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FINANCE COMMITTEE

Hundred and Ninety-eighth Session

Rome, 6-10 November 2023

Recommendation 7 of the JIU Report *Review of the state of the investigation function: progress made in the United Nations system organizations in strengthening the investigation function* (JIU/REP/2020/1)

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EXECUTIVE SUMMARY

- The Finance Committee at its 195th Session (13-17 March 2023) considered progress related to the recommendations presented in the JIU Report, *Review of Whistleblower Policies and Practices in United Nations System Organizations* (JIU/REP/2018/4) and JIU Report, *Review of the State of the Investigation Function: Progress made in the United Nations System Organizations in Strengthening the Investigation Function* (JIU/REP/2020/1).
- This document is presented further to the request of the Finance Committee, endorsed by the Council at its 172nd Session, to consider “*preliminary procedures at its November 2023 Session, together with relevant views of the CCLM, noting that these should be developed in consultation with other UN specialized agencies and taking into account the legal framework of the Organization*”.
- The Committee on Constitutional and Legal Matters (CCLM) reviewed this matter at its 119th Session (9-11 October 2023). An extract of the Report of the 119th Session of the CCLM is provided in document FC 198/8 Add.1.

GUIDANCE SOUGHT FROM THE FINANCE COMMITTEE

- **The Committee is invited to review this document and make such observations thereon as it considers appropriate within the context of its mandate. Taking into account the legal framework of the Organization, the Committee is invited to provide its views or suggestions to guide the development by the Secretariat of proposals for (i) an investigation procedure; and (ii) a disciplinary procedure applicable to the FAO Director-General, with due regard to ongoing development on this subject in other UN specialized agencies.**

I. Introduction

1. In Recommendation 7 of its report on the *Review of the state of the investigation function*, the Joint Inspection Unit of the United Nations (JIU) recommended that: “[t]he legislative bodies of United Nations system organizations that have not yet done so should develop and adopt appropriate formal procedures for the investigation of complaints of misconduct by executive heads” (“Recommendation 7”).¹

II. Background

2. At its 117th Session in October 2022, the CCLM concluded as follows:

“33. The Committee noted that the UN System Chief Executives Board for Coordination (CEB) had not initiated its anticipated ‘consultative process for a harmonized implementation approach’, and that, therefore, a number of Specialized Agencies have either begun or have now completed work on implementation of the JIU recommendation, in particular to identify an investigating entity.

34. The Committee found no legal impediment to FAO similarly developing and adopting procedures on its own initiative, taking into account the legal framework of the Organization.

35. The Committee invited the Council to request FAO Management to prioritize the development of procedures, taking into account the views of the Finance Committee, and encouraged continued consultation with other Specialized Agencies.

36. The Committee invited the Council to recommend to FAO Management to identify the appropriate legal instruments, as well as any amendments required to existing instruments, to implement the JIU recommendation 7.”²

3. Subsequently, the Finance Committee, at its 194th Session in November 2022, *inter alia*,

“c) supported the recommendation of the CCLM inviting the Council to request FAO Management to prioritize the development of procedures and to identify the appropriate legal instruments, as well as any amendments required to existing instruments, to implement the JIU recommendation;

d) recommended that when developing such procedures, FAO should take into account the intergovernmental nature of the Organization, its existing legal framework, governance structure and investigation capacity, and ensuring due process;

e) encouraged continued consultation with other Specialized Agencies to ensure, to the extent possible, a coordinated and harmonized approach within the broader UN System; and

f) requested that a further update on progress be presented to the Spring 2023 Session of the Committee, and requested Management present preliminary procedures, together with relevant views of the CCLM as appropriate, to the Finance Committee for consideration at its autumn 2023 Session.”³

4. The Council, at its 171st Session in December 2022 endorsed the above-mentioned recommendations of the CCLM and the Finance Committee.⁴

5. At its 172nd Session in April 2023, the Council “noted the CCLM’s considerations on the status of recommendations presented in the Joint Inspection Unit (JIU) Report, Review of the State of

¹ For further background on the Governing Bodies’ consideration of this matter, see [CCLM 117/4](#).

² [CL 171/10](#), paragraphs 33-36.

³ [CL 171/9](#), paragraph 20.

⁴ [CL 171/REP](#), paragraphs 35 (c) and 32 (b).

the Investigation Function: Progress made in the United Nations System Organizations in Strengthening the Investigation Function (JIU/REP/2020/1)”⁵ and endorsed the recommendations of the Finance Committee related to “*progress related to the recommendations presented in the Joint Inspection Unit (JIU) Reports, Review of Whistleblower Policies and Practices in United Nations System Organizations and Review of the State of the Investigation Function: Progress made in the United Nations System Organizations in Strengthening the Investigation Function*”.⁶

6. In their reports submitted to the 172nd Session of the Council, the two Committees had made the following observations and recommendations in the context of their respective mandates:

a) The CCLM

“20. The Committee *welcomed* the oral update by the Legal Counsel, including on the consultations with other UN specialized agencies.

21. The Committee, recalling the recommendations on this matter by CCLM and Finance Committee at their Autumn 2022 Sessions which were endorsed by the Council at its 171st Session, *looked forward* to considering preliminary procedures at its Autumn 2023 Session, noting that these should be developed in consultation with other UN specialized agencies and taking into account the legal framework of the Organization.”⁷

b) The Finance Committee

“a) *welcomed* the oral update by the Legal Counsel, including on the consultations with other UN specialized agencies, while recommending that written updates be provided for similar matters in the future;

b) *looked forward* to considering preliminary procedures at its November 2023 Session, together with relevant views of the CCLM, noting that these should be developed in consultation with other UN specialized agencies and taking into account the legal framework of the Organization; and

c) *requested* Management to provide Members of the Finance Committee with an opportunity to review and provide inputs on the preliminary procedures prior to their formal presentation to the CCLM and Finance Committee at their autumn 2023 sessions.”⁸

7. Preliminary procedures were circulated informally to the CCLM and Finance Committee members. Some of the observations received from the CCLM members have been taken into account in the preparation of this document. Nevertheless, it was the view of the secretariat that a large number of the inputs, particularly those addressing matters of general principle or process, needed to be first addressed in discussions amongst Members.

