

How to deal with problems at EMBL



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Foreword

How to deal with problems at EMBL

(Disputes, conflicts, inappropriate conduct etc.)

What has impressed me most about EMBL in the short time that I have been Director General is the people I have met here. Our organisation is based on, and driven by, intense interactions between team members, collaborators, mentors, and colleagues. I see a truly special culture that ensures that EMBL rightly holds a place amongst the best life science institutes in the world.



EMBL, as an organisation, has a responsibility to ensure the health and wellbeing of its staff – our most important constituents. This document outlines our obligations and presents in a simple manner, the formal and informal processes to ensure our rights and pursue our interests. I hope that it, and the colleagues named in it, will guide you in your approach to any issues you might encounter during your time working at EMBL, whether it is a dispute with a manager, conflict with a colleague, or you have witnessed something you feel is just not right and don't know what to do about it.

Like any large community, there are times when people working at EMBL will need to react to situations they regard as stressful or uncomfortable. I want to ensure that at its heart, EMBL has a culture where everyone feels safe to voice concerns or complaints, knowing that solutions to workplace problems will be delivered in a collaborative, fair, and constructive way. Formal processes exist and people should be aware of these and their implications when launched; however, informal processes can and should be used first to try to resolve conflicts and problematic issues within our organisation. Sometimes this will mean some difficult conversations but communication is usually the key to resolving problems. I want us to try to be consistent in our approach to preventing, managing, and resolving conflict – and indeed problems of all sorts – to create a workplace culture at EMBL we are all proud of.

Of course, this vision can only be achieved with you being aware of and living up to your own responsibility as a Member of Staff and, given the case, as a manager, or supervisor.

I welcome your input, suggestions, and feedback at any time. By working together and addressing issues in a manner that ensures respect, dignity, and fairness for all, we can help to ensure EMBL remains a very special workplace for all of us.

Edith Heard,
Director General

How to deal with problems at EMBL – a brief overview

(Disputes, conflicts, inappropriate conduct etc.)

Introduction

Working within an international multicultural organization like EMBL presents a unique set of opportunities and also challenges for staff and management.

Problems and conflicts can arise, as in any work environment. They can have an impact on peoples' health and well-being; they can interfere with the proper functioning of an organization; they can also be important catalysts for change. For all these reasons, they need to be handled appropriately. A transparent approach to addressing and resolving problems is key for enabling a healthy culture within an organisation. In this brief document, an outline is provided of some of the procedures that staff can follow at EMBL in case of dispute, conflict, or inappropriate conduct and also raise awareness about expected conduct.

The hope is that this will help to guide EMBL staff as to how they should proceed when faced with serious issues that they feel they cannot resolve: who they should turn to, what informal and formal processes at EMBL consist of, the respective roles of different people in the organization, and the implications of a formal process.

Understanding the wider context and the expectations the organisation has on its Members of Personnel might also help prevent problems and serious conflicts.

Rights and obligations of Members of Personnel (also referred to as staff) – a healthy work environment

It is essential that staff familiarize themselves with EMBL's Code of Conduct and with the general staff rights and obligations and as set out in the EMBL regulatory framework (Staff Rules and Regulations, Internal Policies). Staff need to not only know what they can expect from their workplace, but also what is expected of them, from the organization, and by extension from colleagues, in addition to their job performance.

While staff can pursue their rights (e.g. through informal resolutions, mediation, formal complaint, or an appeal of a decision), they may also be called on to account for non-compliance with their general obligations, in other words, for behaviour that falls under the definition of misconduct.

As put forward in EMBL's Code of Conduct, ethical and respectful behaviour are fundamental in creating and maintaining a healthy work environment which is the basis of EMBL's success and productivity.

Resolution of problems – disputes

EMBL considers it pivotal that staff are able to address any issue, be it a dispute, a conflict, or more personal



concerns, in an early (or timely) manner and, where necessary, with the support of a trustworthy person without fearing negative consequences.

Generally speaking, depending on the issue and the context, problems may be dealt with via a formal process or an informal manner.

EMBL has established appropriate mechanisms for both approaches. EMBL calls upon the Members of Personnel to familiarize themselves with the different processes (see Staff Regulations Rules and Internal Policies) and to seek assistance in understanding them and their potential advantages and disadvantages in order to make an informed decision as to which approach might be better to handle a specific issue.

Wherever possible, EMBL encourages the informal resolution of a problem or a dispute.

Natural contact points for staff facing problems are their supervisors or managers, Head of Units, Human Resources, and, in the case of fellows, the Dean of Graduate Studies.

When Members of Personnel are not sure about what they can and – sometimes – are obliged to do regarding a problem, they may avail themselves of the Ombudsperson or a Trusted Advisor, whose role is to listen to issues of staff and assist them in identifying the suitable avenue(s) for resolution in a neutral manner. Neither the Ombudsperson nor a Trusted Advisor will themselves take any action on what has been shared with them, unless it is agreed upon with the staff member.

Appeals (challenges to a decision)

The appeal process can be triggered by a member of personnel wishing to challenge a decision (or non-decision) that concerns her or him personally and can affect her or him adversely. An appeal may contest the conformity of a decision with the Staff

Rules and Regulations, with the conditions of the contract of employment or Internal Policies, and needs to be submitted in writing to the Director General. The Director General will take a final decision only after having obtained a recommendation from the Joint Advisory Appeal Board which operates in an independent manner.

It is important to note that EMBL has subjected its internal formal system to scrutiny by the International Labour Organisation Administrative Tribunal (ILOAT), which means that a final decision taken by the Director General may, as a last resort, be challenged before that tribunal.

Disciplinary process

The disciplinary process focusses on the responsible conduct of members of personnel.

