



Renouveau & Démocratie

Syndicat de la fonction publique européenne

Administrative Inquiries, Disciplinary Proceedings and specific provisions concerning the rights of alleged victims of harassment and protective measures

Art 44 of the F4E applicable decision:

“Fusion for Energy shall provide training and undertake other awareness-raising activities on disciplinary matters for staff members”

Cristiano SEBASTIANI Chairman R&D Federal and
Permanent Member of the Disciplinary Board of the Commission

When are disciplinary proceedings launched by the Appointing Authority (AA)?

- **Where a member of staff or a former member of staff fails, whether intentionally or negligently, to comply with their obligations under the Staff Regulations ALSO WITH REGARD PRIVATE LIFE**

And

- **Following an administrative inquiry by OLAF or an internal investigation**



Article 12 of the SR:

“An official shall refrain from any action or behaviour which might reflect adversely upon his position”.

According to Article 12 of the SR, staff members are required to refrain from any action or behaviour, which might reflect adversely upon their position. This includes both the professional context AND their private life.

Article 12 of the SR is one of the expressions of the duty of loyalty to the Institution which underpins the relationship of trust between the Institution and the staff member.

Any action, even in the private sphere, must also comply with the highest ethical standards required of the staff of an EU Institution.



Which facts can lead to the opening of an inquiry and/or disciplinary proceedings?

Listed below are some examples of cases where inquiries/disciplinary proceedings have been conducted in, EU Institutions and other bodies:

- *Psychological or sexual harassment*
- **Improper behaviour**, both in the workplace and in private life, where such improper behaviour reflects adversely on the official's or former official's position
- **Breaches of financial rules** (such as public procurement)
- **Misuse of IT equipment**
- **Theft of materials**
- **Acceptance of gifts** without respecting the relevant rules
- **Conflicts of interest** (favouritism)



- **Criminal prosecution** (e.g. corruption), even for private matters
- **Exercising an outside activity** without complying with the relevant rules
- **False declarations and/or forgery of documents**, e.g., in connection with reimbursement of medical expenses, mission expenses, recruitment procedures, etc.



The different phases of the proceedings

(a) preliminary assessments,

- means all actions aimed at evaluating information received in order to enable the AA to decide on the appropriate follow-up to be given to such information;

(b) administrative inquiries,

- means all actions aimed at establishing the facts of a case for which the AA has issued a mandate in accordance with Article 2 of Annex IX of the Staff Regulations;
- **NB : According to article 10.3 of the F4E applicable decision, where information received concerns or could concern facts for which OLAF is competent, Fusion for Energy shall transmit the information to OLAF without delay, unless otherwise agreed with OLAF;**
- **According to article 10.3 of the F4E applicable decision, unless otherwise agreed with OLAF, before opening an administrative inquiry, Fusion for Energy shall consult OLAF to ascertain that it is not conducting and/or does not intend to conduct an investigation for its own purposes.**



(c) pre-disciplinary proceedings,

- means all actions directed at enabling the person concerned to be heard, in accordance with Article 3 of Annex IX of the Staff Regulations, on the established facts and circumstances of the case, including their legal qualification, in order to enable the AA to decide on the appropriate follow-up to the case;

(d) disciplinary proceedings,

- means all actions directed at enabling the AA to decide upon the disciplinary penalty to be imposed on the person concerned in accordance with Articles 9 and 10 of Annex IX to the Staff Regulations;

(e) suspension proceedings,

- means all actions directed at enabling the AA to decide whether to suspend a staff member, in accordance with Article 23 of Annex IX to the Staff Regulations.



Specific provisions concerning the rights of alleged victims of harassment and protective measures

1. The alleged victim of a possible situation of harassment shall be informed without undue delay of the opening of an administrative inquiry regarding this situation.
2. In the framework of the administrative inquiry sexual harassment should be treated like gender discrimination. According to current EU legislation this means a reversal of burden of proof. The consequence of the **reversal of the burden of proof** is that in case the victim has established “facts from which it may be presumed that harassment has taken place”, it needs to be proven that no harassment has taken place.
3. Where the AA decides to close the case without further action, it shall inform the alleged victim of that decision.
4. Where the AA decides to give a follow-up to the inquiry regarding the allegations of harassment, it shall inform the alleged victim of its conclusions as regards these allegations.