III. Guiding principles for the development of processes to implement Recommendation 7

8. The options for the implementation of Recommendation 7 presented in this document have been developed having regard to the general principles set out below. These are drawn from the *Basic Texts*, the general principles of international administrative law, and the jurisprudence of the ILO Administrative Tribunal (ILOAT).⁹ As further described in Section IV below, the options presented

⁵ [CL 172/REP](#), paragraph 27 (c) (iii).

⁶ [CL 172/REP](#), paragraph 24 (g).

⁷ [CL 172/10](#), paragraphs 20-21.

⁸ [CL 172/9](#), paragraph 38.

⁹ All references to Judgments in this document refer to Judgments delivered by the ILOAT, which has the authority to deliver decisions binding on the Organization, including the award of damages.

with respect to the investigation process and the disciplinary process, respectively, aim to parallel the standard processes applicable to staff members to the extent feasible and appropriate.

9. **Adherence to, and consistency with, the *Basic Texts*:** Mechanisms to address allegations of misconduct against the Director-General must be consistent with the *Basic Texts*, including the provisions conferring the authority to appoint the Director-General on the Conference, and which cannot be delegated to the Council.¹⁰ The processes must also respect the accountability of the Director-General to the Conference and Council.¹¹ As observed under Section VII (“Next Steps”) below, whether the procedures should or could lead to amendments to the *Basic Texts* will need some consideration.

10. **Due process, the adversarial principle and rights of defence:** The right to due process applies in respect of appointments of chief executives by governing bodies, and decisions concerning the terms and conditions of appointment of chief executives may be challenged before the ILOAT.¹² The ILOAT has established that a disciplinary measure can be imposed only at the close of an adversarial procedure that fully guarantees the staff member’s right to be heard. The facts complained of must be clearly stated and notified in good time so that the staff member can participate actively and fully in the taking of evidence both before the body responsible for conducting the investigation during the disciplinary process and before the decision-making authority.¹³ A staff member must, as a general rule, have access to all evidence on which the decision-making authority bases (or intends to base) a decision affecting her or him personally. Such evidence cannot be withheld on grounds of confidentiality unless there is some special case in which a higher interest stands in the way of disclosure.¹⁴

11. **Duty of care:** There is a duty to refrain from any kind of conduct that may harm the dignity or reputation of the individual concerned, noting that placement of a senior official on special leave pending a review of his/her performance has been recognized by the ILOAT to inevitably affect that person’s dignity and good name, and has consequences on that person’s career.¹⁵ Due regard should be had to the highly confidential nature of investigations and disciplinary processes and sensitive information should be restricted in circulation, especially while processes are ongoing.

12. **Presumption of innocence, standard and burden of proof:** The individual concerned is presumed innocent and the burden of proving allegations of misconduct is on the Organization. Different standards of proof apply to the investigation and disciplinary processes. The standard of proof applied during an investigation to substantiate an allegation is “*as specified in the rule or policy governing the alleged misconduct or, in the absence of such a rule or policy, the evidence is tested to the greatest extent possible in the circumstances*”.¹⁶ International administrative law requires that disciplinary measures are imposed only when the allegations are proven beyond a reasonable doubt.¹⁷

¹⁰ See Article V (3) and Article VII of the Constitution.

¹¹ Article VII (4) of the Constitution, Rule XXXVIII (1) of the General Rules of the Organization.

¹² See e.g. Judgment 2232, considerations 10 and 16.

¹³ See e.g. Judgment 2741, consideration 4 (a); Judgment 1133; Judgment 1212; Judgment 2254, consideration 6; Judgment 2475, consideration 20; Judgment 4615, consideration 7; Judgment 4310, consideration 11; Judgment 3640, considerations 16 and 20; and Judgment 2741, consideration 4 (a).

¹⁴ See e.g. Judgment 4310, consideration 11.

¹⁵ See e.g. Judgment 2324, consideration 13; Judgment 4448, consideration 9; and Judgment 4411, consideration 22.

¹⁶ [FAO Investigation Guidelines](#), paragraph 10.2.

¹⁷ See e.g. Judgment 4491, consideration 19; Judgment 2741, consideration 4 (a); Judgment 4363, consideration 10; Judgment 4051, consideration 5; Judgment 3297, consideration 8; and Judgment 3875, consideration 8.

IV. The definition of misconduct

13. In adopting a process to implement Recommendation 7, there should be clarity as to the nature of the conduct that is to be addressed. It is observed that the Recommendation refers to “misconduct”.

