MANAGEMENT BOARD DECISION No 23/2012
of 27 September 2012

ADOPTING FRONTEX DISCIPLINARY PROCEDURE

THE MANAGEMENT BOARD,

Having regard to the Frontex Regulation\(^1\), in particular Article 17(4) thereof,

Whereas:

(1) The implementing provisions to govern the conduct of administrative inquiries should be adopted,

(2) The implementing provisions for disciplinary procedures should be adopted,

(3) A preventative approach to and transparency in disciplinary matters should be ensured,

(4) The provisions governing the conduct of administrative inquiries should also be applied to persons seconded to Frontex pursuant to the rules on the secondment of national experts (SNE) to Frontex adopted by Management Board Decision No. 22/2009 of 25 June 2009 (Frontex SNE Rules). Following the letter and the spirit of Frontex SNE Rules the results an administrative inquiry showing a failure by an SNE to comply with obligations are to be communicated also to the relevant seconding national authority.

The provisions for disciplinary procedures should be applied to SNE only if the relevant seconding Member State explicitly agrees to such application.

In all cases concerning the SNEs the relevant provisions of Frontex SNE Rules should be applied in parallel where feasible,

(5) Following Article 110 of the Staff Regulations, the Commission has given its agreement to Frontex implementing rules on administrative inquiries and disciplinary procedures on 23 January 2012,

(6) Clear and detailed provisions should be laid down regarding personal data processing in accordance with the Data Protection Regulation\(^2\) and taking into account the European Data Protection Supervisor’s guidelines\(^3\),

(7) The European Data Protection Supervisor has given his opinion on the provisions of this Decision on 22 June 2011\(^4\).

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\(^3\) Guidelines concerning the processing of personal data in administrative inquiries and disciplinary proceedings by European institutions and bodies, 23 April 2010.

\(^4\) Case 2010-0752
(8) Frontex Staff Committee has given its views on this Decision on 22 August 2011,

HAS DECIDED AS FOLLOWS

Article 1
Object
The rules annexed hereto are adopted as Frontex Disciplinary Procedure.

Article 2
Repeal
Decision of the Management Board No 6/2005 of 30 June 2005, applying the EU Commission Implementing rules of the Staff Regulations is hereby repealed and replaced by this Decision as far as the disciplinary procedure concerns.

Article 3
Entry into force
This Decision and the rules in the Annex enter into force on the day following the date of their adoption.

Done in Warsaw, 27 September 2012

For the Management Board

[signed]
Ralf Göbel
Chairperson
ANNEX

FRONTEX DISCIPLINARY PROCEDURE

PART I
GENERAL PROVISIONS

Article 1
Scope

1. This Decision sets out the implementing rules in Frontex for the Staff Regulations of Officials of the European Union and the Conditions of employment of other servants laying down the provisions governing the administrative inquiries and the disciplinary procedures.

2. The provisions of Part I, Part II and Part IV of this Decision apply by analogy to those Frontex staff members that are seconded to Frontex in accordance with Frontex seconded national experts (SNE) rules and to the guest officers seconded to Frontex pursuant to Article 3b(3) of the Frontex Regulation.

3. The application of the provisions of Part III of this Decision to staff members referred to in paragraph 2 must be explicitly agreed between the seconding Member State and Frontex.

4. This decision also defines the rules concerning the processing of personal data in the framework of aforementioned procedures.

Article 2
Definitions

Staff member hereby means any individual working or having worked in Frontex.

Third party hereby designates any individual, including staff members, other than the person subject to an administrative inquiry or disciplinary proceeding.

PART II
ADMINISTRATIVE INQUIRIES

Article 3
Opening the administrative inquiry

1. The decision to open an administrative inquiry pursuant to Article 86(2) of the Staff Regulations and Article 2 of Annex IX to the Staff Regulations lies with the Deputy Executive Director.

2. The Deputy Executive Director takes a decision to open an administrative inquiry on its own initiative or on proposal of any Division Director.