Specific provisions concerning the rights of alleged victims of harassment and protective measures

Protective measures

At any time during the administrative inquiry, the inquiry team may recommend to the AA to take appropriate and proportionate measures to protect the alleged victim of harassment and the witnesses requested to testify, or to ensure the proper functioning of the service concerned.

In accordance with the duty of care, such measures may consist, in particular, of transferring the alleged victim and/or the alleged harasser to another service.



The Staff Regulations do not lay down any prescription periods, but its implementing rules have established that

For the sake of legal certainty, it is necessary to ensure that administrative inquiries are opened within a reasonable period of time and in any event no later than 10 years after the alleged breaches have ceased.

However, it should be possible to open administrative inquiries beyond this time limit in cases of serious allegations of fraud, corruption and any other illegal activity affecting the financial interests of the Union, as well as in cases where the Staff Regulations or the CEOS so provide.



Obligations of loyal cooperation on the part of any person called to testify as part of the investigation

- ‘ **Witness**’ means any staff member or any other person who is requested to provide information relating to facts which are the subject-matter of an administrative inquiry, pre-disciplinary proceedings and/or disciplinary proceedings;
- **In accordance with their duty of loyalty to the institution, staff members called upon to provide information shall cooperate and provide all requested information available to them, subject to obligations regarding confidentiality.**
- **The obligation of loyal cooperation of any person called to testify as part of the investigation is direct consequence of the LEGAL OBLIGATION of any staff member witnessing behaviors that may qualify as harassment, TO REPORT this in accordance with Article 22a of the Staff Regulations under the whistle blower provision in the Staff Regulations.**
- This means the staff member *“shall without delay inform either his immediate superior or his Director-General or, if he considers it useful, the Secretary-General, or the persons in equivalent positions, or the European AntiFraud Office (OLAF) directly.” (Art. 22a SR).*
- **This is a far-going obligation which any staff member must be aware of.**
- **It means not to be a bystander. Much too often, in the framework of administrative inquires and disciplinary proceedings have been observed situations where colleagues turned a blind eye instead of taking the side of the victim and reporting harassment or any other wrongdoing.**



Managers Responsibilites

- Reminder of the obligations under Article 21 of the SR :
- ***“An official in charge of any branch of the service shall be responsible to his superiors in respect of the authority conferred on him and for the carrying out of instructions given by him. The responsibility of his subordinates shall in no way release him from his own responsibilities”***

Much too often even in the framework of administrative inquiries and disciplinary proceedings have been observed situations where managers try to absolve themselves of their responsibilities by claiming that their subordinates are solely responsible for the mistakes detected.



What rights do the persons concerned have during disciplinary proceedings?

- **Right to receive the disciplinary report**, including the status of the person concerned, the procedure, a description of the facts of the case and other relevant circumstances;
- **Right to access the relevant documents in the disciplinary file**, subject to the legitimate interests of confidentiality;
- **Right to access the relevant documents in the disciplinary file**, subject to the legitimate interests of confidentiality;
- **Right to be accompanied, assisted or represented at hearings** by persons of their choice, including a lawyer. Anyone assisting the person concerned is bound to respect the confidentiality of the procedure;
- **Right to the presumption of innocence** in all stages of the procedure;
- **Right to put forward facts and circumstances in relation to the case**;



- **Right to submit documents to be included in the file;**
- **Right to remain silent** if they would otherwise incriminate themselves;
- **Right to have the respective decision included in the personal file;**
- **Right to have their case dealt with within a reasonable period of time**, commensurate with the circumstances and the complexity of the case;
- **Right to receive a reasoned final decision and to contest it.** This provides the grounds for the person concerned, should they so wish, to lodge a formal administrative complaint under Article 90(2) of the Staff Regulations, and ultimately, a claim for judicial review before the EU Court.



Report at the end of the administrative inquiry

The report shall set out the procedural steps followed, the facts and circumstances relevant to the case and, if appropriate, individual responsibilities.

Its conclusions shall mention the potential breaches of the obligations incumbent on the person concerned in relation to the facts and circumstances established by the inquiry.

The report shall be accompanied by copies of all documents and statements relevant to the case.

The OLAF/inquiry team shall transmit the report to the AA and may issue recommendations on the appropriate follow-up.



What disciplinary penalties can be imposed?