Misconduct, as well as the disciplinary process in general, is regulated in the Staff Rules and Regulations. Misconduct is defined by Staff Regulation R 2 5.01 as ‘conduct on the part of a member of personnel which is incompatible with his/her obligations and duties under the Staff Rules and Regulations, his/her contract, the Code of Conduct, any other relevant administrative issuances including the internal policies or which is materially or morally damaging to the Laboratory.’ Examples of misconduct include, among others, harassment, abuse of authority, or fraud.

In general, disciplinary cases are initially handled by the Administrative Director (unless they are involved, in which case it is the Director General). More serious cases, which warrant a sanction beyond a written warning or reprimand, will be looked into by the Joint Advisory Disciplinary Board. The Board, operating in an independent manner, will then submit a recommendation to the Director General for decision making.

A disciplinary process may be triggered, not only by the administration itself, but also by a member of personnel reporting to the Administrative Director or the Director General, or other channels as designated by internal



policies, that they have witnessed or are subject to misconduct. Such reports may also be provided anonymously.

Separate provisions regarding specific misconduct

In addition to the general provisions dealing with misconduct in the Staff Rules and Regulations, various Internal Policies (IPs) further explain specific forms of misconduct and in some cases establish separate ‘bodies’ or specific procedures and processes to handle them.

For example: (1) in cases of alleged scientific misconduct, IP 51 sees the involvement of the Scientific Ombudsperson and the appointment of an ad-hoc Scientific Misconduct Investigating Committee which will conduct formal investigations; (2) in cases of alleged transgressions against animal welfare, IP 65 encourages reports to be made to the Animal Welfare and ICAUC Committee; (3) violations of the General Data Protection Policy, IP 68, may be reported to the Data Protection Committee, which is also responsible for investigating allegations and recommending to the Director General the start of a disciplinary process; (4) in line with the Safety Policy, Members of Personnel are required to report hazardous situations to their supervisors, Health and Safety, or the Safety Committee established by that policy.

Other IPs that define required conduct and its breaches are: (1) IP 53, Use of Human Biological Material; (2) IP 54, Acceptable computer and network facility use; (3) IP 57, Conflict of Interest Policy; (4) IP 60, Equality and Diversity; (5) IP 61, EMBL NIH FCOI Policy; (6) IP 63, EMBL Publication Policy; (7) IP 66, EMBL Open Access Policy; (8) IP 67, Anti-Harassment Policy.

Conflicts between Pre-doctoral fellows and their supervisors

Explicit ‘conflict resolution guidelines’ (see IP 48, Pre-doctoral fellows) have to be followed in cases of conflicts between Pre-doctoral fellows and their supervisors. They foresee the involvement of the Dean of Graduate Studies as well as of the Thesis Advisory Committee.

Other problems

Staff might encounter other problems that cannot be properly addressed by the existing formal and informal processes. In such cases, Members of Personnel are encouraged to seek assistance from channels, such as their supervisor or manager, their Head of Unit, the Dean of Studies, the Staff Association, Health and Safety, Legal Services, Human Resources, Security, or Counselling Services, as appropriate.

For any issue or questions, they may always contact the Ombudsperson or a Trusted Advisor, who may also coach a person through handling a conflict or problem themselves.

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EMBL – How to deal with problems

(Disputes, conflicts, inappropriate conduct etc.)

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Purpose of this Guide

This guide aims to help you as EMBL members of personnel¹ (hereinafter also sometimes referred to as staff) understand your obligations and identify the resources and processes that exist for assisting in or actually resolving problems that you may encounter in your workplace.

This guide does not have any authoritative or binding character. It serves as a starting point and is intended to be auxiliary to the regulatory framework.

While consultation of the relevant official documents such as EMBL's Code of Conduct, the Staff Rules and Regulations or Internal Policies (hereinafter also referred to as regulatory framework) is strongly encouraged, it becomes indispensable when you are faced with a specific problem or case which could be of a legal nature.

1 What constitutes a problem at work?

A problem at work means anything that negatively impacts you in the work context, whether the issue results directly from your work environment or is of a (more) private nature.

Examples include: conflict with a colleague or supervisor; struggling with an unpleasant working environment; perceived unfair treatment, discrimination, or harassment; lack of perspective or loss of motivation; negative stress, anxiety, or depression; witnessing or experiencing improper treatment by colleagues; feeling isolated or helpless; being confronted with a perceived improper decision by a supervisor or other EMBL services.

Members of Personnel are encouraged to tackle all perceived problems, in particular if they appear to be long-lasting or have the potential to get bigger.

2 Where do I start?

There is not a single way in which all problems can be solved. How to address them depends on various factors, not least on the nature of the problem itself. For many problems, mainly for disputes and conduct, EMBL has established clear processes which can be initiated in different ways as described in the document below. They may be informal or formal.

Where problems fall into a category with no specific process or no designated interlocutors, staff are still encouraged to tackle them with appropriate channels. Channels for you to consider next to your direct and/or your second supervisor might be:

- **Human Resources**
- **The Head of the site's administration**
- For fellows:
 - **The Dean of Graduate Studies** and the **members of personnel in the Dean's office**
 - **The Thesis Advisory Committee**
- **The Scientific Ombudsperson**
- Legal Services can be contacted by Members of Personnel whenever they need clarification on the regulatory framework, such as understanding, interpretation, or applicability. Questions put to Legal Services could be regarding deadlines, formal requirements for an appeal or notification/report of misconduct, designated channels for reporting or for assistance, available options to solve problems, role of internal stakeholders etc. Legal Services do not provide support to individuals in handling their specific case but may assist by providing general legal advice.
- **Staff Association** provides confidential support and assistance to members of personnel, and Staff Representatives may assist in handling your specific case.
- Equally, another **Member of Personnel (current or former member)** may be helpful in giving you useful information and tips, or even represent you when dealing with your case.
- You may always contact one of EMBL's designated informal sources of assistance: **the Ombudsperson** and the EMBL Trusted Advisors. If you do not know what to do, these persons will help you to identify

¹ Formal processes do not apply to external collaborators. Nevertheless, external collaborators are encouraged to avail themselves of the informal procedures to resolve any workplace problems that they may encounter.

your options. They do not have any reporting obligations and treat any information they receive from you as strictly confidential. They may also coach you through a conflict or provide other assistance.

