

## Summary table

<i><b>Powers</b></i>	<i><b>Legal basis</b></i>
Competence of the Appointing Authority and OLAF	Article 86(2) of the Staff Regulations of Officials of the European Union
Administrative investigations and disciplinary proceedings	Article 86 and Annex IX of the Staff Regulations
Creation and powers of OLAF (no real disciplinary or judicial powers, as true disciplinary powers only lie with the Appointing Authority)	Commission Decision 1999/352 of 28 April 1999 Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council
The Specialised Financial Irregularities Panel (SFIP) is a body which functions independently and must be notified in the event of financial irregularities pursuant to the provisions of the Financial Regulation. However, it does not have investigative powers in the strict sense and, in certain cases, shares its powers with OLAF.	Articles 60(6) and 66(4) of the Financial Regulation and Articles 74 and 75 of the rules for implementing the Financial Regulation For the European Court of Auditors: Decision No 43/2007 of 17 July 2007 SFIP rules of procedure

<b><i>Rights of the official</i></b>	<b><i>Legal basis</i></b>
1) Right to an administrative investigation before any disciplinary proceedings to seek evidence for all allegations	Articles 1, 2(2) and 3 of Annex IX to the Staff Regulations (Civil Service Tribunal judgment of 8 March 2012, <i>Kerstens v Commission</i> , paragraph 90)
2) Presumption of innocence	Article 48 of the Charter of Fundamental Rights Judgment of 8 July 2008 in case T-48/05, <i>Franchet and Byk v Commission</i> .
3) Duty of confidentiality in the course of OLAF investigations and SFIP verifications	Article 10 of Regulation (EU, Euratom) No 883/2013 Fifth recital to the SFIP rules of procedure
4) An individual's right to be informed, in a language which he understands, of the accusations against him, and his right to adequate time and facilities for the preparation of his defence, provided this does not harm the ongoing investigation	Article 6(3) of the European Convention on Human Rights Article 16(5) of the OLAF instructions on investigative procedures Article 4 of the model decision attached to the Interinstitutional Agreement of 25 May 1999
5) Right to be informed by the Appointing Authority of the end of the investigation and the findings thereof and, <u>at the request</u> of the official concerned, of documents relating directly to the allegations made	Article 2(2) of Annex IX to the Staff Regulations
6) Right to be informed <u>in writing</u> by the Appointing Authority if, on the basis of the investigation report, no case can be made	Article 3 of Annex IX to the Staff Regulations
7) During disciplinary proceedings, the Appointing Authority has an obligation to communicate to the official concerned all evidence for and against him as well as the file relating to him. Similarly, OLAF investigations must seek evidence for <u>and</u> against.	Article 12(2) of Annex IX to the Staff Regulations
8) When the Disciplinary Board delivers an opinion it must inform the official concerned within two months.	Article 18 of Annex IX to the Staff Regulations

<p>9) Right to good administration of justice: the official has the right to be heard before an individual measure affects him personally (however, this right may be deferred for reasons of confidentiality). This right applies equally during disciplinary proceedings or proceedings before the Disciplinary Board, during the investigation itself and when the Appointing Authority is to deliver its decision.</p> <p>In an SFIP investigation the official will have the opportunity, when invited for interview, to express his views on the facts concerning him, but may nonetheless refuse to appear.</p>	<p>Article 41 of the Charter of Fundamental Rights Articles 1, 11 and 22 of Annex IX to the Staff Regulations Court of Auditors Decision No 99-2007 of 12 December 2007 laying down general implementing rules for conducting administrative investigations</p> <p>Articles 12 and 13(2) of the SFIP rules of procedure</p>
<p>10) A European official also has the right not to incriminate himself.</p>	<p>European Court of Human Rights judgment of 14 October 2010 Article 16.5 of the OLAF instructions</p>
<p>11) The official may make use of the proportionality principle, i.e. the means deployed within the framework of an investigation must be confined to what is strictly necessary without encroaching disproportionately on the rights of the official. This also applies to the duration of the investigation, which must not exceed “a reasonable time” commensurate with “the circumstances and complexity of the case”, so as to uphold the right of each individual to have his affairs handled within a reasonable time (non-observance is regarded as contrary to the good administration of justice). The proportionality principle applies equally during the preliminary investigation phase, at the initiation of disciplinary proceedings and during those proceedings themselves.</p> <p>It also applies to the work of the SFIP.</p>	<p>Regulations (EU, Euratom) No 883/2013 and, as appropriate, judgment of 8 July 2008 in case T-48/05, <i>Franchet and Byk v Commission</i> Article 41 of the Charter of Fundamental Rights</p> <p>Proportionality: recitals 23 and 49, Articles 5(1), 6(1) and 7(5). Duration: Article 15(1): “The Supervisory Committee shall in particular monitor developments concerning [...] the duration of investigations.”</p> <p>Second recital to the SFIP rules of procedure</p>
<p>12) The periods established in the Staff Regulations, although not mandatory, must also be respected. However, <u>simply exceeding the “reasonable time” limit cannot call into question the proceedings or resultant decision</u> unless it has a bearing on the substance of the decision by, for example, depriving the official of the opportunity to defend himself.</p>	<p>Articles 18 and 22 of Annex IX to the Staff Regulations</p>