14. “Misconduct” refers to unsatisfactory conduct of a particularly serious nature. As reflected in the FAO rules applicable to staff members, “unsatisfactory conduct” is defined as “*conduct which is incompatible with the staff member’s undertaken or implied obligation to the Organization or failure to comply with the requirements of Article I of the Staff Regulations*”. These include, but are not limited to:

- (a) Use of official position, authority, or property for pecuniary gain or advantage for staff member or others.*
- (b) Abuse of authority or trust to the detriment of the Organization, or any conduct of such character which is detrimental to the name of the Organization.*
- (c) False statement, misrepresentation or fraud, whether oral or written, pertaining to official matters.*
- (d) Any action calculated to impede the effective operation of the Organization.*
- (e) Serious violation of any applicable national law.*
- (f) Wilful or grossly negligent acts that endanger lives or cause damage to property.*
- (g) Neglect or avoidance of just claim for debt or any comparable obligation.*
- (h) Insubordination or refusal to obey instructions.*
- (i) Unwillingness to perform prescribed duties or unwillingness to perform them in a satisfactory manner.*
- (j) Conduct which renders the staff member unable to perform his/her duties properly, for example being intoxicated when on duty, or unauthorized absence from duty.*
- (k) Lack of neutrality, and comparable failure to conform with the requirements in Article I ‘Duties, Obligations and Privileges’ of the Staff Regulations, particularly 301.1.1, .1.3, .1.4, .1.5, .1.7, and .1.9’.¹⁸*

15. The FAO rules address “misconduct” in the context of the disciplinary measure of dismissal. In particular, “*dismissal for misconduct is a termination for unsatisfactory conduct that has jeopardized, or would be likely to jeopardize, the reputation of the Organization and its staff*”, and summary dismissal for misconduct is imposed “*when the misconduct of the staff member concerned is so serious that it has gravely jeopardized or is likely to gravely jeopardize the reputation of the Organization and its staff*”.¹⁹

16. These rules are complemented by definitions in various policies addressing specific types of misconduct such as corruption and fraud, sexual harassment and abuse of authority, and sexual exploitation.

17. It is considered that the nature of conduct that qualifies as unsatisfactory conduct and misconduct for staff members would similarly constitute unsatisfactory conduct and misconduct in the

¹⁸ FAO Manual section 330.1.5.

¹⁹ FAO Manual section 330.2.4.

case of an executive head. However, the role and functions of that individual would increase the seriousness of any unsatisfactory conduct.

18. In the case of the World Meteorological Organization (WMO), definitions of unsatisfactory conduct and misconduct have been included in the newly adopted special procedures described further below.²⁰ These are included, as well as the procedures, in the contract concluded with the Secretary-General. The definitions are largely similar to those of FAO set out above. Unsatisfactory conduct is defined as “*any conduct where the Secretary-General fails to comply with his/her obligations under the WMO Convention, its Regulations and Rules, Charter of the United Nations or to observe the standards of conduct expected of an international civil servant. Unsatisfactory conduct includes conduct of sufficient gravity that rises to the level of misconduct*”. Misconduct is defined as “*any conduct where the Secretary-General fails to comply with his/her obligations under the WMO Convention, its Regulations and Rules, Charter of the United Nations or to observe the standards of conduct expected of an international civil servant and may be of sufficient gravity to lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct*”. The WMO procedures also include a non-exhaustive list of types of misconduct for which disciplinary measures may be imposed.

19. The Committee may wish to consider whether to include definitions of unsatisfactory conduct and misconduct in the procedures to be developed. Alternatively, they may determine that the process could simply refer to the definitions in existing FAO rules and policies, if they conclude that it is the process – rather than the type of conduct – which distinguishes the case of the executive head from other personnel of the Organization.

V. The investigation and disciplinary processes

20. The handling of allegations of misconduct in FAO falls into two stages: the investigation process and the disciplinary process. The procedures applicable to staff members during the investigation process, and the disciplinary process are set out in Annexes 1 and 2 respectively. Possible options for processes to implement Recommendation 7 are set out in Annexes 3 and 4, and these aim to parallel the standard process to the extent feasible and appropriate.

A. Investigation Process

21. The investigation process is a technical fact-finding exercise. In accordance with the FAO Investigation Guidelines, it comprises three stages (see **Annex 1**): intake; preliminary review; and investigation. Allegations that are determined by the investigation to be substantiated are then referred for the disciplinary process.

22. Under the FAO Investigation Guidelines, the Office of the Inspector General (OIG) may recommend that the subject of the investigation be suspended pending completion of the investigation.

B. Disciplinary Process

23. The disciplinary process involves an assessment of the facts established by the investigation to ascertain whether it has been proven beyond a reasonable doubt that there has been a breach of a rule or policy and, if so, to determine the appropriate measure to impose for that breach (see **Annex 2**). As with the investigation process, FAO rules foresee that a staff member may be suspended with or without pay pending completion of the disciplinary process, the suspension being without prejudice to the rights of the staff member.

²⁰ See [WMO Congress resolution](#) at its 19th Session (May-June 2023) approving revised terms for the Secretary-General’s contract setting out the investigative and disciplinary procedures, at Section 3.

24. Decisions during the disciplinary process are typically made by the appointing authority, taking into account any recommendations from units having relevant expertise.

C. Special considerations arising in the context of allegations against executive heads

25. Many of the other UN specialized agencies consulted by FAO underlined the need to consider how to prevent abuse of such procedures. It is understood that, in some agencies, instead of or in addition to relying on established complaints processes, employees have alleged misconduct against executive heads to challenge lawful decisions related to, for example, recruitment, promotion or restructuring. This, those agencies indicated, has interfered with the lawful exercise of managerial authority by the executive head, delaying implementation of decisions while also politicizing them.

VI. Preliminary matters requiring decision

26. FAO's policies and rules related to allegations of misconduct are similar to those of other UN system organizations. It is proposed that the Organization's policies and rules regarding allegations of misconduct against staff members apply, *mutatis mutandis*, in addressing allegations against the Director-General.

27. Preliminary procedures for the investigation and the disciplinary processes, including options for consideration by the Members, are set out in **Annexes 3** and **4**, respectively. These annexes also identify elements on which decisions are needed from the Members to enable the further development of procedures and propose adjustments to relevant legal instruments.

A. Considerations concerning preliminary proposals for an investigation procedure

28. The design of the procedure for investigating allegations of misconduct against an executive head should reflect the technical fact-finding nature of the exercise. Attention must also be paid to the principles set out in Section III above.