- Finally, you may also consider seeking **medical or psychological support**, either from within or outside EMBL, in addition to, or instead of, the above internal support.

3 Why do we need processes?

Processes are put in place to ensure clarity, fairness, transparency, and efficiency.

In addition to putting in place processes because of their benefits, EMBL also needs to live up to its obligations as an intergovernmental organisation. Owing to its privileges and immunities, EMBL is not subject to any national legislation or jurisdiction when it comes to labour law disputes. This means that EMBL needs to put together its own labour law, such as Staff Rules and Regulations or Internal Policies, not only regulating the material but also the procedural aspects, e.g. the processes to follow, meeting the required legal standards.

Beyond providing for internal formal processes to deal with disputes, EMBL accepts the jurisdiction of the International Labour Organisation Administrative Tribunal (ILOAT). ILOAT, as a court of last resort, will hear and decide on legal cases only when internal processes have been exhausted.

4 Formal – informal?

While putting in place formal processes, such as the appeals or the disciplinary avenues, is a legal requirement, EMBL strongly supports informal resolution of problems and has put in place designated and exclusively informal interlocutors, such as the Ombudsperson.

Formal processes lay out procedures with opposing parties, which are designed around guaranteeing individual rights and which will result in a formal

decision by the Laboratory. They also guarantee formal steps in relation to misconduct and may result in disciplinary measures. After the exhaustion of such process, an individual has access to the ILOAT. Informal processes offer confidential and non-adversarial avenues, where either an individual is assisted or where two (or more) parties are supported in finding a mutual understanding or agreement. Solving a problem in an informal manner may consist of receiving coaching to address an issue directly with the conflicting party, just as well as having facilitated talks or a mediation. Informal process will allow the party or parties to find their own solution. Taking an informal approach enables the party (or parties) to remain in control of the situation. If the informal process succeeds, there is normally no decision to be taken by the administration, which also means that this route does not lead to ILOAT.

Both informal and formal processes have their advantages and disadvantages, and it is important to reflect on the most appropriate approach for the specific problem at hand.

As indicated above, depending on the nature of the dispute or parties involved, EMBL provides different processes. Several of them propose, as a first step, to try to resolve the dispute or issue in an informal manner, but indicate the path to follow in case the informal resolution is unsuccessful.

As a general rule, it is always good to take an informal approach first.

5 Conflicts between fellows and thesis supervisors

The Predoctoral Fellows Policy, IP 48², establishes a specific procedure for conflicts between fellows and their thesis supervisor.

The policy first suggests informal resolution with the assistance of EMBL's Dean of Graduate Studies, members of the fellow's representative's team, the Staff Association or the Head of Unit.

² https://intranet.embl.de/hr/internal_policies/ip48_predocs.pdf



OMBUDSPERSON

The Ombudsperson provides independent, neutral/impartial, confidential and informal support for person working for and with EMBL.

This means that the Ombudsperson is independent in structure, function, and appearance within the organisation; is a designated neutral, remains unaligned and impartial. The Ombudsperson holds all communications with those seeking assistance in strict confidence and does not disclose confidential communications unless given permission to do so. The only exception to this privilege of confidentiality is where there appears to be imminent risk of serious harm. The Ombudsperson, as an informal resource, does not participate in any formal adjudicative or administrative procedure related to concerns brought to his/her attention. The Ombudsperson does not provide information to nor accept information on behalf of the organisation.

What can you expect from the Ombudsperson?

- Confidential discussions to listen to your concerns or inquiries.
- Complete impartiality, no matter which party to a difficult situation/conflict makes initial contact.
- Help in identifying and evaluating your options, and deciding which option makes the most sense for you.
- Coaching on how to deal with the problem directly.
- Help with addressing issues that you are reluctant to raise within regular channels.
- Only on request, active involvement in resolving problems and speaking with relevant parties in order to do so.
- Facilitating resolutions to disputes.
- Upon request, acting as a mediator or assisting with identifying a suitable mediator.
- Alerting management to systemic trends and issues that give rise to conflict.

TRUSTED ADVISOR

The Trusted Advisor's primary role is to be an informal, confidential, trustworthy, and readily accessible source of early assistance for staff with questions or concerns regarding a workplace issue or who want information about where to seek assistance. Trusted Advisors fulfil their role in line with the Trusted Advisor's Code of Conduct. Trusted Advisors are selected among your colleagues at EMBL.

They serve as a "first aid" confidential sounding board for staff; Listen and help colleagues assess their situations and think through their options; Help colleagues help themselves by listening and providing problem-solving guidance in confidence; Coach colleagues in conflict resolution skills, when appropriate, to enable them to help themselves in the future; and/or Guide colleagues to appropriate institutional sources of information such as relevant policies and procedures and support. Trusted Advisors do not provide information to nor accept information on behalf of the organisation.

It also establishes the **Thesis Advisory Committee (TAC)** as a resource to suggest a resolution, after having heard both parties and having consulted various relevant stakeholders.

