 MANAGEMENT BOARD DECISION 26/2018
 of 25 October 2018

adopting general implementing provisions on the conduct of administrative inquiries and disciplinary procedures

THE MANAGEMENT BOARD

Having regard to the European Border and Coast Guard Regulation1, and in particular Article 62(2)(s) thereof,

Having regard to the Staff Regulations of Officials (‘Staff Regulations’) and the Conditions of Employment of Other Servants (‘CEOS’) of the European Union, laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68, and in particular Article 86 and Annex IX to the Staff Regulations, and Articles 50a and 119 of the CEOS,

Having regard to the agreement of the European Commission pursuant to Article 110(2) of the Staff Regulations of 14 June 20182,

After consulting the Staff Committee on 8 January 2016 and having received its response on 2 February 2016,

Whereas:

(1) Pursuant to Article 58(1) of the European Border and Coast Guard Regulation, the Staff Regulations and the CEOS are applicable to the staff of Frontex.

(2) Pursuant to Articles 58(3) and 62(2)(s) of the European Border and Coast Guard Regulation, the Management Board shall adopt necessary implementing measures concerning staff in agreement with the Commission in accordance with Article 110 of the Staff Regulations.

(3) Pursuant to Article 2.3 of Annex IX to the Staff Regulations, the implementing provisions governing the conduct of administrative inquiries shall be adopted.

(4) Pursuant to Article 30 of Annex IX to the Staff Regulations, implementing provisions for Annex IX of the Staff Regulations “disciplinary proceedings” shall be adopted.

(5) A preventive approach and transparency must be ensured in disciplinary matters.

(6) Frontex should apply the principles of Regulation (EC) No 45/20013 to the processing of personal data relating to staff.

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HAS DECIDED AS FOLLOWS:

Article 1
The annex containing Frontex’s general implementing provisions on the conduct of administrative inquiries and disciplinary procedures is adopted.

Article 2
Management Board Decision No 23/2012 of 27 September 2012 adopting Frontex disciplinary procedure is repealed.

Article 3
This Decision enters into force on the day following its adoption.

Done in by written procedure on 25 October 2018.

For the Management Board

[signed]
Marko Gašperlin
Chairperson
ANNEX

General implementing provisions on the conduct of administrative inquiries and disciplinary procedures

PART I

GENERAL PROVISIONS

Article 1

Scope

1. This annex sets out Frontex’s internal rules on administrative inquiries and disciplinary proceedings.

2. Information obtained or forwarded at any stage of the procedures described in the present rules shall enjoy the protection given by Regulation (EC) No 45/2001 of the European Parliament and of the Council.

Article 2

Definitions

1. Staff member means any staff to whom the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union apply.

2. Person concerned means a staff member who is subject to an administrative inquiry or disciplinary proceeding.

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

PART II

ADMINISTRATIVE INQUIRIES

Article 3

Previous consultations

Before opening the administrative inquiry, the Authority Authorised to Conclude Contracts (AACC) shall consult the European Anti-Fraud Office (hereinafter OLAF) to ascertain that that Office is not undertaking an investigation for its own purposes and does not intend to do so, unless it is clear that the alleged facts do not fall under the scope of OLAF’s competences. As long as OLAF is conducting an investigation within the meaning of Regulation 883/2013, no administrative inquiry shall be opened regarding the same facts.

Article 4

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 AACC.

2. Upon analysis of the initial information, the AACC decides to either not pursue the case, or, in view of the sufficiently clear indication of a potential breach of obligations enshrined in the Staff Regulations,

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1 Regulation (EC) No 45/2001 of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies (OJ L 8, 12.1.2001, p. 1).

to open an administrative inquiry.

3. The decision to open an administrative inquiry defines the subject and scope of the inquiry and appoints one or two investigators. If the person concerned is a Director of Division, the Deputy Executive Director, or the Executive Director, one of the investigators must be at least at Head of Unit level, or equivalent.

4. In conjunction with the opening of an administrative inquiry the AACC may adopt any precautionary measures, such as temporary internal reassignment, in the interest of the service, pending the outcome of the inquiry, after having heard the staff member(s) concerned.

5. The person concerned shall be informed without delay once an administrative inquiry has been opened in his or her regard, provided that this is not harmful to the inquiry. In such a case, the investigators may defer this notification with the written agreement of the AACC.

Article 5
Investigator and investigations

1. An investigator is an individual appointed to conduct the administrative inquiry investigations and may be:
   (a) a Frontex staff member;
   (b) a staff member of another EU Agency who is part of the Inter-Agency Pool of Investigators;
   (c) an externally contracted person.

