

## II

*(Acts whose publication is not obligatory)*

## EUROPEAN PARLIAMENT COUNCIL COMMISSION

### INTERINSTITUTIONAL AGREEMENT

of 25 May 1999

**between the European Parliament, the Council of the European Union and the  
Commission of the European Communities  
concerning internal investigations by the European Anti-fraud Office (OLAF)**

THE EUROPEAN PARLIAMENT, THE COUNCIL OF THE EUROPEAN UNION AND THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Referring to the resolution of the European Parliament of 7 October 1998 on the independence, role and status of the Unit for the Coordination of Fraud Prevention (UCLAF)<sup>(1)</sup>,

Referring to the conclusions of the Council of 15 March 1999, adopted following detailed discussions with the representatives of the European Parliament and the Commission,

Noting Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 establishing a European Anti-fraud Office<sup>(2)</sup>,

(1) Whereas Regulation (EC) No 1073/1999 of the European Parliament and of the Council<sup>(3)</sup> and Council Regulation (Euratom) No 1074/1999<sup>(4)</sup> concerning investigations conducted by the European Anti-fraud Office provide that the Office is to initiate and conduct administrative investigations within the institutions, bodies and offices and agencies established by or on the basis of the EC or Euratom Treaties;

(2) Whereas the responsibility of the European Anti-fraud Office as established by the Commission extends beyond the protection of financial interests to include all activities relating to the need to safeguard Community interests against irregular conduct liable to give rise to administrative or criminal proceedings;

(3) Whereas the scope of the fight against fraud should be broadened and its effectiveness enhanced by exploiting existing in the area of administrative investigations;

(4) Whereas, therefore, on the basis of their administrative autonomy, all the institutions, bodies and offices and agencies should entrust to the Office the task of conducting internal administrative investigations with a view to bringing to light serious situations relating to the discharge of professional duties which may constitute a failure to comply with the obligations of officials and servants of the Communities, as referred to in Articles 11, 12, second and third paragraphs, 13, 14, 16 and 17, first paragraph, of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities (hereinafter referred to as 'the Staff Regulations'), detrimental to the interests of those Communities and liable to result in disciplinary or, in appropriate cases, criminal proceedings, or serious misconduct,

<sup>(1)</sup> OJ C 328, 26.10.1998, p. 95.

<sup>(2)</sup> See page 20 of this Official Journal.

<sup>(3)</sup> See page 1 of this Official Journal.

<sup>(4)</sup> See page 8 of this Official Journal.

as referred to in Article 22 of the Staff Regulations, or a failure to comply with the analogous obligations of the members, managers or members of staff of the institutions, bodies and offices and agencies of the Communities not subject to the Staff Regulations;

- (5) Whereas such investigations should be conducted in full compliance with the relevant provisions of the Treaties establishing the European Communities, in particular the Protocol on privileges and immunities, and of the texts implementing them and the Staff Regulations;
- (6) Whereas such investigations should be carried out under equivalent conditions in all the Community institutions, bodies and offices and agencies; whereas assignment of this task to the Office should not affect the responsibilities of the institutions, bodies, offices or agencies themselves and should in no way reduce the legal protection of the persons concerned;
- (7) Whereas, pending the amendment of the Staff Regulations, practical arrangements should be laid down stipulating how the members of the institutions and bodies, the managers of the offices and agencies and the officials and servants of the institutions, bodies and offices and agencies are to cooperate in the smooth operation of the internal investigations,

Having conferred with a view to drawing up common rules for that purpose,

Calling on the other institutions, bodies and offices and agencies to accede to this Agreement,

HEREBY AGREE:

1. To adopt common rules consisting of the implementing measures required to ensure the smooth operation of the investigations carried out by the Office within their institution. These investigations shall serve the purpose of:
  - fighting against fraud, corruption and any other illegal activity detrimental to the financial interests of the European Communities,

— bringing to light serious situations relating to the discharge of professional duties which may constitute a failure to comply with the obligations of officials or other servants of the Communities liable to result in disciplinary or, in appropriate cases, criminal proceedings or a failure to comply with the analogous obligations of the members, managers or members of staff not subject to the Staff Regulations.

These investigations shall be carried out in full compliance with the relevant provisions of the Treaties establishing the European Communities, in particular the Protocol on privileges and immunities, of the texts implementing them and the Staff Regulations.

They shall also be carried out in accordance with the terms and conditions laid down by the regulations of the European Community and the European Atomic Energy Community.

2. To draw up such rules and make them immediately applicable by adopting an internal decision in accordance with the model attached to this Agreement and not to deviate from that model save where their own particular requirements make such deviation a technical necessity.
3. To recognise the need to send to the Office, for an opinion, any request for the waiver of the immunity from judicial proceedings of an official or servant relating to any cases of fraud or corruption or any other illegal activity. If a request for the waiver of immunity concerns one of their members, the Office shall be informed.
4. To communicate to the Office the provisions which they have drawn up to implement this Agreement.

