

**GENERAL IMPLEMENTING PROVISIONS  
GOVERNING DISCIPLINARY PROCEEDINGS AND  
ADMINISTRATIVE INVESTIGATIONS  
(ARTICLE 86 OF AND ANNEX IX TO THE STAFF REGULATIONS)**

**THE SECRETARY-GENERAL,**

**HAVING REGARD TO** the Staff Regulations of Officials of the European Communities and the Conditions of service of other servants of the Communities, laid down by Regulation (EEC, Euratom, ECSC) No 259/68<sup>1</sup>, as last amended by Council Regulation (EC, Euratom) No 723/2004<sup>2</sup>, and in particular Article 86 of the Staff Regulations and Annex IX thereto, and Articles 49, 50, 50a and 119 of the Conditions of employment of other servants,

**HAVING REGARD TO** the Bureau decision of 29 March 2004 to delegate to the Secretary-General powers in respect of all the issues which, in connection with the implementation of the Staff Regulations, involve technical provisions derived therefrom,

**HAVING REGARD TO** the Bureau decision of 3 May 2004 determining the appointing authorities,

**HAVING REGARD TO** the opinion of the Staff Regulations Committee of 26 March 2004,

**HAVING** consulted the Legal Service, the Staff Committee and the Committee on Equal Opportunities,

**HAS ADOPTED**

**THE FOLLOWING GENERAL IMPLEMENTING PROVISIONS**

**Article 1  
Preliminary procedure**

**1. Initiation of disciplinary proceedings**

Depending on the nature of the facts at issue, recourse to disciplinary proceedings may be proposed by the director-general or head of autonomous unit of the official concerned, or by the Director-General for Personnel, or directly by the Appointing Authority.

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<sup>1</sup> OJ L 56, 4.3.1968.

<sup>2</sup> OJ L 124, 27.4.2004.

## **2. Decision to open disciplinary proceedings**

The decision to open disciplinary proceedings shall lie with the Appointing Authority, which shall send a written notice to the official in question setting out the preliminary charges levelled against him and calling him, within a reasonable time limit, to the preliminary hearing provided for in Article 3 of Annex IX to the Staff Regulations. The Legal Service and any other service which may be concerned by the facts may be consulted.

## **3. Administrative investigation**

Before initiating disciplinary proceedings, the Appointing Authority shall launch an administrative investigation in accordance with the provisions of Article 86(2) of the Staff Regulations.

## **4. OLAF**

In cases of alleged financial fraud in which OLAF has launched an enquiry or intends to do so, the Appointing Authority may postpone the launch of an administrative investigation and/or, where appropriate, disciplinary proceedings, until OLAF has completed its enquiry.

# **Article 2**

## **Administrative investigation**

### **1. Launching an investigation**

The directors-general and heads of autonomous units may ask the Appointing Authority to launch an administrative investigation pursuant to Article 86(2) of the Staff Regulations and Article 2 of Annex IX to the Staff Regulations.

The Appointing Authority may also launch an administrative investigation on its own initiative, particularly in cases where it needs to gather additional information in order to decide on a request to initiate disciplinary proceedings.

The decision to open an administrative investigation shall specify the object and scope of the enquiry and shall instruct one or more officials to carry it out.

An official concerned by an administrative investigation shall be kept informed, provided this is not harmful to the investigation.

### **2. Conducting the investigation**

The official responsible for conducting the investigation shall exercise his powers independently, thoroughly and as quickly as possible. He shall be empowered to obtain documents, request information from any persons he sees fit to question and carry out on-the-spot checks. In conducting the investigation he shall neither request nor receive instructions.

Conclusions referring to an official by name may not be drawn at the end of the investigation unless that official has had the opportunity to express an opinion on all the facts which relate to him in the presence of the official responsible for conducting the investigation.

The official may be accompanied by a person of his choice. Any costs pertaining thereto shall be borne by the official.

### **3. Closure of the administrative investigation**

When the investigation is complete, the official responsible for conducting it shall submit a report to the Appointing Authority. The report shall set out the facts and circumstances in question; it shall establish whether the rules and procedures applicable to the situation were respected; it shall take note of any aggravating or mitigating circumstances; it shall detail the extent of the damage suffered by the Institution; and it shall put forward a recommendation on the action to be taken.

Copies of all relevant documents and records of any hearings held shall be attached to the report.

The Appointing Authority shall inform the official concerned of the conclusion of the investigation and shall communicate to him the conclusions of the investigation report and, on request and subject to the protection of the legitimate interests of third parties, all documents directly related to the allegations made against him, in accordance with the provisions of Article 2(2) of Annex IX to the Staff Regulations.

