



**Office for Harmonization
in the Internal Market**
(Trade Marks and Designs)

Discipline and related procedure and measures in the European communities

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- The disciplinary system, which essentially involves administrative inquiries and disciplinary procedures, applies to any failure by a staff or former staff member to comply with his/her obligations under the Staff regulations – intentionally – or –negligence-.
- This can include conduct in the private life, such as offences under national criminal law.



- Investigation and Disciplinary Office of the Commission (IDOC)
- Office européen de Lutte AntiFraude (OLAF) (European Anti-Fraud Office)
- Appointing Authority (appoints, promotes, transfers)
- Disciplinary board (with Staff committee appointees)
- 'Person concerned' is 'the defendant'



OLAF:

- Administrative inquiries can be carried out by either the OLAF or IDOC, depending on the nature of the case.
- OLAF deals with cases involving fraud and other serious financial irregularities



- a) The impartial and independent conduct of **administrative inquiries**, the aim of which is to *collect facts and to verify* if any obligation as laid down in the Staff Regulations may have been breached.

- a) The **conduct of disciplinary procedures**. The disciplinary procedures are opened once there is evidence that any obligation contained in the Staff Regulation may have been breached

- There is a clear procedural and operational separation between both tasks.



- Article 22 of the Staff Regulations
- Art. 22(a) and 22(b) of the Staff Regulations: Whistleblowing
- Article 86: Disciplinary measures
- Annex IX: Administrative inquiries and disciplinary proceedings
- Article 90: Appeals
- Commission decision C(2004) 1588 final / 4 of 28 April 2004



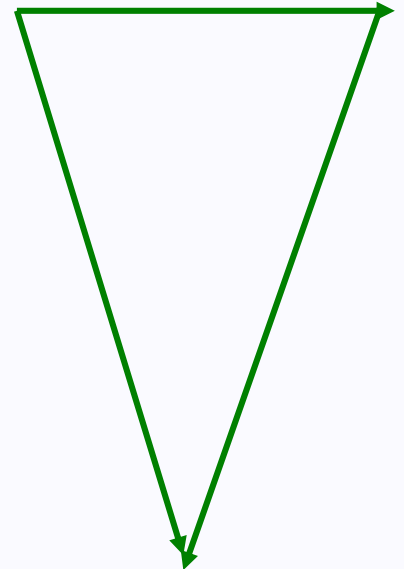
Ex: Cases of inquiries/disciplinary procedures

- Breaches of financial rules (such as public procurement)
- Conflicts of interests (favouritism)
- Corruption
- Allegations of psychological or sexual harassment
- Convictions in a criminal case
- Theft of Commission material
- Committing fraud and falsifying documents
- Abuse of IT-equipment
- Improper behaviour



From beginning to end

- Suspicion or whistleblowing
- Administrative inquiry / investigation
- 'Hearing' (article 3 of annex IX)
- Disciplinary procedure
- Disciplinary sanction