2. Where an investigator is not a Frontex staff member, a staff member is appointed as liaison.

3. For the purpose of the investigation, investigators are independent and neither seek nor take instructions.

4. The investigators conduct the administrative inquiry investigations in order to establish the facts and responsibilities in relation to the allegations, and to consider all aggravating and mitigating circumstances.

5. In the course of the administrative inquiry, the investigators have the power to request and obtain documents, summon the person concerned, staff members and third parties, and carry out on-the-spot checks.

6. The administrative inquiry investigations shall last for a period appropriate to the circumstances and complexity of the case.

7. The investigators collaborate, if necessary, with the Inspection and Control Office and with the Head of the Legal and Procurement Unit on procedural requirements and deadlines to be respected.

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

Article 6
Administrative inquiry investigation hearing

1. The person concerned is notified to attend a hearing in writing with 7 calendar days’ notice.

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

3. The person concerned has the right to be accompanied to any hearing by a person of their choice, with prior notification of the name of the person to be made at least 1 calendar day in advance to the investigator. Any costs pertaining thereto are not to be borne by Frontex.
Article 7
Finalisation of the administrative inquiry

1. Before written conclusions referring by name to a person concerned are drawn up, the person concerned shall be given the opportunity to comment on the facts concerning him or her.

2. If the person concerned does not submit written comments within 7 calendar days of the receipt of the summary of the facts, conclusions will be drawn up on the basis of the information already gathered in the course of the inquiry. If the person concerned comments on the facts, those comments shall be added to the inquiry report.

3. The administrative inquiry terminates with a report containing:
   (a) all the evidence, indicating sources (witnesses’ statements, documents or other);
   (b) the facts and circumstances in question that have been established;
   (c) any individual responsibility, specifying any obligations under the Staff Regulations that have been breached or disregarded having regard to aggravating or mitigating circumstances;
   (d) the record of the hearing of the person concerned;
   (e) the comments of the person concerned on the facts.

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

Article 8
Hearing with the AACC

1. On the basis of the investigation report, or, if applicable, OLAF’s report, the AACC notifies the person concerned of all evidence in the files, including the administrative inquiry report, in writing, either served personally or by registered letter with acknowledgement of receipt.

2. In the aforementioned notification, the AACC summons the person concerned for a hearing which should, in principle and unless otherwise agreed by the person concerned, not take place before 7 calendar days’ notice.

3. The AACC is assisted by a minute-taker.

4. During the hearing the person concerned may be assisted by a person of their choice. Any costs pertaining thereto are not borne by Frontex.

5. If the person concerned cannot be heard because of objective reasons, he/she may be asked to comment in writing or may be represented by a person of his/her choice.

6. If possible, the minutes of the hearing are signed at the end of the hearing. When this is not possible, the record of the hearing is communicated to the person concerned in writing, either served personally or by registered letter with acknowledgement of receipt, for signature. The person concerned forwards the signed record together with any comments and remarks within 7 calendar days from receipt. Failure to do so results in the record communicated to the person concerned being considered as approved and final.

7. When the alleged facts need to be further verified, the result of the verifications shall be communicated to the person concerned for comments.

Article 9
Follow-up by the AACC

1. After hearing the person concerned, the AACC adopts one of the following decisions:
   (a) decides that no case can be made against the person concerned; or
(b) decides, even if there is or appears to have been a failure to comply with obligations pursuant to the Staff Regulations, that no disciplinary measure shall be taken and, addresses a non-disciplinary warning\(^3\) to the person concerned, which will be inserted in the personal file;
(c) decides to initiate disciplinary proceedings not involving the Disciplinary Board;
(d) decides to initiate disciplinary proceedings before the Disciplinary Board.

2. For the specific case of paragraph 1(b), the person concerned is heard by the AACC before a final decision is taken.

**Article 10**

**Information**

1. The AACC informs the person concerned of the decision referred to in Article 9 of the present rules, in writing, either served personally or by registered letter with acknowledgement of receipt.

2. If the administrative inquiry was opened due to a request for assistance of a staff member under Article 24 of the Staff Regulations, that staff member is informed by the AACC of the opening, closure and conclusions of the administrative inquiry in writing, either served personally or by registered letter with acknowledgement of receipt.