If no resolution can be found, the dissatisfied party should notify the Dean of Graduate Studies. Advice or requests for a final decision, where appropriate or necessary, is to be sought from the Director General. In the event that that a conflict between the PhD supervisor and the fellow appears irresolvable, efforts should be taken to change supervisor. The final decision is to be taken by the Dean of Graduate Studies with the agreement of the Director General.

6 Conduct – Discipline

a. Misconduct as defined by Staff Regulation (R 2 5.01)

Misconduct is defined by Staff Regulation R 2 5.01 as ‘conduct on the part of a member of personnel which is incompatible with his/her obligations and duties under the Staff Rules and Regulations, his/her contract, the Code of Conduct³, any other relevant administrative issuances including the internal policies (see specific forms of misconduct) or which is materially or morally damaging to the Laboratory.’

The Staff Rules and Regulations contain a specific Section, 1.3 under Chapter 1 referred to Duties and Obligations which state that, Members of Personnel shall:

- Not seek or accept instructions from Government or any authority outside the Laboratory.
- Refrain from any act or activity which is incompatible with their functions or which would be morally or materially prejudicial to the Laboratory.
- Not use for private purposes the property of the Laboratory, its premises, its name or any of its logos or emblems without the express and prior authorization of the Director General.
- Inform the Director General of any conviction of an offence under national law, other than one involving a summary fine.
- Request authorization from the Director General for any professional activity outside the Laboratory or any activity of a commercial nature.

- Observe required standards of conduct when engaging in a political activity.
- Not communicate to the public in connection with the work of the Laboratory unless authorized by the Director General.

Regulation 2 5.01 lists examples of misconduct. They are:

- Use of official position, authority, or property for pecuniary gain or advantage for member of personnel or others;
- Any form of scientific misconduct;
- Abuse of authority or trust;
- False statement, misrepresentation, or fraud, whether oral or written, pertaining to official matters;
- Violation of any applicable law;
- Disrespectfulness, such as refusal to obey instructions from a superior;
- Conduct which renders the member of personnel unable to perform his/her duties properly, for example being intoxicated when on duty or unauthorized absence from duty;
- Non declared conflict of interests;
- Harassment;
- Retaliation.

b. Disciplinary Process – Misconduct (general provisions)

In the event of misconduct, EMBL may take disciplinary measures having followed the established disciplinary process.

In a first instance, the process is conducted by the Administrative Director, who receives allegations of misconduct and may conduct a preliminary investigation in order to find out more facts about the case, including hearing from the persons involved. The Administrative Director may, depending on the evidence, dismiss the allegations or adopt a written warning or written reprimand. If the case has the potential to result in more serious disciplinary measures than a written warning or written reprimand, the Administrative Director needs to refer the matter to the **Joint Advisory Disciplinary Board (JADB)**⁴. The JADB operates in an independent manner and is established in line with the Staff Rules and Regulations.

³ <https://intranet.embl.de/leadership/dg/code-of-conduct/>

⁴ https://intranet.embl.de/leadership/dg/committees/joint_disciplinary/index.html



The JADB will look into the specific case, e.g. by examining the documents or ordering a further investigation, fully observing the rights of the persons involved. At the end of the proceedings before it, the JADB will make a recommendation to the Director General on the merits of the case for decision making. Where a member of personnel is found to have committed misconduct, the Director General may, for example, decide to postpone the advancement to a higher grade or step, reassign a person to another post, temporarily remove the person from duty, order the loss of one or more steps/grades, or dismiss the person.⁵

Disciplinary measures can be **appealed** against internally, resulting in a final decision by the Director General. The final recourse possibility is the ILOAT.⁶ For specific forms of misconduct (see below) different processes might apply but are supplemented, where necessary, with the overall regulatory framework.

A disciplinary process may be triggered by the administration itself, but also by a member of personnel. In general, Members of Personnel who become aware of misconduct have to inform in writing the Administrative Director or, if s/he are involved personally, the Director General, providing a description of the situation, all available supporting information and documentation, and indicate the persons involved. Such information must be provided in good faith as soon as possible. The information may also be provided anonymously.

c. Protection against retaliation for reporting misconduct in good faith (whistleblowing)

The **Whistleblowing Policy**, IP 67 complements the existing regulatory framework (Staff Rules and Regulations and other Internal Policies) and sets out general duties, rights and responsibilities in relation to whistleblowing and protection against retaliation.

A whistleblower is defined as someone who, in good faith, informs of an alleged misconduct or cooperates with an authorized investigation (including a preliminary investigation).

Retaliation is explained in the policy as any direct or indirect detrimental action or mission recommended, threatened or taken by a Member of Personnel against the whistleblower.

The policy sets out that EMBL endeavors to actively support anyone involved in whistleblowing. Persons who have indications that an alleged misconduct has taken place or suffer retaliation are encouraged to use the different available internal channels (see also above under 2) to discuss the situation, to clarify and explore all options so as to make an informed decision on an informal or formal resolution.

The whistleblower may request protection against retaliation, by addressing the request in writing to the Administrative Director. Protective measures for the whistleblower will be ordered by the Director General after the Administrative Director hear(s) the person(s) affected by the alleged retaliation and any other persons as considered necessary.

Where retaliation has been established to have occurred, the Director General may, taking into account any existing recommendations, decide the appropriate or corrective measures aimed at correcting any negative consequences suffered by the affected person, such as rescission of the retaliatory decision/action, reinstatement, transfer to another office or function for which the person is qualified, reversing the situation, etc.). The Policy reminds that retaliation itself constitutes misconduct which may be subject to disciplinary measures.