- **Written warning;**
- **Reprimand;**
- **Deferment of advancement to a higher step for a period between one and 23 months;**
- **Relegation in step;**
- **Temporary downgrading for a period of between 15 days and one year;**
- **Downgrading in the same function group;**
- **Classification in a lower function group, with or without downgrading;**
- **Removal from post and, where appropriate, reduction pro tempore of a pension or withholding for a fixed period, of an amount from an invalidity allowance.**



What penalty for what wrongdoing?

- There is **no ‘tariff’ of penalties for specific wrongdoing**
- However, according to the principle of proportionality, **the severity of the penalty must be commensurate with the seriousness of the misconduct.**



In determining the seriousness of the misconduct and in deciding on the disciplinary penalty, the AA shall have regard to all the facts and circumstances of the case, including those which may aggravate or mitigate the individual responsibility of the person concerned.

In this respect, it shall in particular consider the following factors:

- (a) the nature of the misconduct and the circumstances in which it occurred;
- (b) the extent to which the misconduct adversely affects the integrity, reputation or interests of the institutions;
- (c) the extent to which the misconduct involves intentional actions or negligence;
- (d) the motives for the staff member's misconduct;
- (e) the staff member's grade and seniority;
- (f) the degree of the staff member's personal responsibility;
- (g) the level of the staff member's duties and responsibilities;
- (h) whether the misconduct involves repeated action or behaviour;
- (i) the conduct of the staff member throughout the course of the career.



Can disciplinary proceedings be reopened after having been closed?

- In principle, the person concerned cannot be subject to further disciplinary follow-up for the same misconduct, **unless new facts**, supported by relevant evidence, come to light after the closure of the case.



How long do disciplinary proceedings last?

- There is no **'hard and fast'** rule on the time limits within which decisions to initiate **disciplinary proceedings** and to impose a penalty should be taken
- **A reasonable time-line** must be respected between each stage of the procedure
- The Disciplinary Board must transmit its opinion to the AA and the official concerned **within two months of the date of receipt of the report** from the AA
- The AA shall take its decision **within two months of receipt of the opinion** of the Disciplinary Board



What happens during disciplinary proceedings?

- **Two types of disciplinary proceedings:**
 - ⇒ **Without the involvement of the Disciplinary Board**
 - ⇒ **With the involvement of the Disciplinary Board**



Disciplinary proceedings WITHOUT referral to the Disciplinary Board

I. Why and when?

- **A simplified procedure applies in cases where the AA considers that the facts do not, in principle, merit a penalty more severe than a written warning or a reprimand.**

II. What are the procedural steps?

- **On receipt of the disciplinary report, the person concerned will be invited to a hearing by the AA.**
- **The hearing date is fixed with regard to the need for an efficient procedure and the availability of the people involved (a minimum of 10 working days is provided from receipt of the disciplinary report)**

III. Who is informed of the outcome of the case?

- **The decision (written warning or reprimand) is notified to the person concerned.**
- **If OLAF was involved in the procedure, it is also informed.**



Disciplinary proceedings WITH referral to the Disciplinary Board

I. *Why and when?*

- **Where the AA considers the alleged wrongdoing to be sufficiently serious** as to warrant a financial penalty, the case is referred to the Disciplinary Board.

II. *The Disciplinary Board*

- The Disciplinary Board is **a joint body of staff members and a Chairperson**.

The Disciplinary Board shall consist of:

(a) **a Chairperson and four permanent members**, all of whom may be replaced by alternates, for cases where the person concerned is in a grade between AD 14 and AD 16;

or

(b) **a Chairperson and four permanent members**, all of whom may be replaced by alternates, **together with two additional members** belonging to the same function group and to the same grade as the person concerned, for cases other than those referred to in point (a).



III. The permanent members and their alternates shall be appointed:

- (a) for cases where the person concerned is in grade AD 15 or AD 16, from among staff members in active employment **in grade AD 16**;
- (b) for all other cases, from among staff members in active employment **in at least grade AD 14**

The Disciplinary Board members and the Chairperson are independent in the performance of their duties.

The purpose of the Disciplinary Board (which operates as a ‘fresh pair of eyes’) is to hear the person concerned on the facts and allegations of wrongdoing against them.



What are the procedural steps?

I. Preparation of the hearing by the Disciplinary Board

- **The AA seizes the Disciplinary Board by means of the disciplinary report.**
- Upon receipt of the disciplinary report, **the person concerned has no less than 10 working days to prepare for the hearing before the Disciplinary Board.**
- **Requests for witnesses should be submitted** within the deadline given by the Chairperson or, in the absence of such a deadline, **within 5 working days** following the invitation to the hearing.
- The person concerned must be granted **no less than 10 working days to submit written comments**, unless he agrees on to shorter period.



