

MB DECISION

Decision n°:	2022/08
Subject:	Decision on the establishment of an "Appeals Committee" to handle complaints under Article 90(2) of the Staff Regulations against decisions taken by the Director of FRA.

THE MANAGEMENT BOARD OF THE EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

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 2(1) of the Staff Regulations and Article 6 of the CEOS,

Having regard to Council Regulation (EC) 168/2007 establishing the European Union Agency for Fundamental Rights ('the Agency' or 'FRA'), as amended by Regulation (EU) 2022/555 amending Council Regulation (EC) 168/2007 ('the amended founding Regulation'), and in particular Articles 12.6(e), 12.7a and 12.7b thereof,

Having regard to the Management Board Decision 2022/07 on the delegation to the Director of the European Union Agency for Fundamental Rights of the powers conferred by the Staff Regulations on the Appointing Authority and by the CEOS on the Authority Authorised to Conclude Contracts of Employment (collectively referred as 'the Appointing Authority powers'), and in particular, Article 2(3) thereof,

Whereas:

- (1) By virtue of Article 12.6(e) of the amended founding Regulation, the Appointing Authority powers are conferred on the Management Board of the Agency.
- (2) Pursuant to Articles 12.6(i) and 12.7a of the amended founding Regulation, the Management Board adopted, in accordance with Article 110(2) of the Staff Regulations, Decision 2022/07 delegating the relevant Appointing Authority powers to the Director of the Agency.
- (3) Notwithstanding the above, pursuant to Article 2(3) of Decision 2022/07, the Management Board shall exercise the Appointing Authority powers concerning Article 90(2) of the Staff Regulations when the contested decision was taken by the Director.
- (4) Individual staff matters, including complaints lodged under Article 90(2) of the Staff Regulations, should be treated with urgency and with the utmost confidentiality.
- (5) According to Article 90(2) of the Staff Regulations, a reasoned decision shall be notified to the person concerned within four months from the date of which the complaint was lodged. Moreover, files concerning complaints submitted under Article 90(2) typically entail personal data and therefore, their handling needs to be in

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accordance with the personal data protection framework applicable to the Agency, namely, Regulation 2018/1725¹.

- (6) For reasons of expediency and flexibility, it is appropriate to establish an "Appeals Committee" to exercise the relevant Appointing Authority powers on behalf of the Management Board, enabling the swift handling of Article 90(2) complaints, with due regard to the requirements of confidentiality and personal data protection.

HAS DECIDED AS FOLLOWS:

Article 1 - Establishment

An Appeals Committee is hereby established to deal with complaints submitted under Article 90(2) of the Staff Regulations against decisions taken at the level of the Director of the Agency.

Article 2- Composition

1. The Appeals Committee shall be composed of three (3) members appointed by the Executive Board from amongst its members, including the representative of the European Commission at the Executive Board.
2. The Appeals Committee shall appoint its Chair from amongst its members.
3. The Executive Board shall appoint an alternate member nominated from amongst the members of the Executive Board. The alternate shall replace any of the members of the Appeals Committee in the event that a member is unable to act, including the Chair of the Appeals Committee.

Article 3 – Term of office

4. The term of office of the two members of the Appeals Committee other than the representative of the European Commission shall be two (2) years. The term of office may be renewed once.
5. The term of office of a member of the Appeals Committee shall end on the date on which their membership of the Executive Board ends or on the date on which the Management Board decides on their replacement, whichever is earlier.
6. If one of the members of the Appeals Committee is prevented from exercising their functions (e.g. due to a conflict of interest), the member must be replaced for that particular case by the appointed alternate or, in absence of an appointed alternate, by an *ad hoc* member appointed by the Executive Board from amongst its members. If no other member of the Executive Board is available, the Management Board shall appoint the *ad hoc* member from amongst the members of the Management Board.
7. In the event that a member of the Appeals Committee is unable to complete the term of office as member of the Executive Board or as member of the Management Board, they shall be replaced by a substitute member appointed by the Executive Board

¹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC

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from amongst its members for the remaining period of their mandate or by the appointed alternate if no other member of the Executive Board is able to take office. The substitute or the alternate will replace the Appeals Committee member until a new member of the Executive Board is appointed by the Management Board and the election of the new member of the Appeals Committee can take place.

Article 4 – Role and functioning

1. The Appeals Committee shall exercise the following function on behalf of the Management Board: to adopt decisions of the Appointing Authority in response to complaints submitted under Article 90(2) of the Staff Regulations when the contested decision was taken by the Director of the Agency (or by another staff member deputising the Director in accordance with the rules on deputising of the Agency).
2. The Appeals Committee shall strive to make decisions by consensus. In the event that consensus cannot be reached, the Appeals Committee shall take the decision by simple majority.
3. Decisions can be taken at a meeting or by written procedure. Meetings of the Appeals Committee, if necessary, shall take place at the premises of the Agency, via video-conference or other technical means.
4. A decision shall be taken and notified to the person concerned within four months from the date on which the complaint was lodged.

Article 5 – Support by FRA

1. The Agency shall ensure adequate legal expertise and administrative support as well as offering training to the Appeals Committee members for the handling of complaints submitted under Article 90(2) of the Staff Regulations.
2. Such support shall be provided by the Corporate Services Unit of the Agency. If required, external legal assistance shall also be provided by the Agency.
3. The Agency shall provide to the Appeals Committee all relevant information concerning the complaint at hand that it is necessary for the Committee to carry out its role.

Article 6 – Confidentiality, data protection and independence

1. The members of the Appeal Committee shall treat the complaints submitted under Article 90(2) of the Staff Regulations and any documents received in this regard with the utmost confidentiality and abide by Regulation 2018/1725.
2. This obligation of confidentiality shall also apply after the end of their mandate as members of the Executive Board, Management Board and/or after the termination of their mandate as members of the Appeals Committee.
3. The Chair and the other members of the Appeals Committee must be independent of any internal or external influence in the conduct of their mandate. They must not take part in deliberations or consultations and decisions of the Appeals Committee concerning any case in which they have a personal interest. They must perform their duties in good faith, honestly and impartially and avoid situations that might compromise their integrity or otherwise lead to conflicts of interests.

Article 7 – Rules of Procedure of the Appeals Committee

1. The Appeals Committee may adopt its own Rules of Procedure to handle complaints under Article 90(2) of the Staff Regulations, which shall follow the provisions of the present decision.

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2. The Rules of Procedure shall have due regard to the principles laid down in Article 6 above and establish a procedure ensuring that complaints under Article 90(2) are handled in a fair and timely manner and in accordance with the provisions of the Staff Regulations.

Article 8 – Reporting to the Management Board

1. The Chair of the Appeals Committee shall provide information on the exercise of this tasks to the Management Board, with due regard to confidentiality and protection of personal data.
2. The information provided to the Management Board shall be depersonalised to the extent possible.

Article 9 – Entry into force

The present decision shall take effect on the day following that of its adoption. It shall be brought to the attention of the staff in a suitable form.

Article 10 – Review clause

The present decision may be reviewed two years after its entry into force or earlier should it be deemed necessary.

Done at Vienna, on 16 September 2022.

For the European Union Agency for Fundamental Rights


Elise Barbe
Chairperson of the Management Board