Any information gained in connection with whistleblowing will be treated with strict confidentiality. The name of the whistleblower might need to be disclosed to the alleged offender in the course of a legal procedure to protect his/her rights. However, the disclosure will principally be done with the consent of the whistleblower and always having informed them beforehand.

Finally, the policy refers to the responsibility of Members of Personnel to report misconduct (see also above under b, last paragraph) and stresses the

⁵ See for more information Disciplinary Measures, Section 2.5.

⁶ Unless the DG considers the member of personnel guilty and decides to dismiss them without notice. Such decision can be directly challenged before ILOAT.



duty to cooperate with authorized investigations, which includes being available for meetings with the investigator, providing truthfully, and to the best of one's ability's and knowledge, all information and documents which may have a bearing on the case.

d. Discrimination, harassment and abuse of authority (specific form of misconduct)

Discrimination, harassment and abuse of authority are specific forms of misconduct. EMBL has separate policies relating to these subjects, providing definitions, setting out responsibilities, and establishing procedures for all staff and managers. Whereas those policies encourage an informal resolution where possible, they clearly establish the individual's right to submit a formal complaint as a means to start a formal **disciplinary process**.

The **Policy on Equality and Diversity**, IP 60⁷, sets out that "Everyone, employees and visitors at EMBL have a responsibility to ensure that the standards established within this policy are adhered to and that they report any alleged discriminatory acts or practices to the Head of Human Resources. Employees who have a complaint about alleged discrimination or unfavorable treatment should normally attempt to resolve this matter by speaking informally with their supervisor. Where informal attempts to resolve the matter are impossible and/or unsuccessful or for more serious matters, the Head of Human Resources must be involved and the Staff Association may be involved. All formal outcomes must be recorded in writing. Breaches of this policy will be investigated and where found proven may be addressed using the disciplinary procedure."

The **Anti-Harassment Policy**, IP 67⁸, regulates all forms of harassment (moral and sexual), abuse of authority, but also refers to discrimination as defined by IP 60. The policy provides a definition of harassment and gives more explanations as to what is harassment and what it is not. In brief, harassment means unwelcome behaviour that has the effect of violating a person's dignity and/or creating a hostile working environment. The policy also establishes obligations of staff, management and HR.

Alleged victims of harassment are encouraged to deal with the problem as early as possible after it has occurred, either through an informal resolution or a formal procedure, as described in the policy. If feasible, given the circumstances of the case, informal resolution is encouraged, e.g. by addressing it with the alleged perpetrator directly, also with the assistance of the supervisor, Human Resources, the Ombudsperson or the Staff Association. Regardless of the choice made, alleged victims are invited to keep a written record of events, noting dates, places, a description of what happened and the names of any witnesses, and of anyone who may have information concerning the incident(s). The policy further states that EMBL will adopt the appropriate investigative, administrative, or disciplinary measures, regardless of the function, title, length of service, and, in general, the status of the alleged offender.

Any person aware of a possible act of harassment, or the alleged victim in circumstances where informal resolution is not desired, appropriate, or has been unsuccessful, may submit a written notification to the Director General noting the offence and requesting to initiate a disciplinary procedure against the alleged offender.

e. Scientific misconduct (specific form of misconduct)

Scientific misconduct is a specific form of misconduct. **The Rules of Good Scientific Practice and Procedures in cases of suspected scientific misconduct**, Internal Policy 51⁹, clearly set out what constitutes scientific misconduct and how cases are to be handled.

Scientific misconduct includes fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. It also includes the destruction, absence of, or respondent's failure to provide research records accurately documenting the questioned research. Scientific misconduct does not include honest error or honest differences of opinion.

The policy defines the role of the **Scientific Ombudsperson** whose job is to be available to all staff as a trustworthy advisor in cases where there

⁷ https://intranet.embl.de/hr/internal_policies/ip60_equality_diversity.pdf.

⁸ https://intranet.embl.de/hr/internal_policies/IP67-Anti-Harassment-Policy-31072017.pdf.

⁹ https://intranet.embl.de/hr/internal_policies/ip51_good-practice_en.pdf



is suspicion of a violation of the principles of good scientific practice in general, and these rules in particular. There is no formal code of procedure for the Scientific Ombudsperson, but he/she shall be guided by the principles of confidentiality, impartiality, fairness of procedure, and transparency for all parties involved. As far as possible, the procedure will be conducted in mutual agreement between all sides involved. Detecting or judging scientific misconduct and imposing sanctions are not tasks of the Scientific Ombudsperson. If there is a justified initial suspicion of scientific misconduct, the Scientific Ombudsperson shall inform the Director General and the respective Head of Unit.

The policy defines precise rules of procedure in case of suspected scientific misconduct.

A person who becomes aware of any significant indication that scientific misconduct within the meaning of the catalogue of misconduct mentioned in the policy has occurred, has the responsibility of notifying the Director or the Head of the EMBL Unit concerned, who in turn must notify the Director General in writing. If the Head of Unit is himself/herself implicated in the enquiry, then the Director General shall be notified directly. Disclosure of the name of the whistleblower, if necessary, is decided by the Director General.

The Head of Unit is responsible for the immediate collection of all relevant materials, unless implicated, in which case this is done by an appropriately qualified person designated by the Director General.

The preliminary enquiry may result in the closure of the case (if grounds have not been sufficiently substantiated or disproved), in a further formal investigation (where grounds for suspicion are confirmed but misconduct is not proven), or in the initiation of a disciplinary process according to the Staff Rules and Regulations (where there is proof of misconduct).

