



Staff Association of the European Union institutions, bodies, offices and agencies

## **Generation 2004**

### **Annex II – Implementing rules**

#### **Implementing Rule 4:**

#### **Disciplinary procedure and guarantees**

##### Article 1 (Scope)

1. Having regard to Article 70 and Article 72(3) of the bylaws, this implementing rule is devoted to governing the legal aspects of the internal disciplinary proceedings and guarantees for a fair and impartial disciplinary action.
2. Having regard to Article 12(3)(b) and Article 16(5) (suspension of membership), Article 14(1)(b), Article 15(3) and Article 16(6) (cessation of membership following conclusion of a disciplinary procedure), Article 16(4) (eligibility of honorary members to the Disciplinary Committee), Article 49(4)(m) and Article 69(1) and (2) of the bylaws (Disciplinary Committee: election, composition and mission), these implementing provisions concern the following:
  - a) rights and obligations of the parties taking part in a disciplinary procedure,
  - b) right to be heard and to provide comments,
  - c) right to appeal before the General Assembly from a Board decision stating the exclusion from membership,
  - d) type of disciplinary procedure and sanctions,
  - e) procedural rules to be followed by the Board to initiate and approve a disciplinary procedure,

- f) election, composition, powers and decision-making process of the Disciplinary Committee,
- g) confidentiality and privacy,
- h) special provisions to be applied to the members of the advisory and governing bodies subject to a disciplinary action.

## Article 2 (Definitions)

For the purposes of this implementing rule, the following definitions shall apply:

- (1) '*Complainant*' is a person (member or not of Generation 2004) who formally notifies the Board about a situation that triggers a disciplinary procedure provided for in this implementing rule.
- (2) '*Defendant*' is a member who is subjected to a disciplinary procedure ('member concerned').
- (3) '*Counsellor*' is a person (member or non-member of Generation 2004) chosen by the person concerned to accompany or assist him or her in a hearing conveyed in the context of a disciplinary procedure.
- (4) '*Suspected misconduct*' regards the situation of a Generation 2004 member whose action or behaviour might not comply with any element of the bylaws and could be founded to have breached the bylaws and its implementing rules.
- (5) '*Disciplinary action or procedure*' is the disciplinary proceedings initiated by the Board in relation to a case of misconduct or to a censored action or declaration in the situations defined in Article 3(2).
- (6) '*Disciplinary measure*' is a penalty that, because of a disciplinary action, can be imposed on a member.
- (7) '*Written reprimand*' is a disciplinary measure in the form of a written document (letter or similar) that formally criticises the misconduct or action or declaration of the member under disciplinary action and that may also mention possibly further disciplinary action in case of continuation or repetition of the misconduct or censored action or declaration in question.
- (8) '*Suspension of membership*' is the temporary withdrawal of certain or all membership rights or the temporary exclusion from office or from electoral registers. The list of possible disciplinary measures is given in Article 4. The suspension of membership is restricted to the situation explained in Article 8.

(9) *'Termination of membership'* means the exclusion from Generation 2004 membership. Consequently, the member concerned will be deleted from the register or the sub-register(s) of members as stipulated in Article 14(1)(b) and Article 16(6) of the bylaws.

(10) *'Notification'* is a written communication addressed to the functional mailbox of Generation 2004 as well as other written communications within pre-disciplinary, disciplinary and suspension proceedings in the form of a letter or an electronic mail between parties concerned by a disciplinary procedure. A notification is considered effectively sent, if within two calendar days no error message or other indication of failure of delivery is received back. In case an electronic mail delivery fails, a printed version of the original e-mail will be sent in a closed envelope marked "private/confidential" to the latest supplied professional address. In this case, the valid date is determined by the postmark.

(11) *'Periods'* for the purposes of this implementing rule shall be considered as follows:

(a) *'days'* means *'calendar days'*,

(b) the reference time is the *'Brussels time zone'*,

(c) a period expressed in days, weeks or months is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall be considered as falling within the period in question,

(d) a period expressed in days shall start at the beginning of the first hour of the first day and shall end with the expiry of the last hour of the period,

(g) a period expressed in weeks or months shall start at the beginning of the first hour of the first day of the period and shall end with the expiry of the last hour of whichever day in the last week is the same day of the week, or falls on the same date, as the day from which the period runs. If, in a period expressed in months, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last hour of the last day of that month.