29. Impartiality must be built into the investigation process. To avoid any actual or perceived conflict of interest, most organizations refer allegations against their most senior officials to external investigating entities (EIEs). That being said, with a view to limiting the potential abuse of these processes (as outlined in paragraph 25 above), in some organizations the preliminary review is conducted by the internal investigation function in consultation with their independent oversight committees, with EIEs undertaking only the full investigations.

30. As regards the full investigation, some organizations have identified a specific EIE, such as the UN Office of Internal Oversight Services (OIOS) and have, or are concluding, agreements for those purposes. Others have not identified a single EIE, stipulating only that investigations will be conducted by EIEs. Yet others have established rosters of individual investigators who could be called upon to investigate when allegations are received.

31. In deciding which entity should investigate allegations, the following considerations are relevant:

- a) Most of the investigation functions of the UN system adhere to the same *Uniform Principles and Guidelines for Investigations*, endorsed by the Conference of International Investigators.²¹
- b) Some private firms have experience in conducting investigations for UN system agencies.
- c) OIOS, while exercising operational independence, reports to the UN General Assembly and discharges its functions under the authority of the UN Secretary-General. While FAO could

²¹ [Uniform Principles and Guidelines for Investigations](#), 2nd edition, endorsed by the Conference of International Investigators at their 10th Conference in June 2009.

request OIOS to provide investigatory services on a reimbursable basis and seek to conclude an agreement for this purpose, it cannot require OIOS to agree to do so.

- d) Any arrangement with an EIE should reflect and respect the autonomy of the Organization and the primacy of its Governing Bodies in matters concerning FAO and its Director-General. It should also recognize that FAO operates under its own legal framework.

32. Whichever option is selected by the Members as regards the EIE, it is recommended that an individual or entity be identified to provide quality assurance and oversight with respect to the EIE's conduct of investigations, similar to the manner in which these are provided by the Inspector General in respect of investigations of other FAO personnel.

33. Bearing in mind the technical nature of investigations and the relevant specialist expertise of the Oversight Advisory Committee (OAC), Members could consider mandating the OAC or its Chair to oversee the preliminary review and the investigation process.²² This would require a new OAC mandate for this specific purpose as, under its existing Terms of Reference, the OAC reports to the Finance Committee and the Director-General. It is noted that the OAC supports the investigations into allegations against the Inspector General, which are to be conducted by an EIE.²³

34. Another option could be to entrust the responsibility of overseeing the preliminary review and/or the full investigation to a standing special committee or mechanism ("Special Mechanism") appointed by the Conference, established as described in paragraphs 37-45 below. In this regard, Members would need to consider the technical fact-finding nature of the investigation process. In particular, two aspects should be borne in mind: it is imperative to ensure the integrity and impartiality of the investigation process to comply with the principles set out in Section III above; and the rules of UN system agencies – including FAO – distinguish between the investigation activity and the disciplinary decision-making, the latter being undertaken by the appointing authority taking into consideration the findings of neutral investigation experts.

35. As reflected in the preliminary procedures proposed in **Annex 3**, the guidance of Members is requested on the following questions:

- a) *Should OIG or an EIE conduct the preliminary review?*
- b) *Who should serve as EIE in the investigation process?*
- c) *If the EIE is to be identified on an ad hoc basis, who should select the EIE?*
- d) *Who should oversee the investigation process, including the preliminary review; OAC or a Special Mechanism?*

²² "Members are selected on the basis of their qualifications and relevant experience at senior level in the areas of oversight including audit, investigation and ethics, financial management, governance, risk and controls. Due regard is paid in their selection to gender and geographic representation in the Committee", [Terms of Reference of the FAO Oversight Advisory Committee](#), paragraph 4.3.

²³ "Allegations of misconduct against the Inspector General shall be reported to the Director-General, who shall inform, without delay, the Chair of the Finance Committee and seek the Oversight Advisory Committee's advice on how to proceed. The Oversight Advisory Committee shall arrange for a preliminary review by an independent external investigative entity. Based on the results of this review, the Oversight Advisory Committee shall provide a recommendation to the Director-General and the Chair of the Finance Committee on whether to close the matter or refer the matter for investigation to an independent external investigative entity other than the one that conducted the preliminary review. Based on the results of the investigation and taking into account the advice of the Oversight Advisory Committee, the Director-General, in consultation with the Finance Committee, will close the case or initiate disciplinary proceedings", [Charter of the Office of the Inspector General](#), paragraph 22.

B. Considerations concerning preliminary proposals for a disciplinary procedure

36. The design of the disciplinary procedure to address allegations of misconduct against the executive head calls for particular consideration of how the Members will participate in the disciplinary process and take decisions; and who should support the Members in this context?

37. Disciplinary decisions on allegations of misconduct are normally taken by the appointing authority. Members will need to consider the mechanism through which the Conference, as the appointing authority, would engage in the procedures and take decisions, in light of the *Basic Texts*. It is observed that:

- a) There are currently no Governing Bodies mandated to review allegations against the Director-General.
- b) In other specialized agencies, disciplinary proceedings against the executive head are normally led by the chair and/or the bureau of the appointing authority. However, in those organizations, the officers of the relevant governing bodies discharge their functions intersessionally. In FAO, the Chairperson and officers of the Conference discharge their functions only for the duration of a Conference session. Moreover, the Council does not have a bureau.
- c) The *Basic Texts* do not grant the Independent Chairperson of the Council (ICC) any authority over the Director-General. Indeed, they stipulate that the ICC's role should not create any potential conflict with the managerial functions of the Director-General in the administration of the Organization.²⁴
- d) Having regard to the duty of care and the benefit of the doubt described in Section III above, it would be inappropriate for allegations and related evidence to be circulated and reviewed by the entire membership of the Conference or Council.
- e) Allegations against an executive head must be addressed with minimum delay, given the serious implications for the individual and organization concerned. If *ad hoc* bodies are established only when allegations arise, this could lead to delays.

