

**DECISION OF THE ADMINISTRATIVE BOARD  
of 24 JANUARY 2014**

**laying down the General Implementing Provisions on the Conduct of  
Administrative Inquiries and Disciplinary Procedures**

The Administrative Board of the European Maritime Safety Agency,

Having regard to Regulation (CE) N° 1406/2002 of the European Parliament and of the Council establishing a European Maritime Safety Agency, as amended, in particular Article 6,

Having regard to the Staff Regulations of Officials of the European Communities (hereafter the "Staff Regulations") and the Conditions of Employment of Other Servants of the European Communities (hereinafter referred to as the CEOS), laid down by Council Regulation (EEC, EURATOM, ECSC) No 259/68 and the amendments thereto,

Having regard, 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,

After consultation of the Staff Committee and in agreement with the Commission according to the provisions of Article 110 of the Staff Regulations,

Whereas:

1. General implementing provisions governing the conduct of administrative inquiries should be adopted.
2. The implementing provisions for disciplinary procedures should be adopted. The present implementing rule however is without prejudice to the provisions on disciplinary proceedings in Annex IX of the Staff Regulations.
3. In accordance with Article 10 of EMSA's Founding Regulation, as amended, the Administrative Board will exercise disciplinary authority over the Executive Director and the Heads of Department as identified in such article. The Administrative Board shall decide on a case by case basis how to exercise this authority, in accordance with Annex IX of the Staff Regulations.

4. Administrative inquiries should be carried out by the Internal Investigations Service (IIS) which shall also represent the Appointing Authority before the Disciplinary Board.
5. 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.
6. The independence of the Disciplinary Board should be safeguarded.
7. A preventative approach to and transparency in disciplinary matters should be ensured.
8. In the IIS's administrative inquiries, account should be taken of EMSA's 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 EMSA as it does in respect of Commission departments. By derogation to the above, alternatively, the Administrative Board of EMSA 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 Community bodies ('the Joint Panel'), in accordance with Article 47(4) of EMSA's Financial Regulation.
9. 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.
10. 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.
11. In accordance with the Decision of the Executive Director N°2007/24 Adopting Implementing Rules concerning Data Protection at EMSA, EMSA shall apply the principles of Regulation (EC) No 45/2001 to the processing of personal data relating to EMSA staff.

HAS DECIDED AS FOLLOWS:

**Chapter I**  
**INTERNAL INVESTIGATIONS SERVICE (IIS)**

Article 1

*IIS*

1. An internal investigations service (IIS) is hereby established. It shall be composed of three members: an Internal Investigations Officer, who will head the IIS, and two other additional members. At least two of the three members of the IIS must undertake an investigation when designated to do so.

Should the Appointing Authority wish to nominate a member from the inter-agency pool of investigators, the composition of the IIS shall be amended accordingly.

2. The IIS shall be directly attached to the Policy Advisor of the Bureau of the Executive Director as nominated by the Appointing Authority. It shall be headed by an Internal Investigations Officer. In case of a conflict of interest for the Policy Advisor, a Head of Department may be nominated. In the case of a conflict of interest for the Internal Investigations Officer or one of the authorised members, the Appointing Authority or Policy Advisor or nominated Head of Department will ensure that they are not involved in the inquiry.
3. The Internal Investigations Officer and the other members of the IIS (hereafter the "authorised members") cannot sit on a Disciplinary Board.

Article 2

*Tasks and functions of the IIS*

1. The IIS shall carry out administrative inquiries solely when designated to do so on the opening of an administrative inquiry. For the purposes of these implementing provisions, 'administrative inquiries' shall mean all actions taken by the authorised member(s) to establish the facts and, where necessary, determine whether there has been a failure to comply with the obligations incumbent on EMSA staff members.

For the purposes of these provisions, the term 'staff member' shall include Officials, Temporary Agents and Contract Agents within the meaning of the Staff Regulations and Conditions of Employment as well as former Officials, 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 coordinate preventative measures as regards discipline.

## **Chapter II**

### **ADMINISTRATIVE INQUIRIES**

#### Article 3

##### *The exercise of powers with regard to administrative inquiries*

1. The Internal Investigations Officer and other authorised members of the IIS 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 IIS may receive assistance from other staff or specialist departments.
4. Upon request, they may inform the Appointing Authority or the Policy Advisor or the nominated Head of Department of the stage of the inquiry.

