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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Code of Conduct and Discipline for EU Civilian CSDP Missions

Delegations will find attached the Code of Conduct and Discipline for EU Civilian CSDP Missions, as adopted by the Foreign Affairs Council on 18 July 2016.

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CHAPTER I

General Provisions

Section 1: Scope of Application

Article 1

1. This Code applies equally to all members of civilian CSDP missions of the European Union**:**
   (a) Members seconded by Member States or contributing Third States;
   (b) Members seconded by European Union institutions or the European External Action Service;
   (c) International contracted members;
   (d) Locally contracted members;
   (e) Other members, in particular members of Civilian Response Teams and Visiting Experts.

2. However, in view of the difference in legal status between seconded and contracted mission members, the seconding authority retains the ultimate responsibility for the imposition of a disciplinary measure, as outlined in Chapters VI and VII.

3. This Code shall be without prejudice to constitutionally protected rights in the Member States and the rules to which a mission member may be subject to under national, EU or international law, and regulations of the seconding authority.

Article 2

1. The disciplinary procedures and measures taken under this Code do not preclude the imposition of sanctions or other measures under national, EU or international law.

2. In the event that the conduct of a mission member may also constitute a criminal act, the competent authorities as defined in paragraph 3 of this Article shall be informed without delay with respect to the relevant allegations.

3. For the purpose of paragraph 2 of this Article the competent authorities shall be:
   (a) The authorities of the seconding state, in case of a mission member seconded by a Member State or a contributing Third State;
   (b) The authorities of the European Union institution or the European External Action Service in case of a mission member seconded by them, in cooperation with the responsible authorities of the Member States concerned;
   (c) The authorities of the state of nationality in case of an international contracted mission member;
   (d) The authorities of the host state in case of a locally contracted mission member; and
   (e) The seconding authorities and the authorities of the state of nationality, in case of any other mission member.

Article 3

The Head of Mission may promulgate additional, mission specific regulations or instructions to complement this Code through Standard Operating Procedures. These shall be of administrative nature only and fully in line with the provisions of this Code.

Section 2: General principles of behaviour and discipline

Article 4

1. All mission members shall maintain the highest personal standards of ethical behaviour, impartiality and integrity and shall act in an irreproachable manner, during and outside working hours.

2. Without prejudice to privileges and immunities mission members may enjoy, this includes respecting applicable laws and regulations of the host state, international law and instructions, as well as refraining from any action or behaviour which might adversely reflect upon their position and function as a person acting for the European Union.

3. In this respect and with an emphasis, inter alia, on the prevention of serious misconduct, such as sexual harassment and abuse, corruption and misappropriation of mission assets, all mission members shall have regard to and act in conformity with the currently applicable versions of:
   (a) The Annex to the Generic Standards of Behaviour for ESDP Operations (18 May 2005, 8373/3/05);
   (b) The European Code of Good Administrative Behaviour (6 September 2001);
   (c) The OPLAN and Standard Operating Procedures of the mission for which they are working.

4. The Head of Mission shall assure that all mission members are informed about and understand the documents as mentioned in (3), in their relevant parts, and that they receive specific training on the general principles of behaviour and discipline and their implications.

Article 5

If mission members do not act in accordance with the obligations outlined in Article 4 (breaches of this Code), whether intentionally or through negligence, they may be subject to actions, procedures and disciplinary measures as provided for in Article 11 and following of this Code.

CHAPTER II

Reporting of possible breaches of this Code

Article 6

1. A possible breach of this Code may be reported to the line manager or the Deputy Head of Mission. If the possible breach is reported orally, the recipient shall put it in writing.

2. If the possible breach is with respect to the Deputy Head of Mission, the report shall be directly addressed to the Head of Mission.

3. If the possible breach is with respect to the Head of Mission, the report shall be addressed to the Civilian Operations Commander.

4. In the event that a mission member receives information concerning a possible breach from a person or body external to the mission, this information shall be forwarded in accordance with (1) to (3).

