



European X-Ray Free-Electron Laser Facility GmbH

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Germany

Rules of Procedure for the European XFEL Council

Adopted at the 4th meeting of the European XFEL Council, hereinafter referred to as the “Council”, on 11 May 2010)

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In accordance with the Articles of Association of the European X-Ray Free-Electron Laser Facility GmbH, especially Art. 11 para. 3 lit. j thereof, the Council has adopted its Rules of Procedure as follows¹:

Article 1 POSITION AND FUNCTION OF THE COUNCIL

- 1.1 The Council is the supreme organ of the Company representing the Contracting Parties and simultaneously acting as the Meeting of the Shareholders of the Company.
- 1.2 The Council decides on important issues of Company policy as set out in Art. 11 of the Articles of Association and *may issue instructions to the Management Board.*

Article 2 MEMBERS OF THE COUNCIL

- 2.1 *The Shareholders of one Contracting Party may be represented in the Council by up to two delegates, representing all Shareholders of that Contracting Party.*
- 2.2 *Delegates to the Council shall be appointed and have their appointments terminated by all Shareholders of each Contracting Party. The Shareholders of each Contracting Party shall inform the Chairperson of the Council in writing of any appointment or termination of appointment of its delegates to the Council without undue delay.*

Article 3 ADVISERS, EXPERTS, OBSERVERS, AND GUESTS

- 3.1 Delegates may be accompanied by up to two advisors with each delegation, subject to prior notification to the Secretary.
- 3.2 No official of the Company may act as a delegate or an advisor of a Shareholder.

¹ The parts of the text in *italics* are taken over from the Articles of Association.

- 3.3 The Council may decide to hear experts (on specific agenda items related to their expertise), to admit observers (appointed by a Contracting Party after its accession to the Convention but before becoming a Shareholder or by a Scientific Associate), and to invite guests.

Unless otherwise agreed by the Council, observers shall have the right to attend all Council meetings, including its closed sessions, to receive all documents in preparation for and following such meetings, to raise questions and comments at such meetings, and to informally vote. Votes by observers are in any case non-binding but shall be considered by the delegates and recorded in the respective summary of decisions and minutes.

Unless otherwise agreed by the Council, guests shall have the right to attend those parts of a Council meeting for which they are invited. They do not have the right to receive Council documents. They are allowed to raise questions and make comments but do not have the right to vote. Their comments and questions shall be recorded in the corresponding minutes.

Article 4 OFFICERS OF THE COUNCIL

- 4.1 *The Council shall elect a Chairperson and a Vice-Chairperson from the delegations of the Shareholders of different Contracting Parties for a period not exceeding two years. With their election the Chairperson and Vice-Chairperson become supra partes and leave their delegations. Chairperson and Vice-Chairperson have no right to vote.*
- 4.2 *Consecutive re-election is permitted only once for a second term of up to two years.*
- 4.3 The Council, with the agreement of the Chairperson of the Management Board, designates as its Secretary and Vice-Secretary members of the staff of the Company.

Article 5 CONDUCT OF BUSINESS

- 5.1 In addition to exercising the powers conferred upon him/her elsewhere by these Rules, the Chairperson shall declare the opening and closing of each meeting, shall direct the discussion, ensure observance of these Rules, accord or withdraw the right to speak, put questions to the vote and announce decisions. The Chairperson, subject to these Rules, shall have control of the proceedings of the Council at its meetings and over the maintenance of order thereat. He shall rule on points of order and shall, in particular, have the power to propose adjournment or closure of the debate, or adjournment or suspension of the meeting.
- 5.2 If the Chairperson finds it necessary to be absent during a meeting, or any part thereof, the Vice-Chairperson shall take the Chair. A Vice-Chairperson acting as Chairperson shall have the same powers and duties as the Chairperson.
- 5.3 The Chairperson shall call upon the delegates in the order in which they signify their desire to speak. The Chairperson shall, however, grant priority for a point of order and such point of order shall be immediately decided upon by the Chairperson. An appeal may be made against his ruling, but any discussion on such appeal shall be limited to the delegate making the appeal and the Chairperson. If the difference of opinion is maintained, the matter shall be put to vote immediately.
- 5.4 If there are several amendments to a resolution, the Chairperson shall determine the order in which they shall be discussed and put to vote, subject to the following provisions:
- a) every amendment or resolution shall be put to the vote;
 - b) amendments may be voted on either individually or as against other amendments according to the Chairperson's decision;
 - c) if a resolution is amended as a result of a vote, that resolution as amended shall be put to the Council for a final vote.
- 5.5 The Chairperson, in the exercise of his functions, remains under the authority of the Council.

