used by the Claimant. If so requested by a member of the Board, these documents shall be accompanied by a translation into the other official language. The Secretary of the Board shall be responsible for the preparation of such translations and shall communicate them to the parties.
- c) At hearings of the Board, oral comments may be made in English or French.
- d) Judgments shall be delivered in one of the official languages and, under the responsibility of the Secretary of the Board, translated into the other one. The only authentic text shall be the original version. All translation shall be performed by a professional translator who is not a EUMETSAT employee and who has experience in translating legal documents.

Rule 2

Filing of Claims

a) Claims for submission to the Board shall be drawn up in one original and three duplicates. They shall set out clearly the principal and subsidiary submissions of the claimant. They shall in any case address the actual grounds of the claim and shall not be limited to procedural considerations. In case damages or compensation are sought these shall be expressed specifically.

b) Documentary evidence in support of the claim shall in all cases include the contested decision together, with the written request addressed to the Director General and, except where no reply has been received from him, the communication notifying the Claimant that his request has been rejected. The results of the Complaint Procedure set for in Article 37 of the EUMETSAT Staff Rules shall be attached to the comments of the claimant.

c) Claims shall contain, as a minimum, the following:

1. Name, first name(s) and address of Claimant.
2. Author, date and subject matter of the contested decision.
3. Statement of facts, including:
 - a) Date of the prior written request addressed to the Director General;
 - b) Date of reply, or reference to absence of reply from the Director General;
 - c) Where appropriate, the date when the Claimant received notification of the decision of the Director General.
4. Legal grounds and arguments submitted.
5. The principal and subsidiary submissions of the claim (redress sought).
6. Date and signature.

d) The Claimant may subsequently enlarge upon his grounds for appeal in an additional petition, without prejudice to the rights of the Defendant. Should this additional petition be deemed by the Chairman to prejudice the rights of defense of the defendant, he may, upon request of the Defendant allow him to produce additional documents, such as rejoinder, surrejoinder, or rebuttal, as appropriate, so that the Defendant can fully express his views on this additional petition. In this case the deadlines of Article 2.2 and Article 3.2 of Annex VIII to the EUMETSAT Staff Rules shall be postponed automatically by the duration granted by the Chairman to the Defendant to submit its considerations with regard to the additional petition.

Rule 3

Preliminary Procedure

a) The preliminary procedure shall take place as described in Article 2 of Annex VIII to the EUMETSAT Staff Rules. For the application of Article 2.1, possible rejoinders and surrejoinders shall be communicated to the Secretary of the Board within 20 days of the reception of the previous comment or reply of the other party. The comments, memorandum, reply, rejoinder and surrejoinder shall in any case address the actual grounds of the claim and shall not be limited to procedural considerations.

b) If, after the notification of a surrejoinder, a party wishes to further reply to the other one, this party shall make a duly justified written request to the Secretary of the Board within 5 days after reception of the surrejoinder, and the Chairman of the Board shall decide on the merit of this request. In case the Chairman of the Board authorises this further reply, he shall state, at his discretion, the deadline for its submission. This authorisation by the Chairman shall automatically extend by the time granted the deadline of 3 months for communication of of all documents of the case to the Members of the Board by the Secretary of the Board as prescribed in Article 2.2 of Annex VIII to the Staff Rules. The same shall apply *mutatis mutandis* to Article 3.2 of Annex VIII to the Staff Rules.

c) The Secretary of the Board shall receive all documents addressed to the Board and shall carry out the notifications provided for below. He shall open and compile the file of each case with all possible despatch and within the prescribed time limits.

d) The time limits for the pre-hearing procedure specified in these Rules or in the Staff Rules shall in the normal cases cease to run from 15 July to 15 September. They may be extended by the Chairman of the Board where he finds there are good grounds for so doing.

e) If necessary, any measure of investigation may, if the Board so decides, be conducted by one of its members or by any other person whom the Board may designate for that purpose with the agreement of both parties.