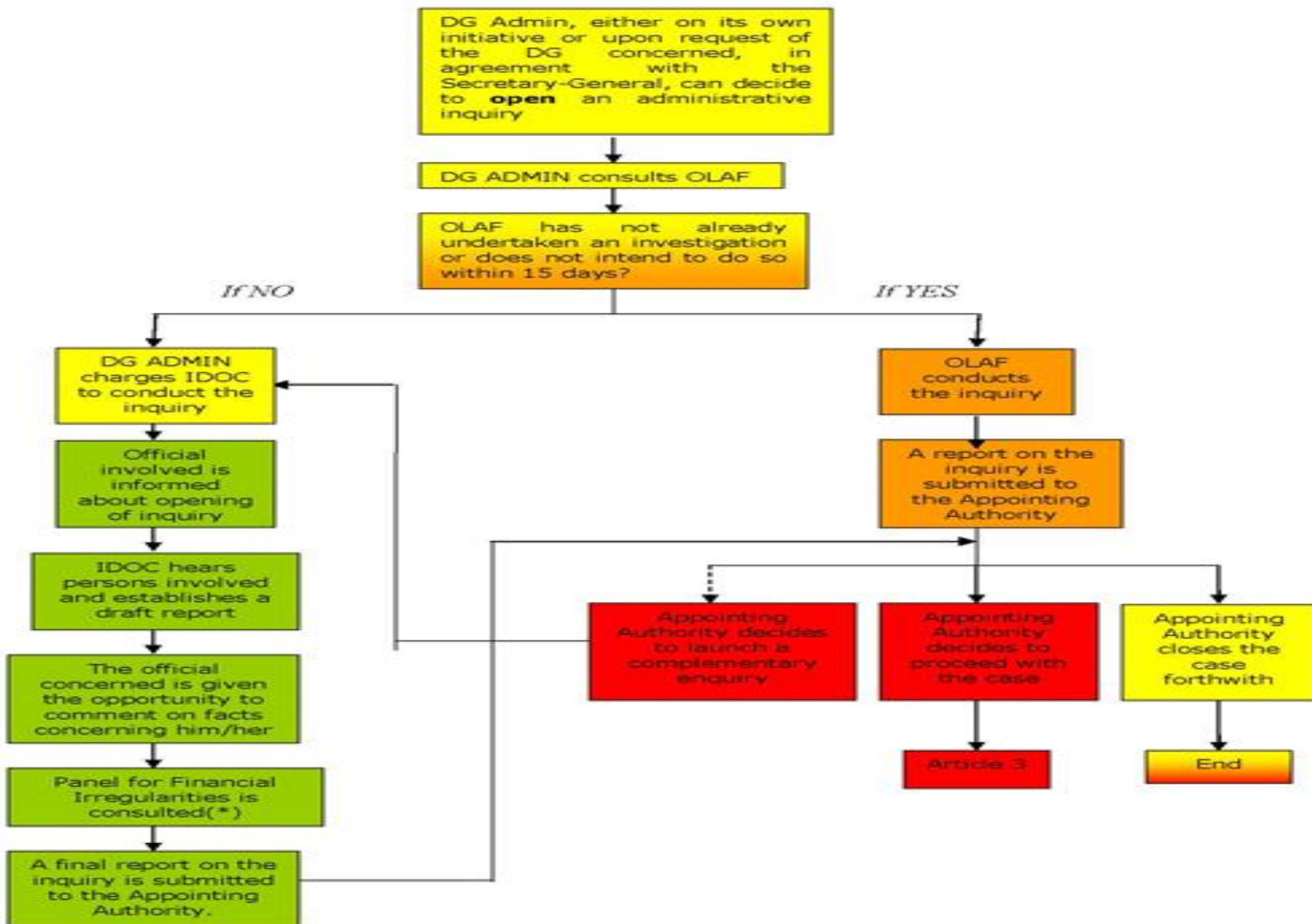


(Possible appeal to the Civil Service Tribunal)



- Purpose is to allow the employee to raise a concern about serious wrongdoing so that those in charge may look into it
- Staff members are obliged to report facts pointing to a possible illegal activity or to a serious failure to comply with professional obligations
- Report in writing to 1) head of Unit, or, 2) Director-General, 3) Secretary general of the Commission or to 4) OLAF directly – employees choice
- Appointing Authority can initiate process without prior whistleblowing
- Discretion is key