The formal investigation is conducted by an ad-hoc Scientific Misconduct Investigating Committee (SMIC). The SMIC submits the results of the investigation

together with a recommendation of the sanction to be imposed to the Director General. In case of established misconduct, the Director General will proceed in line with the **disciplinary process** as set out in the Staff Rules and Regulations, see Section 2.5.

f. Misconduct in relation to the Protection and Welfare of Animals Used for Scientific Purposes (specific form of misconduct)

The **Policy on Protection and Welfare of Animals Used for Scientific Purposes**, IP 65,¹⁰ sets out standards and requirements concerning the breeding, care, accommodation, or killing of animals and subjects non-compliance to disciplinary measures in accordance with the EMBL Staff Rules and Regulations.

It also stipulates that if a member of the personnel learns of a potential violation of that policy, they should report it to one of the members of the Animal Welfare and Committee for **Animal Welfare and Institutional Animal Care and Use (IACUC)** („Animal Welfare and IACUC Committee“)¹¹. EMBL will ensure that each member of the personnel reporting a potential violation of this policy will be protected against retaliation.

g. Misconduct in relation to the Use of Human Biological Material (specific form of misconduct)

The **Policy regarding the Use of Human Biological Material**, IP 53¹², makes group leaders responsible for ensuring that materials, including data, used in their research, have been collected with due regard for principles of informed consent, data protection, and protection of human subjects from research risk. Normally, this is satisfied by following appropriate protocols. Violation of the policy by members of EMBL personnel may be subject to disciplinary action.

h. Unacceptable use of EMBL Computer and Network Facility (specific form of misconduct)

The **Acceptable Computer and Network Facility Use Policy**, IP 54¹³, lists examples of unacceptable use

¹⁰ https://intranet.embl.de/hr/internal_policies/ip65_animalwelfare.pdf

¹¹ https://intranet.embl.de/leadership/dg/committees/animal_welfare/index.html

¹² https://intranet.embl.de/hr/internal_policies/ip53_humanresearch.pdf

¹³ https://intranet.embl.de/hr/internal_policies/ip54_computeruse.pdf



of EMBL facilities, such as viewing, downloading, storing, creation, or transmitting of offensive, obscene or indecent images and data, of discriminatory or defamatory material, or of material that infringes on copyright of another person, or breaches confidentiality. Any member of personnel found to have violated this policy may be subject to disciplinary action in accordance with EMBL's Staff Rules and Regulations. Subject to the preservation of any required evidence, any inappropriate material will be removed without undue delay. The Heads of IT Services, the Administrative Director, or, in their absences their deputies may need to take swift action to prevent or investigate potential breaches of this Policy. Any action they take in conflict with this policy is acceptable, if they can demonstrate the need for urgency and that they are taken in the best interest of the Laboratory, with due respect to the rights of the individual concerned and in response to a specific suspension.

i. Infringements of the General Data Protection Policy (specific form of misconduct)

The **General Data Protection Policy**, IP 68¹⁴, ensures the protection of the fundamental rights and freedoms of individuals in relation to the processing of their personal data at EMBL and ensures the free flow of such data among scientific researchers. An infringement of this Internal Policy may constitute misconduct under R2 5.01 of the Staff Rules.

Members of Personnel may complain in writing to the Data Protection Committee about breaches of the policy (i.e. 'any legal or material act or omission of a data controller or a data processor'). The Data Protection Committee must decide on the complaint within two months of receipt.

The **Data Protection Committee** may potentially then launch and conduct investigations, order data controllers to restrict or discontinue processing, and recommend to the Director General that disciplinary proceedings against data controllers be launched.

j. Violation of Conflict of interest policy (specific form or misconduct)

The **Conflict of Interest Policy**, IP 57¹⁵, defines that a "conflict of interest" exists when a person's private interest might conflict or interfere in anyway with the interests of EMBL. It can arise when an employee takes action or has interests that may make it difficult to perform his or her work for the organisation, objectively and effectively – for instance professional duties, responsibilities in administration, management, research and so on.

Members of Personnel should consult with their supervisor, EMBL's Legal Services or the Staff Association when in doubt if a conflict of interest exists and how to eliminate or appropriately manage it. Conflicts of interests shall be reported by the employee to the supervisor, who will inform the Director General. The Director General, after having consulted the Administrative Director, and Heads of Unit if necessary, will decide on a suitable course of action.

EMBL will take appropriate action against any employee whose actions are found to violate this policy. Disciplinary actions may include sanctions or other actions permitted by the EMBL Staff Rules and Regulations under section 2.5.

k. Violation of Financial Conflict of Interest Policy – Compliance with United States of America Regulations (specific form or misconduct)

The **NIH Financial Conflict of Interest Policy**, IP 61¹⁶, requires investigators to comply fully, truthfully, and in a timely manner with that policy. It clearly sets out which behaviors could be grounds for disciplinary action, e.g. instances of proven intentional or grossly negligent breach of rules. This includes: failure to submit required disclosures, statements or updates thereof; failure to provide additional information requested by EMBL; and failure to comply with prescribed conditions or restrictions under the policy.

14 https://intranet.embl.de/hr/internal_policies/IP68-Data-Protection-EN-18052018.pdf

15 https://intranet.embl.de/hr/internal_policies/ip57_interestconflict.pdf

16 https://intranet.embl.de/hr/internal_policies/ip61_EMBL_NIH_FCOI.pdf



I. Violation of EMBL's Publication and/or Open Access Policy (specific form or misconduct)

The **EMBL Publication Policy**, IP 63¹⁷, establishes principles to be observed when publishing results of scientific research, in addition to the provisions set forth in the Staff Rules and Regulations and in the **EMBL Rules of Good Scientific Practice**, IP51. Violations of these policies may be subject to disciplinary processes.