5. The Head of Mission shall make sure that the local authorities and population are made aware of this Code and its reporting procedures.

Article 7

1. Mission members who have reported a possible breach shall not suffer any adverse effects as a result of or as a reaction to this reporting, provided they had acted reasonably and in good faith.

2. Additional rules as contained in Standard Operating Procedures on Whistleblowing apply.

Article 8

The Head of Mission shall inform the Civilian Operations Commander:

(a) On a quarterly basis about reported possible breaches which have led to disciplinary investigations, as outlined in Chapter V; and

(b) Immediately if a possible breach may have a substantial impact on the mission. Article 18 (4) on the notifications of the seconding authority applies accordingly.

CHAPTER III

Responsible authorities and possible actions

Section 1: Responsible authorities

Article 9

In the context of Chapters III to VII of this Code, the responsible authority for follow up on a possible breach shall be:

(a) The Deputy Head of Mission for a possible breach by a mission member;

(b) The Head of Mission for a possible breach by the Deputy Head of Mission;

(c) The Civilian Operations Commander exercising command and control of the mission under the political control and strategic direction of the Political and Security Committee (PSC) and overall authority of the High Representative (HR), for a possible breach by the Head of Mission.

Article 10

1. If the Head of Mission so requests, under his or her sole responsibility, the Civilian Operations Commander may decide:
   (a) That the Deputy Civilian Operations Commander irrevocably takes over the authority in a specific case; or
   (b) That the responsible authority is supported with advice from the Civilian Planning Conduct Capability (CPCC) or other independent external experts.

2. Under exceptional circumstances and after having consulted with the Head of Mission, the Civilian Operations Commander may decide of his or her own motion that the Deputy Civilian Operations Commander irrevocably takes over the authority in a specific case.

3. For the purpose of this Article, exceptional circumstances arise when a possible breach may have a substantial adverse effect on the functioning or the reputation of the mission and where it would not be appropriate for the Head of Mission to deal with the case.

4. The Civilian Operations Commander shall inform Member States, whose personnel are involved in the case, of any decision taken under paragraph 2 of this Article.

Section 2: Possible actions of the responsible authority

Article 11

1. On the basis of a report concerning a possible breach, the responsible authority shall, within ten working days, decide, in accordance with best disciplinary practice:
   (a) To close the file without further action;

(b) To deal with it as a management issue, without recourse to a formal disciplinary procedure, and to subject it to mediation procedures, if appropriate;

(c) To commence a preliminary investigation (Chapter IV);

(d) To commence a disciplinary investigation (Chapter V, Section 1), including taking temporary measures if required (Chapter V, Section 3).

2. In case the decision is taken by the Deputy Head of Mission, the Head of Mission shall be informed thereof.

CHAPTER IV

Preliminary Investigation

Article 12

1. In the event that the responsible authority requires more information to decide on appropriate follow up on a possible breach, it shall, within ten working days, appoint and instruct one or more investigating officers to conduct a preliminary investigation.

2. Investigating officers shall be members of the mission.

3. If the circumstances so require, or upon request of the Head of Mission, CPCC staff, within means and capabilities, or other independent external experts may be appointed as investigating officers by the Civilian Operations Commander.

Article 13

1. The preliminary investigation is of a limited scope in order to make a determination whether the possible breach merits a disciplinary investigation.

2. The preliminary investigation shall be carried out objectively, independently, impartially whilst maintaining the highest standards of integrity, confidentiality and fair trial.

Article 14

The investigating officers shall present the results of the preliminary investigation in a preliminary investigation report to the responsible authority. This preliminary investigation report shall contain the obtained facts and circumstances related to the possible breach. It shall not contain conclusions or recommendations.

Article 15

On the basis of the preliminary investigation report the responsible authority shall take a decision in accordance with Article 11.

CHAPTER V

Disciplinary Investigation

Section 1: General principles

Article 16

1. If the responsible authority decides to commence a disciplinary investigation, it shall, within ten working days, appoint and instruct one or more investigating officers to conduct such an investigation.

