

UPDATE OF THE ARRANGEMENTS FOR SUBMITTING

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REQUESTS AND COMPLAINTS UNDER ARTICLE 90(1) AND (2) OF THE STAFF REGULATIONS

Any person subject to the Staff Regulations or the Conditions of Employment of Other Servants may send the appointing authority (or ‘appropriate authority’)

- a request for that authority to take a decision;
- a complaint seeking the annulment or amendment of a decision taken by the appropriate authority, including the rejection of a request, constituting an act prejudicial to him or her.

REQUESTS

1. DEFINITION

By a request under Article 90(1) of the Staff Regulations, an official - or a person subject to the Staff Regulations or the Conditions of Employment of Other Servants (CEOS) - asks the appropriate authority to take a decision concerning him or her.

The purpose is therefore to secure a decision from the appropriate authority, which may either grant the request or, by rejecting it, open the way to a complaint.

Requests should not seek revision of a decision already taken, unless new evidence comes to light and a request can be submitted to have a decision reviewed.

2. THE PERSON CONCERNED

2.1. Who may submit a request?

Any person subject to the Staff Regulations of Officials, and, by analogy, temporary staff, contract staff and special advisers covered by the CEOS, may submit a request under Article 90(1) of the Staff Regulations to the appointing authority or the authority responsible for concluding contracts of employment, as appropriate.

The persons referred to in the Staff Regulations or the CEOS are not only the serving staff listed above but also other categories such as probationers awaiting establishment, former staff or those entitled under them in the event of death and candidates in a competition¹.

2.2. Addressee

Whether explicitly or implicitly, the addressee of a request is the appointing authority.² Accordingly, the letter submitting the request should be addressed to the appointing authority and headed 'Request under Article 90(1) of the Staff Regulations'. The power delegated to the appointing authority by Article 90(1) of the Staff Regulations is exercised by the persons listed in the Commission decision of 4 June 2013 (Administrative Notice No 26-2013 of 7 June 2013).

2.3. Address and method of submission

One single copy of the request should be submitted to the "Appeals and Case Monitoring" Unit (HR.D.2), by any **one** of the following ways:

- by e-mail to the operational mailbox HR MAIL D2 (hr-mail-d2@ec.europa.eu)
or
- by fax (no. 32-2-295.00.39 or 32-2-299.11.32) or
- by post, to the office address SC11 4/57 or
- handed in at the office address SC11 4/57 (from 09.00 to 12.00 and from 14.00 to 17.00).

¹ Where the rules governing their conditions of employment so provide, local staff may make requests to the appropriate authority in the same way as officials. However, disputes between local staff and an institution cannot be brought before the European Union Civil Service Tribunal or the Court of Justice of the European Union: they must be referred to an arbitration board on the conditions defined in the arbitration clause contained in their contract (Article 122 of the CEOS).

² Or, for staff working under the CEOS, the authority responsible for concluding contracts of employment.

To facilitate the procedure, the person concerned should enclose a form with the request. This form is available on the "Complaints and Appeals" web pages (https://myintracomm.ec.europa.eu/hr_admin/en/appeals/Pages/requests.aspx) and may also be obtained from the "Appeals and Case Monitoring" Unit.

2.4. Time allowed for submission

A request may be made at any time. However, a request concerning the same matter as an earlier request or complaint which has received no reply or a negative reply may not reopen the period for the submission of a complaint allowed by Article 90(2) of the Staff Regulations (see 3.2 below).

The registration stamp of the "Appeals and Case Monitoring" Unit will be taken as proof of the date the request was submitted. In the case of requests submitted by e-mail, the date of registration will be the date on which it is sent or the first working day following that date if it is a holiday.³

2.5. Form and content

The form, which is not subject to any particular conditions, is not the factor which determines whether a request is to be regarded as such. Only the content does so. Accordingly, the administration may regard a submission inviting it to review an earlier decision as a complaint even if it is entitled 'request'.

A request must normally indicate that it is a request under Article 90(1) of the Staff Regulations and state the identity of the person concerned, its purpose and the reasons why it is being made and include the place, date and signature. Any relevant document should be attached.

3. THE ADMINISTRATION

3.1. Treatment of the request

The "Appeals and Case Monitoring" Unit sends the person submitting the request an acknowledgement of receipt, normally by e-mail. The acknowledgement of receipt contains information such as the number of the request, the date of registration and the deadline for the reply.

There is no particular procedure for dealing with a request. It includes consideration of the purpose of the request by the department responsible for taking a decision and any checks needed to adopt that decision.

3.2. Decision and time allowed

A reasoned decision should be adopted by the appropriate authority and sent to the person concerned, with no particular formality, within four months of the date on which the request is made.

³ Article 3(4) of Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

Time periods will be calculated from the date of registration by the "Appeals and Case Monitoring" Unit.

If the request is rejected, the person concerned may lodge a complaint within three months from the date of notification of the decision.