THE DEVELOPMENT OF AN ADMINISTRATIVE INQUIRY

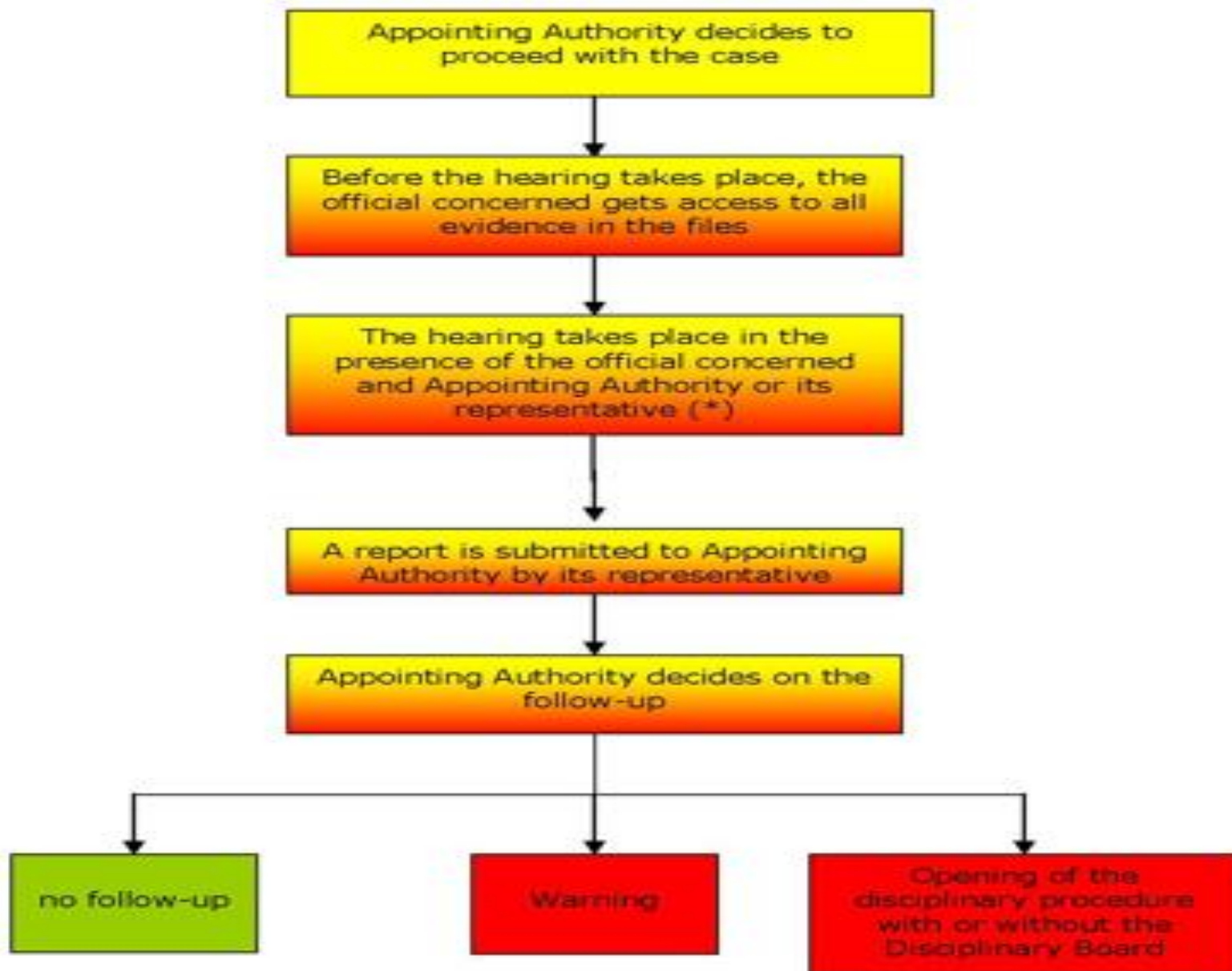


(*) When there is a potential infringement of the Financial Regulation as from 2003.