2. Investigating officers shall be members of the mission.

3. If the circumstances so require, or upon request of the seconding authority, whose personnel is involved in the case, or of the Head of Mission, CPCC staff, within means and capabilities, or other independent external experts may be appointed as investigating officers by the Civilian Operations Commander.

4. In the event that the disciplinary investigation concerns a seconded mission member, the seconding authority shall be notified according to Article 18 (4).

Article 17

1. The purpose of the disciplinary investigation is to obtain all relevant facts and circumstances related to the possible breach.

2. The disciplinary investigation shall be carried out objectively, independently, impartially whilst maintaining the highest standards of integrity, confidentiality and fair trial.

Article 18

1. The responsible authority shall notify the mission member under disciplinary procedure in writing about the decision to commence a disciplinary investigation, the allegations and the names of the investigating officers.

2. The notification shall be made as soon as possible, taking into account the interest of the investigation. It shall include due information about the mission member's rights and obligations as outlined in Article 21.

3. The line manager of the mission member under disciplinary procedure shall be notified accordingly.

4. If the disciplinary investigation concerns a seconded mission member, the seconding authority shall be notified as soon as possible about the decision to commence a disciplinary investigation and the allegations, in principle through the National Contingent Leader or other national point of contact in the mission, or via CPCC.

5. The mission member having made a report in accordance with Article 6 and following shall be notified as soon as possible about the decision to commence a disciplinary investigation.

Article 19

1. The collection of evidence during the disciplinary investigation may comprise documentary or physical material, statements by the mission member under disciplinary procedure or witnesses and opinions of expert witnesses.

2. Notwithstanding the right to privacy of the mission member under disciplinary procedure, means of obtaining evidence may include observations, on-site inspections, the submission of written statements and interviews.

3. Where the mission member under disciplinary procedure is investigated, prosecuted or tried ('criminal proceedings') for the same conduct by the competent authorities as mentioned in Article 2, the evidence collected there may also be taken into account for the disciplinary investigation.

4. In the case the possible breach leads to both, criminal proceedings and a disciplinary investigation under this Code, the responsible authority shall ensure that its actions do not in any way prejudice the criminal proceedings.

5. In the case the secondment or contract of the mission member under disciplinary procedure is terminated, the disciplinary procedure will nevertheless be carried out or continued in full.

Article 20

The investigating officers shall present the results of the disciplinary investigation in a disciplinary investigation report to the responsible authority. This disciplinary investigation report shall contain all facts and circumstances related to the possible breach and an annex consisting of the documents on which it is based. It shall not contain conclusions or recommendations.

Section 2: Rights and obligations of mission members under disciplinary procedure

Article 21

1. Subject to the limitations of (2) and (3), mission members under disciplinary procedure shall cooperate with the investigating officers.

2. They shall be given reasonable opportunity to respond to all allegations, orally and in writing, to comment on all evidence presented to them, and to provide information of their own. They may also, at their own discretion, decline to provide any response or information.

3. They shall have the right to seek assistance, of their own choice and at their own expense, from a person inside or outside the mission, including the National Contingent Leader or other national point of contact in the mission and external lawyers. This person shall respect the procedural rules as outlined in this Code and be granted the same procedural rights as the mission member under disciplinary procedure.

Section 3: Temporary measures

Article 22

1. In the event that the good functioning of the mission, the interests of the disciplinary investigation or the nature or severity of the possible breach so require, the responsible authority may, having consulted the investigating officers, decide to suspend or temporarily reassign the mission member under disciplinary procedure.

2. The period and scope of the suspension or temporary reassignment shall be proportionate and shall take into account the potential adverse effects on the mission member under disciplinary procedure. It may be extended if the conditions for its imposition continue to apply.

3. A suspension or temporary reassignment may last until the final decision is taken. The responsible authority shall review the measure of its own motion or upon request of the mission member under disciplinary procedure and shall revoke it as soon as it is no longer necessary.

