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Code of good administrative behaviour in the Community Plant Variety Office

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(2000/C 371/08)

THE ADMINISTRATIVE COUNCIL OF THE COMMUNITY PLANT VARIETY OFFICE,

In exercise of the powers conferred on it by Article 36(1)(d) of Council Regulation (EC) No 2100/94 on Community plant variety rights,

Having regard to the own initiative inquiry of the European Ombudsman into the existence and public accessibility in the different Community institutions and bodies of a code of good administrative behaviour for officials in their relations with the public,

Whereas the Amsterdam Treaty has explicitly introduced the concept of openness into the Treaty on European Union, by stating that it marks a new stage in the process of creating an ever close union in which decisions are taken as openly as possible and as closely as possible to the citizen;

Whereas such a code is useful both for officials, as it will inform them in detail of the rules to be followed in dealing with the public, and for the public as it will provide them with information on the standard of conduct they are entitled to expect in dealings with the Office;

Considering therefore that it is desirable to establish a code governing the principles of good administrative behaviour which officials should respect in their relations with the public and to make the code widely available to the public,

HEREBY ESTABLISHES THE FOLLOWING RULES ON WORKING METHODS OF THE OFFICE -

Article 1

General provision

In their relations with the public, the staff of the Community Plant Variety Office ("the Office") shall respect the principles which are laid down in these rules and which constitute the code of good administrative behaviour, hereafter referred to as "the Code".

Article 2

Personal scope of application

1. The code shall apply to all officials and other servants to whom the Staff Regulations and the conditions of service of other agents apply, in their relations with the public. Hereafter the term "official" refers to both officials and other servants.
2. The Office shall take the necessary measures to ensure that the provisions set out in this code also apply to other persons working for it, such as persons employed under private law contracts, experts on secondment from national civil services and trainees.

3. "The public" refers to natural and legal persons, whether or not they reside or have their registered office in the EU.

Article 3

Material scope of application

1. This code contains the general principles of good administrative behaviour which apply to all relations of the Office's officials with the public, unless they are governed by specific provisions.
2. The principles set out in this code do not apply to relations between the Office and its officials, which are governed by the Staff Regulations.

Article 4

Lawfulness

An official shall act according to law and apply the rules and procedures laid down in Community legislation. In particular, he shall take care that decisions which affect the rights or interests of individuals have a basis in law and that their content complies with the law.

Article 5

Absence of discrimination

1. In dealing with requests from the public and in taking decisions, an official shall ensure that the principle of equality of treatment is respected. Members of the public who are in the same situation shall be treated to a similar manner.
2. If any difference in treatment is made, this must be justified by the objective relevant features of the particular case.
3. In particular, an official shall avoid any unjustified discrimination between members of the public based on nationality, sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Article 6

Proportionality

1. When taking decisions, an official shall ensure that the measures taken are proportional to the aim pursued. In particular, he shall avoid restricting the rights of members of the public or imposing charges on them when those restrictions or charges are not reasonable in relation to the purpose of the action pursued.
2. When taking decisions, an official shall strike a fair balance between the interests of private persons and the general public interest.

Article 7

Absence and misuse of power

Powers shall be exercised solely for the purposes for which they have been conferred by the relevant provisions. In particular, an official shall avoid using powers for purposes which have no basis in law or which are not motivated by any public interest.

Article 8

Impartiality and independence

1. An official shall be impartial and independent. He shall abstain from any arbitrary action adversely affecting members of the public, as well as from any preferential treatment on any grounds whatsoever.
2. An official shall not be guided by any outside influences of whatever kind, including political influences, or by personal interests.
3. An official shall abstain from being involved in the taking of a decision on a matter concerning his own interests, or those of his family, relatives, friends or acquaintances.

Article 9

Objectivity

When taking decisions, an official shall take into consideration all relevant factors and give each of them its proper weight in the decision and shall exclude any irrelevant element from consideration.

Article 10

Legitimate expectations and consistency

1. An official shall respect the legitimate and reasonable expectations that members of the public have in the light of how the Office has acted in the past.
2. An official shall be consistent in his own administrative behaviour as well as with the administrative action of the Office. He shall follow the Office's normal administrative practices unless there are legitimate grounds for departing from them in an individual case.

Article 11

Fairness

An official shall act fairly and reasonably.

Article 12

Courtesy

1. An official shall be service minded, correct, courteous and accessible in relations with the public.
2. If an official is not responsible for a given matter, he shall direct an interested member of the public to the appropriate official.
3. If an error occurs which negatively affects the rights or interests of a member of the public, an official shall apologise.

Article 13

Reply to letters in the language of the correspondent

An official shall use his best endeavours to ensure that any member of the public who writes to the Office in one of the official languages of the Community receives a reply in the same language.

