



NOTE TO THE MANAGEMENT BOARD

Implementing rules on the conduct of administrative inquiries and disciplinary proceedings, and on the payment of the education allowance provided for in Article 15 of Annex X to the Staff Regulations

1. Introduction

Under Article 110 of the Staff Regulations, EFSA lays down staff-related implementing rules (IRs) according to the following modalities:

- adoption by analogy of Commission Implementing rules (general principle);
- adoption of Implementing rules based, when available, on Agency Model Decisions negotiated within the Standing Working Party¹, to ensure common implementation of the Staff Regulations across all agencies;
- adoption of Implementing rules derogating from Commission Implementing rules in case EFSA requires Implementing rules which are specifically adapted to its own reality;
- opt-out Commission Implementing rules which are not relevant or suitable for staff management at EFSA.

The decision-making power remains with the Management Board, based on proposals of the Executive Director and following consultation with the Staff Committee.

An overview of the Implementing rules adopted so far by EFSA is provided in the Annex to the present note.

2. Implementing rules on the Conduct of administrative inquiries and disciplinary proceedings (based on Agency model decision)

a) Background

Article 86 of the Staff Regulations (applicable to officials and, by analogy, to other EU servants within the meaning of the CEOS) sets out the possibility for the Appointing Authority to conduct administrative inquiries and disciplinary proceedings in cases of failure by staff to comply with their obligations under the Staff Regulations. Annex IX thereof details the related procedures as well as the requirements for the composition of the Disciplinary Board.

The current EFSA's implementing legal framework regulating the above matter is laid down in an EFSA's Decision of 2009². Since then, the case-law of the General Court and the Court of Justice of the European Union has considerably evolved and EFSA's practice has been constantly aligning with it.

The new Commission rules adopted in 2019³, which takes stock of the experience gained from the practical implementation of the previous rules and reflects the requirements introduced by case-law

¹ The Standing Working Party is composed of agencies' and Commission (DG HR) representatives and its mission is to negotiate General Implementing rules to be applied within agencies. EFSA is represented by the European Medicines Agency (EMA).

² IMPRUL_004_Decision of the Executive Director on the implementing rules for the conduct of administrative inquiries and for disciplinary procedures of 1 September 2009.

³ Decision C(2019)4231 of 12 June 2019 laying down general implementing provisions on the conduct of administrative inquiries and disciplinary proceedings. This Decision was notified to agencies on 17 June 2019.



along the years, required adaptations to agencies' peculiarities. Therefore, following consultation with its Staff Committee, EFSA opt-out of the Commission Decision, pending the finalisation and the agencies' model decision. On 25 January 2022, the Commission gave *ex-ante* agreement on the adoption by agencies of rules identical to the provided model decision⁴.

The proposed rules, which are to some extent applicable to national experts, persons employed under private law contracts working on EFSA premises, and trainees (i.e. Chapters III on Preliminary Assessment and IV on Administrative inquiries), introduces the above-mentioned model decision into the EFSA legal framework.

b) Main elements

Structure

The Decision lays down a set of general principles, rights and obligations (Chapter II) and provides for the legal requirements to carry out preliminary assessments (Chapter III), administrative inquiries (Chapter IV), pre-disciplinary proceedings (Chapter VI), disciplinary proceedings (VII) not involving the Disciplinary Board (VIII) and before the Disciplinary Board (IX), including rules on the composition and appointment of the Disciplinary Board / Common Disciplinary Board. The Decision also introduces specific provisions governing the rights of alleged victims of harassment as well as protective measures (Chapter V), rules on the impact of other procedures on disciplinary proceedings (Chapter X), procedural requirements for the suspension of a staff member immediately after the preliminary assessment (Chapter XI), rules on prevention and publication of anonymised summaries of the disciplinary decisions (Chapter XII).

Principles, rights and obligations (Chapter II)

- **General principles** governing the proceedings:
 - presumption of innocence,
 - objectivity and impartiality,
 - confidentiality,
 - reasonable duration of proceedings.
- **Rights** of both the person concerned by one of these proceedings, the witness(es):
 - right to be informed about their own rights and obligations,
 - right to a timely procedure,
 - right not to self-incriminate (person concerned only).
- **Obligations** of both the person concerned, the witness(es), any other persons involved:
 - duty of cooperation,
 - obligation to remain at disposal (person concerned only),
 - prohibition of unauthorised disclosure of information relating to the proceedings,
 - duty to respect confidentiality and protection of personal data,
 - obligation to declare any possible conflict of interest.

Preliminary assessment and administrative inquiries (Chapters III and IV)

- **Preliminary assessment**
 - codified in the rules for the first time,
 - to assess the information indicating a possible breach of statutory obligations to enable the Appointing Authority to decide whether the case is to be closed without further action (non-case) or warrants a follow-up (administrative inquiry possible only if the available information shows a beginning of evidence).

⁴ Commission Decision C(2022)497 of 25.1.2022 on giving the Commission's *ex ante* agreement to adoption by decentralised agencies and joint undertakings of implementing provisions on the conduct of administrative inquiries and disciplinary proceedings.