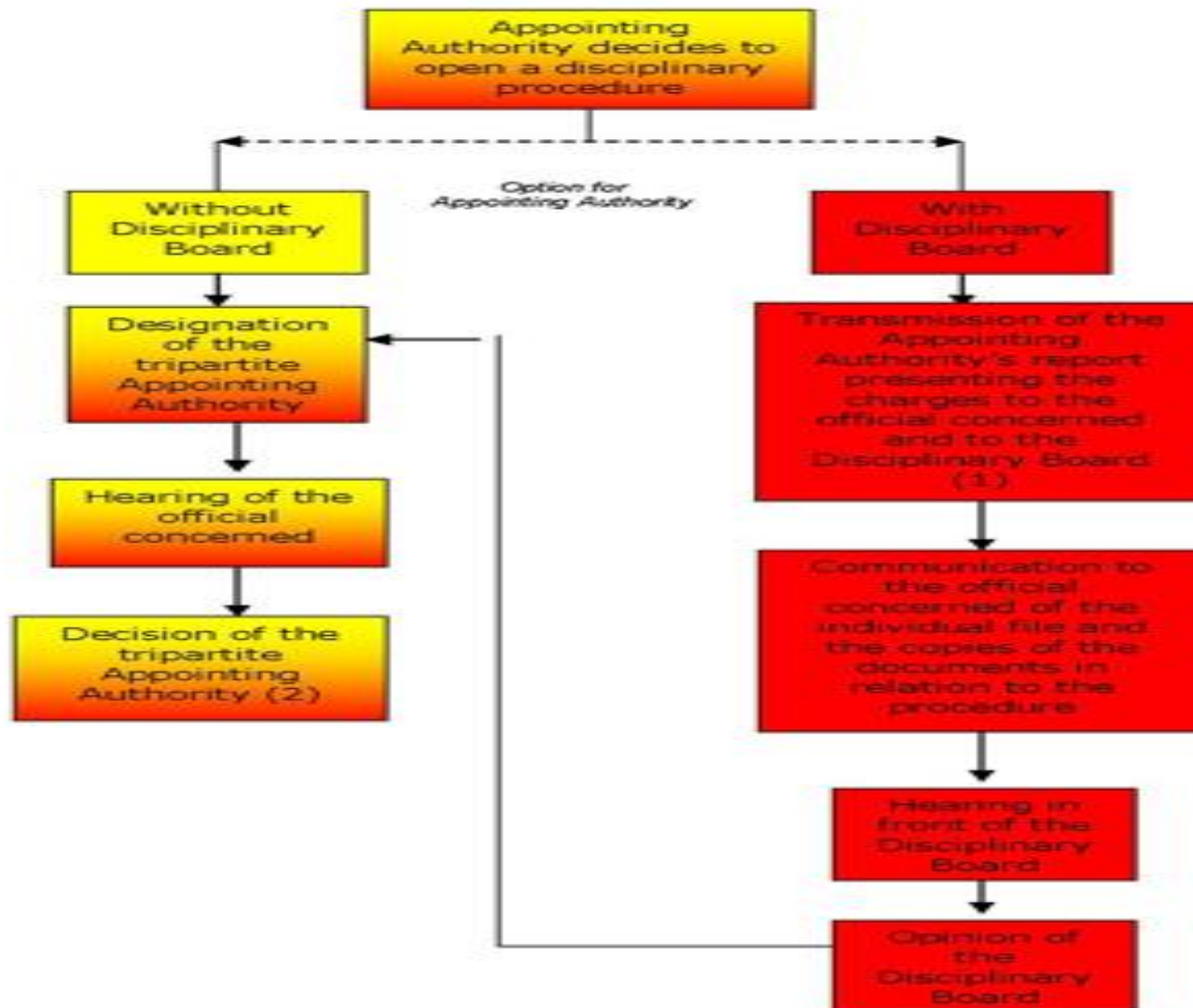
- The inquiry is impartial.
- Presumption of innocence always ensured in order to respect the right of the defence.
- Right to be informed as soon as an administrative inquiry is conducted by either IDOC or OLAF, provided that that information does not hinder the inquiry.
- Conclusions referring to an official by name may not be drawn at the end of the inquiry unless that official has had the opportunity to express an opinion on the facts that relate to him/her.

ARTICLE 3 OF ANNEX IX



(*) The hearing under article 3 is **not** conducted by the same person who conducted the inquiry

THE DISCIPLINARY PROCEDURE



(1) From that moment, the official concerned can also request the application of Article 14 of Annex IX (withdrawal of case before Disciplinary Board).

(2) Filing with no follow up, Written warning, Reprimand, Deferment of advancement to a higher step, Relegation in step, Downgrading, Classification in a lower function group, Removal.