### Article 3

(Situations that may trigger a disciplinary procedure)

1. All Generation 2004 members shall do their utmost to protect and enhance the reputation of the staff association.
2. The Board enjoys the exclusive right of initiating a disciplinary procedure against a member or a group of members, including Board, General Assembly or Steering Committee members as well as any other member of an *ad-hoc* or permanent committee, previously

appointed by a Generation 2004 governing or advisory body, whose behaviour does not comply with the principles and/or the bylaws and its corresponding implementing rules or who would enter through their actions or declarations in one of the following situations:

a) in a situation of:

i. conflict of interest,

ii. breaching ethics and conduct rules as provided for in *Implementing rule 3: Ethics and conduct rules*,

iii. impairing the independence of the association, or

b) in open contradiction to the mission, principles and objectives of the association (Article 3 of the bylaws).

3. The Board, upon specific and motivated request by the Steering Committee (Article 55(3) and 69(1) of the bylaws and Article 2(4) of the Implementing rule 7), may also decide to initiate a disciplinary procedure. This decision shall be adopted by a qualified majority of two-thirds of the members of the members of the Board.

#### Article 4

##### (Disciplinary measures)

1. Depending on the severity of the misconduct or breach of rules, the Board may impose one of the following penalties:

a) written reprimand,

b) non-permission or, if applicable, withdrawal of earlier given permission to join an electoral register of Generation 2004,

c) suspension of voting rights,

d) suspension from office and/or suspension of eligibility rights,

e) suspension of membership,

f) exclusion from membership.

2. Generally, the least drastic disciplinary measure appropriate to the misconduct or breach of rules should be imposed as a first step, while exclusion from membership should be applied as a last resort for severe cases of repeated misconduct or breach of rules, which could not be stopped by milder measures.

3. The penalties according to paragraph 1, b), c), and d) must be restricted in time for a suitable period between 3 and 18 months. Alternatively, in the case of c) or d), the restriction can also be set for a certain number of elections (normally one).

4. The penalty according to paragraph 1, d) (i.e. suspension of office) applies to functions carried out within Generation 2004 only. Functions outside the organisation (e.g. elected member of an institution's staff representation) are generally not affected by the penalties listed on paragraph 1 above, except for paragraph 1, f). In the latter case, as from the date of the communication of the sanction, the elected member censored with an exclusion of membership will no longer represent Generation 2004 in the local or central staff committee for which he or she has been elected or appointed as Generation 2004 member.

5. The penalties according to paragraph 1, e) and f) can only be imposed according to the procedure described in Article 6.

6. In case a disciplinary procedure results in the exclusion of a member, the same person can only validly re-apply for membership after 12 months following the date on which the exclusion took effect (Article 18(6) of the bylaws). If the application arrives earlier, it is routinely rejected.

7. In case of exclusion, the membership fee will not be refunded, unless the exclusion is adopted by the General Assembly within the first 30 days of membership. In the latter case, there will be a restitution of the annual membership fee (Article 14(2) of the bylaws).

8. If a member, who has received a secondment to Generation 2004, is penalised with a suspension from the office, the Board shall request the cancellation of the secondment and it can only re-submit a request for secondment for the same person once the suspension period is elapsed. A cancellation of a secondment shall have a minimum duration of 12 months.

## Article 5

### (Principles, rights and obligations)

1. A single case of misconduct shall not give rise to more than one disciplinary penalty (Article 4(1) above).

2. All proceedings shall be carried out within a reasonable period commensurate with the circumstances and complexity of the case.

3. The presumption of innocence shall apply at all procedural stages.

4. The defendant shall be informed of his or her rights and obligations applicable to the proceedings at the moment he or she is informed for the first time that these proceedings have been opened.

5. The defendant has the right to be heard (Article 6(9) and Article 8(4) and (5)).
6. The defendant shall have the right not to incriminate him or herself.
7. The defendant may, at any step of the proceedings, put forward facts and circumstances in relation to the case. That right shall not be used to unduly delay the proceedings.
8. The defendant has the right to appeal to the General Assembly from a decision of the Board imposing the disciplinary measure listed in Article 4(1), point f. above. Pursuant to Article 49(5), point c. of the bylaws, the General Assembly must refuse the Board decision by qualified majority of two-thirds as defined in *Implementing rule 6: Governance and functioning of the governing bodies*.
9. Witnesses requested to testify during the proceedings shall be informed of their rights and obligations before being heard orally or in writing for the first time during such proceedings. Witnesses will not incriminate themselves through the testimony, either by means of interrogation where information of a self-incrimination nature is disclosed, or when information of a self-incriminatory nature is disclosed voluntarily without pressure from another person.
10. In accordance with their duty of loyalty to the association, Generation 2004 members called upon to provide information shall cooperate and provide all requested information available to them, subject to obligations regarding confidentiality.
11. Without prejudice of their right to be accompanied, assisted or represented in the proceedings, Generation 2004 members and any other person involved in the proceedings shall be prohibited from any unauthorised disclosure of information relating to the proceedings.
12. The members of the Disciplinary Committee and any other person designated to participate in the proceedings shall declare any circumstance which could impair or could be perceived as impairing their independence or impartiality when dealing with a case.