■ **Administrative inquiry**

- to establish the facts and circumstances of the case, including those that may attenuate the individual responsibility of the persons concerned or exonerate them entirely from their responsibility,
- to be carried out within an indicative timeframe of 12 months,
- cannot be opened for alleged breaches older than 10 years from the cessation of the breach, except for specific reasons (e.g. serious allegations of fraud, corruption),
- may be reopened in view of new facts.

Pre-disciplinary and disciplinary proceeding (Chapters VI, VII and VIII)

■ **Pre-disciplinary proceeding**

- necessary step to move to disciplinary proceeding,
- to hear the person concerned about the opening of the disciplinary proceeding;

■ **Disciplinary proceeding**

- new legal basis to establish a Disciplinary Board common to other institutions/agencies,
- proceeding without involving the Disciplinary Board – simplified procedure with possible outcome non-financial sanctions only (reprimand or written warning),
- proceeding before the Disciplinary Board – *quasi* judicial trial,
- no more than one disciplinary penalty per each established misconduct,
- guidance criteria to determine the disciplinary penalty based on seriousness of the misconduct.

c) Proposal

EFSA proposes that the Management Board adopts implementing rules based on the model decision agreed by the Commission. The Staff Committee expressed favourable opinion to this adoption. A draft decision for this purpose is enclosed to the present note.

3. Commission implementing provisions regarding the payment of the education allowance provided for in Article 15 of Annex X to the Staff Regulations to staff members for the duration of temporary assignments to the seat of the institution or any other place of employment in the Union (to be applied by analogy)

Officials, temporary agents, and contract agents may perform their duties in EU delegations located in third countries. Special and exceptional provisions applicable to staff members of the Union serving in a third country are set in the Annex X to the Staff Regulations.

EFSA does not currently have staff located in third countries. Thus, Annex X rules *de facto* does not apply to its staff. However, the Commission has encouraged all agencies to adopt the related implementing rules by analogy to ensure uniformity and legal certainty, should agencies need to address this situation in the future. EFSA adheres to this approach.

On 9 February 2022, EFSA was notified of Commission Decision C(2021)8179 of 16 November 2021 laying down general implementing provisions regarding the payment of the education allowance provided for in Article 15 of Annex X to the Staff Regulations. Staff serving in a third country are to be transferred periodically in the interest of the service. Under this mobility procedure, staff may be reassigned temporarily to the seat of the institution or any other place of employment in the Union. In such case, the Appointing Authority may decide that staff members are to remain subject to certain provisions of Annex X to the Staff Regulations for the duration of temporary assignments. The above Commission Decision specifies the conditions under which the education allowance foreseen in Article 15 of Annex X may be granted to staff during that temporary reassignment.

In line with the approach explained above, EFSA proposes that the Management Board adopts this Commission Decision by analogy. The Staff Committee expressed favourable opinion. A draft decision for this purpose is enclosed to the present note as well as the related Commission Decision.



Annex

Commission implementing rules adopted by analogy

- Commission Decision of 16.12.2013 laying down general provisions giving effect to Article 8 of Annex VII to the Staff Regulations C(2013) 8987;
- Commission Decision of 16.12.2013 repealing Commission Decision of 28.4.2004 adopting General implementing provisions on the early retirement of officials and temporary agents without reduction of pension rights C(2004) 1588 final/5) C(2013) 9039;
- Commission Decision of 16.12.2013 laying down general implementing provisions concerning the criteria applicable to classification in step on appointment or engagement C(2013) 8970;
- Commission Decision of 16.12.2013 on general implementing provisions on granting the education allowance (Article 3 of Annex VII to the Staff Regulations) C(2013) 8971;
- Commission Decision of 16.12.2013 on leave C(2013) 9051;
- Commission Decision of 16.12.2013 on maternity leave and maternity pay for women whose maternity leave begins before the end of their contract (Articles 17 and 91 of CEOS) C(2013) 9020;
- Commission Decision of 16.12.2013 laying down general implementing provisions to Article 7 (4) Annex VII to the Staff Regulations on determining the place of origin C(2013) 8982;
- Commission Decision of 16.12.2013 on reimbursements due to officials assigned to non-member countries C(2013) 8990;
- Commission Decision C(2015)9151 of 17 December 2015 on the implementation of telework in Commission Departments;
- Commission Decision of 16.12.2013 on General Implementing Provisions on removal expenses (Article 9 of Annex VII to the Staff Regulations) C(2013) 9040;
- Commission Decision of 16.12.2013 on rules for the implementation of housing policy in EU delegations C(2013) 8965,
- Commission Decision of 16.12.2013 on the living conditions allowance and the additional allowance referred to in Article 10 of Annex X to the Staff Regulations C(2013) 9032;
- Commission Decision of 16.12.2013 on home leave for officials, temporary agents and contract agents posted in third countries (second paragraph of Article 7 Annex V to the Staff Regulations) C(2013) 9035;
- Commission Decision of 16.12.2013 on management of rest leaves pursuant to Article 8 of Annex X to the Staff Regulations C(2013) 9027.
- Commission Decision C(2015)9720 concerning part-time work.
- Commission Decision of 27 September 2017 on the general provisions for implementing Articles 11, 12 and 13 of Annex VII to the Staff Regulations of Officials (mission expenses) and on authorised travel C(2017) 5323.
- Commission Decision on outside activities and assignment and on occupational activities after leaving the service⁵.
- Commission Decision of 4 October 2019 on procedures for dealing with professional incompetence C(2019) 6855.
- Commission Decision of 30 October 2019 amending Commission Decision C(2004) 1318 of 7 April 2004 on the duties of Commission drivers C(2019) 7822.