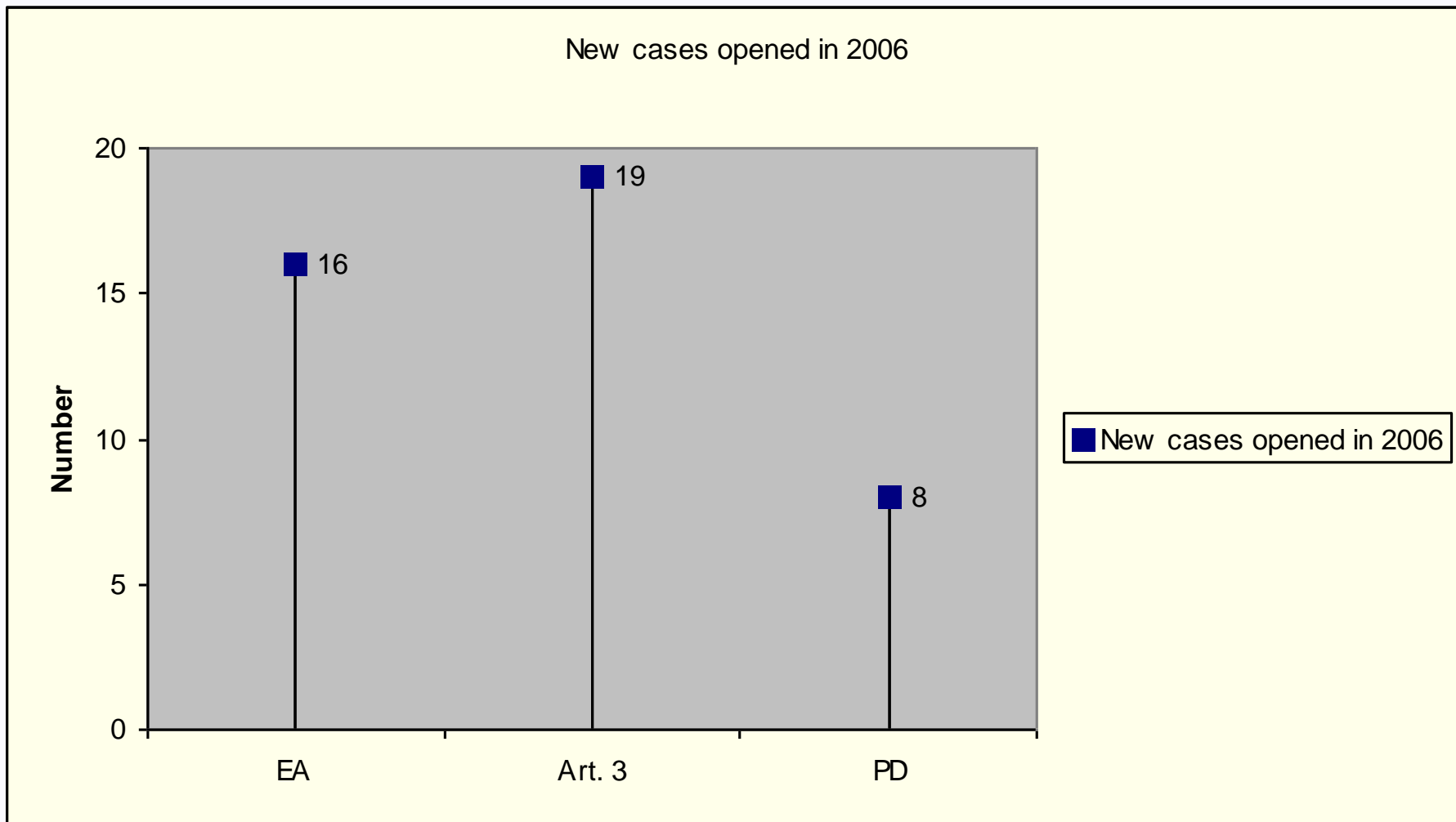


- Consulted if the AA considers a sanction with financial impact appropriate.
- It is an administrative instance and a consultative body consisting of members designated by the AA and the Staff Committee.
- At least one member should be chosen from outside of the Institution/body (to assure the independence of the Board).
- The President and the members shall be independent in the performance of their duties.
- Deliberations and proceedings of the Board shall be secret.

