

DECISION № MC/2012/3

by the Management Committee of the Office of the Body of European Regulators for Electronic Communications (BEREC Office) laying down general implementing provisions on the conduct of administrative inquiries and disciplinary procedures

The MANAGEMENT COMMITTEE

Having regard to the Council and European Parliament Regulation (EC) n° 1211/2009 of 25 November 2009 establishing the BEREC and the Office, and in particular article 10 thereof.

Having regard to the Staff Regulations of Officials of the European Union (hereafter the "Staff Regulations") and the Conditions of Employment of Other Servants of the European Union (hereafter the "Conditions of employment"), laid down by Council Regulation (EEC, EURATOM, ECSC) No 259/68¹ and the amendments thereto.

Having regard, more in particular, to Article 2(3) and Article 30 of Annex IX to the Staff Regulations.

Having regard to the Commission Decision C(2005)5304 of 16 December 2005 concerning the guidelines on staff policy in the European Regulatory Agencies.

Having regard to the Management Committee decision on Financial Regulation applicable to the BEREC Office in conformity with the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Union.

In agreement with the European Commission pursuant to Article 110 of the Staff Regulations.

Having regard to the Rules of Procedure of the Management Committee and in particular Annex 1 thereto.

Having regard to the fact that the Staff Committee of the BEREC Office, which is to be consulted pursuant to Article 110, paragraph 1, second sentence, of the Staff Regulations, has not yet been constituted and it is therefore impossible at the present to comply with the requirements of that provision. The Staff Committee will be invited to give its opinion on the relevant implementing rules when it has been constituted and due consideration will be given to any such opinion. The Management Committee is entitled in such circumstances to approve the rules forthwith.

¹ OJ L 56, 04.03.1968, p.

Whereas:

- (1) General implementing provisions governing the conduct of administrative inquiries should be adopted.
- (2) The implementing provisions for disciplinary procedures should be adopted.
- (3) Administrative inquiries should be carried out by the Internal Investigations Service (IIS) which shall also represent the authority authorised to conclude contracts of employment referred to in Article 6 of the Conditions of employment (hereafter the "Contracting Authority") before the Disciplinary Board.
- (4) The term of office of the Chairman, the members of the Disciplinary Board and their alternates should be extended to a maximum period of three years.
- (5) The independence of the Disciplinary Board should be safeguarded.
- (6) A preventative approach to and transparency in disciplinary matters should be ensured.
- (7) In IIS's administrative inquiries, account should be taken of the BEREC Office Financial Regulation which provides in Article 47(4) that the specialised financial irregularities panel set up by the Commission ('the General Panel') in accordance with Article 66(4) of Council Regulation (EC, Euratom) No. 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities shall exercise the same powers in respect of the BEREC Office as it does in respect of Commission departments. By derogation to the above, alternatively, the Management Committee of the BEREC Office may decide on an ad hoc basis to set up a functionally independent panel ("the Ad Hoc Panel") to assess particular financial irregularities or to participate in a joint panel established by several bodies of the Union ("the Joint Panel"), in accordance with Article 47(4) of the Financial Regulation of the Office.
- (8) The General Panel, the Ad Hoc Panel or the Joint Panel as described above, shall function independently and shall issue an opinion on the existence of a financial irregularity and its possible consequences in accordance with Article 66(4) of Regulation (EC, Euratom) No 1605/2002.
- (9) Under Article 22 of the Staff Regulations, the formalities laid down for disciplinary matters must also be observed in the case of a procedure concerning the pecuniary responsibility of a staff member.

HAS ADOPTED THE FOLLOWING PROVISIONS:

Chapter I

Internal Investigations Service (IIS)

Article 1

IIS

1. An Internal Investigations Service (IIS) is hereby established. The IIS is composed by the Administrative Manager and a staff member appointed by the Administrative Manager. In case of an administrative inquiry involving himself, the Administrative Manager shall not act as part of the IIS.
2. The Administrative Manager shall head the IIS as Internal Investigations Officer (IIO). The Administrative Manager appoints a staff member, with at least grade AD5, as deputy IIO. Seconded National Experts cannot be appointed as IIO.
3. The Internal Investigations Officers (hereafter the "authorised officials") may not sit on a Disciplinary Board.