Article 6 FREQUENCY AND CONVENING OF MEETINGS

- 6.1 *The Council shall meet at least twice a year.*
- 6.2 *Meetings of the Council shall be convened by the Chairperson. Meetings of the Council shall also be convened at the request of at least two Shareholders of different Contracting Parties. Extraordinary meetings of the Council may also be convened at the request of the Chairperson of the Management Board, if it is required in the interest of the Company.*
- 6.3 Meetings of the Council shall be convened by an invitation to each Shareholder that shall be sent by registered letter. The invitation for a meeting of the Council shall name place, day and time of the meeting and shall be sent with at least four weeks notice; in case of emergency a meeting may be called with a shorter notice period. The notice period shall start to run on the day following the date of sending the invitation letter. The day of the meeting of the Council shall not be taken into account in the calculation of the notice period.

Article 7 AGENDA

- 7.1 The Chairperson prepares a draft agenda in consultation with the Chairperson of the Management Board.
- 7.2 The invitation for a meeting of the Council shall indicate the draft agenda and identify the topics of proposed resolutions. Documents to be considered by the Council in preparation of the agenda topics must be circulated at least 20 calendar days before the date of the meeting.
- 7.3 In the case of an extraordinary meeting a detailed description of the business to be discussed shall be circulated with the notice convening the meeting.

- 7.4 Each Shareholder shall be entitled to request the addition of further points to the agenda at the latest seven calendar days before the day of the meeting of the Council. The respective Shareholder making such a request shall notify the Chairperson of such request in writing (incl. electronic means like email) and include documentation with regard to the points to be added to the agenda. The Secretary shall notify the other Shareholders without undue delay by sending the request including the documentation and the amended agenda to all Shareholders through electronic means like email.
- 7.5 The draft agenda for an ordinary session shall be considered for adoption at the opening of the session. Before adoption of the agenda the Council may decide to add, delete, modify or combine items or re-arrange the order of business. Supplementary items with supporting papers may be added to the agenda during the session only if the Council so decides. Decisions on such items shall only be possible if their addition to the agenda was decided with at least qualified majority.

Article 8 ATTENDANCE AT MEETINGS, CLOSED SESSIONS

- 8.1 Meetings of the Council shall not be public. Unless the Council decides otherwise, the Members of the Management Board and the Chairpersons of committees may attend meetings without the right to vote.
- 8.2 In exceptional cases, the Council may decide to treat certain agenda topics in a closed session. Unless otherwise agreed by the Council, the Council Chairs, all delegates, and all observers shall attend a closed session, while the Chairpersons of other committees, the advisors, the experts, and the guests shall leave the meeting room during the closed session. At the beginning of each closed session, the Council shall decide on a case-by-case basis and in the absence of the Directors and the Secretaries about their participation at the respective closed session. Immediately after the closed session, the corresponding decisions shall be announced to the whole Council. The decisions taken during a closed session shall be recorded in the summary of decisions and repeated in the minutes in accordance with Art. 15. The substance of the discussions during a closed session shall be summarized by the Secretary (if absent, by the Council (Vice-) Chair) and—after being approved by the Council Chair—be distributed only among the

persons who attended the closed session. This summary of a closed session shall be treated as strictly confidential and shall be deemed to be approved if no comments or objections are received by the Chairperson within 20 calendar days after the summary has been distributed. If there are objections or comments to the summary, the Council Chair shall decide how to proceed. The summary of a closed session shall be stored by the person who prepared them.

Article 9 QUORUM

9.1 The meeting of the Council shall have a quorum if

- two thirds of the entire share capital is represented, and
- Shareholders of more than half of the Contracting Parties are present.