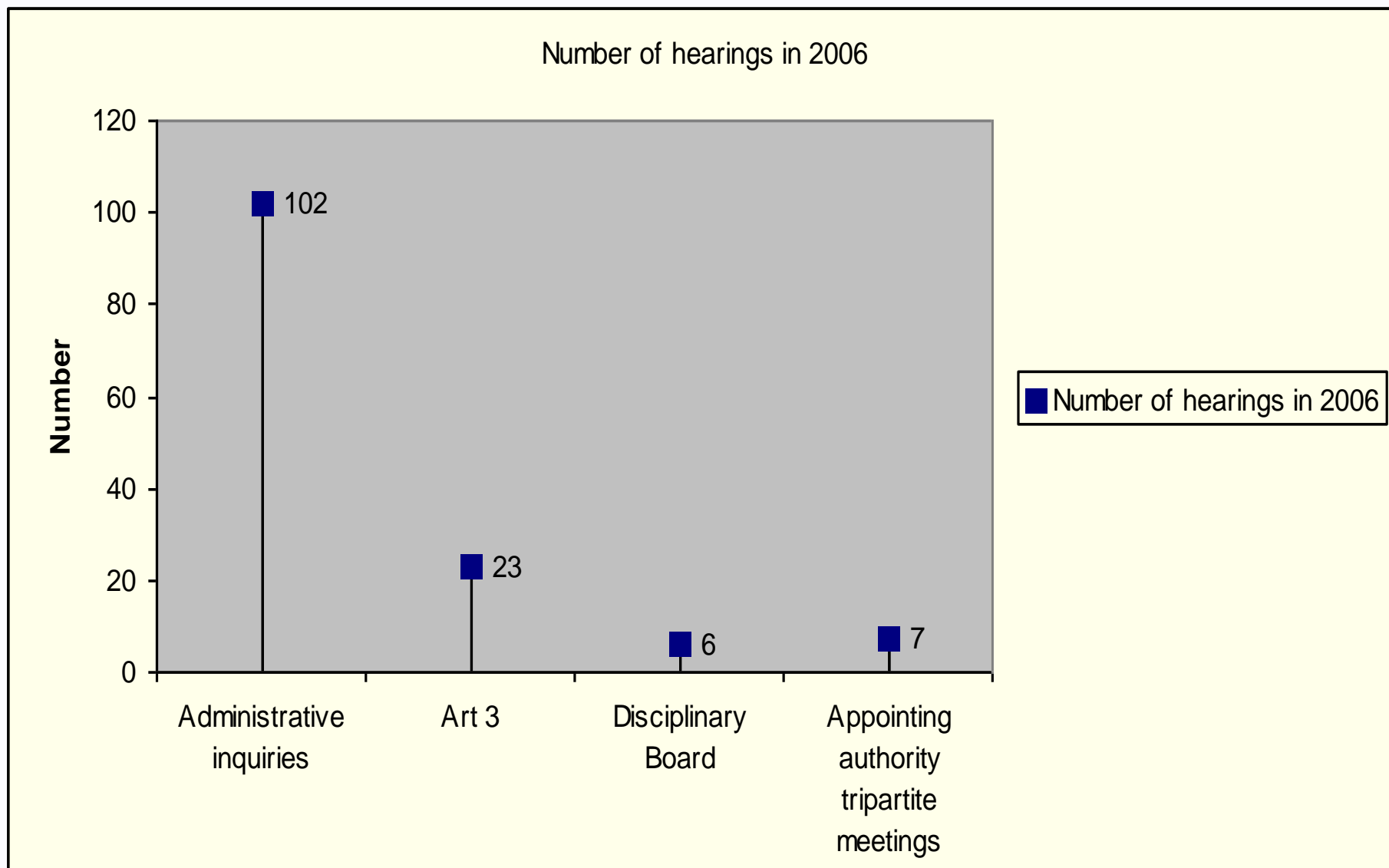


- **Without financial impact (AA can decide alone):**
 - written warning
 - verbal reprimand

- **With financial impact (Disciplinary board must be consulted):**
 - deferment of advancement to a higher step for a period up to 23 months
 - relegation in step
 - temporary downgrading for between 15 days and one year
 - downgrading in the same function group
 - classification in a lower function group
 - removal from post