II. The hearing by the Disciplinary Board

- **The persons concerned may present their defence in person or through a representative** (usually a lawyer). Anyone attending the hearing is required to respect the confidentiality of the procedure.
- **The representative of the AA presents a summary of the case as set out in the disciplinary report**
- **The members of the Disciplinary Board may ask questions or seek clarifications from the person concerned and/or the AA on any point relating to the case.**
- **Witnesses, if any, shall be called individually to give oral statement on the facts or circumstances for which they were invited to participate.**



III. Opinion of the Disciplinary Board

- **Following the hearing, the Disciplinary Board is required to deliver a reasoned opinion on whether the facts in question are established and on the appropriate penalty, if any.**
- **The opinion is adopted unanimously or by majority vote**
- **The opinion of the Disciplinary Board is sent to the AA and to the person concerned.**
Where possible, **this is done of the date of receipt of the disciplinary report by the person concerned and by the Disciplinary Board, but in practice this may take longer depending on the complexity of the case.**
- **Minutes of witnesses' presentations** (drafted by the Secretary of the Disciplinary Board and approved by the witnesses concerned) **are attached to the opinion of the Disciplinary Board.**



IV. Hearing before the AA

- **The person concerned is then invited to a final hearing before the AA which will decide on their case.**
- **The hearing must take place no less than 10 working days from the date of receipt of the reasoned opinion of the Disciplinary Board by the person concerned, unless otherwise agreed with the person concerned.**
- **A hearing date and time is set which fits best with the ongoing procedure and with the availability of the people involved and the person concerned is formally invited to attend.** Any request to postpone the hearing must be substantiated and will be decided upon by the AA.



The final decision

- **Following the hearing of the person concerned, the AA decides on the outcome of the case, including on the penalty to be imposed.**
- **If the AA decides to impose a disciplinary penalty, the person concerned is informed by means of a reasoned decision 2 months after the Disciplinary Board issues its opinion.**
- **The person concerned is required to acknowledge receipt of the decision.**
- **The decision takes effect either on the day it is issued or on a date specified in the decision.**



Who is informed of the outcome of the case?