## Article 6

### (Procedure)

1. The decision to impose one of the disciplinary measures listed in Article 4(1) above is taken according to the procedure stipulated in this article.
2. A disciplinary action is initiated upon a decision of the Board (Article 3 (2) and (3) above). The request must be supported by suitable material on the case.
3. The opening of a disciplinary action shall be communicated in writing to the defendant within seven days counting from the date of the adoption of the decision of the Board

together with all supporting material. Wherever necessary to ensure the right to confidentiality, the Board will not disclose information without the consent of the data subject or a legal reason. The Board may further decide, prior to the communication of the decision to the defendant, anonymise information contained in the file, which shall be qualified as confidential.

4. The defendant has the right to present her or his point of view in writing and to request a hearing. If the defendant does not react within 30 days further to the communication set out in paragraph 3 above, this shall be deemed to constitute a refusal to comment as well as a decline to attend a hearing.

5. Upon request of the defendant, the Board convokes a hearing with the aim to discuss all aspects of the case and to investigate possibilities of reconciliation. The hearing should take place within 30 days after the delay for the defendant's reply according to paragraph 4 above has elapsed.

6. The defendant may be accompanied or assisted by a person of his or her choice. The counsellor commits to keep all information exchanged during the hearing confidential by previously signing a declaration of confidentiality.

7. Considering the defendant's written reply and the outcomes of the hearing, the Board shall request a reasoned opinion from the Disciplinary Committee according to the procedure laid down in Article 7 of this Implementing rule. Further to the reasoned opinion issued by the Disciplinary Committee, the Board may adopt a proposal for a disciplinary measure. Should the Board decide not to propose a disciplinary measure, then the action is closed and such decision will not be made public. Both decisions are adopted by simple majority as defined in *Implementing rule 6: Governance and functioning of the governing bodies*.

8. After adoption by the Board of the proposed disciplinary measure, the Board shall communicate its decision to the member or group of members concerned by the disciplinary procedure within two days counting from the date of the Board decision.

9. The communication must be done by electronic means informing the defendant(s) of:

(i) the proposed sanction(s) and the reasons to support them; and

(ii) invite the defendant(s) within seven days counting from the date of acknowledgment of the Board's communication to comment on the proposed sanction or propose an alternative arrangement. In case the Board accepts an alternative arrangement, the procedure is closed as specified in paragraph 7 above.

The absence of comments by the defendant(s) within the deadline above referred shall be deemed as a tacit agreement with the proposed disciplinary procedure.

10. In case the defendant(s) pre-empt(s) the proposal of the Board on a disciplinary measure by resigning from office or leaving the association, the disciplinary procedure is immediately closed by merely administrative decision adopted by the Board.

## Article 7

### (Disciplinary Committee)

1. To assist the Board in its tasks relating to the disciplinary procedure, a Disciplinary Committee is set up to deal with complaints made by members concerning the activities of the staff association and disciplinary matters.
2. The Disciplinary Committee shall carry out all its tasks objectively and impartially, in conformity with the principles of legality, proportionality and confidentiality, taking account of all circumstances brought to its knowledge.
3. The request for a reasoned opinion should be sent to the chair of the Disciplinary Committee, which afterwards shall forward it to each member of the Disciplinary Committee. Further to the examination of the Board request, the Disciplinary Committee will decide preliminarily whether to proceed with or to dismiss the complaint. If the Disciplinary Committee decides to dismiss the complaint for lack of substance, it should immediately inform the Board. If the Disciplinary Committee decides to proceed, the complainant and the member concerned may be invited to a hearing where they will have the opportunity to explain and exchange on the problematic issue(s) concerned by the pending disciplinary action, unless such hearing has been organised by the Board at the request of the defendant (Article 6(4) above)
4. After the hearing referred to in paragraph 3 above, the Disciplinary Committee will examine the situation and will decide whether a penalty should be applied and, if so, which penalty is appropriate according to the range of penalties set out in Article 4(1) above. The Disciplinary Committee will recommend to the Board, by means of an opinion, the imposition of one of the penalties listed in Article 4(1) above to any individual member or group of members who is deemed to have harmed or tarnished the image of the association or who has shown consistent unwillingness to abide by the association internal rules. If said hearing does not take place as provided for by paragraph 3 *in fine* above, the Disciplinary Committee will prepare without delay the reasoned opinion.
5. The deliberations of the Disciplinary Committee shall be secret. The chair has a tie resolving vote. The reasoned opinion shall be signed by all members of the Committee. Each member may attach to the opinion a divergent view. The reasoned opinion shall be addressed to the Board within one month further to the reception of the request for opinion by the Disciplinary Committee. The reasoned opinion of the Disciplinary Committee is not subject to an appeal before the General Assembly. Any reasoned opinion taken by the

Disciplinary Committee, upon request, shall be made available to all members, unless special circumstances justify keeping it confidential or unless is covered by the exception established in Article 6(7) above. Alternatively, the Board may decide to anonymise segments of the text of the reasoned opinion to ensure confidentiality.

