

TRAINING U4U

Litigation procedures (art 90 Staff Regulations)



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Objective of an appeal

- Restore your rights
- Everyone has the right to an effective remedy (Article 47 of the Charter of Fundamental Rights)
- No sanction against the exercise of this right
- Legal action (arguments of law and not of fairness or opportunity)

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Opportunity: it would be appropriate to take a measure or not

Fairness: it would be fair to take a measure

Law: the measure is based on - or violates - a legal basis

Do not stay alone!

**Do not stay alone!, U4U
can help you !**

<http://u4unity.eu/support.htm#ai>



- Analysis of the file
- Proposal for other ways of resolution
(harassment procedure, medical support, mediation ...)
- Assistance for writing an appeal
- Free initial legal consultation
- Preferential rate for a lawyer

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Internal appeal procedures

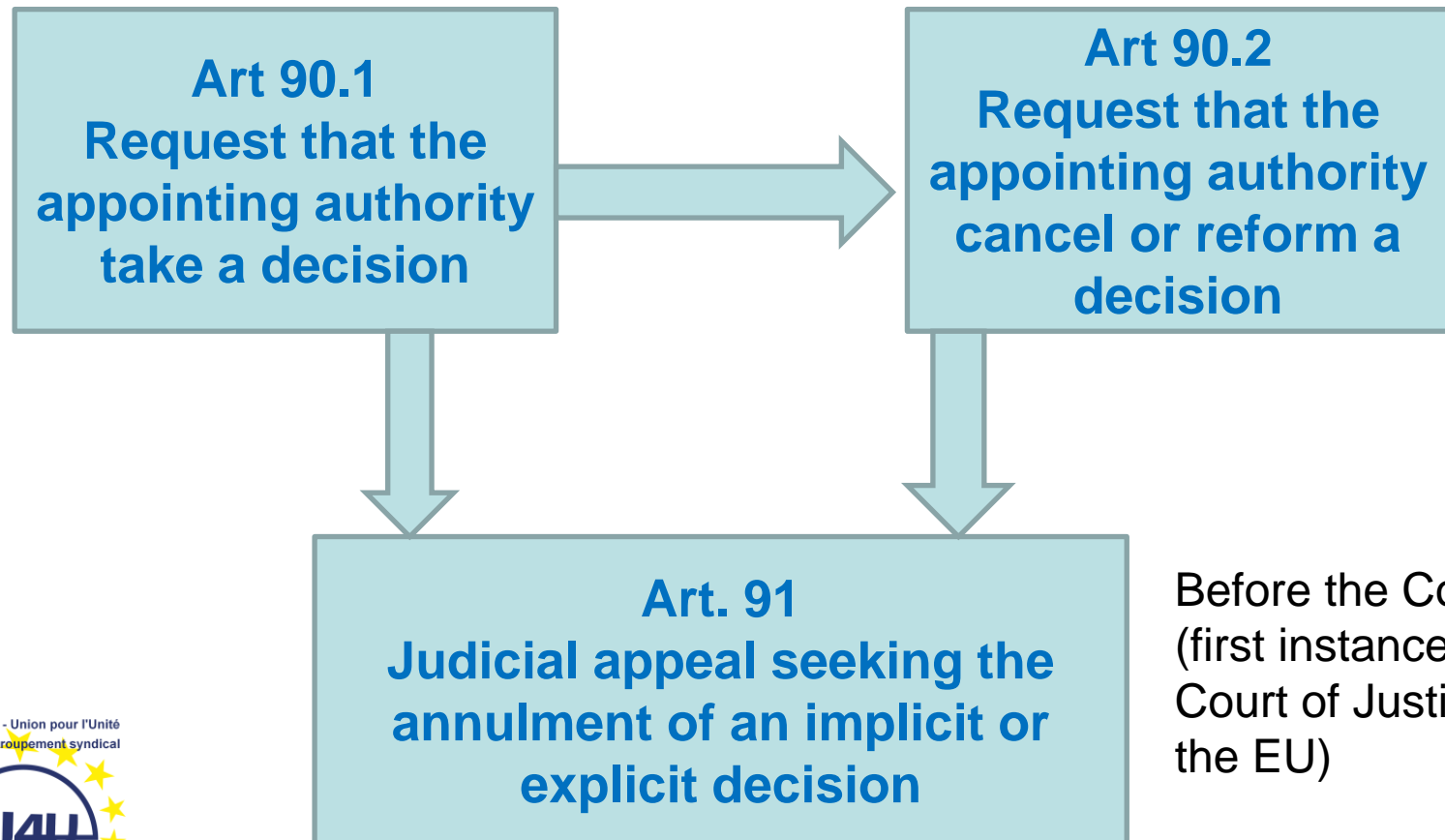
- In some areas, there are specific appeal procedures with very short deadlines: evaluation report, probationary report, promotion, medical questions, EPSO competition ...

**See the documents
relative to these subjects**



These slides do not address these procedures

Overview



Art 90.1 : request for decision

- The purpose is to invite the appointing authority to take a decision
- Do not confuse this request with a 90.2 claim for which it does not extend delays
- It may be used to obtain an appealable decision if the appointing authority remains inactive

Or OLAF ou Data Protection Supervisor

Eg change of family situation, center of interest ...