38. In light of the above, an option could be the appointment by the Conference of a Special Mechanism to address, on its behalf, allegations against the Director-General when they arise, as has recently been established by WMO.²⁵

39. A Special Mechanism of this nature would reflect the appointing authority of the Conference and may facilitate the identification by Member Nations of representatives having relevant experience.

40. If Members agree to establish a Special Mechanism, they will need to determine whether it would make recommendations to the Conference with the Conference being convened in Special Session to take decisions, or whether the Conference would delegate decision-making to that Special Mechanism.

41. To remain aligned with the composition of other FAO bodies as reflected in the *Basic Texts*, a Special Mechanism could reflect the usual regional distribution, for example, one representative each from Africa, Asia and the Pacific, Europe, Latin America and the Caribbean, Near East, North

²⁴ Resolution 9/2009, *Basic Texts* (2017 edition), volume II, section E.

²⁵ See WMO's [Executive Council decision](#) at its 76th Session (February-March 2023) establishing an Executive Council Disciplinary Committee, and the [WMO's Congress resolution](#) at its 19th Session (May-June 2023) approving revised terms for the Secretary-General's contract setting out the investigative and disciplinary procedures.

America, and Southwest Pacific. It is recommended, in light of the need to preserve confidentiality while a disciplinary process is ongoing, that the number of representatives be limited.²⁶

42. Should the Members decide to establish a Special Mechanism, they would also need to decide whether the chair of that body should also be appointed by the Conference.

43. Members may need support during the disciplinary process, for example, on legal aspects. For the usual procedures under FAO rules as set out in **Annex 1**, the Human Resources Division (CSH) advises the Director-General with the support of the Legal Office. Members will need to consider whether, given the reporting lines of relevant internal units to the Director-General, advice and support should be provided by another entity, such as the OAC or the relevant units of other UN system organizations.²⁷ It is noted that at the World Health Organization (WHO) and the World Intellectual Property Organization (WIPO), the internal legal offices of these organizations support the equivalent of the OAC and, more generally, the disciplinary process.²⁸

44. While Members could decide to mandate the OAC to support the disciplinary process, given its focus on audit and investigation, the membership of the OAC does not necessarily include expertise in international administrative law and procedures. Similarly, the representatives of Members in a Special Mechanism may not necessarily have expertise in these areas of law. It is important to bear in mind that any disciplinary decision may be subject to appeal to the ILOAT.

45. In deciding which entity should support the conduct of the disciplinary process, the following considerations are relevant:

- a) The extent to which the necessary legal and other expertise may be available amongst the representatives of the Members.
- b) Some private firms have experience in supporting UN system organizations in the conduct of disciplinary procedures involving senior officials.
- c) The disciplinary procedures of UN specialized agencies are broadly similar, and agencies already often assist each other in addressing more sensitive disciplinary cases where recusal of the internal function has been necessary. However, the provision of this support is always subject to available capacity.

46. As reflected in the preliminary procedures proposed in **Annex 4**, the guidance of Members is requested on the following questions:

- a) *Should an existing FAO Governing Body undertake the disciplinary procedure, or should a new Special Mechanism be established?*
- b) *If a Special Mechanism is to be established, with authority delegated by the Conference, what should be its composition and who should chair it?*
- c) *If a Special Mechanism is to be established, should it be mandated to take the final decision or make recommendations to the Conference?*

²⁶ The WMO Executive Council Disciplinary Committee comprises one member per region.

²⁷ See, for example, the amendments to the terms of reference of the WMO Audit and Advisory Committee, which mandates it to “*Assist and advise the WMO President and Executive Council Disciplinary Committee, as requested, on the disciplinary process or any associated points of law as established by the misconduct rules annexed to the contract of the Secretary-General*”. The WIPO Internal Oversight Charter, paragraphs 40-42, as well as the Terms of Reference of the Independent Advisory Oversight Committee (IAOC) which is mandated “*To provide advice in case of allegations of misconduct against the Director General in accordance with the Internal Oversight Charter (paragraphs 24, 41 and 42)*”.

²⁸ A proposed “[Process of Handling and Investigating Potential Allegations against the Director-General](#)” is currently under review at WHO.

- d) *Who should provide assistance and support to the body entrusted with the disciplinary process, including providing legal and procedural advice?*

C. Reporting and disclosure of information concerning allegations

47. Given the Director-General's accountability to the Conference and Council, there is a need for appropriate transparency *vis-à-vis* these Bodies. This must, however, be balanced with the duty of care and the benefit of the doubt owed to the person against whom allegations are made (see the principles set out in Section III above).

48. The amount of information to be disclosed, the audience to which it should be disclosed, and the timing of disclosure are also relevant considerations in seeking to prevent misuse of these special procedures as described in paragraph 11 above.

49. In internal processes involving staff members, supervisors are not automatically informed about ongoing investigations; rather, they are informed about ongoing investigations strictly on a need-to-know basis (for example, supervisors are informed to the extent that this is required for managerial purposes). Particular care is taken to adhere to the presumption of innocence and to preserve the dignity and reputation of staff members while investigation and disciplinary procedures are ongoing.

50. The Members may wish to consider whether, when, and to what extent they should be informed of allegations. Having regard to the principles set out above, the Members could decide that they should be informed at the end of the preliminary review or at the conclusion of an investigation. In deciding when relevant information should be disclosed, Members would need to take into account the mechanism by which the disciplinary process should be conducted.