4. For the purpose of (3), the final decision is:
   (a) For a seconded mission member, the decision taken by the seconding authority upon recommendation (Article 33);
   (b) For a contracted mission member, the decision taken according to Article 34.

Article 23

1. A decision to impose or extend a suspension or temporary reassignment shall outline its period and scope, and it shall state the reasons on which it is based.

2. The responsible authority shall immediately notify the mission member under disciplinary procedure in writing of the decision.

3. Article 18 (3) and (4) on the notification of the line manager and the seconding authority applies accordingly.

Article 24

1. The mission member under disciplinary procedure has the right to appeal against the decision or its extension, within ten working days from its notification.

2. The appeal shall be in writing, motivated and addressed to the responsible authority. Article 36 on the responsible authority for deciding on an appeal applies accordingly.

3. The appeal has no suspensive effect.

4. If the appeal is admissible, the responsible authority for deciding on an appeal shall review and shall amend or confirm the decision. It may, however, not amend the decision to the detriment of the mission member under disciplinary procedure. Article 23 applies accordingly.

Section 4: Rights and obligations of other mission members

Article 25

1. Subject to appropriate justification, all other mission members who can contribute to the investigation shall, likewise, cooperate with the investigating officers and shall process requests for information and documentation expeditiously and accurately.

2. They shall treat information and documentation that is pertinent to the disciplinary investigation in the strictest confidence.

CHAPTER VI

General principles of disciplinary decision-making

Article 26

1. The procedures of disciplinary decision-making in the first and second instance, as outlined in Chapters VII and VIII, apply equally to all mission members.

2. However, the ultimate decision to impose a disciplinary measure lies with:
   (a) The seconding authority, for seconded mission members;
   (b) The responsible authority as defined in Chapter III, for international contracted and locally contracted mission members.

Article 27

Any disciplinary measure shall be proportionate to the gravity of the breach, taking into account the mission member under disciplinary procedure's intention or level of negligence, the previous behaviour in the mission and adverse effects of the breach as well as the mission member's efforts to mitigate them.

Chapter VII

Disciplinary decision-making in the first instance

Section 1: Possible actions of the responsible authority

Article 28

1. On the basis of the disciplinary investigation report, the responsible authority shall, within ten working days, decide:
   (a) To close the case without taking any further action, if the possible breach is not substantiated; or
   (b) To close the case and make use of the instruments of Article 11 (b), if the possible breach may be substantiated but does not merit a disciplinary measure; or
   (c) To submit the disciplinary investigation report for advice to a Disciplinary Board, in all other cases.

2. The responsible authority shall immediately notify the mission member under disciplinary procedure in writing about the action taken. This notification should include a complete copy of the disciplinary investigation report. Article 11 (2) on the information of the Head of Mission and Article 18 (3) and (4) on the notification of the line manager and the seconding authority apply accordingly.

3. The responsible authority shall, within five working days, further inform a mission member having made a report in accordance with Article 6 and following about a decision to close the case.

Section 2: Disciplinary Board

Article 29

1. In the case of Article 28 (1) (c), the responsible authority shall, within ten working days, appoint a Disciplinary Board consisting of a chairperson, two other voting members and a secretary as a non-voting member.

2. Members of the Disciplinary Board shall be neutral towards the mission member under disciplinary procedure, have no personal interest in the case and shall preferably hold a more senior position than the mission member under disciplinary procedure. They shall be independent and shall not be subject to any instructions in the performance of their duties.

3. The Disciplinary Board shall be composed of members of the mission.

4. If the circumstances so require, or upon request of the seconding authority, whose personnel is involved in the case, or of the Head of Mission, CPCC staff, within means and capabilities, or other independent external experts may be appointed by the Civilian Operations Commander.

5. If the mission member under disciplinary procedure is a judge or prosecutor in an executive capacity, Standard Operating Procedures shall guarantee an appropriate composition of the Disciplinary Board.

Article 30

1. The Disciplinary Board shall carry out its activities objectively, independently, and impartially whilst maintaining the highest standards of integrity, confidentiality and fair trial.