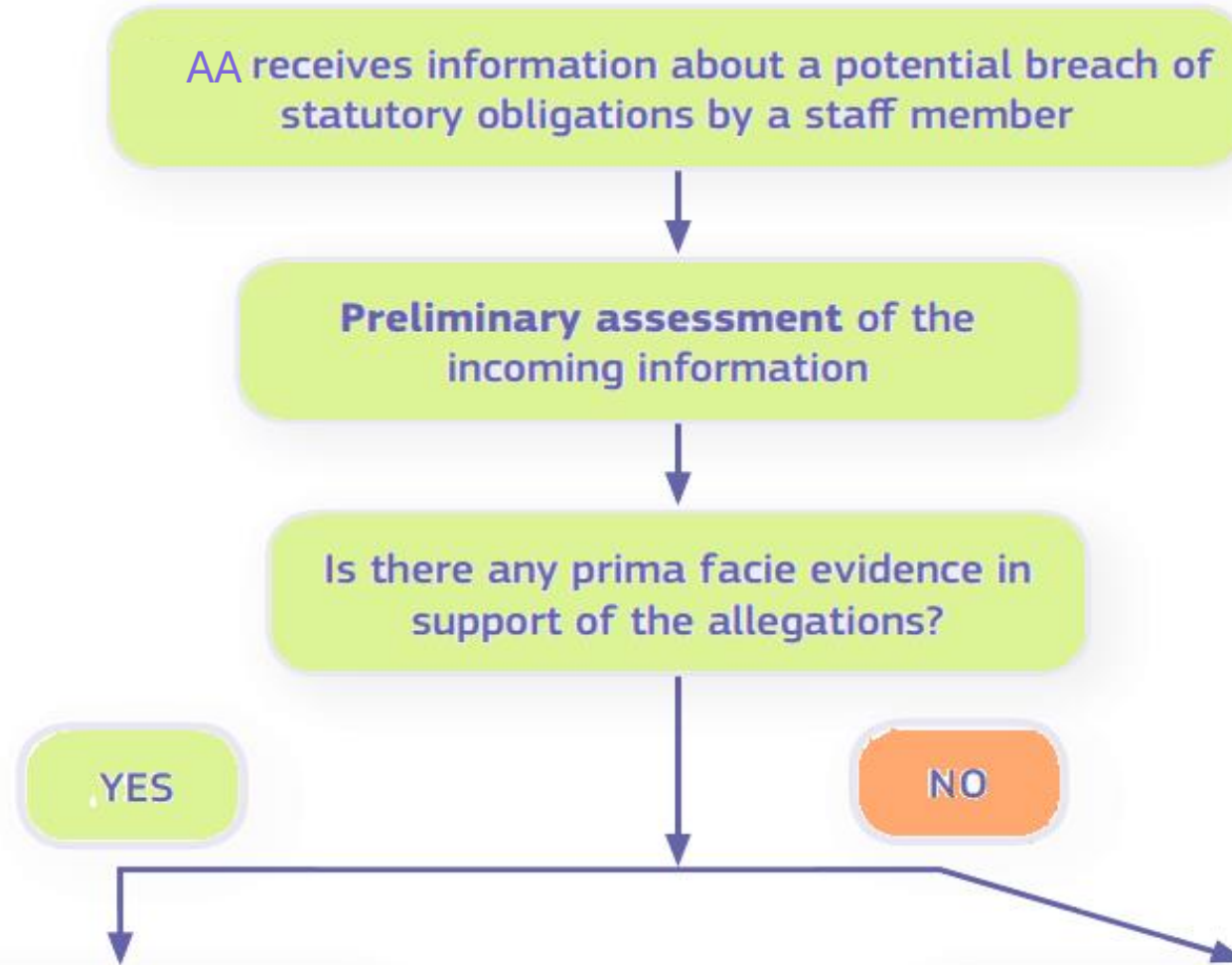
- The penalty decision is **notified to the person concerned**.
- **If OLAF was involved in the procedure, it is also informed.**
- The penalty decision is also **transmitted to the Disciplinary Board** and the operational parts of the decision are sent, on a 'need-to-know basis', **to other services concerned for follow-up and enforcement of the decision.**

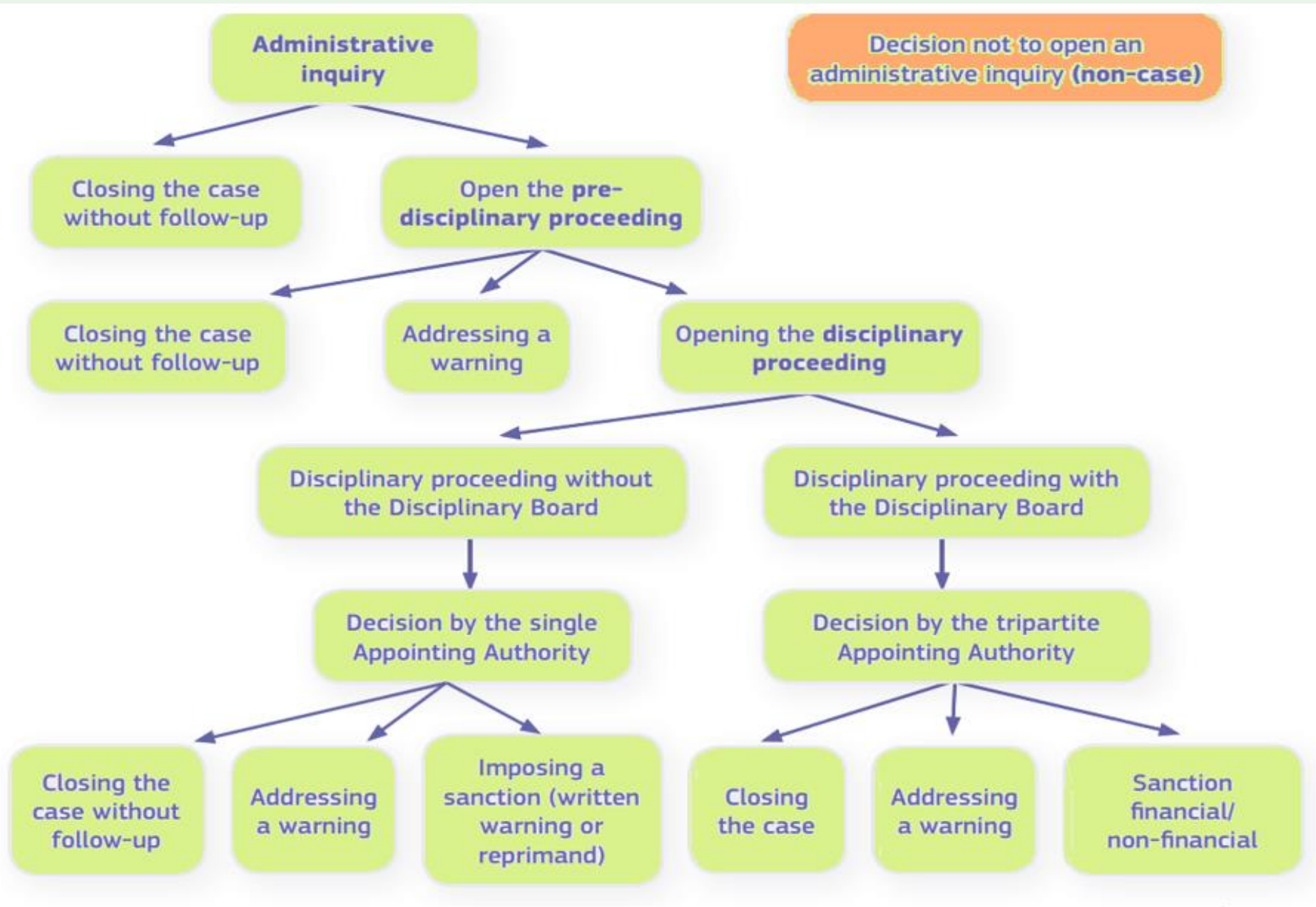
Publication of the results of disciplinary cases