Article 2

Tasks and functions of IIS

1. IIS shall carry out administrative inquiries. For the purposes of these implementing provisions, 'administrative inquiries' shall mean all actions taken by the authorised officials to establish the facts and, where necessary, determine whether there has been a failure to comply with the obligations incumbent on the Office's staff members.

For the purposes of these provisions, the term 'staff member' shall include temporary agents and contract agents within the meaning of the Conditions of Employment as well as former temporary and contract agents.

2. The IIS may be asked to carry out other inquiries to ascertain certain facts, in particular under Articles 24, 73 and 90 of the Staff Regulations.
3. The IIS shall carry out disciplinary procedures for the Contracting Authority.
4. The IIS shall coordinate preventative measures as regards discipline.

Chapter II

Administrative inquiries

Article 3

The exercise of powers as regards administrative inquiries

1. The Internal Investigations Officers shall exercise their powers of administrative inquiry independently. In the exercise of those powers, they shall neither seek nor receive instructions. They shall have the power to obtain documents and other evidence, summon any person subject to the Staff Regulations to provide information and carry out on-the-spot investigations.
2. Administrative inquiries shall be carried out thoroughly and include all aggravating and extenuating circumstances; they shall last for a period appropriate to the circumstances and complexity of the case.
3. The Data Protection Officer shall be consulted in advance whenever the Internal Investigation Officer or the member of the IIS responsible for the inquiry intends to

access electronic or hard copy files or telecommunications data. If the processing of data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade-union membership or the processing of data concerning health or sex life are necessary for the purposes of the inquiry, the Internal Investigation Officer or the member of the IIS responsible for the inquiry shall also consult the DPO in advance.

In both cases the Data Protection Officer shall ensure that the consultation takes place as soon as possible and without any delay that could affect the conduct of the investigation.

Article 4 *Opening and conduct of administrative inquiries*

1. An administrative inquiry shall be opened upon a decision of the Contracting Authority. In case of an administrative inquiry involving the Administrative Manager, the Contracting Authority will also decide about the ad hoc procedure to be applied.
2. Before opening the inquiry the European Anti-Fraud Office (hereafter OLAF) shall be consulted to ascertain that that Office is not undertaking an investigation for its own purposes and does not intend to do so. As long as OLAF is conducting an investigation within the meaning of Regulation 1073/99², no administrative inquiry under the preceding paragraph shall be opened regarding the same facts.
3. The decision to open an administrative inquiry shall designate the Internal Investigations Officer as responsible for the inquiry, define the purpose and scope of the inquiry and require the authorised officials responsible for it to determine responsibilities on the basis of the particular facts and circumstances, and, if appropriate, the individual responsibility of the concerned staff members. In case of an administrative inquiry involving the Administrative Manager, the investigations officers shall be designated by the Contracting Authority and shall come from another Agency or European Institution.
4. As soon as an administrative inquiry suggests that a staff member may be personally involved in an affair, that person shall be kept informed provided that information does not hinder the inquiry. In any case, conclusions referring to a staff member by name may not be drawn at the end of the inquiry unless he or she has had the opportunity to express an opinion on all the facts which relate to him or her. The conclusions shall record that opinion.

Where absolute secrecy is required by the aims of the inquiry requiring investigative procedures which are the responsibility of a national judicial authority, the obligation to invite the staff member to express an opinion may be deferred by the Contracting Authority in agreement with the Head of the IIS. In that eventuality, no disciplinary procedure may be opened until the staff member concerned has been able to express an opinion.