3. The decision to open an administrative enquiry defines the subject and scope of the enquiry and appoints one or more appropriately qualified staff members to conduct the enquiry.

Footnote:
5 Management Board decision No 22/2009 of 25 June 2009 laying down rules on the secondment of national experts (SNE) to Frontex.
4. In conjunction with the opening of an administrative inquiry the Deputy Executive Director may also adopt the decision, after having heard the staff member concerned, to reassign him, in the interest of Frontex, pending the outcome of the inquiry.

Article 4

Previous consultations

1. If justified by the circumstances of the case, before opening the inquiry, the European Anti-Fraud Office (hereinafter OLAF) is consulted in order to ascertain that OLAF is not undertaking an investigation for its own purposes and does not intend to do so.

2. In cases where the purpose of the administrative inquiry is to determine whether there has been Information and Communications Technology abuse, Frontex Data Protection Officer is consulted.

Article 5

Investigation activity

1. The investigators conduct the inquiry in order to establish the facts and any responsibility in relation to given allegations. In seeking evidences, they have the power to obtain documents, summon any person subject to the Staff Regulations and any seconded national expert to Frontex, and carry out on-the-spot investigations. They shall receive assistance from other staff members. Upon request, they may inform the Administration Division Director on the stage of the inquiry.

2. When carrying out their mission, investigators are independent and shall neither seek nor take instructions.

3. The investigation includes all aggravating and extenuating circumstances.

Article 6

Information

1. As soon as an administrative inquiry suggests that a staff member is personally involved in an affair, he shall be notified by the investigators provided that information does not hinder the inquiry.

2. The investigators may defer this notification with the written agreement of the Deputy Executive Director.

Article 7

Preliminary hearing with the investigators

1. No facts or circumstances relating to a staff member by name may be mentioned in the administrative inquiry report before he has been given an opportunity to express an opinion as to these facts and circumstances to the appointed investigators.

2. The staff member is notified to attend a hearing in writing with 15 days notice.

3. Depending on the case in question, a call to attend a hearing may be made at the same time as notification of the opening of the administrative inquiry referred to in Article 6.

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6 Within the meaning of Frontex Management Board decision No 22/2009 of 25 June 2009 laying down rules on the secondment of national experts (SNE) to Frontex.
4. The staff member has the right to be accompanied to any hearing by a person of his/her choice. Any costs pertaining thereto are to be borne by the staff member.

5. The staff member has the right to receive a copy of the hearing record.

Article 8
Concluding report

1. The administrative inquiry terminates with a concluding report containing, in summary form:
   a) the main evidence, indicating sources (witnesses' statements, documents or other);
   b) the facts and circumstances in question;
   c) whether the rules and procedures applicable to the situation were respected;
   d) any individual responsibility, specifying any obligations under the Staff Regulations that have been breached or disregarded having regard to aggravating or mitigating circumstances;
   e) the record of the hearing of the staff member.

2. Copies of all the relevant documents are attached to the report.

3. Subject to the protection of the legitimate interests of third parties, the draft report is sent to the staff member for comments. If the staff member does not submit his written comments within 10 days, he is deemed to have waived his rights to comment the report.

Article 9
Information

The Deputy Executive Director informs the staff member on the conclusion of the inquiry and, upon request, sends him a copy of the final report, subject to the protection of the legitimate interests of third parties.

Article 10
Hearing with the DED

1. On the basis of the Investigation report or whenever there is sufficient evidence of responsibility, the Deputy Executive Director notifies the staff member of all evidence in the files by registered letter with acknowledgement of receipt.

2. After the aforementioned notification, the Deputy Executive Director hears the staff member, giving him 10 days' notice.

3. The hearing is held with the assistance of a member of the Legal Affairs Unit.

4. During the hearing the staff member may be assisted by a person of his/her choice. Any costs pertaining thereto are to be borne by the staff member.

5. If the staff member wishes not to be present or cannot be heard, he may be asked to comment in writing or may be represented by a person of his choice.