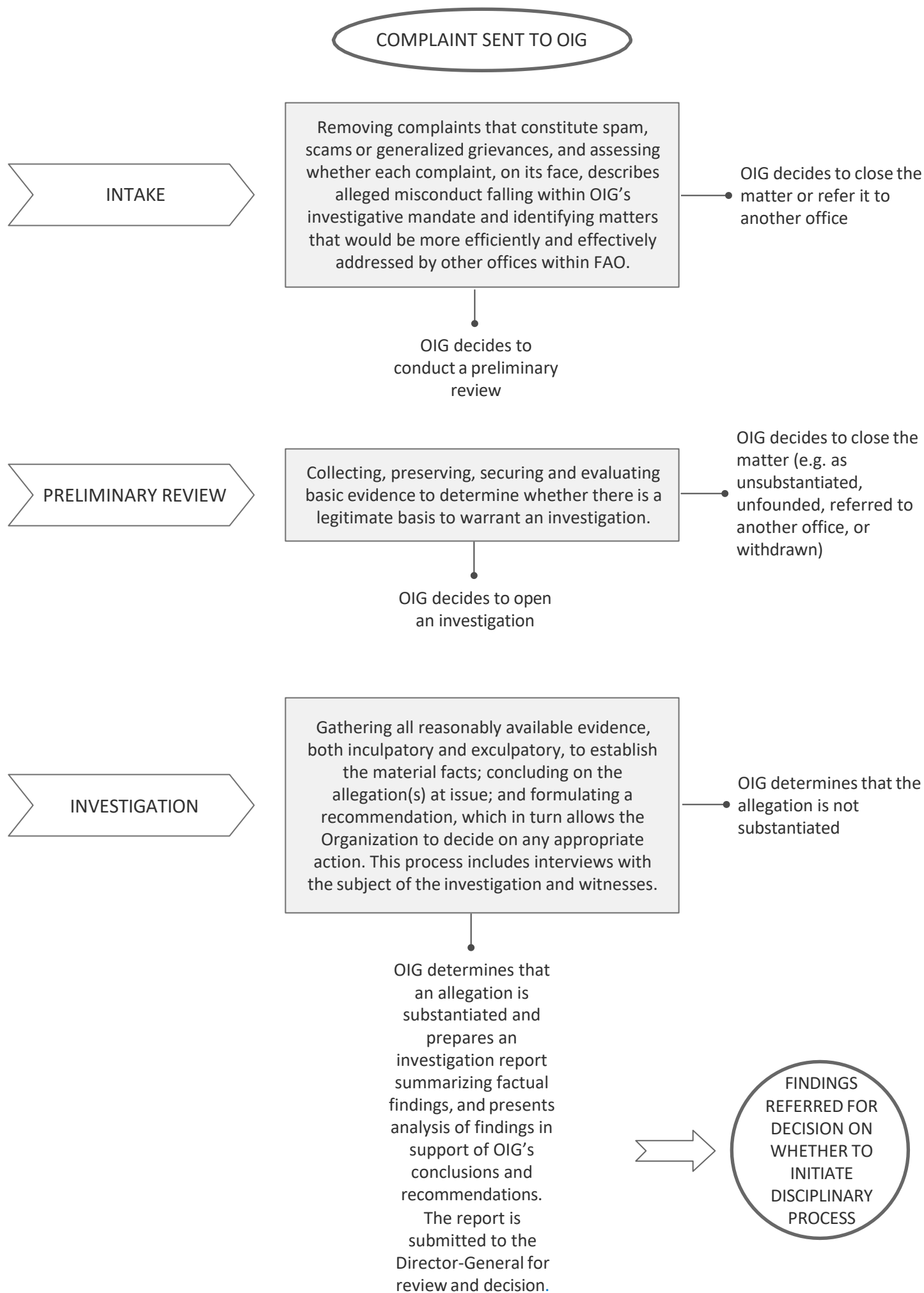
VII. Next Steps

51. In addition to the specific investigation and disciplinary processes, other matters will also need to be considered, as observed in some of the inputs received following the informal circulation of preliminary procedures referred to in paragraph 7 of this document. These would include, for example, provisions for special leave during an investigation and/or disciplinary process, the possible scope of disciplinary measures, budgetary allocations for the relevant activities (to be guided by, for example, the Members' decisions on who should support these processes from a legal, investigation and administrative perspective).