#### Article 4

##### *Opening and conduct of administrative inquiries*

1. An administrative inquiry shall be opened by the Appointing Authority.
2. Notwithstanding the provisions of paragraph 1 above, the Appointing Authority may decide to open an administrative inquiry upon request from the Chairperson of the Administrative Board.
3. Before opening the inquiry, the Appointing Authority shall consult the European Anti-Fraud Office (hereafter OLAF) 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 1073/99<sup>1</sup>, no administrative inquiry under the preceding paragraph shall be opened regarding the same facts.

In cases where the purpose of the administrative inquiry is to determine whether there has been information and communications technology abuse, EMSA's Data Protection Officer shall be consulted.

---

<sup>1</sup> Regulation of the European Parliament and of the Council of 25/05/1999 concerning investigations conducted by the European Anti-Fraud Office, OJ L136 of 31/05/1999, pp. 1-7.

4. The decision to open an administrative inquiry shall designate the Internal Investigations Officer or another member of the IIS as responsible for the inquiry, define the purpose and scope of the inquiry and require the authorised members 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.
5. As soon as an administrative inquiry suggests that a staff member may be personally involved in an affair, that person shall be informed by the IIS 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 that relate to him/her to the IIS. The conclusions shall record that opinion.

The staff member is notified in writing with 15 days' notice to attend a hearing with the IIS. 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. The staff member has the right to receive a copy of the hearing record.

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 Appointing Authority. In that eventuality, no disciplinary procedure may be opened until the staff member concerned has been able to express an opinion.

6. The IIS shall submit a report on the inquiry to the Appointing Authority, after consulting, if appropriate, the specialised financial irregularities panel of the Commission ('the General Panel') pursuant to Commission Decision C(2003)2247 of 9 July 2003 or, as the case may be, the Ad Hoc Panel or the Joint Panel as described in Article 47(4) of EMSA's Financial Regulation.

The concluding report shall contain, in summary form:

- a) the main evidence, indicating its 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, having regard to aggravating or mitigating circumstances;
- e) the record of the hearing of the staff member.

Copies of all the relevant documents and records of interviews shall be attached to the report.

7. The Appointing Authority 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.

8. After receiving an inquiry report from OLAF, EMSA may, if appropriate according to the content of the inquiry report, 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** **PRE-DISCIPLINARY PROCEDURES**

#### Article 5

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

1. On the basis of the investigation report, or whenever there is sufficient evidence of responsibility, the Appointing Authority or a person authorised to that effect may decide to conduct interviews with certain persons following the hearing referred to in Article 3 of Annex IX to the Staff Regulations. The staff member will be notified of all evidence in the files by registered letter with acknowledgement of receipt.

After the aforementioned notification, the Appointing Authority hears the staff member, giving him/her 10 days' notice.

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.

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/her choice.

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, except in cases of force majeure, result in the record being considered as approved.

If further interviews have to be conducted following this hearing, the staff member concerned shall receive a copy of the signed records of those interviews.

#### Article 6

##### *Decision following the investigation report*

After hearing the staff member concerned the Appointing Authority can adopt one of the following decisions:

1. If, following an administrative inquiry, no case can be made and 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 Appointing Authority, who shall so inform the staff member concerned by registered letter with acknowledgement of receipt, in writing.

The staff member may request that that decision be placed in his/her personal file.

The closure of the administrative inquiry shall not prevent its being reopened if new facts come to light.

2. He/she can decide, that even if there is, or appears to have been a failure to comply with obligations, that no disciplinary measures shall be taken and, if appropriate, address a warning to the staff member. The staff member will be informed of this warning and a copy shall be inserted in his/her personal file.
3. He/she can decide to initiate disciplinary proceedings not involving the Disciplinary Board. In this case, without consulting the Disciplinary Board, the Appointing Authority may decide on the penalty of a written warning 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 shall be forwarded to the staff member by registered letter with acknowledgement of receipt.