6. The record of the hearing shall be forwarded to the staff member by registered letter with acknowledgement of receipt, for signature. The staff member shall forward the signed record and/or his/her comments and remarks within 15 calendar days from receipt. Failure to do so within that period shall result in the record being considered as approved.
7. If further interviews have to be conducted following the hearing referred to in paragraph 2, the staff member receives a copy of the signed records of those interviews provided that the facts mentioned there have a direct bearing on the preliminary allegations made against him.

Article 11
Decision

After hearing the staff member the Deputy Executive Director makes a recommendation to the Executive Director to adopt one of the following decisions:
(a) decide that no case can be made against the staff member; or
(b) decide, even if there is or appears to have been a failure to comply with obligations, that no disciplinary measure shall be taken and, if appropriate, address a warning7 to the staff member; or
(c) decide to initiate the disciplinary proceedings provided for in Article 15,
(d) decide to initiate disciplinary proceedings before the Disciplinary Board.

The Executive Director adopts one of the decisions referred to supra.

Article 12
Decision to take no further action

If, under Article 11(a) the Executive Director decides that no case can be made against the staff member, the latter is notified by registered letter with acknowledgement of receipt in writing.

Article 13
Decision to issue a warning

If, under Article 11(b), the Executive Director decides to issue a warning to the staff member he informs the latter accordingly. A copy of the decision shall be inserted in his personal file.

PART III
DISCIPLINARY PROCEDURES

Article 14
Opening the disciplinary procedure

The disciplinary proceedings are initiated by sending the staff member concerned a notification from the Executive Director informing him of the accusations and the choice of procedure to be followed (referral or not to the Disciplinary Board).

Article 15
Disciplinary proceedings not involving the Disciplinary Board

Without consulting the Disciplinary Board, the Executive Director may decide on the penalty of a written warning8 or reprimand. The staff member shall be heard before the penalty is imposed. The decision imposing the penalty shall be inserted in the staff member's personal file. A copy of the decision will be forwarded to the staff member by registered letter with acknowledgement of receipt.

Article 16
Disciplinary proceedings before the Disciplinary Board

7 “Mise en garde”
8 “Avertissement par écrit”.
1. If the Executive Director decides to initiate disciplinary proceedings before the Disciplinary Board, he shall send a report to the Chairman of the Disciplinary Board. The Legal Affairs Unit and the staff member concerned shall receive a copy of the report.

2. Pursuant to Article 16(2) of Annex IX to the Staff Regulations, the Executive Director notifies the Chairman of the Disciplinary Board of the name of his representative.

3. If the staff member intends to acknowledge misconduct within the meaning of Article 21, the Chairman informs the staff member, pursuant to Article 14(3) of Annex IX to the Staff Regulations, of the possible consequences of an acknowledgment of misconduct.

4. The staff member has 15 days from the date of receipt of the report initiating the disciplinary proceedings to prepare a defence.

**Article 17**

**Hearing**

The staff member shall be heard by the Disciplinary Board. During the hearing he may be assisted by a person of his choice and submit observations in writing or orally, whether in person or through a representative and call witnesses.

**Article 18**

**Additional Investigations**

1. If the Disciplinary Board considers that it has no sufficiently clear information on the facts complained of or the circumstances in which they arose, it shall order an investigation in which each side can submit its case and reply to the case of the other side.

2. The Chairman or a member of the Board shall conduct the investigation on behalf of the Board. For the purposes of the investigation, the Board may call for any documents relating to the matter before it.

**Article 19**

**Opinion**

After hearing the staff member and, if necessary, conducting additional investigations, the Disciplinary Board delivers an opinion to the Executive Director as to whether the facts complained of are established and as to any penalty to which those facts should give rise.

**Article 20**

**Decision**

1. After hearing the staff member, the Executive Director shall take its decision within two months of receipt of the opinion of the Disciplinary Board. The staff member is informed by registered letter with acknowledgement of receipt.