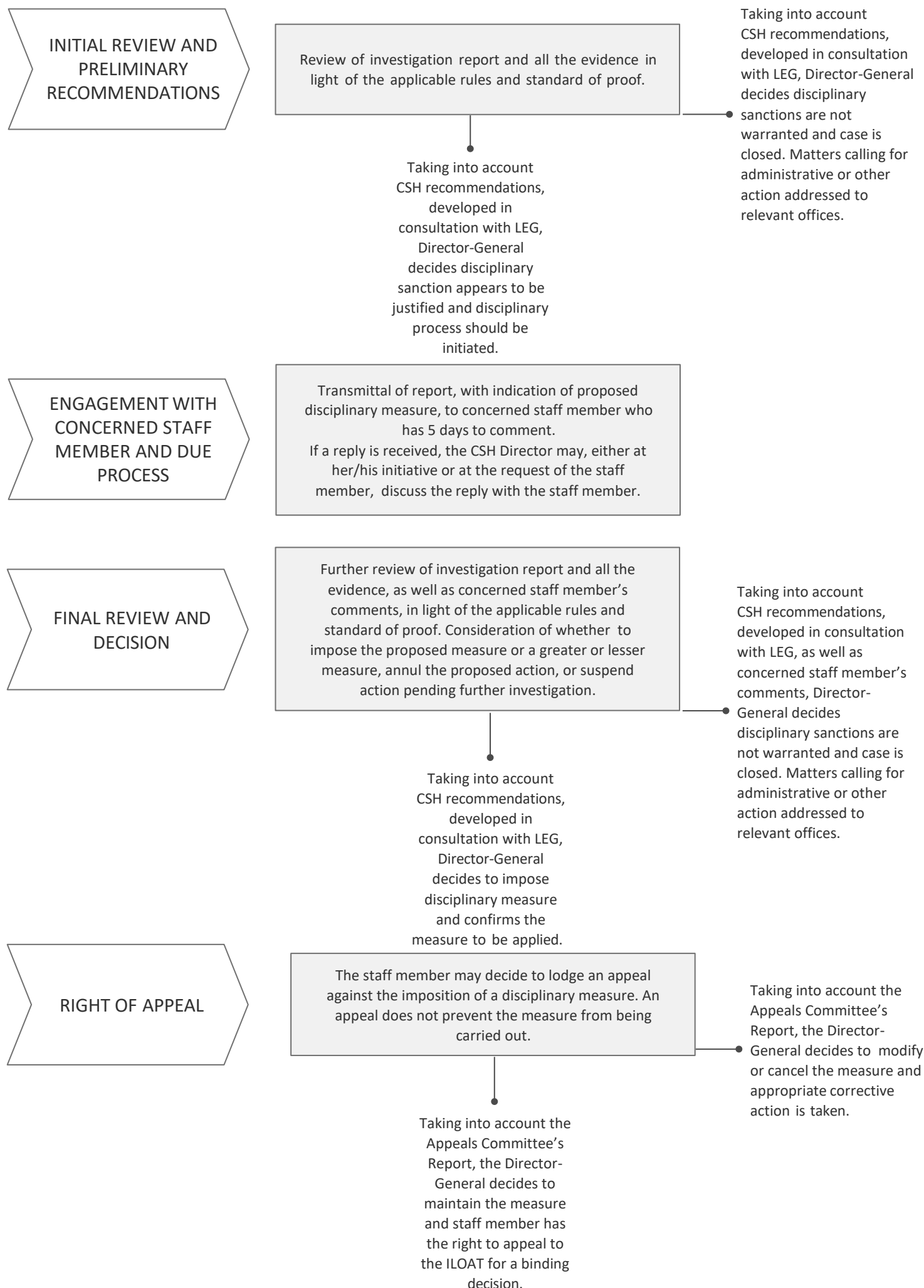
52. As has also been previously observed, the adoption of procedures to address allegations of misconduct by the executive head is likely to require the amendment of several instruments. These could include, but not be limited to, the terms of reference of the OAC, the OIG Charter, the FAO Investigation Guidelines, the standard clauses in the Conference resolution appointing the Director-General, the contract between the Director-General and the Organization, the Staff Regulations and Manual sections concerning investigations and disciplinary matters, the policies on harassment, fraud and corruption, whistle-blower protection, to name but a few. However, before proceeding to specifically identify the instruments concerned and propose amendments, decisions of the Members on the elements of the preliminary procedures identified in this document are needed. In addition, Members' guidance will be needed as to whether any aspects of these processes should call for amendment to the *Basic Texts*.

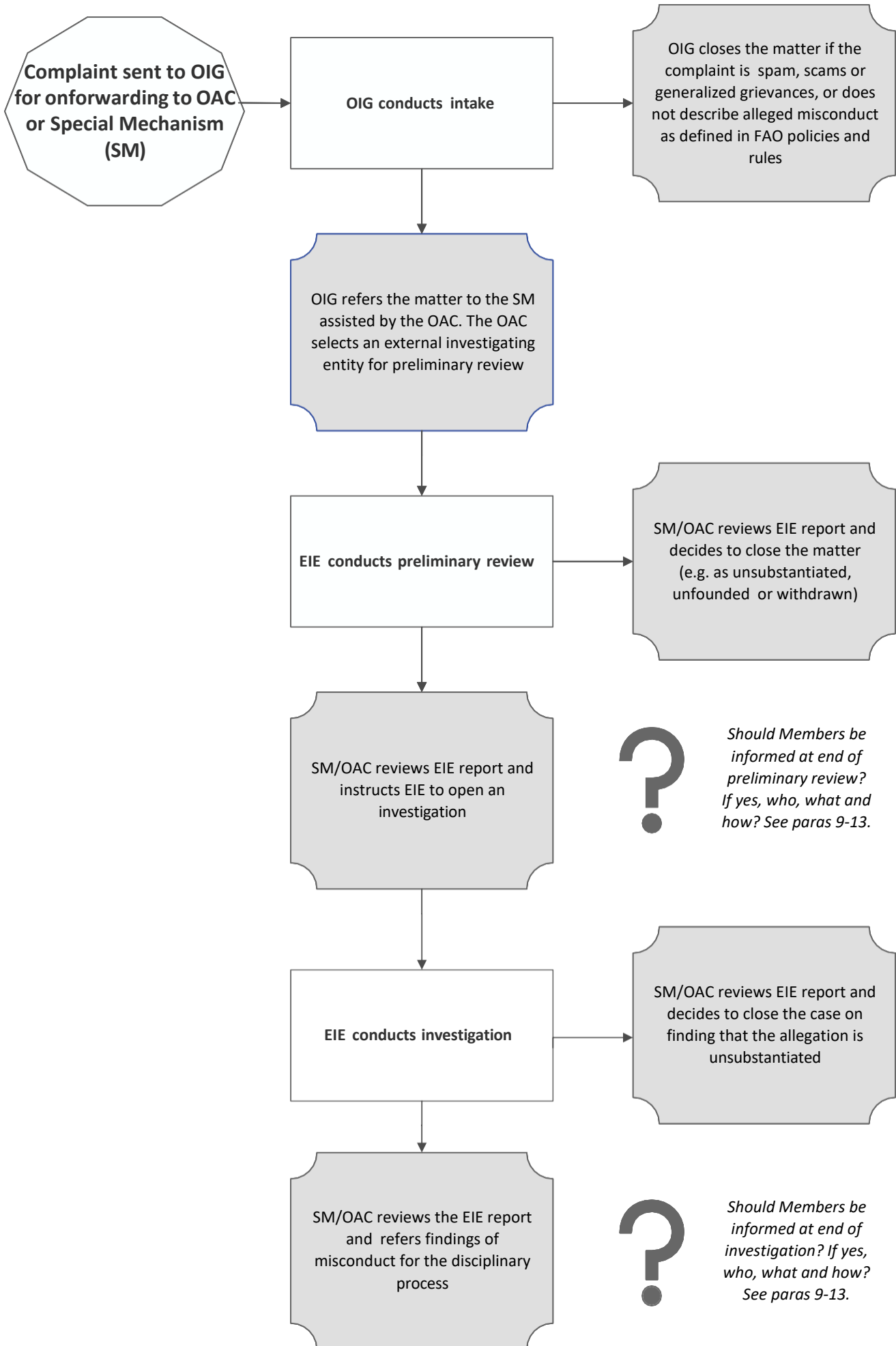
53. With the requested guidance, specific textual proposals will be developed for review by the Members.