f) If it appears from the content of the Claim that, should the Board eventually give right to the Claim, the rights of a third party would be prejudiced, the Chairman of the Board shall decide whether the claim should be communicated to the third party who should then be invited to participate in the proceedings. He shall fix the time limit within which such third party may submit his comments. Should the third party accept this invitation and submit comments within the time limit fixed, he shall become a party to the proceedings and have the same rights, *mutatis mutandis*, as the Claimant and the Director General. His comments shall be communicated to the Claimant and to the Director General.

g) If the Chairman of the Board deems that a claim is clearly prima facie not founded or irrecevable for procedural reasons, he may invite the Secretary of the Board to suspend any procedural act. After collection of the written consent of the two other judges, the Chairman can reject the claim with a decision explaining the grounds why the claim is clearly prima facie not founded or irrecevable for procedural reasons. Should the Chairman fail to collect the unanimous agreement of the other judges on this matter, the normal procedure shall be continued.

h) All comments, memorandum, reply, rejoinder and surrejoinder, or possible rebuttal, for submission to the Board shall be drawn up in one original and three duplicates and shall be addressed to the Secretary of the Board.

Rule 4

Comments of the Staff Association

In case the Staff Association has elected to submit comments, or has expressed to the Secretary of the Board its intention to attend the hearing, the Secretary shall communicate to the Staff Association the documents of the written procedure. A copy of the Staff Association comments shall be sent by the Secretary to the parties.

Rule 5

Powers of the Chairman

Should the Claimant withdraw his claim, the Chairman may accept the withdrawal without convening the Board for this purpose, provided the withdrawal is unconditional. In such case the Secretary shall notify the parties of the acceptance of the withdrawal by the Chairman.

Rule 6

Convening of hearings

a) The date of hearings shall be decided by the Chairman after consulting the parties. It shall be notified by the Secretary to the judges, parties, interveners and the Staff Association as a general rule at least 20 days in advance. A copy of the file of each case shall be sent with this notification to each of the judges.

b) The Chairman shall rule on any request for the hearing to be postponed. Such request shall be filed in writing with the Secretary of the Board and shall contain the grounds for this request.

c) The parties shall at the latest together with the rejoinder or surrejoinder notify the Secretary of the Board in writing of the names and description of the witnesses they wish to call, together with the reasons why they wish to question them.

d) Unless the Chairman of the Board considers that their evidence would not be useful, the witnesses cited by the parties shall be summoned by the Secretary by any means allowing proof that the summons was received by the addressee, as a general rule, at least two weeks before the day of the hearing.

Rule 7

Hearings

a) The Claimant may arrange to be represented or assisted by an advocate or counsel, who may be another staff member; however, the Board may invite the Claimant to appear before it in person, in which case the Claimant must appear.

b) If one or both of the parties, although duly summoned, fails or fail to appear before the Board, without producing a valid reason, the Board may decide to sit despite this absence, may close the hearings and may make its final decision.

c) The Chairman shall be responsible for the conduct of proceedings.

d) The Board shall rule on any objection made with regard to its composition, before consideration of the case before it. A party may not request a change in the Board's composition on the grounds of a member's nationality, but may request such change on account of presumed partiality: in the event of such a request the Board shall take a decision in the absence of the member concerned. It shall also settle any difficulty arising from the application of this Regulation. A member of the Appeals Board may not participate in the settlement of any case in which he has previously participated as the representative, counsel or advocate of one of the parties or on which he has been called upon to decide as a member of a tribunal or in any other capacity. The request must be lodged by the concerned party as soon as the party has been made aware or should be aware of these facts.

e) The Secretary of the Board shall attend the hearing(s) and all meetings of the Board (including the preparatory or pre-hearing ones) during their full duration.

f) The Staff Association can make oral comments at the hearing. Should the Claimant not wish the Staff Association to make comments, he shall justify in writing his request before the hearing. The Board shall then decide on the merit of such request, bearing in mind that only in exceptional cases the Staff Association should be denied the right to make comments at the hearing. In any case the Staff Association shall be allowed to attend the hearing.