If, following an administrative inquiry, no charge is brought against a staff member against whom allegations have been made, the administrative inquiry concerning that person shall be closed with no further action by decision of the Head of the IIS, who shall so inform the staff member concerned in writing. The staff member may request that that decision be placed in his or her personal file.

The closure of the administrative inquiry shall not prevent its being reopened if new facts come to light. Where an administrative inquiry is closed the file containing all evidence

² Regulation of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office, OJ L 136 of 31/05/1999, pp. 1-7.

collected in this context shall be kept no longer than 24 months from the date of closure of the inquiry.

5. The Head of IIS shall inform the staff member concerned of the conclusion of the inquiry together with the conclusions of the inquiry report and, on request, communicate all documents directly linked to the allegations made, subject to the protection of the legitimate interests of third parties.
6. After receiving an inquiry report from OLAF, the Office may, if appropriate, either ask OLAF to supplement the report or decide to open an administrative inquiry itself or immediately open a disciplinary procedure or indeed close the file without any disciplinary consequences.

Chapter III **Disciplinary procedures**

Article 5

The hearing referred to in Article 3 of Annex IX to the Staff Regulations

1. A staff member heard pursuant to Article 3 of Annex IX to the Staff Regulations shall sign the record of the hearing or make comments and/or remarks within 15 calendar days from receipt of the record. Failure to do so within that period shall, except in cases of force majeure, result in the record being considered approved. If, following an administrative inquiry, a charge is brought against a staff member against whom allegations have been made, the Contracting Authority shall decide to initiate disciplinary proceedings before the Disciplinary Board.
2. If the Contracting Authority or a person authorised to that effect has to conduct interviews with certain persons following the hearing referred to in Article 3 of Annex IX to the Staff Regulations, the staff member concerned shall receive 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 or her.

Article 6

Representation of the Contracting Authority before the Disciplinary Board

1. The representation of the Contracting Authority before the Disciplinary Board, which is composed of five members, pursuant to Article 16(2) of Annex IX to the Staff Regulations shall be undertaken by an Internal Investigations Officer.
2. Where an administrative inquiry has already been held into a case before referring it to the Disciplinary Board, the members of the IIS who conducted that inquiry may not represent the Contracting Authority before the Disciplinary Board but may, if appropriate, be called by it as witnesses.
3. In case of a disciplinary procedure involving the Administrative Manager, the Contracting Authority will be represented before the Disciplinary Board by the member of the Management Committee representing the Commission.

Chapter IV

Chairman and members of the Disciplinary Board

Article 7

Appointment and term of office of the Chairman and Members

1. The Chairman of the Disciplinary Board and its members shall be appointed for a maximum period of three years, which may be renewed. The contracting authority and the Staff Committee shall each appoint two members and two alternates at the same time.
2. The Chairman of the Disciplinary Board and his alternate shall be appointed, by the Contracting Authority, from amongst staff members of the Office or officials of a European Institution or other European Union bodies.
3. The Board shall include at least one member, who may be the Chairman, chosen from among the European institutions or other European Union bodies.

Article 8

Training

All members of the Disciplinary Board and the Internal Investigation Officers shall, as soon as possible after their appointment, receive specific training to allow them to efficiently take part in the work of the Disciplinary Board.

Chapter V

Prevention and publicity

Article 9

Guide

The guide setting out the rights and obligations of staff members, the rules of conduct they are required to follow and the consequences which violations of those obligations may engender and examples of faults shall be regularly updated and made accessible to all the staff of the Office.

Article 10

Publication of the results of disciplinary procedures

The decisions on disciplinary matters taken by the Contracting Authority or a summary of those decisions shall be published once a year. The names of the staff members and any other information which could identify them shall be omitted.

Chapter VI
Final provisions

Article 11

Date of entry into force and applicability

This decision shall enter into force on the day following that of its adoption by the Management Committee.

Done at Dubrovnik, on 25 May 2012.

For the Management Committee



Georg SERENTSCHY
BEREC Chair for 2012