Summaries of the disciplinary decisions adopted are published every 3 years in an anonymous format.



Overview of the disciplinary proceedings





Sources & references

A. Case law

I. INVESTIGATION PRIOR TO THE INITIATION OF DISCIPLINARY PROCEEDINGS

1. Initiation of a new investigation followed by disciplinary proceedings after a first investigation - Lawfulness:

- a) *Judgment of 4 May 1999, Z v Parliament (T-242/97, RecFP p. II-401) (see paragraph 28)*
- b) *Judgment of 24 November 2021, CX v Commission (T-743/16 RENV II) (see paragraph 364)*

2. Purpose - Observance of the rights of the defence - Exercise of procedural guarantees by the accused official from the date of referral to the Disciplinary Board:

- a) *Judgment of 21 February 2006, V v Commission (T-200/03 and T-313/03, RecFP p. II-A-2-57) (see paras 156-158, 160)*

II. OFFICIALS – DISCIPLINARY MEASURES

1. Proceedings before the Disciplinary Board - Investigation - Discretion of the Disciplinary Board - Citation of witnesses:

- a) Article 6 of Annex IX to the Staff Regulations; the Disciplinary Board has a discretion as to whether it is necessary to order an inquiry (judgment of the Court of Justice of 11 July 1985 in Joined Cases 255/83 and 256/83 R. v Commission [2473] ECR, paragraph 24)
- b) Judgment of 21 November 2000, A v Commission (T-23/00, RecFP p. II-1211) (see paragraph 39)

2. Penalty - Discretion of the AA - Judicial review - Scope - Limits:

- a) *Judgment of 13 January 2011, Nijs v Court of Auditors (F-77/09) (see paras 131-132, 135)*
- b) *Judgment of 17 July 2012, BG v Ombudsman (F-54/11) (see paragraph 116)*
- c) *Judgment of 18 June 2015, CX v Commission (F-27/13) (see paragraph 101)*
- d) *Judgment of 11 April 2016, FU v Commission (F-49/15) (see paras 120-122)*
- e) *Judgment of 23 March 2022, OT v Parliament (T-757/20) (see paras 165-173)*
- f) *Judgment of 5 June 2019, Bernaldo de Quirós v Commission (T-273/18) (see paragraphs 122, 124-126)*
- g) *Judgment of 6 October 2021, AV and AW v Parliament (T-43/20) (see paras 134-137, 147)*
- h) *Judgment of 10 September 2019, DK v EEAS (T-217/18) (see paras 75-77)*
- i) *Judgment of 24 November 2021, CX v Commission (T-743/16 RENV II) (see paras 90-92, 355-357)*