**PART III**

**DISCIPLINARY PROCEEDINGS**

**Article 11**

**Opening of the disciplinary proceedings**

The disciplinary proceedings are initiated by sending the person concerned a notification from the AACC indicating the procedure to be followed (referral or not to the Disciplinary Board) and including a report containing a statement of the facts complained of, an identification of the alleged breaches and the circumstances in which the breaches arose, including any aggravating or extenuating circumstances.

**Article 12**

**Disciplinary proceedings not involving the Disciplinary Board**

1. Before the decision on a penalty is made, the person concerned is informed of the possible penalty and invited for a hearing with the AACC, with at least 7 calendar days' notice.

2. Without consulting the Disciplinary Board, the AACC may decide on the penalty of a written warning\(^4\) or reprimand. The AACC may also decide to close the case without imposing a penalty or to address a warning to the person concerned.

3. The decision imposing the penalty is communicated to the person concerned in writing, either served personally or by registered letter with acknowledgement of receipt and it is inserted in their personal file.

**Article 13**

**Disciplinary proceedings before the Disciplinary Board**

1. If the AACC decides to initiate disciplinary proceedings before the Disciplinary Board, he sends a report to the Chairperson of the Disciplinary Board. The person concerned receive a copy of the report.

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\(^3\) "Mise en garde".

\(^4\) "Avertissement par écrit".
2. Pursuant to Article 16(2) of Annex IX to the Staff Regulations, the AACC notifies the Chairperson of the Disciplinary Board of the name of his representative.

3. If the person concerned intends to acknowledge misconduct within the meaning of Article 18 of the present rules, the Chairperson informs the person concerned, pursuant to Article 14(3) of Annex IX to the Staff Regulations, of the possible consequences of an acknowledgment of misconduct.

4. The person concerned has not less than 15 calendar days from the date of receipt of report initiating the disciplinary proceedings to prepare a defence.

Article 14
Disciplinary Board hearing

1. The person concerned is heard by the Disciplinary Board.

2. During the hearing the person concerned may be assisted by a person of their choice, with a prior notification of the name of the person at least 1 calendar day in advance, submit observations in writing or orally, whether in person or through a representative, and call witnesses. Any costs pertaining thereto are not borne by Frontex where the disciplinary proceedings result in the imposition of one of the penalties provided for in Article 9 of Annex IX to the Staff Regulations.

3. During the hearing the representative of the AACC may call witnesses.

Article 15
Additional investigations by the Disciplinary Board

1. If the Disciplinary Board considers that it has insufficiently clear information on the facts or circumstances, it orders an investigation in accordance with Article 17 of Annex IX to the Staff Regulations.

2. The Chairperson or a member of the Disciplinary Board conducts the investigation on behalf of the Disciplinary Board. For the purposes of the investigation, the Disciplinary Board may request for any documents or summon any person related to the matter.

Article 16
Opinion of the Disciplinary Board

After hearing the person concerned and, if necessary, conducting additional investigations, the Disciplinary Board delivers an opinion to the AACC as to whether the facts are established and as to any penalty to which facts should give rise, in accordance with Article 18 of Annex IX to the Staff Regulations.

Article 17
Decision of the AACC

1. The person concerned is informed of the opinion of the Disciplinary Board and invited to a hearing with the AACC with 10 calendar days’ notice.

2. After hearing the person concerned, the AACC takes a decision within two months of receipt of the opinion of the Disciplinary Board. The person concerned is informed in writing, either served personally or by registered letter with acknowledgement of receipt.

3. The AACC may 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;
(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.

4. The AACC may also decide to close the case without imposing a penalty or to address a warning to the person concerned.

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

6. If the AACC decides to close the case without imposing any disciplinary penalty, the person concerned may request that this decision be inserted in their personal file.

Article 18
Acknowledgement of misconduct

1. At any time, during the disciplinary proceeding and in the presence of the Chairperson of the Disciplinary Board, the person concerned may acknowledge misconduct and accept unreservedly the report submitted by the AACC.

2. The AACC may withdraw the case from the Disciplinary Board and impose one of the following penalties, after the Chairman of the Disciplinary Board has delivered an opinion on the penalty considered:
   (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.

Article 19
Personal files

1. A copy of the non-disciplinary warning or disciplinary decision is stored in the personal file of the person concerned, taking into account Article 27 of Annex IX to the Staff Regulations concerning the request of deletion of such data.

2. After 18 months starting from the date of the non-disciplinary warning, the person concerned may address a request to the AACC to have it removed from his or her personal file.

3. When the AACC decides to close the case without imposing any disciplinary penalty, and without prejudice to Article 9(1)(b) of the present rules, there should be no traces of the decision in the personal file, unless the person concerned requests so.

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