2. The Disciplinary Board shall act on the basis of the disciplinary investigation report and in accordance with best disciplinary practice, including whether interviews shall be conducted or whether the case shall be considered on the basis of written submissions. Article 19 on the gathering of evidence and Article 25 on rights and obligations apply accordingly.

3. Upon request of the mission member under disciplinary procedure, an interview shall be conducted.

4. Additional rules on the functioning of the Disciplinary Board as contained in the Standard Operating Procedure apply to all missions.

Article 31

1. Based on a simple majority vote the Disciplinary Board shall provide the responsible authority with a written advice, including the reasons on which it is based.

2. The advice may propose:
   (a) To close the case, with or without dealing with it as a management issue as provided in Article 11 (b); or
   (b) To impose a disciplinary measure.

Section 3: Decision-making in the first instance and appeal

Article 32

1. On the basis of the advice of the Disciplinary Board, and in full respect of the principles of Article 30 (1), the responsible authority shall, within ten working days, take a decision. If it does not agree with the advice or the reasoning of the Disciplinary Board, it shall provide reasons as to why it has deviated from them.

2. The responsible authority shall notify the mission member under disciplinary procedure in writing about its decision, the advice of the Disciplinary Board and the right to appeal (Article 35). Article 11 (2) on the information of the Head of Mission and Article 18 (3) and (4) on the notification of the line manager and the seconding authority apply accordingly.

3. The responsible authority shall, within five working days, further inform a mission member having made a report in accordance with Article 6 and following, if the decision does not impose any disciplinary measure.

Article 33

For seconded mission members, the decision may consist of the recommendation of one of the following disciplinary measures to the seconding authority, notwithstanding measures taken by this authority following its own rules and legislation:

(a) To impose a written warning;

(b) To agree with the transfer to another post in the mission;

(c) To agree with the redeployment to a different location in the mission;

(d) To impose repatriation.

Article 34

For international contracted and locally contracted mission members, the decision may consist of the imposition of one of the following disciplinary measures:

(a) Written warning;

(b) Transfer to another post in the mission;

(c) Redeployment to a different location in the mission;

(d) Suspension without pay for a period of maximum one month;

(e) Termination of contract.

Article 35

1. The mission member under disciplinary procedure has the right to appeal against the decision within ten working days from its notification.

2. This appeal shall be in writing, motivated and addressed to the responsible authority as outlined in Article 36, which shall take the final decision.

3. The appeal has suspensive effect.

CHAPTER VIII

Disciplinary decision-making in the second instance (appeal procedure)

Section 1: General provisions

Article 36

1. The Head of Mission is the responsible authority for deciding on an appeal against a decision of the Deputy Head of Mission.

2. The Deputy Civilian Operations Commander is the responsible authority for deciding on an appeal against a decision of the Head of Mission.

3. The Civilian Operations Commander is the responsible authority for deciding on an appeal against a decision of the Deputy Civilian Operations Commander.

Article 37

The responsible authority for deciding on an appeal shall submit the case for advice to a Disciplinary Board of Appeal.

Article 38

The provisions of Chapter VII apply accordingly to the appeal procedure, if not provided otherwise.

Section 2: Disciplinary Board of Appeal

Article 39

1. The responsible authority for deciding on an appeal, shall, within ten working days, appoint a Disciplinary Board of Appeal consisting of a chairperson, two other voting members and a secretary as a non-voting member.

2. Members of the Disciplinary Board shall not be appointed as members of the Disciplinary Board of Appeal in the same case.

3. The Disciplinary Board of Appeal shall be composed of members of the mission.

4. If the circumstances so require, or upon request of the seconding authority, whose personnel is involved in the case, or of the Head of Mission, CPCC staff, within means and capabilities, or other independent external experts may be appointed by the Civilian Operations Commander.

5. If the mission member under disciplinary procedure is a judge or prosecutor in an executive capacity, Standard Operating Procedures shall guarantee an appropriate composition of the Disciplinary Board of Appeal.