STANDARD INVESTIGATION FOR STAFF MEMBERS



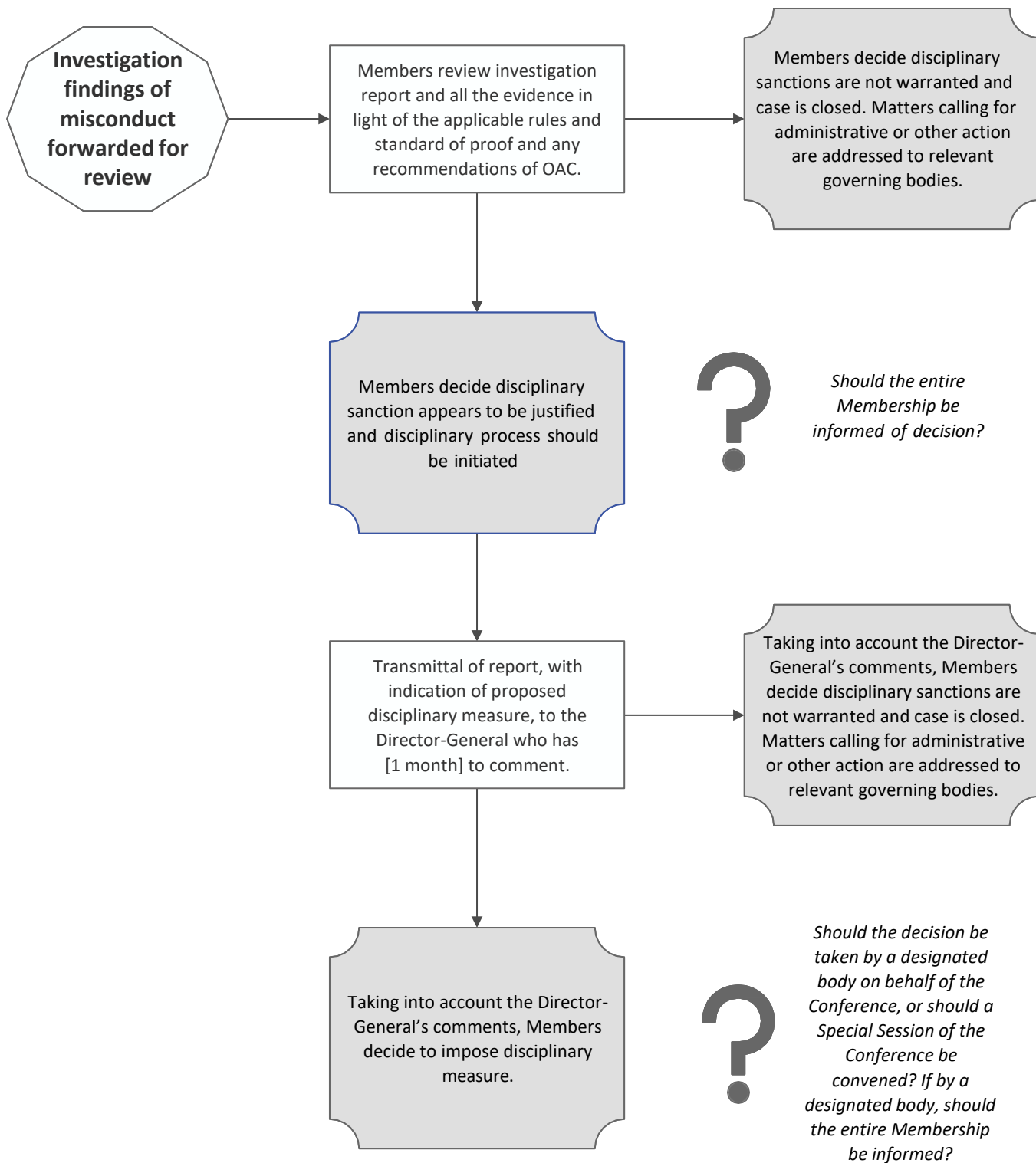
STANDARD DISCIPLINARY PROCESS FOR STAFF MEMBERS







How should Members participate in the disciplinary process? See paras 9-13 and 38-42. Reference to “Members” below refers to the body selected by Members to undertake the disciplinary process. Who should assist the Members in this process?



The decision to impose a disciplinary measure shall be a “final decision”, and the Director-General shall have the right to file a complaint directly with the ILO Administrative Tribunal. An appeal does not prevent the measure from being carried out.