If one of the two conditions is not fulfilled, a new meeting of the Council with the same agenda shall be called immediately in accordance with Art. 6.2 and 6.3 above. This new meeting of the Council shall have a quorum regardless of the share capital and Contracting Parties represented, but only if this has been expressly indicated in the invitation to such new meeting of the Council.

9.2 If all Shareholders are present or duly represented and agree that the Council may pass resolutions on certain topics, resolutions on the respective topics may be passed, even if statutory law or provisions of these Rules of Procedure relating to the calling or announcement of a meeting of the Council have not been complied with.

Article 10 RESOLUTIONS INVOLVING EXPENDITURE

No resolution involving expenditure additional to that adopted in the annual budget shall be deemed to be approved by the Council until it has approved an estimate submitted by the Chairperson of the Management Board for the additional expenditure involved.

Article 11 POWERS OF THE COUNCIL

11.1 *The following matters shall require the approval of the Council by unanimous vote:*

- a) *Admission of new Shareholders;*
- b) *Share capital increases;*
- c) *Amendment of the Articles of Association;*
- d) *Mergers or splits of the Company;*
- e) *Dissolution of the Company;*
- f) *the Financial Rules of the Company;*
- g) *Arrangements for long-term use of the European XFEL Facility by Governments or groups of Governments not acceding to the Convention, or by establishments or organizations thereof;*
- h) *the repartition scheme of operating costs in accordance with Art. 5 para. 5 of the Convention;*
- i) *Decisions on questions of Intellectual Property Rights.*

11.2 *The following matters shall require the approval of the Council by a qualified majority:*

- a) *Election of its Chairperson and Vice-Chairperson;*
- b) *Medium-term scientific programme;*
- c) *Annual budget and medium-term financial estimates;*
- d) *Adoption of the annual financial statement (“Jahresabschluss” in the sense of the GmbHG);*
- e) *Appointment, employment and termination of the appointments of the Directors;*
- f) *Establishment of committees and their terms of reference;*

- g) *Policy for the allocation of beam time;*
- h) *Short and medium-term arrangements for use of the Company's scientific equipment and facilities by national or international scientific organisations;*
- i) *Procurement rules;*
- j) *Rules of Procedure of the Council;*
- k) *Transfer ("Übertragung" in the sense of the GmbHG) of a SHARE or parts thereof between Shareholders of different Contracting Parties; redemption ("Einziehung" in the sense of the GmbHG) or assignment of a SHARE or parts thereof;*
- l) *Instructions to the Management Board;*
- m) *Appointment and termination of the appointment of a proxy holder ["Prokurist" in the sense of the German Commercial Code (Handelsgesetzbuch – HGB)].*

11.3 *All other resolutions of the Council shall require the simple majority unless mandatory law or the Articles of Association provide otherwise.*

11.4 *Decisions on matters related to the regulatory requirements of the Federal Republic of Germany for public health and safety, permits and for the protection of the environment shall not contravene German law.*

Article 12 VOTING PROCEDURE

12.1 *For every 1 (one) € of share capital the holder is entitled to one vote. Each Shareholder may only cast all of its votes indivisibly and combined, exercisable by the delegates designated for this purpose by the relevant Shareholder. Shareholders nominated by a single Contracting Party may only jointly cast their votes, indivisibly and combined.*

12.2 *A "simple majority" means 50% of the share capital and the Shareholders of not more than half of the Contracting Parties voting against.*

- 12.3 A "qualified majority" means a majority of at least 77% of the share capital and the Shareholders of not more than half of the Contracting Parties voting against.
- 12.4 A "unanimous vote" means at least 90% of the share capital and no unfavourable vote, all Shareholders having had the opportunity to vote.
- 12.5 Council decisions, which in accordance with Art. 11.1 require unanimous vote, may be taken by secret ballot upon demand of two or more delegations present. In the case of votes by secret ballot the number of abstentions shall be recorded. In all voting by secret ballot, two tellers selected from among the delegates present shall assist in the counting of votes.

Article 13 PLACE OF MEETING

Meetings shall be held at the headquarters of the Company unless the Council decides to meet elsewhere.