Section 3: Decision-making in the second instance

Article 40

1. On the basis of the advice of the Disciplinary Board of Appeal and in full respect of the principles of Article 30 (1), the responsible authority for deciding on an appeal shall, within ten working days, take a decision.

2. If the appeal is admissible, the responsible authority shall review and shall amend or confirm the decision. It may, however, not amend the decision to the detriment of the mission member under disciplinary procedure.

3. If it does not agree with the advice or the reasoning of the Disciplinary Board of Appeal, it shall provide the reasons as to why it has deviated from them.

4. The responsible authority shall immediately notify the mission member under disciplinary procedure in writing about its decision and about the advice of the Disciplinary Board of Appeal. Article 11 (2) on the information of the Head of Mission and Article 18 (3) and (4) on the notification of the line manager and the seconding authority apply accordingly.

5. The responsible authority shall, within five working days, further inform a mission member having made a report in accordance with Article 6 and following, if the decision does not impose any disciplinary measure.

CHAPTER IX

Implementation of the decision

Article 41

1. The Head of Mission shall facilitate the implementation of any decision on disciplinary measures taken by a seconding authority over a seconded mission member, upon this authority's request.

2. The Head of Mission shall implement any decision on disciplinary measures taken by the responsible authority as mentioned in Chapter III over an international contracted or locally contracted mission member.

CHAPTER X

Final Provisions

Article 42

If criminal investigations regarding mission members are conducted by the competent authorities as defined in Article 2 (3) of this Code, the mission shall assist them, upon request, in accordance with the rules applicable to these investigations and having regard to the applicable Council decision as well as the Status of Mission Agreement (SOMA) or exchange of letters between the European Union and the host state.

Article 43

1. All persons and authorities acting within the framework of this Code shall act promptly and without undue delay.

2. The duration of the disciplinary procedure, which includes the implementation of the final decision, shall be proportionate and shall take into account the potential adverse effects on involved individuals. It shall not exceed one year.

3. The timelines given in this Code, with the exception of Articles 24 (1) and 35 (1), may be deviated from under exceptional circumstances that are beyond the control of the mission. If timelines are deviated from, it shall be motivated and communicated to the involved personnel.

Article 44

All communications, reports and investigations in the framework of this Code shall be issued and conducted in the working language of the mission. Where deemed necessary, for example in case of the involvement of a locally contracted mission member, a mission interpreter shall give assistance.

Article 45

1. In the framework of this Code, data shall be collected only to the extent necessary and relevant and in accordance with the principles and procedures of personal data protection as contained, in particular, in Regulations (EC) 45/2001 and (EU) 2016/679 in their currently applicable version.

2. All documents related to a disciplinary investigation shall be kept in disciplinary files, which shall be fully separated from mission members' personal files. Recommendations of Disciplinary Boards, final decisions and, upon request of the mission member under disciplinary procedure, also decisions to close a case shall be included in the personal files and shall be removed from them in accordance with the applicable rules. Once removed, they must not be referred to any further in subsequent disciplinary procedures.

3. For the purpose of (2), final decisions are decisions taken according to Articles 33 or 34, in first instance or upon appeal, and decisions taken by the seconding authority upon recommendation (Article 33).

4. The Head of Mission shall collect aggregated statistical data on the numbers of disciplinary procedures, on their main subjects, on the substantial decisions taken, and on appeals. This data shall be shared with the Civilian Operations Commander on a regular basis.

Article 46

For the purpose of providing independent external expertise as foreseen in Articles 10, 12 and 29, the responsible authorities may, inter alia, draw upon Civilian Response Teams (CRT) in accordance with the revised Concept for Civilian Response Teams (04 November 2009, 15371/09), in their currently applicable version.

Article 47

In case a recommendation is made in accordance with Article 33, the disciplinary investigation report as referred to in Article 20 shall be communicated, upon its request, to the seconding authority, whose personnel was under disciplinary procedure.