

Management Board

29 June 2022



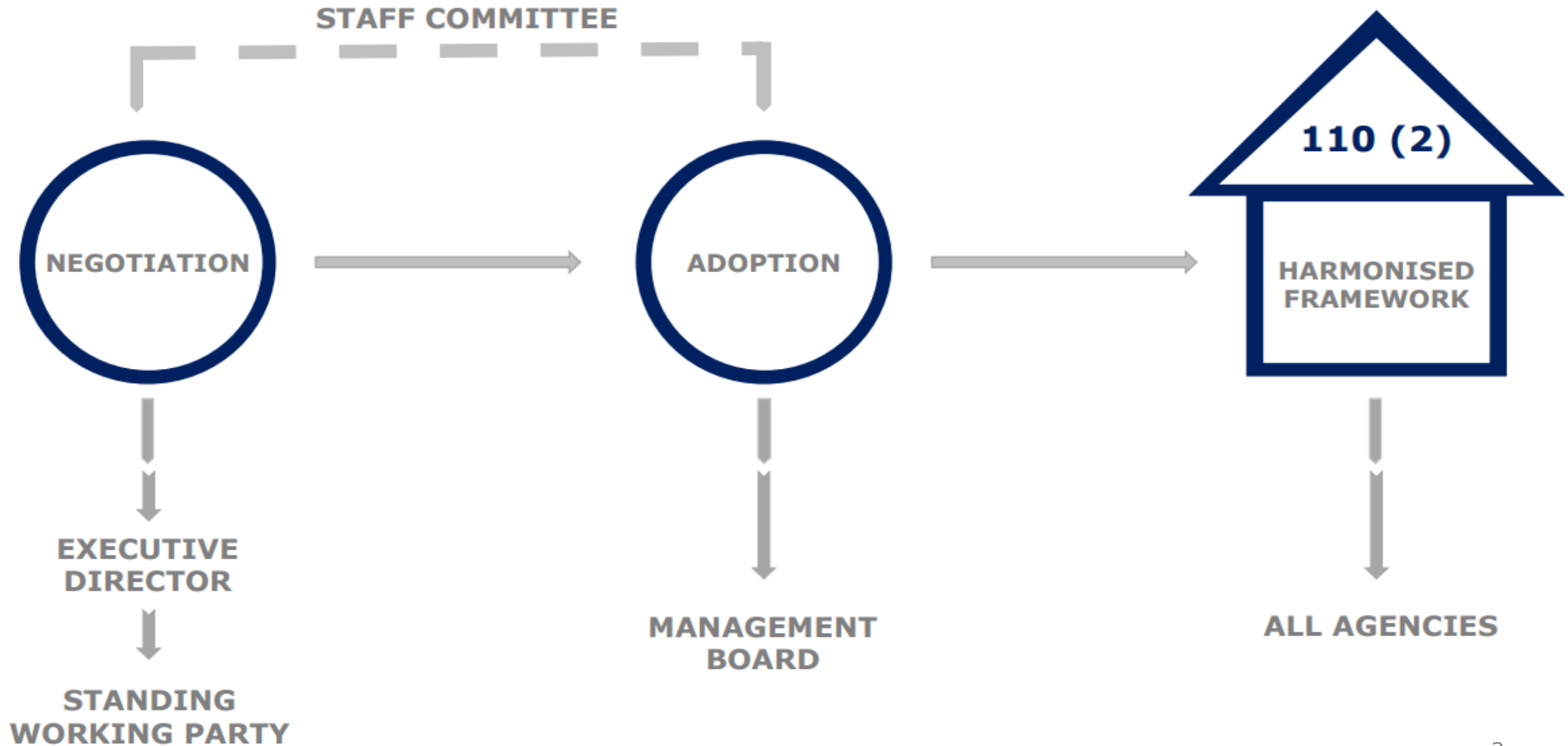
Implementing rules to the Staff Regulations under Article 110(2)