Article 14 DECISIONS BY CORRESPONDENCE

- 14.1 In case of urgency, or at the request of any delegation, the Secretary on instruction of the Chairperson shall submit an urgent proposal for decision to the Council by consulting delegates individually by correspondence. The proposal shall be approved if the required majority of delegations give their written (incl. electronic means like email) assent within three weeks or some longer period which has to be specified in the proposal. An assent by electronic means should contain a scan of the full text of the vote including the original signature of the respective eligible voter. A corresponding template shall be provided by the Secretary.
- 14.2 In the case of the granting of licences in accordance with Art. 22 para. 5 of the Articles of Association, the proposal shall be approved unless either the Shareholder concerned withholds its approval or a simple majority of delegations give their disapproval in writing (incl. electronic means like email) within three weeks or some longer period specified in the proposal.

- 14.3 If before the deadline specified in the proposal any delegate so requests, the question shall be remitted to the next meeting of the Council.
- 14.4 If a decision by correspondence has been rejected, the Chairperson shall try to reach a decision in due time, if necessary at an extraordinary meeting of the Council.
- 14.5 The Secretary shall immediately inform the delegates of the result in writing (incl. electronic means like email), and shall report to the next meeting.

Article 15 SUMMARY OF DECISIONS, MINUTES

- 15.1 The Secretary shall circulate a summary of decisions that has been approved by the Chairperson to the participants within ten calendar days after each meeting.
- 15.2 The summary shall become effective at the time of its distribution unless an objection or a comment from a delegation is received by the Chairperson within 20 calendar days after the summary has been distributed. If there are objections or comments to the summary, the Council Chair shall decide how to proceed.
- 15.3 The Secretary shall draft minutes of each meeting. The minutes shall give the substance of the discussion and include all decisions taken by the Council at the meeting or by the procedure specified in Art. 14.
- 15.4 Within four weeks after the meeting, the Secretary shall submit the draft minutes to the Chairperson, and as soon as he/she has given his/her approval, to the participants for approval by the delegations.
- 15.5 The minutes shall be approved at the next meeting. Any proposed amendments of substance shall be circulated in writing (incl. electronic means like email) before the meeting. The approved minutes shall be signed by the Chairperson and the Secretary. The Secretary shall send to the participants a copy of the minutes within ten calendar days after their approval.

Article 16 (INFORMAL) RETREATS

- 16.1 Once a year and after prior approval by the Council, (informal) retreats of the Council should take place. Such (informal) retreats shall provide a forum to discuss special (in particular, strategic) topics and to prepare corresponding decisions by the Council. Binding decisions cannot be made at (informal) Council retreats.
- 16.2 The present rules of procedure for formal Council meetings (in particular, regarding the participation rights) shall apply accordingly to (informal) Council retreats, unless otherwise agreed below or by a separate decision of the Council:
- a) Invitations to (informal) retreats shall include the draft agenda indicating the topics to be discussed and shall be sent by electronic means (like email) to all Council members with at least four weeks' notice.
 - b) Documents in preparation of agenda topics shall be prepared only in exceptional cases and shall be distributed to the Council 20 calendar days before the date of the meeting, if possible.
 - c) The conclusions, but not the discussions, of an (informal) Council retreats shall be summarized by the Secretary. This summary of conclusions shall be circulated, after being approved by the Chairperson, to the Council members within ten calendar days after the retreat takes place. It shall be deemed to be approved if no comments or objections are received by the Chairperson within 20 calendar days after the summary has been distributed. If there are objections or comments to the summary, the Council Chair shall decide how to proceed.

Article 17 LANGUAGE

The working language of the Council shall be English.

Article 18 AMENDMENT TO THE RULES OF PROCEDURE

Subject to the provisions of the Articles of Association the present Rules may be amended by a decision of the Council.

Article 19 INTERPRETATION

In the event of conflict between any provision of these Rules and the Convention and/or the Articles of Association, the Convention and the Articles of Association shall prevail.

Article 20 ENTRY INTO FORCE

These Rules of Procedure of the Council enter into force on 11 May 2010. Its adjustments become effective on the date of the corresponding Council approval.