6. The General Assembly elects by simple majority a Disciplinary Committee for a three-year mandate following the procedural rules set out in Implementing rule 5: *Internal electoral rules*. The election shall be organised in parallel with the election of the Board. The list shall comprise three full members and three alternate members. In case of dismissal of the Board as provided for by Article 40(2) and (3), the Disciplinary Committee remains in office until the end of the mandate.

7. The Disciplinary Committee is composed of three full members, who may be replaced by alternate members. Further to an expression of interest at the candidacy, one of the full members shall be appointed chair of the committee by the General Assembly. The eligible members shall be full or honorary members of Generation 2004, whose eligibility rights have not been suspended and demonstrate a good knowledge of the internal functioning of the association. The members of the Disciplinary Committee may renew their initial mandate up to a maximum of six years.

8. The secretariat of Generation 2004 will act as secretariat of the disciplinary committee.

9. The appointment to the Disciplinary Committee is not permitted to the secretary general, the political secretary, members of the Steering Committee, electoral committees/offices, Board members and coordinator of section.

10. If a member of the Disciplinary Committee is concerned by a disciplinary procedure, he or she shall be suspended from the Disciplinary Committee until a final decision is taken. During such period, the concerned member shall be immediately replaced by an alternate member. If no disciplinary measure is adopted at the end of the disciplinary procedure, the concerned member shall resume its functions until the end of the mandate.

11. The exhaustion of the list of alternate members determines the call for a new election of the Disciplinary Committee by the General Assembly. The same procedure applies when the General Assembly approves the dismissal of the Disciplinary Committee at its own initiative or at the request of the Board. The dismissal of the Disciplinary Committee shall be found on a severe and fundamental breach of ethic and/or legal rules and principles established in the bylaws and/or in the implementing rules.

12. The Disciplinary Committee, once in office, decides its own on its working method(s), modalities for issuing reasoned opinions and on distribution of tasks among the Committee members. To this end, it may adopt internal guidelines.

13. The secretary of the Disciplinary Committee is the minutes-taker and provides administrative support to the chair and to the Committee's members by taking the appropriate organisational and procedural measures and by bringing all information and documents relating to the case to the attention of the Disciplinary Committee members and to the parties concerned by the proceedings.

14. The Disciplinary Committee shall report annually to the General Assembly on its activities.

#### Article 8

##### (Data protection)

Information obtained or forwarded during disciplinary proceedings should enjoy the protection guaranteed by Regulation (EU) 2016/679 of the European Parliament and of the Council (General data Protection Regulation)<sup>1</sup>. The rules set out in Commission Decision (EU) 2019/1654<sup>2</sup> concerning the provision of information to data subjects and the restriction of certain data protection rights should apply, with the necessary adaptations, where relevant. It is necessary to ensure the confidentiality of personal data processed in the context of administrative inquiries and disciplinary proceedings, unless the data subject have agreed to waive this right at the adhesion to the association (Article 3(10) of *Implementing rule 2: Application for membership, acceptance and registration*).

#### Article 9

##### (Special procedure for members of the Board)

1. In case a Board member is involved in a disciplinary procedure as defendant or complainant, the Board must discuss the situation and take the decision on a proposal for a disciplinary measure in the absence of that Board member. The right to be heard according to Article 7(3) and Article 6(4) and (5) above remains unaffected.

2. The quorum required for the deliberations of the Board concerning disciplinary measures to concerned members is ruled out by Implementing rule 6: *Governance and functioning of the governing bodies*.

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<sup>1</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).

<sup>2</sup> Commission Decision (EU) 2019/165 of 1 February 2019 laying down internal rules concerning the provision of information to data subjects and the restriction of certain of their data protection rights by the Commission in the context of administrative inquiries, pre-disciplinary, disciplinary and suspension proceedings (OJ L 32, 4.2.2019, p. 9)

Article 10

(Entry into force)

The content of this implementing rule was initially adopted by the General Assembly as Implementing rule 3 on 01.12.2015. Pursuant to Article 49(4)(n) and Article 72(3) of the bylaws this implementing rule is amended and re-numbered as Implementing rule 4. It was adopted by the General Assembly on 08.10.2024 and enters into force the following day.