g) Before hearing a witness, the Chairman shall request him to give an undertaking to reply fully and accurately to the questions put to him. If the witness is a member of the staff, the Chairman shall inform him that it is his duty to give any information required of him. At the request of one of the parties, the Board may decide that a written record shall be made of the evidence given by witnesses. Witnesses shall be present in the room of the hearing only during their own examination.

h) In principle the hearings of the Board shall take place at EUMETSAT Headquarters. The Chairman can, at his discretion, decide otherwise, upon consultation with the other judges. Yet, the chosen location shall allow all parties to attend without hurdle.

Rule 8

Judgements

a) The Board shall deliberate in secret. The Secretary of the Board shall attend the full deliberation as a mere observer.

b) Judgements of the Board shall, in addition to dealing with the arguments presented by the parties and stating the grounds for the decision, include a summary of the pre-hearing proceedings, if any, and of the hearing. Judgments shall be signed by the Chairman and by the Secretary of the Board who shall notify them to the parties and to the Staff Association in cases where the latter has submitted written comments on the case, or attended the hearing, and, where appropriate, to interveners, as soon as possible after they have been adopted, in the original language of the judgements.

c) Pursuant to Paragraph 2 of Article 38 of the Staff Rules, the Board has full jurisdiction to annul, modify or replace the appealed decision. The Appeals Board shall also be competent to settle disputes concerning its jurisdiction, or any question of procedure. The Board has also jurisdiction to grant damages and compensation, if requested by the Claimant and deemed justified by the merits of the case, and has jurisdiction to decide on the bearing of the cost of the procedure and to allocate it to either or both parties.

d) Judgments shall be notified by the Secretary of the Board to the Claimant and the Defendant in the form of copy certified conform, by the Secretary, to their original version in the original language and, subsequently, in the language of procedure chosen by the Claimant if different from the language of the original version. The time limits for appeals under Rules 10 and 12 of these Rules shall not begin to run against the Claimant until notification to him in the language of procedure chosen by him. The content of the decision of the Board – or a summary thereof - shall not be communicated to any party, Claimant or Defendant, even verbally, before the official written notification by the Secretary of the Board.

e) Judgments shall be communicated by the Secretary to any person who so requests. However, the Chairman or the Board may decide that a judgment shall not be communicated until the name of the Claimant or any person mentioned therein has been deleted.

Rule 9

Request for rectification

When a judgment is vitiated owing to a mistake in fact ("erreur matérielle") and this mistake may have decisively influenced the decision of the case, one of the parties may file a request for rectification with the Board, within three months from the date of notification of the judgment. This applies in the same fashion in case the judgment itself contains a clerical error. In no circumstances can an appeal be lodged against the judgment based on legal grounds.

Rule 10

Request for interpretation

Where the operative provisions of a judgment are ambiguous or incomplete or where they are inconsistent either with each other or with the *ratio decidendi* (reasons in point of law), one of the parties may, within three months from notification of the judgment, request the Board to interpret it.

Rule 11

Procedure on request concerning a judgment

In the event of a request on rectification or interpretation of a judgment of the Board, the provisions of these Rules shall apply, *mutatis mutandis*, to the appeals procedure and judgment.

Rule 12

Calculation of Time Limits

a) The time limits laid down in the Staff Rules or in these Rules of Procedure shall run from midnight of the first day of each time limit as defined in the provision concerned. Saturdays, Sundays and official holidays shall count when calculating a time limit. However, where the last day of a time limit is a Saturday, Sunday or official holiday at EUMETSAT Headquarters, the time limit shall be extended to include the first working day thereafter.

b) Where, under the Staff Rules or Rules of Procedure, a time limit runs from a communication or notification, it shall begin to run only from the date of reception of the notification or communication by the party to whom the time limit applies.