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Art 90.1 : procedure

Request from the interested party

Free procedure, except your possible consulting fees

Reasoned decision of the appointing authority

4 months from the request to the appointing authority. Non-response is a rejection decision.

Possible complaint 90.2

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Art 90. 2 The Complaint

- Any official or agent may refer to the appointing authority a complaint against an act adversely affecting his legal position, directly and immediately
- Adversely affecting act
 - decision of the appointing authority
 - implied rejection of an application under art.

Or OLAF ou European Data Protection Supervisor

Adversely affecting act

- General decision (published)
- Individual measure (notified)
- Excludes preparatory acts

Examples of such acts: pay slips, closed evaluation report ...

The preparatory acts of decisions do not in themselves affect you

Examples of preparatory acts: opening of an investigation, evaluation report not closed ...



Parallel actions

- Possibility of using parallel actions:
 - Dialogue with the hierarchy
 - Complaint to the Internal Mediator, the European Ombudsman ...
- But watch out for delays that are not suspended by these actions

Art 90.2: Lodging deadlines

- 3 months :
 - from the day of publication or notification of the act adversely affecting you.
 - from the day on which the person concerned became aware, if an individual act adversely affects a person other than the notified recipient.
 - from the implied decision of rejection within the meaning of Article 90.1.



Lodging a Complaint

- Each institution establishes how to file a claim :
 - Commission: Cover Form
 - Parliament: email or registered letter with AR
 - ...

Art 90.2 : Procedure

Free procedure, except your consulting fees

Complaint filed

**GIS : Groupe interservices
demandes et réclamations**
Gives an advice to the AIPN

Reasoned decision
taken by the AIPN

4 months from the
request to the appointing
authority. Non-response
is a rejection decision.

It is possible to contact
the GIS member
appointed by the CSC
to ensure that all facts
are well listed

Possible appeal with
the Court of Justice

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Content of the complaint

- Always seek legal help from a U4U lawyer or other advisor to file a claim
- You have to attack the decision in law
- It will be **impossible** to develop **new *pleas*** in a judicial appeal

The *pleas in law* are the factual or legal reasons that support the arguments of the parties.



Judicial appeal art 91

- Objective: to obtain from the judge the annulment of a decision by challenging its legal grounds
- There needs to be continued interest in acting
- Heavy and slow procedure: think carefully and take advice before starting.



**Don't stay alone : U4U
may help you !**

<http://u4unity.eu/support.htm#ai>



The legal appeal

- Before the Tribunal, provided that a claim has been made under Art. 90.2 and rejected

EPSO competitions excepted

- 3 months delay, from explicit or implicit rejection

An explicit rejection within 3 months after an implicit rejection opens a new delay

- Interim measures (application for suspension of execution) possible, as soon as the complaint is filed without waiting for its rejection.

Costs of an Appeal

- Free of charges
- You will have to incur attorney fees
- The losing party will be ordered to pay the costs of the other party

Real heavy risk !

Content of an appeal

- Arguments of admissibility (interest to act ...)
- Legal arguments : main pleas: unlawfulness, procedural violation, manifest error, violation of your fundamental rights or of principles of good administration, misuse of powers or of procedure, violation of the principle of proportionality ...
- Evidence, supporting documents, testimonials

Stay of execution – Application for interim measures

- To avoid **serious and irreparable harm** to the plaintiff's interests, if the impugned decision had effect before the judgment on the merits.
- The application for interim measures presents all the evidence to justify the granting of provisional measures
- At least one of the pleas relied upon by the plaintiff must, at first glance, be serious.

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As the appeals are not suspensive, only this procedure allows suspension of the execution of an act. The judge hearing the application for interim measures also balances the interests of all involved parties.

Obligation of Assistance by the Administration (Article 24)

- Request for assistance from the Administration in any proceedings against the perpetrators of threats, contempts, insults, defamations or attacks against the person and the property, **causing damage** to the official (or his family) **because of his quality and its functions**
- Bring a beginning of proof of the reality of the attacks
- Does not protect against the acts of the Administration itself
- The unjustified delay of the Administration to respond can incur its responsibility but it has a wide discretion in the choice of measures to be taken.

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Whistleblowing (art 22 bis)

Compulsory !
otherwise, offence...

- An official who has knowledge of facts alleging illegal activity **must** inform his superior or his DG or the SG or OLAF.
- If he has acted in good faith, he is not prejudiced by the Institution
- He can forward the information (Presidents of the Institutions or Mediator) if:
 - He is in good faith and his information is founded
 - he has previously informed OLAF or his Institution (who must indicate within 60 days their time limit for action) (Except urgency motivated by the circumstances of the case)



take advice before
acting



To know more

Legal basis:

- Art 90 Staff Regulations

Lexique

AIPN : autorité investie du pouvoir de nomination - au sens large (Appointing Authority)

OLAF : European Anti-Fraud Office

CSP : Central Staff Committee

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