Failure to reply to a request within the period of four months given to the appointing authority to adopt its decision means that the request has been implicitly rejected. A complaint against such a decision may also be lodged within three months of the implicit rejection. A late reply by the appointing authority (after the four-month period) does not reopen the three-month period available for lodging a complaint.

COMPLAINTS

4. DEFINITION

By lodging a complaint under Article 90(2) of the Staff Regulations⁴, an official contests a decision by the appropriate authority which he or she considers prejudicial; the authority has either taken an explicit or implicit rejection decision or it has failed to take a measure required by the Staff Regulations:

Examples:

- complaint against a refusal to reimburse medical expenses;
- complaint against the appraisal report or a decision under the promotion exercise;
- complaint against a decision not to pay daily allowances on recruitment.

Unlike a request, a complaint presupposes the prior existence of an administrative act taken by the appropriate authority. This act may be challenged if it is final (preparatory acts may not be challenged) and personally and individually prejudicial (the person concerned must have a personal, legitimate, direct, substantive and current interest in having the decision cancelled or amended).

It should be noted that a complaint is the only means provided by the Staff Regulations for a member of staff to contest a decision by the appropriate authority which, in his or her view, affects statutory rights and is prejudicial. Any request for the review or reconsideration of such a decision is therefore to be regarded as a complaint for the purposes of compliance with the deadlines listed below⁵.

5. THE PERSON CONCERNED

5.1. Who may lodge a complaint?

Any person subject to the Staff Regulations of Officials, and, by analogy, temporary staff, contract staff and special advisers covered by the Conditions of Employment of

⁴ In the case of temporary and contract staff and special advisers, Articles 46, 117 and 124 of the CEOS apply.

⁵ Decisions taken by a selection board for a competition and decisions relating to the appraisal reports may be challenged directly before the European Union Civil Service Tribunal.

Other Servants (CEOS), may lodge a complaint under Article 90(2) of the Staff Regulations to the appointing authority or authority responsible for concluding contracts of employment, as appropriate.

The persons referred to in the Staff Regulations or the CEOS are not only the serving staff listed above but also other categories such as probationers awaiting establishment, former staff or those entitled under them in the event of death and candidates in a competition.⁶

5.2. Addressee

Whether explicitly or implicitly, the addressee of a complaint is the appointing authority.⁷ Accordingly, the letter lodging the complaint will be deemed to be addressed to the appointing authority. The power delegated to the appointing authority by Article 90(2) of the Staff Regulations is exercised by the persons listed in the Commission decision of 4 June 2013 (Administrative Notice No 26-2013 of 7 June 2013).

5.3. Address and method of submission

One single copy of the complaint should be submitted to the "Appeals and Case Monitoring" Unit (HR.D.2), by any **one** of the following ways:

- by e-mail to the operational mailbox HR MAIL D2 (hr-mail-d2@ec.europa.eu) or
- by fax (no. 32-2-295.00.39 or 32-2-299.11.32) or
- by post, to the office address SC11 4/57 or
- handed in at the office address SC11 4/57 (from 09.00 to 12.00 and from 14.00 to 17.00).

To facilitate the procedure, the person concerned should enclose a form with the complaint. This form is available on the "Complaints and Appeals" web pages (https://myintracomm.ec.europa.eu/hr_admin/en/appeals/complaints/Pages/index.aspx) and may also be obtained from the "Appeals and Case Monitoring" Unit.

5.4. Time allowed for submission

A complaint must be lodged within three months. This period starts:

- on the date of publication of the act if it is a measure of a general nature;
- on the date of notification of the decision to the person concerned and in any event no later than the day when they become aware of it if it is a measure of an individual nature; however, if an act of an individual nature is such as to be prejudicial to a person other than the person directly concerned, that period

⁶ Where the rules governing their conditions of employment so provide, local staff may lodge complaints to the appropriate authority in the same way as officials. However, disputes between local staff and an institution cannot be brought before the European Union Civil Service Tribunal or the Court of Justice of the European Union: they must be referred to an arbitration board on the conditions defined in the arbitration clause contained in their contract (Article 122 of the CEOS).

⁷ See footnote 2.

shall begin to run with regard to that person from the day when he or she becomes aware of it and in any event no later than the date of publication;

- on the date of expiry of the period prescribed for the reply where the complaint is against an implied decision rejecting a request.

These periods are matters of public policy and may not be negotiated by the parties. The fact that in a reply the appropriate authority deals with the substance of a complaint which is out of time, and thus inadmissible, does not derogate from the deadlines and reopen a right of appeal which had otherwise expired.

The date of submission of a complaint for the purposes of deadlines will be taken as that of the registration stamp of the "Appeals and Case Monitoring" Unit. No account will be taken of the time taken for transmission by either the public or internal post. In the case of complaints submitted by e-mail, the date of registration will be the date on which it is sent or the first working day following that date if it is a holiday.⁸

Acts which contain no points not already made in a previous decision are purely confirmatory and do not have the effect of providing the member of staff with further time.