3. Penalty – Discretion of the AA – Reduction of pension – Basis for deduction from the pension – Inclusion of family allowances – Conditions – Guarantee of a minimum income:

a) Judgment of 10 September 2019, DK v EEAS (T-217/18) (see paras 118, 119, 123, 124)

4. Assessment of whether the facts which are the subject of disciplinary proceedings are established – Opinion of the Disciplinary Board – Scope – Limits:

a) Judgment of 3 June 2015, Bedin v Commission (F-128/14) (see paras 23, 24, 30)

b) Judgment of 10 June 2016, HI v Commission (F-133/15) (see paras 147, 148)

c) Judgment of 19 July 2016, HG v Commission (F-149/15) (see paras 78-80)

5. Penalty – Discretion of the AA – Obligation to follow the opinion delivered by the Disciplinary Board – None:

a) Judgment of 10 September 2019, DK v EEAS (T-217/18) (see paras 68-72)

b) Judgment of 19 April 2023, OQ v Commission (T-162/22) (see paragraph 91)



6. **Penalty – Discretion of the AA – Existence of both disciplinary proceedings and criminal proceedings – Obligation on the administration to take a final decision on the official’s situation after the final decision of the criminal court – Obligation on the administration to act within a reasonable time:**

a) [Judgment of 10 September 2019, DK v EEAS \(T-217/18\) \(see paras 85-88, 90, 91, 95\)](#)

7. **Penalty – Discretion of the AA – Existence of both disciplinary proceedings and criminal prosecution – No obligation to take into account the legal characterisation of the facts in the national criminal proceedings:**

a) [Judgment of 15 July 2021, DK v EEAS \(C-851/19 P\) \(see paras 39-44\)](#)

8. **Penalty – Discretion of the AA – Opinion of the Disciplinary Board – Possibility of the official concerned contesting the opinion in an action brought against the disciplinary decision – Conditions – Taking into account, in the disciplinary decision, of the assessment made by the Disciplinary Board:**

a) [Judgment of 15 December 2021, HG v Commission \(T-693/16 P RENV-RX\) \(see paragraph 170\)](#)



9. Penalty – Discretion of the AA – Limits – Observance of the principle of proportionality – Judicial review – Scope:

- a) *Judgment of 1 June 2022, Cristescu v Commission (T-754/20) (see paras 179, 180, 208, 215-223, 237-239)*
- b) *Judgment of 7 September 2022, DD v FRA (T-470/20) (see paras 209-212, 247-251)*

• Penalty – Extenuating circumstance – Carences of the immediate superiors of the official concerned – Not included:

- a) *Judgment of 10 June 2016, HI v Commission (F-133/15) (see paragraph 202)*

11. Penalty – Aggravating circumstances – Conduct of an official exposing the integrity, reputation or interests of the institution to a risk of being undermined – Included:

- a) *Judgment of 10 June 2016, HI v Commission (F-133/15) (see paragraph 204)*

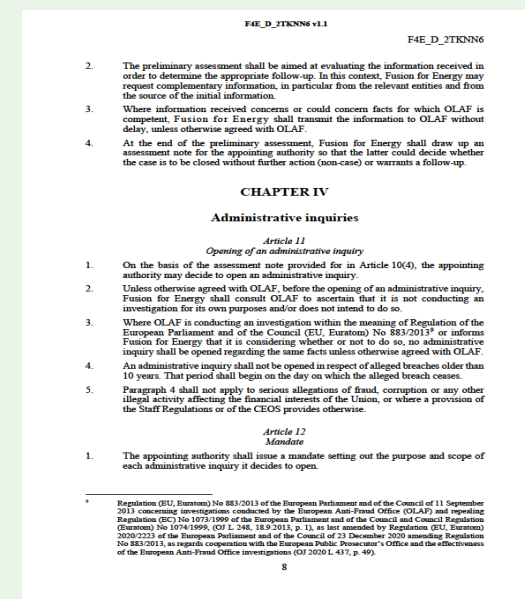


B. Sources

Annex IX to the Staff Regulations

Commission Decision C(2019)4231 of 12 June 2019 laying down general implementing provisions on the conduct of administrative inquiries and disciplinary proceedings.

Decision of the Administration and Management Committee of the European Joint Undertaking for ITER and the development of Fusion Energy laying down general implementing provisions on the conduct of administrative inquiries and disciplinary proceedings.



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We remain at the disposal of any F4E colleague that requires our help and specialised assistance



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