2. The Executive Director may impose one of the following penalties:
   (a) written warning⁹;
   (b) reprimand;
   (c) deferment of advancement to a higher step for a period of between one and 23 months;
   (d) relegation in step;

⁹ "Avertissement par écrit".
(e) temporary downgrading for a period of between 15 days and one year;
(f) downgrading in the same function group;
(g) classification in a lower function group, with or without downgrading;
(h) 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.

3. If a penalty is imposed, reasons must be given for the decision.

4. If the Executive Director decides to close the case without imposing any disciplinary penalty
the staff member may request that this decision be inserted in his personal file.

Article 21
Acknowledgement of misconduct

1. At any time, during the disciplinary procedure and in the presence of the Chairman of the
Board, the staff member concerned may acknowledge misconduct on his part and accept
unreservedly the report submitted by the Executive Director.

2. The Executive Director may withdraw the case from the Board and impose one of the following
penalties:
   (a) written warning;
   (b) reprimand;
   (c) deferment of advancement to a higher step for a period of between one and 23 months;
   (d) relegation in step.

PART IV
DATA PROTECTION

Article 22
Principle of necessity and proportionality

In the course of conducting administrative inquiries and disciplinary proceedings, as well as to
the disciplinary reports, the personal data collected and processed is restricted to the necessary
and proportionate for the purpose of establishing the facts and, where necessary, determine
whether there has been a failure to comply with the obligations incumbent on Frontex staff
members.

Article 23
Categories and subjects of data

1. The data undergoing processing are as follows:
   a) surname, first name, personnel number, grade/step,
   b) data relating to status under the Staff Regulations and Conditions of employment of other
servants,
   c) data relating to the conduct, action or inaction of persons under investigation and/or subject
to disciplinary proceedings,
   d) data relating to the legal definition of such action or inaction with regard to the Staff
Regulations and to other obligations by which the persons in question are bound,
   e) data relating to the individual responsibility of the persons concerned, including financial
liability,
   f) data relating to penalties imposed on the persons concerned, if required.
2. The data processing involves the following persons:
a) Staff member;
b) Individuals who participate in an inquiry and disciplinary proceedings in a role other than that of the accused staff member, including witnesses, “whistleblowers” and others.

Article 24
Special categories of data

1. Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and of data concerning health or sex life cannot be processed unless it is necessary for the purposes of complying with the specific rights and obligations of Frontex in the field of employment law or if absolutely necessary for conducting the investigation at stake.

2. Processing of data relating to offences or criminal convictions may be subject to authorization in accordance with Article 10(5) of the Data Protection Regulation. The decisions implementing Article 86 of the Staff Regulations and, by analogy, Articles 49 to 51 and 119 of the CEOS should be regarded as an authorization to process these data.

3. Frontex Data Protection Officer is consulted before any processing referred to supra.

4. Subject to the provision of appropriate safeguards, and for reasons of substantial public interest, exemptions in addition to those laid down in paragraph 1 may be laid down by the Treaty on European Union and the Treaty on the Functioning of the European Union or other legal instruments adopted on the basis thereof or, if necessary, by decision of the European Data Protection Supervisor.

5. Processing of data relating to offences, criminal convictions or security measures may be carried out only if authorised by the Treaty on European Union and the Treaty on the Functioning of the European Union or other legal instruments adopted on the basis thereof or, if necessary, by the European Data Protection Supervisor, subject to appropriate specific safeguards.

Article 25
Traffic data and confidentiality of electronic communications

1. Processing of personal data relating to internet connections and the use of e-mail or the telephone in the course of administrative inquiries and disciplinary proceedings may be carried out by Frontex. This data shall be erased or made anonymous as soon as possible and no later than six months after collection, unless they need to be kept for a longer period to establish, exercise or defend a right in a legal claim pending before a court.

2. If, in the course of administrative inquiries or disciplinary proceedings, the need arises to gain access to electronic communications, the restriction of the confidentiality principle must be in accordance with the general principles of European Union law.

3. These restrictions can be allowed only in exceptional circumstances where no other less invasive method could be used and after the DPO is consulted on this matter. Such restrictions may take place only if it is in accordance with Article 20 of the Data Protection Regulation.