5.5. Form and content

Like a request, a complaint is defined by its nature and content, not by its form.

A complaint should normally state the identity of the complainant, the disputed act and its purpose and the grounds and arguments on which it is based and include the place, date and signature. Any relevant document should be attached.

6. THE ADMINISTRATION

6.1. Treatment of the complaint

Duly registered complaints are the responsibility of the "Appeals and Case Monitoring" Unit and processed by it so that the appointing authority may adopt a reply.

The "Appeals and Case Monitoring" Unit sends the complainant an acknowledgement of receipt (normally by e-mail). The acknowledgement of receipt contains information such as the reference number of the complaint, the date of registration and the name of the member of the unit responsible for handling the file.

A simplified acknowledgement may be sent in case of complaints with the same subject submitted by a large number of complainants and treated jointly by the "Appeals and Case Monitoring" Unit.

At the same time, the "Appeals and Case Monitoring" Unit will collect any information relevant to treating the matter from the departments which took or are affected by the decision being challenged.

⁸ See footnote 3.

Complaints about the Joint Sickness Insurance Scheme are also sent to the Sickness Insurance Management Committee for its opinion.

If it considers it useful, the "Appeals and Case Monitoring" Unit may organise an interdepartmental meeting to which the complainant, the department(s) responsible for the decision being challenged, the Commission mediator and staff representatives appointed by the Central Staff Committee are invited. The complainant may be accompanied by a person of his or her choice or an adviser. The meeting is not an arbitration or decision-making body; it simply enables all the parties concerned to express their views.

Complaints on certain sensitive issues or challenging decisions taken by other authorities are not discussed in interdepartmental meetings (for example, decisions of a competition selection board, appraisal and/or promotion, medical issues, harassment).

The staff representatives designated to attend interdepartmental meetings will be informed of the action (positive or negative) taken on complaints.

6.2. Decision and time

After the Legal Service has given its opinion, a draft reply is sent to the appropriate authority for a decision. The appointing authority has a period of four months from submission of a complaint to reply to it. After that period, the lack of a reply is an implied decision of rejection.

Without prejudice to the above, complaints submitted on the basis of Article 22c of the Staff Regulations shall receive, where warranted by the circumstances, a reasoned reply before the expiry of the deadlines set out in Article 90 of the Staff Regulations.

The reply to the complaint is sent directly to the complainant or, in his/her absence, to the assistant or Head of the Human Resources Unit of his or her Directorate-General or department.

6.3. Appeals

If the complaint is rejected, whether expressly or implicitly, the complainant may appeal to the Civil Service Tribunal (CST). The appeal must be lodged by a lawyer of his/her choice, within three months from the date of notification of the reply to the complaint or the implied rejection. According to Article 100 of the Rules of Procedure of the CST, time-limits are extended on account of distance by a single period of 10 days. If the period ends on a Saturday, Sunday or official holiday, it shall be extended until the end of the first following working day.

When an express decision rejecting a complaint is taken after an implied rejection but within the period of three months allowed for lodging an appeal (but no appeal has been lodged), it reopens the three-month period for making an appeal to the CST.

Under the terms of Article 87(1) of the Rules of Procedure of the CST, without prejudice to the other provisions of Chapter "Costs", the unsuccessful party is to be

ordered to pay the costs if they have been applied for in the successful party's pleadings. Under Article 87(2), the Tribunal may, if equity so requires, decide that an unsuccessful party is to pay only part of the costs or even that he or she is not to be ordered to pay any.

REQUESTS FOR ASSISTANCE

The "Appeals and Case Monitoring" Unit is also responsible for examining requests for assistance under Article 24⁹ of the Staff Regulations. The rules for submitting such requests are the same as for requests under Article 90.

Without prejudice to the above, requests submitted on the basis of Article 22c of the Staff Regulations shall receive, where warranted by the circumstances, a reasoned reply before the expiry of the deadlines set out in Article 90.

For the specific cases of psychological harassment and sexual harassment, on 26 April 2006 the Commission adopted a decision on the protection of the dignity of the person and the fight against psychological and sexual harassment. This decision establishes an informal mechanism common to these two forms of harassment, via the network of confidential counsellors and the Commission Mediator, and specifies the steps to be followed as regards the formal procedure under Articles 24 and 90.¹⁰

COMPLIANCE WITH REGULATION (EC) No 45/2001 ON THE PROTECTION OF PERSONAL DATA¹¹

In accordance with Articles 11 and 12 ("Information to be given to the data subject") of Regulation (EC) No 45/2001, the "Appeals and Case Monitoring" Unit provides the data subject with information on treatment of the data, and in particular the identity of the controller. Under Articles 11 and 13 ("Rights of the data subject"), the data subject may obtain information on data relating to him or her by applying to the controller.

⁹ The Commission's obligation to assist its staff

¹⁰ Commission Decision on the European Commission policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment – C(2006) 1624 to /3

¹¹ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).