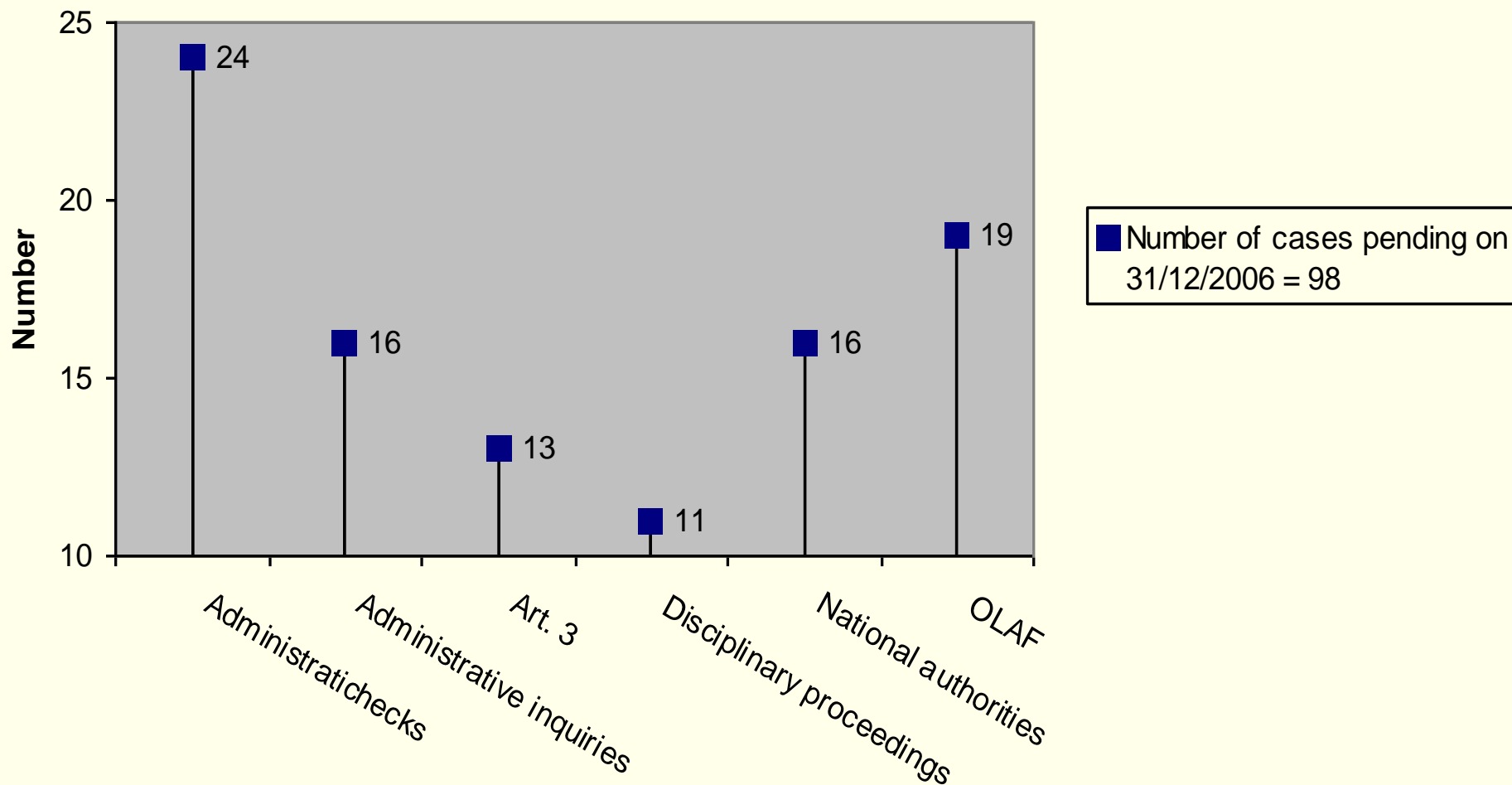


Source: *ACTIVITY REPORT OF THE INVESTIGATION AND DISCIPLINARY OFFICE OF THE COMMISSION (IDOC) 2006*





Number of cases pending on 31/12/2006





Number of closed cases

