

Dear members of the University Council,

Thank you organizing the meeting on Thursday 14th January 2021, in which the EUR Regulations of the Advisory Committee for Complaints and Notices of Objection 2021 (Regulations AKB) was discussed. In this memo we will respond to your questions and suggestions.

1. Gender neutrality

Question UC: Asked was for gender neutrality in the Regulations AKB.

Answer JZ: Gender neutrality in general was regulated in article 1.1 (2): *“Where the Regulations use the ‘he’ form, this may also be read as the ‘she’ form and vice versa.”*

The reason why we have chosen for this description lies in the fact that we cannot change legal concepts such as ‘Nationale Ombudsman’ or other legal texts (Awb) in which the ‘he’-form is used.

Where possible we replaced ‘he’ and ‘him’.

2. Position of this committee in relationship to other EUR-committees

Question UC: You need more information about the context of this committee.

Answer JZ: We will write an explanatory document / guideline / decision-tree in the near future and will also update our website. First we have to rewrite our regulations and adapt legislative changes.

For your information, in appendix 1 you will find a brief description of the tasks of all EUR-committees.

3. The use of terms from the translated version of the Awb, the General Administrative Law Act

Question UC: The UC indicated that for some definitions a link could be made with the translation of the Awb, the General Administrative Law Act.

Answer JZ: This was a very helpful remark. We did change some of the definitions in the Regulations AKB in the context of objection. Unfortunately the chapter on complaints in de Awb (which took effect on 1 July 1999) has not been translated. The translated Awb (General Administrative Law Act) dates from before 1999.

4. Language

Question UC: The UC asked why the Dutch language is leading. It was asked to make it possible that both Dutch and English could be used in speech and writing.

Answer JZ: We discussed this also in the context of the Complaints Regulation Undesirable Behaviour and the Whistleblowers Regulations. Legal follow-up procedures require imperative that all texts are submitted in Dutch. This is obvious for Dutch courts (as described in law). Because of the repeated questions of the UC, we have verified the position of the Nationale Ombudsman, LOWI and CBHO on this subject. They replied all documents must be submitted in Dutch and the procedure is conducted in Dutch. We therefore cannot change our procedures.

Of course, another language (such as English) may be used at a hearing if this does not unreasonably harm the interests of others. Also, someone who has insufficient command of the Dutch language can take along someone who does speak the Dutch language sufficiently.

5. Inadequate translation

Question UC: The UC made some specific remarks about the translation of the term ‘belanghebbende’ and the unclear text in article 2.3 (4).

Answer JZ:

We amended the following articles

- Article 1.1 (1) ‘Stakeholder’ is changed in ‘Interested Party’.

- Article 2.3 (4) “Breaches of confidentiality, that obstruct the determination of the fact, may lead to discontinuation of the handling by the AKB. The Administrative Authority will be informed of this in Writing.”

6. Duties of the committee

Question UC: Why does the committee not issue advice on any measures to be taken by the Administrative Authority in relation to the handling of the complaint; article 3.6 (2).

Answer JZ: We discussed this also in the context of the Complaints Regulation Undesirable Behaviour and the Whistleblowers Regulations and tried to explain the committee is investigating a complaint and will give an advice on the merits of the complaint. Of course, the committee can and will advise about the validity of the complaint, but not on specific (punitive) sanctions in relation to this validity. Specific sanctions and measures that may follow this judgment lie in very different areas, where specific knowledge and expertise is required. As examples and not exhaustive: CAO NU (HR), Civil Code (HR and Legal Advice), criminal law (Police and Legal Advice), Order Regulations for Buildings Sites and Facilities 2020 (Security EUR, Dean, supervisor, HR, Legal Advice).

7. Appointment of chair and members AKB

Question UC: On which bases will the chair and the members be appointed and what are the requirements.

Answer JZ: The Regulations AKB contain two specific requirements: the chair is not employed under the responsibility of the Executive Board: article 3.1 (2) and one member is a Lawyer: article 3.2 (1). We will, in association with HR, start a public recruitment procedure for those committees where the appointment-term of the members ends. The members of the ACB are currently appointed till 1 January 2024. When interim vacancies arise, the aforementioned public recruitment procedure will be followed.

8. Position of the Secretary

Question UC: The UC expressed its concern about the position of the Secretary, as the Secretary should not fulfill other tasks that would put her/him in a difficult situation in relation to the confidentiality of the complaint.

Answer JZ: For this reason, the Secretaries work in a separate section of Legal Affairs: team Legal Protection. This assures the tasks of Legal Protection are not involved in the process prior to the handling of the complaint or the notice of objection.

To assure the Secretaries are only working for the committee, article 3.4 states: “the Secretary will only follow the instructions of the chair”.

The Secretaries are all authorized to use the title ‘Master of Law’ and well aware of the fact that confidentiality applies to them as employee of the EUR but also in the context of the confidentiality-article 2.3 (5) of the Regulations AKB.

The advisory committee is headed by an external chair and the committee determines the content of the advice. As the secretary is obliged to follow the instructions of the chair, the secretary does not feel pressured to meet any expectations from the organization.

9. The costs of witnesses and experts

Question UC: The UC asked who will pay for any costs in consulting witnesses and experts.

Answer JZ:

Article 7:8 of the General Administrative Law Act states:

- (1) At the request of the interested party witnesses and experts may be heard.
- (2) The costs of witnesses and experts shall be borne by the interested party

As clarified during the meeting, the costs that the interested party reasonably had to incur in connection with the handling of the objection will only be reimbursed by the administrative authority insofar as the contested decision is revoked due to unlawfulness attributable to the administrative authority: article 7:15 (2) Awb.

This article should be read in conjunction with the “Administrative Costs Decree” (effective from 1 January 2021), to be found via: <https://wetten.overheid.nl/BWBR0006358/2021-01-01>
Since the “Administrative Cost Decree” contains rules on the reimbursement of costs of **all** legal administrative procedures within EUR (not just those of the the AKB), Legal Protection intends to draw up an information brochure on how to apply the decree.

10. Website text ACB

Remark UC: The UC found the current ACB-website helpful in placing the Regulations AKB in context.

Answer JZ: We are sorry to inform the text on the website is outdated.

- The ACB does no longer handle objections against personnel decisions, because EUR-employees are no longer civil servants by law. Some disputes of employees can be submitted to the Employee disputes committee (Commissie Geschillen Werknemers: CGW). More information can be found in appendix 1, part of the Regulations AKB. Disputes submitted to the CGW are also handled by Legal Protection.
 - The ACB does no longer handle objections of students. These objections (on the basis of article 7.63a WHW) are handled by the GAS, de Geschillenadviescommissie Studenten: <https://www.eur.nl/en/media/2020-11-20200907-geschillenadviescommissie-studentenaangelegenheden-definitief>. Student objections submitted to the GAS are also handled by Legal Protection.
 - In the near future the AKB will also handle complaints (Chapter 9 Awb).
- The website is under construction and will amended in the near future.

11. The number of people appointed in the committee

Question UC: Is it a possibility to define a minimum number of people that must be in the AKB at a given time, to ensure the AKB remains properly filled and thus effective?

Answer JZ: The committee advises with three members, including the chair. At the moment 12 members (including chairs) are appointed. This number is adequate.

12. Examples of complaints to be handled by the committee

Question UC: For a better understanding of the complaints that will be handled by the committee, the UC has requested to provide some examples.

Answer JZ: The committee will advise on complaints about the way in which an Administrative Authority of the EUR has behaved. This could be the behaviour during an application procedure, failure to respond to a problem.