

ANNEX 1

THE AGENCY'S RULES ON THE COMPLAINTS MECHANISM

PART I GENERAL PROVISIONS

Article 1 **Introduction**

1. This Annex sets out the Agency's rules on the complaints mechanism.
2. The complaints mechanism is an administrative mechanism under the meaning of the Regulation. Delineated by Article 72 of the Regulation, it aims to monitor and ensure the respect for fundamental rights in all the activities of the Agency.
3. The FRO is responsible for handling complaints received by the Agency in respect of the complaints mechanism. Other entities within the Agency, the Executive Director, the Member States and relevant authorities or bodies competent for border management or fundamental rights in Member States shall also play an active role.

Article 2 **Overview**

The complaints mechanism has three main stages:

- (a) The receipt, registration, admissibility review, processing and referral of complaints;
- (b) The follow-up of admissible complaints; and
- (c) The reporting on findings and follow-up.

Article 3 **Complainants**

1. A person may make a complaint if s/he is directly affected by the actions of staff involved in an Agency activity, and considers her/himself to have been the subject of a breach of her/his fundamental rights, due to those actions.
2. Complaints may be submitted by a natural person of any age (i.e. a complainant may be under 18 years of age).
3. Complainants may be represented by any party, whether a natural or legal person, acting on their behalf. In such a case, references to 'complainant' are to be read as 'representative' where the context so permits.

Article 4 **Definitions**

1. *Agency* means the European Border and Coast Guard Agency.
2. *FRO* means the Agency's fundamental rights officer.
3. *DPO* means the Agency's data protection officer.
4. *Members of the teams* has the meaning set out in Article 2(8) of the Regulation.
5. *Regulation* means the European Border and Coast Guard Regulation¹.
6. *Complaints mechanism* means the mechanism set out at Article 72 of the Regulation.
7. *Agency activity* means a (i) joint operation, (ii) pilot project, (iii) rapid border intervention, (iv) migration management support team deployment, (v) return operation, or (vi) return intervention. The meaning of (i) - (vi) is clarified in the Regulation.

¹ Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.09.2016, p.1).

8. *Agency staff* means staff working at the Agency who are governed by the Staff Regulations and the Conditions of Employment of Other Servants of the Union². For the purposes of these rules, Seconded National Experts (SNEs) to the Agency's headquarters may be considered as a category equivalent to 'Agency staff' without prejudice to the fact that the Member States remain the employer of the SNEs. For the avoidance of doubt, members of the teams including seconded persons to the Agency within the meaning of Article 20(11) of the Regulation³ who are deployed to an Agency activity and other participants (for example, interpreters engaged by the Agency) are not Agency staff.
9. *Outside the mandate* means correspondence received by the FRO which purports to be a complaint under the complaints mechanism but which does not fall within Article 72 of the Regulation and raises no issue which the FRO believes to be relevant for the Agency.
10. *Expression of concern* means correspondence received by the FRO which purports to be a complaint under the complaints mechanism but which while it does not fall within Article 72 of the Regulation nevertheless raises issues which the FRO believes to be relevant for the Agency.

PART II PROCEDURE

Article 5 **Making a complaint**

1. A complaint must be made in writing and may be made on the official complaint form. The Agency makes the complaint form available in the most common languages that third-country nationals understand or are reasonably believed to understand. Although the use of the complaint form is preferable, complaints can be submitted in any format, provided it is in writing.
2. A complaint must contain the name and contact details of the complainant.
3. A complaint must contain sufficient details of the alleged incident, to identify the contested act.
4. A complaint is free of charge.
5. A complaint may be made even where the complainant has not sought domestic remedies, whether administrative or judicial. The making of a complaint under this mechanism does not prevent the complainant resorting to other remedies, including domestic administrative or judicial remedies.
6. Agency staff and members of the teams have the obligation to provide information about the complaints mechanism and complaint form, to any person who expresses a wish to report an alleged fundamental rights violation under the complaints mechanism. Suitable training or briefing should be given to members of the teams.

Article 6 **Correspondence which is not treated as a complaint**

1. Correspondence which is not a complaint is filed by the FRO as either outside the mandate or as an expression of concern.
2. An expression of concern may be sent by the FRO to the relevant unit or entity within the Agency for its further handling, and, if necessary, action.

Article 7 **Receipt and recording of complaints**

1. The FRO is responsible for handling complaints and correspondence as set out in Article 5 and 6.
2. The FRO may request the complainant and/or other parties to submit materials which the FRO considers relevant for the purposes of the complaints mechanism.
3. The FRO records all complaints and gives all admissible complaints a case reference number.
4. The FRO forwards all registered complaints to the Executive Director.

² Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68, OJ L 56, 4.3.1968, p. 1.

³ Previously known as 'Seconded Guest Officers'.

Article 8
Admissibility

1. A complaint is admissible for the purposes of these rules where:
 - (i) a complainant is directly affected by the actions of staff involved in an Agency activity, and considers her/himself to have been the subject of a breach of her/his fundamental rights, due to those actions;
 - (ii) the complaint is substantiated involving concrete fundamental rights violations; does not concern working relations between the Agency and its staff; and is not manifestly excessive, repetitive, frivolous or malicious;
 - (iii) it is made within one year from the date on which the alleged violation of the fundamental rights occurred or the complainant was informed or learnt about such violation, or the complainant was not otherwise prevented by any circumstances from making a complaint about such an alleged violation;
 - (iv) it concerns only facts that occurred after the date of entry into force of the Regulation; and
 - (v) it is not made anonymously. This condition for admissibility is without prejudice to Article 16(2).
2. Where a complaint is admissible, the complainant is informed in writing that the complaint has been registered, that a review has been started and that a response may be expected as soon as it becomes available. Where a complaint is inadmissible, the complainant is informed in writing of the reasons, and, if available, provided with further options for addressing her/his concerns.

