



THE TWISTS AND TURNS OF THE (PRE)LITIGATION PROCEDURE: HOW TO GET PREPARED?

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We will discuss, in a concise and pragmatic way, a variety of issues that will allow you to look forward more calmly to the various steps of Articles 90 and 91 of the Staff Regulations.

The request : In which circumstances? How to submit it? What tone should be used? Which annexes should be attached? Should I detail it or should I be brief? Is it required to consult a lawyer at this stage?

The complaint : When? Within what timeframe? In which form? On what grounds? Which annexes should be attached? Should I detail it or should I be brief? Is it required to consult a lawyer at this stage?

The claim (the appeal, the request before the Court) : How to build my file for the lawyer? What about the procedure, the delay in processing the file, the costs incurred? Will the reform of the Court of Justice have an impact on the duration of the procedure?

The traps of the procedure : special delays, the EPSO procedure

A question and answer session will close the conference

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I. THE REQUEST ARTICLE 90§1 OF THE STAFF REGULATIONS

1. Any person to whom these Staff Regulations apply may submit to the **appointing authority** a request that it take a decision relating to him. The authority shall notify the person concerned of its **reasoned decision within four months from the date on which the request was made**. If at the end of that period **no reply to the request has been received**, this shall be deemed to constitute an **implied decision rejecting it**, against which a complaint may be lodged in accordance with the following paragraph.

/ ! \ must be introduced within a reasonable timetable

/ ! \ A request cannot be a palliative to the absence of respect of the deadline foreseen in the article 90§2.

/ ! \ The request of re-examination in application of the EPSO rules is not a request depending on article 90.

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II. THE COMPLAINT ARTICLE 90§2 OF THE STAFF REGULATIONS

2. Any person to whom these Staff Regulations apply may submit to the appointing authority a complaint against **an act adversely affecting him**, either where the said authority has taken a decision or where it has failed to adopt a measure prescribed by the Staff Regulations. The complaint must be lodged within **three months**. The period shall start to run:

- on the date of publication of the act if it is a measure of a general nature;
- on the date of notification of the decision to the person concerned, but in no case later than the date on which the latter received such notification, if the measure affects a specified person; if, however, an act affecting a specified person also contains a complaint against another person, the period shall start to run in respect of that other person on the date on which he receives notification thereof but in no case later than the date of publication;
- on the date of expiry of the period prescribed for reply where the complaint concerns an implied decision rejecting a request as provided for in paragraph 1.

The authority shall notify the person concerned of its **reasoned decision** within **four months** from the date on which the complaint was lodged. If at the end of that period no reply to the complaint has been received, this shall be deemed to constitute an **implied decision rejecting it**, against which an appeal may be lodged under Article 91.

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A. Object of the complaint

1. Must affect you

a. Examples

b. Salary slip

2. Act from the appointing authority

/!\ for temporary agent and contractual agents: through articles 46 and 117

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B. Deadlines

1. Public policy

2. When does it start ?

3. How to calculate ?

/!\ Special forms to be used

/!\ Proof

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/ ! \ Any periods fixed in days are of public policy and must be respected. If you have 6 working days, if you receive the decision on Monday, you will have until next Tuesday to introduce the request of internal appeal.

For example: you have 5 days to dispute the results of your absence of eligibility, same period to make comments and remarks on your evaluation.

/ ! \ Periods calculated in EPSO procedures start from the date of the results of the competition or from the date of the rejection of your request of re-examination.

In EPSO procedures, you may introduce a request before the Court without any need to first lodge a complaint since the appointing authority has no competence to change the results of the competition.

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III. CLAIM (REQUEST BEFORE THE COURT)

1. The Court of Justice of the European Communities shall have jurisdiction in any dispute between the Communities and any person to whom these Staff Regulations apply regarding the legality of an act adversely affecting such person within the meaning of Article 90(2). In disputes of a financial character the Court of Justice shall have unlimited jurisdiction.

2. An appeal to the Court of Justice of the European Communities shall lie only if:

- the appointing authority has previously had a complaint submitted to it pursuant to Article 90(2) within **the period prescribed therein**, and
- the complaint has been rejected by **express decisions** or by **implied decision**.

3. Appeals under paragraph 2 shall be filed **within three months**. The period shall begin:

- on the date of **notification of the decision** taken in response to the complaint;
- on the **date of expiry of the period prescribed** for the reply where the appeal is against an implied decision rejecting a complaint submitted pursuant to Article 90(2); nevertheless, **where a complaint is rejected by express decision after being rejected by implied decision but before the period for lodging an appeal has expired, the period for lodging the appeal shall start to run afresh.**

4. By way of derogation from paragraph 2, the person concerned may, after submitting a complaint to the appointing authority pursuant to Article 90(2), **immediately** file an appeal with the Court of Justice, provided that such appeal is **accompanied by an application either**

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for a stay of execution of the contested act or for the adoption of interim measures. The proceedings in the principal action before the Court of Justice shall then be suspended until such time as an express or implied decision rejecting the complaint is taken.

5. Appeals under this Article shall be investigated and heard as provided for in the **Rules of Procedure of the Court of Justice of the European Communities.**

A. Deadlines/Periods

See complaint

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B. Admissibility

1. Advised by a lawyer

2. Interest to the action

a. personal

b. the act must affect you at the time you brought the claim but also until the end of the procedure

c. your interest must be related to what you ask for

3. correspondence between the complaint and the claim

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IV. ARGUMENTS

How to draft the request/the complaint

Be very meticulous, the arguments must be clear, understandable and understood.

Arguments ?

- Illegality,
- Misjudgement,
- Breach of rights: rights to be heard, to be defended, right of good administration, fundamental human rights, etc etc.