The same is true for the **EMBL Open Access Policy**, IP 66, which defines the requirements for EMBL scientists to comply with EMBL's commitment to open access to its publications.

m. Non-compliance with Safety Policy (specific form or misconduct)

The **Safety Policy**¹⁸ concerns occupational health, work safety, and environmental protection. It sets out provisions to ensure the health and safety for all Members of Personnel as well as visitors and contractors at all EMBL sites. The policy, which is regularly updated, lists the members of the Safety Committee and the names of the First Aiders and Fire Wardens as well as the medical services at each site.

It furthermore states that 'non-compliance through ignorance or otherwise of those provisions constitute infringements of the Staff Regulations and a neglect of duty'. All employees are required to attend safety briefings and training courses and to report hazardous situations to their supervisor, the Health and Safety Office, to the Safety Committee, or to other people concerned.

The Safety Committee consists of representatives from management, faculty, Staff Association, and the estate manager of the specific location.

7 APPEALS

Any decisions taken by the Director General, or those who have delegated authority, that impact on the conditions of a contract – including any breach of EMBL's Staff Rules and Regulations – and impact a member of personnel personally and adversely can be challenged by the concerned person by way of internal appeal¹⁹. During an appeal process it is important to adhere to timelines and to comply with all formal requirements.

An appeal has to be submitted to the Director General within 30 days of being notified of the decision. The Director General will, provided the appeal seems *prima facie* receivable, convene a **Joint Advisory Appeals Board (JAAB)**²⁰, which will look into the matter, observing procedural requirements. The JAAB will then submit its findings together with a recommendation to the Director General, who takes a final decision. The Director General's final decision is subject to review by ILOAT. This means that Members of Personnel can put forward a complaint against a final decision before ILOAT, following the procedures established by that tribunal.

The JAAB is established in accordance with the Staff Rules and Regulations for the purpose of advising the Director General on internal appeals. The composition of the JAAB and the procedure for appointing its members are set out in Chapter 6 of the Staff Regulations. The JAAB operates in an independent manner.

Instead of pursuing the formal appeals process, the dispute may also be settled through mediation, for example by involving the Ombudsperson or another chosen third person. A request for mediation to the Ombudsperson may come before or after having lodged an appeal. When the request for mediation through the Ombudsperson or any other chosen third person has been accepted, it will suspend all time limits of the formal process which could be reverted to in case the informal resolution was not successful.

17 https://intranet.embl.de/hr/internal_policies/ip48_predocs.pdf

18 https://intranet.embl.de/health_safety/06-safety_policy/index.html

19 See for more information Disputes and Appeals, Chapter 6, Staff Rules and Regulations.

20 https://intranet.embl.de/leadership/dg/committees/joint_appeals/index.html



Discussions or communication other than mediation through the EMBL Ombudsperson or the chosen third party, after the decision has been made, do not set off a new time limit for lodging an appeal nor suspend any timelines in the appeals procedure.

8 Specific provision for decisions regarding accident at work and disability

The **Rehabilitation Board (RB)**²¹ examines cases submitted to it by the Director General, either on their own initiative or at the request of the member of personnel concerned. The RB makes substantiated recommendations to the Director General concerning: the nature (occupational or otherwise) of an accident or illness; the nature of incapacity to work (temporary or permanent); appropriate rehabilitation measures; and the degree of disability.

If a staff member, fellow, or ancillary has taken a total of 24 months' sick leave in any period of 36 months, the Director General will consult the Rehabilitation Board, and make a decision on whether or not to retain the member of personnel at EMBL.

A member of personnel must not be dismissed on grounds of disability unless the Director General has consulted the RB.

Decisions taken by the Director General can be appealed against, as described above.

establishes essentials for the procedure. For instance:

- The member of personnel concerned may be represented or accompanied by a person of his/her choice, who must be an EMBL member of personnel. Alternatively, representation by a lawyer is allowed but is to be arranged by, and costs covered, by the concerned member of personnel.
- Parties are to make best efforts in good faith as are required for the speedy completion of the Board's tasks.
- Each party (or representative) must be heard by the Board, in the presence of the other party (or representative).
- The Board must evaluate both sides of the argument confined to the matter arising from the content of the application.
- The Board may request any evidence it considers necessary, including hearing witnesses or expert witnesses.
- Parties must also be permitted to take evidence, unless inappropriate, already proven or no relevance for decision.
- Hearings must be recorded in writing.
- Recommendations of the Board should be divided into an operative section and a section describing the grounds for the Board's decision.
- Where the person with authority to take a decision deviates from the required recommendation of the Board, the reasoning behind the decision must be provided.

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9 General requirements for hearings (formal) before EMBL Boards

The **Procedures for EMBL Hearings, IP 62**²², provide guidelines that must be followed by all EMBL Boards referred to in the Staff Rules and Regulations and Internal Policies (e.g. the Joint Advisory Appeals Board or the Joint Advisory Disciplinary Board).

The policy instructs the involved parties concerning the extent of their rights and duties to cooperate, and

²¹ <https://intranet.embl.de/leadership/dg/committees/rehabilitation/index.html>

²² https://intranet.embl.de/hr/internal_policies/ip62_procedures_for_EMBL_hearings.pdf.