### **Article 3 Preliminary hearing**

The preliminary hearing provided for in Articles 3 and 11 of Annex IX shall be held by the Appointing Authority. The latter shall be assisted by an official from the Directorate-General for Personnel, a member of the Legal Service and, if necessary, by a representative of the directorate-general or autonomous unit in which the official concerned is employed and/or a representative of any other service concerned by the facts.

The official concerned may be accompanied by a person of his choice. Any costs pertaining thereto shall be borne by the official.

The record of the hearing shall be forwarded to the official concerned by registered letter with acknowledgement of receipt, for signature. The other participants in the hearing shall receive a copy.

The official shall forward the signed record and/or his comments and remarks within 15 calendar days from receipt of the record. Failure to do so within that period shall result in the record being considered approved.

On the basis of the conclusions of the preliminary hearing, the Appointing Authority shall take one of the decisions provided for in Article 3 of Annex IX to the Staff Regulations.

**Article 4**  
**Decision to close the procedure with no further action**

If the Appointing Authority decides, pursuant to Article 3(1)(a) of Annex IX to the Staff Regulations, that no case can be made against the official concerned, it shall inform the latter by registered letter with acknowledgement of receipt. The official may request that a copy of this letter be inserted in his personal file.

**Article 5**  
**Decision to address a warning**

If, however, the Appointing Authority decides, pursuant to Article 3(1)(b) of Annex IX to the Staff Regulations, to take no disciplinary measure or to address a warning to the official concerned, the latter shall be informed by registered letter with acknowledgement of receipt. A copy of this letter shall not be inserted in the official's personal file.

**Article 6**  
**Decision to initiate disciplinary proceedings without consulting the Disciplinary Board**

If the Appointing Authority decides to apply the provisions of Article 11 of Annex IX to the Staff Regulations, it may decide on the penalty to be imposed without consulting the Disciplinary Board. This decision shall be inserted in the official's personal file.

A copy of the decision shall be forwarded to the official concerned by registered letter with acknowledgement of receipt.

**Article 7**  
**Decision to initiate disciplinary proceedings before the Disciplinary Board**

**1. Consultation of the Disciplinary Board**

If the Appointing Authority decides to initiate disciplinary proceedings before the Disciplinary Board, pursuant to Article 12 of Annex IX to the Staff Regulations, it shall do so by means of a report submitted to the chairman of the Board. A copy of the report shall be forwarded to the official concerned and to the Legal Service.

Pursuant to Article 16(2) of Annex IX to the Staff Regulations, the Appointing Authority shall inform the chairman of the Disciplinary Board of the name of the official representing the Institution.

As soon as proceedings are initiated before the Disciplinary Board, its chairman or secretary shall inform the official concerned, pursuant to Article 14 of Annex IX to the Staff Regulations, of the possible consequences of acknowledging his misconduct.

## **2. Opinion of the Disciplinary Board**

The opinion of the Disciplinary Board shall be forwarded to the Appointing Authority, the official concerned and the Legal Service.

## **3. Withdrawal of the case from the Disciplinary Board**

If the Appointing Authority decides, pursuant to Article 14 of Annex IX to the Staff Regulations, to withdraw the case from the Disciplinary Board, it shall request the opinion of the Board's chairman on the penalty being considered and shall inform the official concerned in writing. The official concerned may ask to be heard or may submit his views in writing.

The original of the Appointing Authority's decision shall be inserted in the official's personal file. The official concerned shall receive a copy by registered letter with acknowledgement of receipt. The opinion of the chairman of the Disciplinary Board shall also be forwarded to the official concerned.

### **Article 8**

#### **Decision on disciplinary measures after consulting the Disciplinary Board**

On receipt of the opinion of the Disciplinary Board and after hearing the official concerned, the Appointing Authority shall decide on the disciplinary penalty. The Directorate-General for Personnel shall be responsible for implementing the decision.

The original of the decision shall be inserted in the personal file of the official concerned. The latter shall receive a copy of the decision by registered letter with acknowledgement of receipt.

### **Article 9**

#### **Composition of the Disciplinary Board**

The Disciplinary Board shall be established in accordance with the provisions of Articles 5 and 6 of Annex IX to the Staff Regulations, taking care to ensure gender balance.

The chairman, members and alternate members of the Disciplinary Board shall be appointed for a period of one year, which may be renewed twice. The allowances payable to the external member shall be determined by an agreement signed by the latter and the Appointing Authority.

### **Article 10**

#### **Final provisions**

These provisions shall also apply by analogy to former officials and temporary and contract staff. Subject to Article 76 of the Conditions of employment of other servants of the European Communities, these provisions shall apply by analogy to auxiliary staff.

They shall enter into force on 1 May 2004 and shall apply to administrative investigations and disciplinary proceedings initiated from 1 May 2004 onwards.

Disciplinary proceedings prior to 1 May 2004 shall continue to be governed by the former rules.

(s)Julian PRIESTLEY  
18-5-2004