⁵ It replaces Commission Decision of 16.12.2013 on outside activities and assignments C(2013) 9037.



- Commission Decision of 7 April 2004 on the duties of Commission drivers C(2004) 1318.
- Commission Decision of 16 March 2020 amending Decision C(2013) 9051 of 16 December 2013 on leave C(2020)1559.
- Commission Decision C(2020)4818 of 20 July 2020 amending the Commission Decision C(2011)1278 of 3 March 2011 on the general implementing provisions for Articles 11 and 12 of Annex VIII to the Staff Regulations on the transfer of pension rights.

Implementing rules adopted based on Model agency rules

- Decision of the Management Board laying down general implementing provisions on the procedure governing the engagement and use of temporary staff under (2)(f) of the Conditions of Employment of Other Servants of the European Union;
- Decision of the Management Board laying down general provisions for implementing Article 43 of the Staff Regulations and implementing the first paragraph of Article 44 of the Staff Regulations for officials and temporary staff⁶;
- Decision of the Management Board laying down general provisions for implementing Article 87 (1) of the Conditions of Employment of Other Servants of the European Union and implementing the first paragraph of Article 44 of the Staff Regulations;
- Decision of the Management Board on measures concerning leave on personal grounds for officials and unpaid leave for temporary and contract staff of the European Union⁷;
- Decision of the Management Board on setting up a Staff Committee⁸;
- Decision of the Management Board laying down general implementing provisions regarding Article 45 of the Staff Regulations⁹;
- Decision of the Management Board laying down general implementing provisions regarding Article 54 of the Conditions of Employment of Other Servants of the European Union¹⁰;
- Decision of the Management Board laying down general implementing provisions regarding Article 87(3) of the Conditions of Employment of Other Servants of the European Union¹¹;
- Decision of the Management Board on the policy of the European Food Safety Authority on protecting the dignity of the person and preventing psychological harassment and sexual harassment¹²;
- Decision of the Management Board on implementing rules laying down guidelines on whistleblowing;

⁶ It replaces Commission Decision of 16.12.2013 laying down general provisions for implementing Article 43 of the Staff Regulations and implementing the first paragraph of Article 44 of the Staff Regulations C(2013) 8985, initially adopted by analogy by Decision of the Management Board of 26 June 2014 concerning the adoption of implementing provisions of the Staff Regulations by analogy (mb 26 06 14).

⁷ It replaces Commission Decision of 16.12.2013 on measures concerning leave on personal grounds for officials and unpaid leave for temporary and contract staff of the European Union C(2013) 9054, initially adopted by analogy by Decision of the Management Board of 26 June 2014 concerning the adoption of implementing provisions of the Staff Regulations by analogy (mb 26 06 14).

⁸ It replaces EFSA Decision of 9 October 2012 concerning the establishment of a Staff Committee.

⁹ It replaces EFSA Decision of 23 July 2010 concerning the career and the promotion of officials (on the basis of Art. 45 of the Staff Regulations).

¹⁰ It replaces EFSA Decision of 22 April 2008 concerning the career of temporary staff and assignment to a post carrying a higher grade than that at which they were engaged (on the basis of Art. 10 of the Conditions of Employment of other Servants) and its Amendment N°1 of 23 July 2010.

¹¹ It replaces EFSA Decision of 23 July 2010 concerning the career of contract staff and assignment to a post carrying a higher grade than that at which they were engaged (on the basis of Art. 87(3) of the Conditions of Employment of other Servants).

¹² It replaces EFSA Decision of 27 April 2012 concerning EFSA's policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment.



- Decision of the Management Board on middle management staff¹³;
- Decision of the Management Board concerning the function of adviser;
- Decision of the Management Board laying down implementing rules on temporary occupation of management posts;
- Decision of the Management Board on the Framework for Learning and Development¹⁴;
- Decision of the Management Board on Working Time¹⁵;
- Decision of the Management Board on the types of posts and posts titles in EFSA.

¹³ It replaces EFSA Decision of 9 February 2011 on middle management staff.

¹⁴ It replaces EFSA Decision laying down the principles and guidelines concerning learning and development at EFSA of 26 June 2014 and EFSA Decision of 20 March 2013 concerning language training at EFSA are hereby repealed.

¹⁵ It replaces EFSA Decision of 1 December 2008 on the introduction of a flexitime policy.