<p>13) Rights of the defence</p>	<p>Article 48 of the Charter of Fundamental Rights For SFIP verifications, see the fifth recital to the SFIP rules of procedure</p>
<p>14) OLAF must have a written authorisation in order to make searches, but it cannot search homes or access bank accounts. The SFIP has no investigative powers and is also precluded from carrying out searches.</p> <p>OLAF staff shall carry out their duties upon presentation of a written authorisation stating their identity and capacity. The Director-General issues such authorisations, stating the object and purpose of the investigation, the legal basis for conducting the investigations and the resulting investigative powers.</p>	<p>Article 7(3) of Regulation (EU, Euratom) No 883/2013</p>
<p>15) Right to assistance by the person of one's choice (for proceedings both with and without Disciplinary Board intervention). This right is also recognised when, within the framework of an SFIP verification, the official concerned is to convey his observations, which may be presented by the official or by his representative.</p>	<p>Article 6(3)(c) of the European Convention on Human Rights Articles 13(3) and 16(1) of Annex IX to the Staff Regulations Judgment of 17 December 1981 in <i>Demont v Commission</i> Article 16.5 of the OLAF instruction Article 12(2) of the SFIP rules of procedure</p>
<p>16) The official has 15 days from the date of receipt of all documents relevant to the proceedings to prepare a defence with the person assisting him.</p>	<p>Article 13(1) and (2) of Annex IX to the Staff Regulations</p>
<p>17) Fairness is a more abstract notion but can also be claimed by the official.</p>	<p>Twelfth recital to Regulation (EU, Euratom) No 883/2013</p>
<p>18) All other rights listed in the Treaties, as well as the fundamental freedoms, must be respected, in particular the right to private life. OLAF has pledged to honour these on several occasions and they may therefore be used against it on the grounds of its duty of consistency. The duty of consistency may also be invoked against the SFIP.</p>	<p>Twelfth recital to Regulation (EU, Euratom) No 883/2013</p>

## Data Protection

<b><i>Rights of the official</i></b>	<b><i>Legal basis</i></b>
<p>19) Everyone has the right to have their personal data protected and processed fairly, for specific purposes, without any change of purpose. Processing must be performed with the consent of the person concerned or on a lawful basis which is not excessive in relation to the purpose of the investigation(*).</p> <p>(*). Nevertheless a number of exceptions are possible in order to prevent, detect or prosecute criminal offences, protect the EU's or a Member State's economic and financial interests, or guarantee the rights and freedoms of others. Under a further exception, the change-of-purpose prohibition is lifted in the case of the prevention, investigation, detection or prosecution of serious criminal offences.</p>	<p>Article 8 of the Charter of Fundamental Rights</p> <p>Article 4(1)(a), (b) and (c) of Regulation (EC) No 45/2001</p> <p>Article 6(1) of Regulation (EC) No 45/2001</p> <p>Article 5(a), (b) and (d) of Regulation (EC) No 45/2001</p> <p>Article 20 of Regulation (EC) No 45/2001</p> <p>Article 6(2) of Regulation (EC) No 45/2001</p>
<p>20) In the event of unlawful processing of data by OLAF, SFIP or the Appointing Authority, the official may request the erasure of the collected data.</p>	<p>Article 16 of Regulation (EC) No 45/2001</p>
<p>21) Right to private life (which may be expressed, for example, through the prohibition during an investigation on opening envelopes marked "personal" or "private", or on consulting personal files).</p>	<p>Article 7 of the Charter of Fundamental Rights</p> <p>Article 8 ECHR</p> <p>Judgments of the European Court of Human Rights in <i>S and Marper v the United Kingdom</i> (paragraph 67), <i>Niemietz v Germany</i> of 16 December 1992 and <i>Amann v Switzerland</i> of 16 February 2000</p>
<p>22) Each official's personal file is confidential.</p>	<p>Article 26(8) of the Staff Regulations</p>

