

# 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

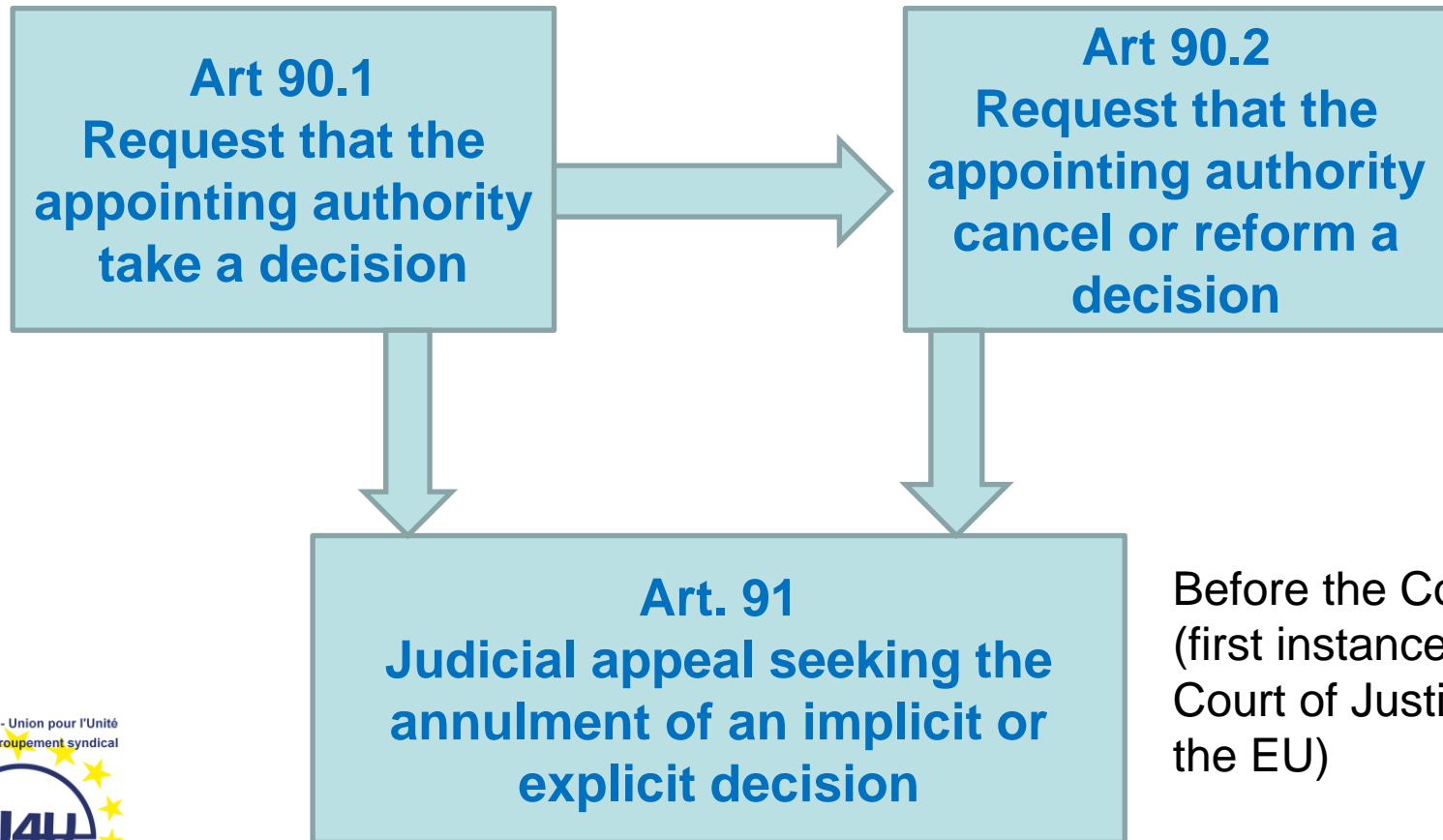
- In some areas, there are specific appeal procedures with very short deadlines: evaluation report, probationary report, promotion, medical questions, EPSO competition ...

**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.**



*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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