Article 14

Acknowledgement of receipt and indication of competent official

1. Each letter or complaint to the Office shall receive an acknowledgement within two weeks of receipt, or a substantive reply if such is possible within that period. In any event a substantive reply shall be sent within two months of such receipt.
2. The acknowledgement or reply shall indicate the name and telephone number of the official dealing with the matter and the service to which he belongs.
3. No acknowledgement or reply need be sent in cases where letters or complaints are frivolous or vexatious because of their excessive number or their repetitive or pointless character.

Article 15

Obligation to transfer to competent service

If a letter or complaint to the Office is addressed or transmitted to a unit or official which is not competent to deal with it, the file shall be transferred to the competent service of the Office, which shall proceed in accordance with Article 14.

Article 16

Right to be heard and to make statements

1. In a case where the rights or interests of a member of the public are involved, an official shall ensure that, at every stage of the decision-making procedure, the rights of defence are respected.
2. In a case where a decision affecting his rights or interests will be taken, every member of the public shall have the right to submit written comments and, where necessary, to present oral observations before the decision is taken.

Article 17

Reasonable time limit for taking decisions

1. An official shall ensure that a decision on every request or complaint to the Office is taken within a reasonable time limit, without delay and in any event no later than two months after the date of receipt.
2. If a request or complaint to the Office cannot, because of the complexity of the matters which it raises, be decided upon within the abovementioned time limit, the author thereof shall be so informed as soon as possible and a definitive decision shall be issued as soon as practicable.

Article 18

Duty to state the grounds of decisions

1. Every decision of the Office which may adversely affect the rights or interests of a private person shall state the grounds on which it is based by stating clearly the relevant facts and the legal basis of the decision.
2. An official shall avoid taking a decision based on brief or vague grounds, or which do not contain individual reasoning.
3. If it is not possible, because of the large number of persons concerned by similar decisions, to communicate in detail the grounds of the decision and where standard replies are therefore made, an official shall subsequently provide individual reasoning to a person who so requests.

Article 19

Indication of the possibilities of appeal

1. A decision of the Office which may adversely affect the rights or interests of a private person shall contain an indication of any right of appeal against the decision. In particular, it shall indicate the nature of the remedies, the bodies before which it can be exercised and the time limit for exercising it.
2. A decision shall also refer to the possibility of judicial review and complaints of maladministration to the Ombudsman under Articles 230 and 195 respectively of the Treaty establishing the European Community.

Article 20

Notification of the decision

1. An official shall ensure that a decision which affects the rights or interests of a private person is notified to that person in writing as soon as possible after the decision has been taken.
2. An official shall abstain from communicating the decision to others until the person concerned has been notified.

Article 21

Data protection

1. An official who deals with personal data concerning a member of the public shall respect the principles laid down in Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and the free movement of such data.
2. In particular, an official shall avoid processing personal data for non-legitimate purposes or the transmission of such data to non-authorized persons.

Article 22

Requests for information

1. When he has responsibility for the matter concerned, an official shall provide members of the public with the information they request.
2. If an oral request is too complicated or comprehensive to deal with, an official may require the person concerned to formulate his request in writing.
3. If, because of its confidentiality, an official cannot disclose the information requested, he shall indicate the reasons in accordance with Article 18 above.
4. Further to requests for information on matters for which he has no responsibility, an official shall direct the inquirer to the competent person, giving his name and telephone number. Further to requests for information concerning another Community institution or body, he shall direct the inquirer to that institution or body.

Article 23

Requests for public access to documents

1. Further to requests for access to documents of the Office, an official shall give access to these

documents in accordance with the legislation governing the Office and the decision of the Administrative Council of the Office on public access to documents.

2. If an official cannot comply with an oral request for access to documents, the member of public may be required to formulate it in writing.

Article 24

Keeping of adequate records

The Office shall keep adequate records of its incoming and outgoing mail, of documents received and of measures taken.

Article 25

Public access to the code

1. The Office shall take the necessary measures to ensure that the code enjoys the widest possible publicity among members of the public. In particular, the Office shall ensure the availability of a leaflet called "Good administrative behaviour in the Community Plant Variety Office" which will contain the code.

2. The Office shall provide a copy of the code to any member of the public who requests it.

Article 26

Right to complain to the European Ombudsman

Any failure of an official to comply with the principles set out in the code may be the subject of a complaint to the European Ombudsman in accordance with Article 195 of the Treaty establishing the European Community and the Statute of the Ombudsman(1).

Article 27

Revision

These rules shall be reviewed after two years of operation. In preparation for the review, towards the end of 2001 the President of the Office shall report to the Administrative Council on the implementation of the rules to that point.

Article 28

Entry into force

These rules shall come into force on 13 April 2000 and shall be published in the Official Journal of the European Communities.

Date: 12 April 2000.

Chairman of the Administrative Council

Louis Van Eylen

(1) Decision of the European Parliament on the Regulations and General Conditions governing the performance of the Ombudsman's duties (OJ L 113, 4.5.1994, p. 15).