Article 26
Transfer of data

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1. Personal data may in the course of an investigation be transmitted to OLAF as evidence of fraud and following an administrative inquiry conducted by OLAF.

2. Where the disciplinary decision has a financial impact or involves a change in the grade it is forwarded to the Administration Division for the adjustment of the salary. The Administration Division then requests the salary adjustment to the Paymaster’s Office.

3. If the staff member contests a Executive Director’s decision, the disciplinary file may be referred to the Court of Justice of the European Union.

4. If the staff member addresses a complaint the disciplinary file may be referred to the European Ombudsman.

**Article 27**

**Right of access**

1. Without prejudice to Article 6, supra, and to Articles 22(a) and 22(b) of the Staff Regulations, the staff member is informed of his right of access to various documents concerning him in the event of a disciplinary proceeding.

2. The staff member can request access and copies of all documents directly related to the allegations made against him, except documents for which disclosure could jeopardize the privacy and right to data protection of third parties, or the legitimate guarantees given to the “whistleblowers”. When disclosure of the full document is not possible for the reasons explained supra, the staff member should have access, whenever it is possible, to at least an abridged version or excerpts of the document.

3. The staff member has the right to rectification in order to ensure completeness of his disciplinary file. This may be done, inter alia, by allowing him to add his comments.

4. Any exceptions to the right of access of staff members should be strictly applied in light of necessity and they should be balanced in relation to the right of defence.

5. Particularly, in the case of “whistleblowers”, informants or witnesses, any restriction to the right of access should not be allowed unless such restriction is made in accordance with the Article 20 of the Data Protection Regulation. In any case, the identity of “whistleblowers” should be kept confidential in as much as this would not contravene national rules regarding judicial proceedings.

**Article 28**

**Right of information**

1. In the framework of the disciplinary procedures, the information to be provided to the staff member concerned includes the processing of personal data, the identity of the data controller, the purposes of the processing operation for which the data are intended, the recipients or categories of recipients and the existence of a right of access to and the right to rectify the data.

2. The right to information can be restricted in certain cases if it constitutes a necessary measure in accordance with Article 20 of the Data Protection Regulation. The data controller should inform the staff member of the principal reasons on which the application of the restriction is based as well as of his/her right to have recourse against this decision.
Article 29
Files

1. The information and documents generated through the administrative inquiry and in the context of the above mentioned disciplinary procedures will be stored in paper form in Frontex "administrative inquiries and disciplinary procedures" file. The file will be structured by reference to individual inquiries.

2. The Administration Division will keep the Frontex "administrative inquiries and disciplinary procedures" file. An electronic version of the same file will be stored in the management software.

3. In addition, a copy of the decisions taken in the context of administrative inquiries may also be stored in the personal file of the staff member. This includes the copy of the decision to take no further action if the staff member requires so.

4. A copy of the administrative or disciplinary decision will be stored in the personal file of the staff member involved, taking into account the provision of Article 27 of Annex IX to the Staff Regulations concerning the request of deletion of such data.

5. When the Executive Director decides to close the case without imposing any disciplinary penalty, there should be no traces of the acquittal decision in the personal file, unless the staff member requests so.

Article 30
Conservation period

1. Regarding conservation periods, the following rules apply both to electronic and paper files:
   a) Files which have led to the opening of disciplinary procedure will be stored for a period of 20 years starting from the date of the Executive Director's decision concluding the procedure;
   b) Files where the Executive Director decides that no case can be made against the staff member or where a warning is issued will be stored for a period of 5 years.

2. Files and all related information may be deleted upon request by the staff member after a period of:
   - Eighteen months in the case of a warning;¹¹
   - Three years in the case of the penalty of a written warning or reprimand;¹²
   - Six years in the case of another penalty.

3. The decision to grant the request is taken by the Executive Director. If the Executive Director denies the request, his decision must be duly justified.

¹¹ "Mise en garde"
¹² "Avertiissement par écrit"