Article 9
Joining and staying complaints and discontinuance

1. Where the FRO decides that two or more complaints refer to the same or similar facts, the FRO may decide to join these complaints together and treat them as one complaint, under the condition that such joining of itself does not have a negative impact on the review of a complaint.
2. The decision to join complaints as referred to in paragraph 1 is given by the FRO in writing to all affected complainants.
3. The FRO may stay the handling of a complaint, in particular where the facts concerned are being considered by a court.
4. Where the FRO cannot contact the complainant for a period of one year, the complaint is deemed to be discontinued.

Article 10
Complaints against the Agency's staff

1. Agency staff means staff working at the Agency who are governed by the Staff Regulations and the Conditions of Employment of Other Servants of the Union. For the purposes of these rules, Seconded National Experts (SNEs) to the Agency's headquarters may be considered as a category equivalent to 'Agency staff' without prejudice to the fact that the Member States remain the employer of the SNEs. For the avoidance of doubt, members of the teams including seconded persons to the Agency within the meaning of Article 20(11) of the Regulation⁴ who are deployed to an Agency activity and other participants (for example, interpreters engaged by the Agency) are not Agency staff.
2. Following receipt of an admissible complaint (see Article 7(4)), the Executive Director examines the complaint.
3. Following examination, the Executive Director reaches a preliminary view.
4. If justified by the circumstances, the Executive Director then ensures appropriate follow-up, in consultation with the FRO.
5. When such follow-up entails administrative and disciplinary measures regarding staff employed by the Agency, the applicable procedure is the one laid down in the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the Union, and its implementing rules⁵.
6. The Executive Director shall report back to the FRO on the findings and follow-up made by the Agency within six months of the date of such follow-up.
7. Where an admissible complaint under this article is related to data protection, the Executive Director consults the DPO.

⁴ Previously known as 'Seconded Guest Officers'.

⁵ Management Board Decision No 23/2012 of 27 September 2012 adopting Frontex Disciplinary Procedure and its successor from time to time.

Article 11

Complaints against the Member States' staff

1. The FRO forwards all admissible complaints concerning members of the teams to the national contact point in the relevant Member State according to Article 23 of the Regulation copied to the relevant competent authority or body of the Member State in question under the meaning of Article 72(4) of the Regulation. The FRO provides the complainant with the relevant competent authority's/body's details.
2. The FRO registers and ensures the follow-up by the Agency or by that Member State of an admissible complaint within a six months period of forwarding the complaint to the Agency or Member State and if necessary at regular intervals under this article.
3. The Agency follows up the matter if no report is received from the Member State.
4. Where a border guard of a host Member State or member of the teams is found by the relevant Member State to have violated fundamental rights or international protection obligations, the Agency may request the Member State to remove her/him from the Agency activity or the rapid reaction pool.

Article 12

Imminent risks

In cases where there exists an imminent risk of irreparable harm to the complainant or to the Agency, the Agency will consider undertaking immediate action until the risk subsides or ends.

PART III

REPORTING OF FINDINGS

Article 13

FRO reporting

1. The FRO reports to the Executive Director and the Management Board on findings and follow-up in respect of complaints that fall under Article 10 and 11.
2. These reports are taken into account to the extent possible by the Agency and the Member States when carrying out vulnerability assessments.

Article 14

Publication

1. The Agency includes information on the complaints mechanism in its annual report, including the amount of complaints received, the amount of admissible complaints, the types of fundamental rights violations involved, the Agency activity concerned, the finding made on the complaint (if known), and the follow-up made (if known).
2. The Agency ensures that information on the possibility and procedure for making a complaint is readily available on its website, including information for vulnerable persons.

PART IV

DATA PROTECTION

Article 15

Memorandum of Understanding

A memorandum of understanding devised by the FRO and DPO specifies their division of tasks and how they are to cooperate in respect of admissible complaints received against Agency staff related to data protection issues.

Article 16

Consent and confidentiality

1. The submission of a complaint is understood as the complainant giving consent to the Agency and the FRO to

- process the complainant's personal data within the meaning of Article 5(d) of Regulation (EC) no 45/2001⁶.
2. The Agency and the FRO treat all complaints as confidential unless the complainant explicitly waives his or her right to confidentiality in the complaint form or otherwise in writing.
 3. The complainant has to waive confidentiality in order that the Member State authorities may process such personal data.

PART V
FINAL PROVISIONS

Article 17
Guidance

Without prejudice to these rules, this article applies where, based on experience gained in operating the complaints mechanism, there is a need for additional guidance on routines, working methods or technical issues. Such additional guidance may be given in writing by the Agency or by the FRO.

Article 18
Evaluation of the Agency rules on the complaints mechanism

The provisions of this Annex may be evaluated by the Executive Director in cooperation with the FRO and Consultative Forum within twelve months of these rules entering into force.

⁶ 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.