4. He/she can decide to initiate disciplinary proceedings before the Disciplinary Board.

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

## **Chapter IV**

### **THE DISCIPLINARY BOARD AND DISCIPLINARY PROCEEDINGS BEFORE THEM**

#### Article 7

##### *Appointment and term of office of the Chairperson and Members*

1. The Chairperson of the Disciplinary Board, its members and their alternates shall be appointed for a maximum period of three years, which may be renewed.
2. The Chairperson of the Disciplinary Board and his/her alternate shall be appointed from amongst former Officials or formers members of a European institution or Agency. He/she shall be remunerated on a daily basis at a level equivalent to 1/22 of the basic salary of an Official in grade AD16, step 1.
3. The Board shall include at least one member, who may be the Chairperson, chosen from amongst the other European institutions.

Article 8  
*Training*

Officials or staff members appointed as members of the Disciplinary Board 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.

Article 9  
*Representation of the Appointing Authority before the Disciplinary Board*

1. The representation of the Appointing Authority before the Disciplinary Board, pursuant to Article 16(2) of Annex IX to the Staff Regulations shall be undertaken by the Internal Investigations Officer or his/or her deputy.
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 Appointing Authority before the Disciplinary Board but may, if appropriate, be called by it as witnesses.

Article 10  
*Disciplinary proceedings before the Disciplinary Board*

1. If the Appointing Authority decides to initiate disciplinary proceedings before the Disciplinary Board, he/she shall send a report to the Chairperson of the Disciplinary Board. The Head of the Legal and Financial Affairs Unit and the staff member concerned shall receive a copy of the report.
2. Pursuant to Article 9 of this decision, the Appointing Authority notifies the Chairman of the Disciplinary Board of the name of his/her representative.
3. If the staff member intends to acknowledge misconduct within the meaning of Article 12 of this decision, 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.
5. The staff member shall be heard by the Disciplinary Board. During the hearing he/she may be assisted by a person of his/her choice and submit observations in writing or orally, whether in person or through a representative and call witnesses. The representative of the Appointing Authority shall have rights equivalent to those of the staff member concerned.
6. If the Disciplinary Board considers that it does not have sufficiently clear information on the facts complained of, or the circumstances in which they arose, it shall order



an investigation. In this investigation each side can submit its case and reply to the case of the other side.

7. 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.
8. After hearing the staff member and, if necessary, conducting additional investigations, the Disciplinary Board delivers an opinion to the Appointing Authority as to whether the facts complained of are established and as to any penalty to which those facts should give rise.

#### Article 11

##### *Decision following disciplinary proceedings before the Disciplinary Board*

1. After hearing the staff member, the Appointing Authority shall take his/her 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 Appointing Authority 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.
3. If a penalty is imposed, reasons must be given for the decision.
4. If the Appointing Authority decides to close the case without imposing any disciplinary penalty the staff member may request that this decision be inserted in his/her personal file.

#### Article 12

##### *Acknowledgement of misconduct*

1. At any time, during the disciplinary procedure and in the presence of the Chairperson of the Disciplinary Board, the staff member concerned may acknowledge misconduct on his/her part and accept unreservedly the report submitted by the Appointing Authority.

2. The Appointing Authority may, in accordance with the principle of proportionality between the nature of the misconduct and the penalty being considered, withdraw the case from the Disciplinary 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.

#### Article 13

##### *Record of disciplinary penalties in the personal file*

A staff member against whom a disciplinary penalty other than removal from post has been ordered may, after one and a half years in the case of a warning addressed to them, three years in the case of a written warning or reprimand or after six years in the case of any other penalty, submit a request for the deletion from his personal file of all reference to such measure. The Appointing Authority shall decide whether to grant this request.

#### Article 14

##### *Appeal*

A staff member has the right to appeal against a decision taken against him/her in accordance with Article 90(2) of the Staff Regulations.

### **Chapter V**

#### **PREVENTION AND PUBLICITY**

#### Article 15

##### *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 EMSA staff.

**Chapter VI**  
**FINAL PROVISIONS**

Article 16

*Date of entry into force and applicability*

This decision shall take enter into force on the day following that of its adoption.

A handwritten signature in blue ink, appearing to read 'Frans Van Rompuy', with a large, stylized flourish extending from the end of the signature.

Done at Lisbon by written procedure on 24 January 2014,

Frans Van Rompuy

Chairman of the Administrative Board