<p>23) Personal data must be processed securely in order to prevent unauthorised access, copying or transmission.</p> <p>Collected data may strictly be transferred only to persons with the necessary authority and covered by an adequate level of protection, regardless of whether the transfer is made by the SFIP, OLAF or the Appointing Authority.</p> <p>Third parties to whom data have been sent must be informed of any subsequent rectification or erasure.</p>	<p>Article 22 of Regulation (EC) No 45/2001</p> <p>Articles 7, 8 and 9 of Regulation (EC) No 45/2001</p> <p>Article 17 of Regulation (EC) No 45/2001</p>
<p>24) Right to know the identity of the data controller. However, this right should be qualified in certain cases, in particular the prosecution of criminal offences (in this regard, see the note (*) to paragraph 19).</p>	<p>Article 12 of Regulation (EC) No 45/2001</p>
<p>25) Right of access (may be qualified in certain cases – see the note (*) to paragraph 19)</p>	<p>Article 13 of Regulation (EC) No 45/2001</p>
<p>26) Right of rectification (may be qualified in certain cases – see the note (*) to paragraph 19)</p>	<p>Article 14 of Regulation (EC) No 45/2001</p>
<p>27) Right to block collected data (may be qualified in certain cases – see the note (*) to paragraph 19)</p>	<p>Article 15 of Regulation (EC) No 45/2001</p>
<p>28) Telecommunications and traffic data remain confidential (save during investigations or disciplinary proceedings, when this confidentiality may be waived).</p>	<p>Articles 20(1), 36 and 37 of Regulation (EC) No 45/2001</p>
<p>29) The processing of ethnic, political and religious data is strictly prohibited, and they may not be collected by OLAF or the SFIP or within the framework of disciplinary proceedings.</p>	<p>Article 10 of Regulation (EC) No 45/2001</p>

<p>30) Once OLAF has completed an internal investigation, the files are kept for between 10 and 20 years. Similarly, in disciplinary proceedings, the penalties recorded in personal files are retained in practice throughout the career of the official and for an indeterminate period thereafter. However, the official has the <u>right to request the deletion</u> of certain penalties from his personal file.</p>	<p>Article 27 of Annex IX to the Staff Regulations Article 4(1)(e) of Regulation (EC) No 45/2001</p>
<p>31) If the Appointing Authority decides to close the case without imposing any disciplinary penalty, the official may request that this decision be inserted in his personal file (however, according to the EDPS, it is not necessarily desirable to do so).</p>	<p>Article 22 of Annex IX to the Staff Regulations</p>
<p>32) If there has been a data protection violation, the official may apply to the EDPS, who will work with the DPO to have those rights protected, or even, in cases of maladministration, to the European Ombudsman.</p>	<p>Articles 24 to 26 and 41 to 48 of Regulation (EC) No 45/2001  Article 24 TFEU</p>
<p>33) The institution concerned shall ensure that complaints received from officials in fulfilment of their obligations under Article 22(a) and (b) are treated confidentially and in a timely manner (the institution is bound to adopt internal rules on complaint handling procedures and on protecting the legitimate interests of whistleblowers).</p>	<p>Article 22(c) of the Staff Regulations</p>

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