Annex: Important contact points

In addition to your supervisor or/and second supervisor,
below contact points might be of relevance:

Ombudsperson

Martina Peskoller-Fuchs
EMBL Heidelberg
Meyerhofstraße 1
69117 Heidelberg, Germany
Location: Building 14 room 108
Tel: +49 6221 387-8826
E-mail: martina.peskoller-fuchs@embl.de
<https://intranet.embl.de/ombudsperson/index.html>

Trusted Advisors

You may choose any of the Trusted Advisors, not only the one at your site.
<https://intranet.embl.de/ombudsperson/trusted-advisors/index.html>

Dean of Graduate Studies

Dr. Monika Lachner
Head of Internal Scientific Training and Dean of Graduate Studies
EMBL Heidelberg
Meyerhofstraße 1
69117 Heidelberg, Germany
Location: ATC A 2402
Tel: +49 6221 387-8532
E-mail: monika.lachner@embl.de

Scientific Ombudsperson

Dr. Anne Ephrussi
Head of Unit, Head of EICAT and Senior Scientist
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Meyerhofstraße 1
69117 Heidelberg, Germany
Location: 539 B
Tel: +49 6221 387-8429
+49 6221 387-8283
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Administrative Director

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Director General

Prof. Edith Heard
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Meyerhofstraße 1
69117 Heidelberg, Germany
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Tel: +49 6221 387-8200
E-mail: Edith.heard@embl.org

Legal Services

Philippe Vorreux
Head of Legal Services
EMBL Heidelberg
Meyerhofstraße 1
69117 Heidelberg, Germany
Tel: +49 6221 387-8428
E-Mail: philippe.vorreux@embl.de
<https://intranet.embl.de/administration/legal-services/index.html>

Counselling services

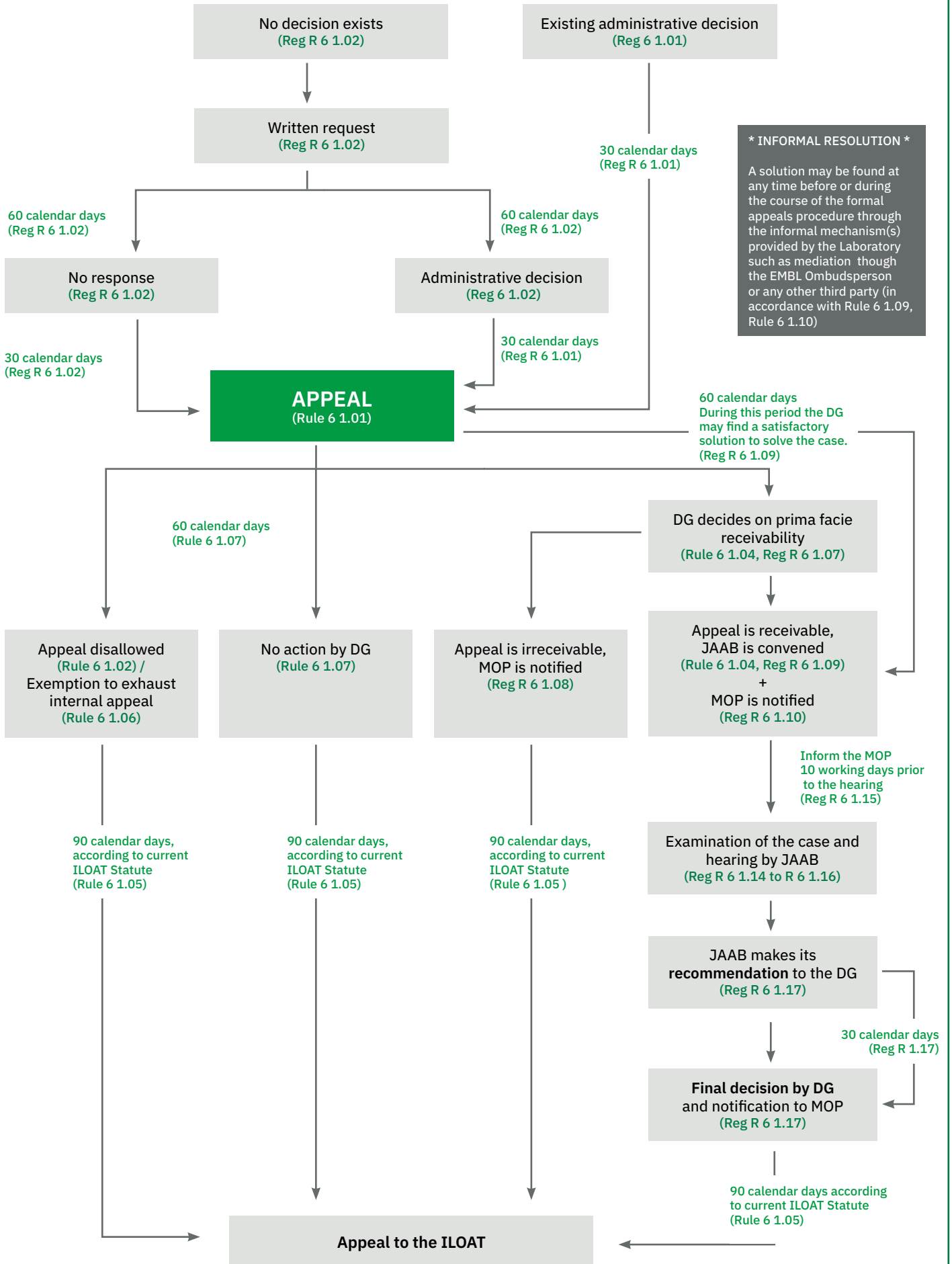
https://intranet.embl.de/health_safety/05-news/Counselling-service-for-staff/index.html

Staff Association

Catherine Floyd, Administrative Officer Staff Association
EMBL Heidelberg
Meyerhofstraße 1
69117 Heidelberg, Germany
Location: Building 14 room 110
Tel: +49 6221 387-8541
E-mail: floyd@embl.de

To find your Staff Representative on site, see also <https://staffassociation.embl.org/>

APPEALS PROCEDURE



DISCIPLINARY PROCEDURE