Dirk Detken

Head of Legal Affairs Unit

Trusted science for safe food

Decision-making



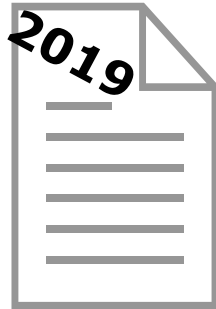
Implementing rules on the conduct of administrative inquiries and disciplinary proceedings

(Based on Agency Model Decision)



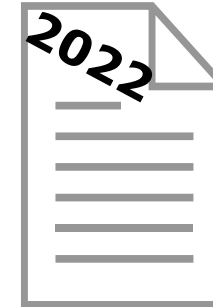
EFSA's current rules

- ❖ Governs the conduct of administrative inquiries and disciplinary proceedings within EFSA
- ❖ Case-law developments
- ❖ Over years, EFSA's practice aligned with evolution of case-law



Commission Decision

- ❖ Takes stocks of the experience gained from the practical implementation of the previous rules
- ❖ Reflects the requirements introduced by case-law
- ❖ Not fully adapted to agencies' reality (e.g. no specialized services like IDOC) → EFSA opt-out pending Model Decision



EFSA IRs based on Model decision

- ❖ Allows adaptation to EFSA's organisational peculiarities
- ❖ Allows EFSA's legal framework to be formally in line with most recent case-law trends

Staff Committee's favourable opinion

Principles, rights and obligations – a new and complete explicit set

- **general principles** governing the procedure → *presumption of innocence, objectivity and impartiality, confidentiality, reasonable duration of proceedings...*
- **rights** of the person concerned and of the witness → *right to be informed about their own rights and obligations timely procedure, right to a timely procedure, right to not self-incriminate*
- **obligations** for all persons involved → *duty of cooperation, prohibition of unauthorised disclosure of information relating to the proceedings, duty to respect protection of personal data, obligation to declare potential conflicts of interests*

Changes from the previous regulatory framework – Administrative inquiries

- **Mandatory before moving to disciplinary step**
 - *Change following case-law*
 - *Establishing circumstances and facts, including those in favour of the person concerned*
- **Codification of a step before the administrative inquiry: “Preliminary assessment”**
 - *To assess the information indicating a possible breach of statutory obligations*
 - *A mere practice under the previous framework.*
- **Setting of clear time-lines**
 - *Facts no older than 10 years, investigation to be concluded in 1 year*
 - *Changes following case-law*
- **References to the rights of the victims of harassment and protective measures**
 - *Codification of mere practice*

Changes from the previous regulatory framework – Disciplinary proceedings

- Codification of “Pre-disciplinary proceedings”
 - *Provide a hearing of the person concerned in view of the potential opening of disciplinary proceedings*
- Alignment of legal basis for the establishing of a Disciplinary Board common to other institutions/agencies
- Guidance criteria for the penalties based on the seriousness of the misconduct
 - *Change based on case-law*
- Clear distinction between proceedings involving the Disciplinary Board (*quasi* judicial trial) or not (for non-financial sanctions only, e.g. reprimand, written warning)
- New rules on publicity
 - *Summaries of the disciplinary decisions adopted shall be published every 3 years in an anonymous format.*

**Commission implementing provisions regarding
the payment of the education allowance provided
for in Article 15 of Annex X to the Staff
Regulations**
(to be applied by analogy)



Commission Decision C(2021)8179 of 16.11.2021 laying down general implementing provisions regarding the payment of the education allowance provided for in Article 15 of Annex X to the Staff Regulations

- ❖ Annex X Staff Regulations → special and exceptional provisions applicable to staff members of the Union serving in a **third country**
- ❖ EFSA does not currently have staff located in third countries → Annex X *de facto* not applicable to EFSA
- ❖ Adoption by analogy is recommended by the Commission → uniformity among agencies + legal certainty should EFSA need to address this situation in the future