This Agreement may be amended only with the express consent of the signatory institutions.

The other institutions, and the bodies and offices and agencies established by or on the basis of the EC Treaty or the Euratom Treaty, are hereby invited to accede to this Agreement by forwarding a declaration addressed jointly to the Presidents of the signatory institutions.

This Agreement shall enter into force on 1 June 1999.

Done at Brussels, 25 May 1999.

*For the European  
Parliament*

*The President*

J. M. GIL-ROBLES

*For the Council  
of the European Union*

*The President*

H. EICHEL

*For the Commission  
of the European Communities*

*The President*

J. SANTER

## ANNEX

## 'MODEL DECISION'

## (INSTITUTION/BODY or OFFICE/AGENCY) DECISION

of

concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' interests

INSTITUTION, BODY, OFFICE or AGENCY

Having regard to (legal basis)

Whereas:

- (1) Regulation (EC) No 1073/1999 of the European Parliament and of the Council<sup>(1)</sup> and Council Regulation (Euratom) No 1074/1999<sup>(2)</sup> concerning investigations conducted by the European Anti-fraud Office provide that the Office is to initiate and conduct administrative investigations within the institutions, bodies and offices and agencies established by or on the basis of the EC Treaty or the Euratom Treaty;
- (2) The responsibility of the European Anti-fraud Office as established by the Commission extends beyond the protection of financial interests to include all activities relating to the need to safeguard Community interests against irregular conduct liable to give rise to administrative or criminal proceedings;
- (3) The scope of the fight against fraud should be broadened and its effectiveness enhanced by exploiting existing expertise in the area of administrative investigations;
- (4) Therefore, on the basis of their administrative autonomy, all the institutions, bodies and offices and agencies should entrust to the Office the task of conducting internal administrative investigations with a view to bringing to light serious situations relating to the discharge of professional duties which may constitute a failure to comply with the obligations of officials and servants of the Communities, as referred to in Articles 11, 12, second and third paragraphs, 13, 14, 16 and 17, first paragraph, of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities (hereinafter referred to as 'the Staff Regulations'), detrimental to the interests of those Communities and liable to result in disciplinary or, in appropriate cases, criminal proceedings, or serious misconduct, as referred to in Article 22 of the Staff Regulations, or a failure to comply with the analogous obligations of the Members, managers or members of staff of the institutions, bodies and offices and agencies of the Communities not subject to the Staff Regulations;
- (5) Such investigations should be conducted in full compliance with the relevant provisions of the Treaties establishing the European Communities, in particular the Protocol on privileges and immunities, of the texts implementing them and the Staff Regulations;
- (6) Such investigations should be carried out under equivalent conditions in all the Community institutions, bodies and offices and agencies; assignment of this task to the Office should not affect the responsibilities of the institutions, bodies, offices or agencies themselves and should in no way reduce the legal protection of the persons concerned;
- (7) Pending the amendment of the Staff Regulations, practical arrangements should be laid down stipulating how the members of the institutions and bodies, the managers of the offices and agencies and the officials and servants of the institutions, bodies and offices and agencies are to cooperate in the smooth operation of the internal investigations,

<sup>(1)</sup> OJ L 136, 31.5.1999, p. 1.

<sup>(2)</sup> OJ L 136, 31.5.1999, p. 8.

HAS DECIDED AS FOLLOWS:

*Article 1*

**Duty to cooperate with the Office**

The Secretary-General, the services and any manager, official or servant of (the institution, body, office or agency) shall be required to cooperate fully with the Office's agents and to lend any assistance required to the investigation. With that aim in view, they shall supply the Office's agents with all useful information and explanations.

Without prejudice to the relevant provisions of the Treaties establishing the European Communities, in particular the Protocol on privileges and immunities, and of the texts implementing them, members shall cooperate fully with the Office.

*Article 2*

**Duty to supply information**

Any official or servant of (the institution, body, office or agency) who becomes aware of evidence which gives rise to a presumption of the existence of possible cases of fraud, corruption or any other illegal activity detrimental to the interests of the Communities, or of serious situations relating to the discharge of professional duties which may constitute a failure to comply with the obligations of officials or servants of the Communities liable to result in disciplinary or, in appropriate cases, criminal proceedings, or a failure to comply with the analogous obligations of the members, managers or members of staff not subject to the Staff Regulations, shall inform without delay his Head of Service or Director-General or, if he considers it useful, his Secretary-General or the Office direct.

The Secretary-General, the Directors-General and the Heads of Service or managers of (the institution, body or office or agency) shall transmit without delay to the Office any evidence of which they are aware from which the existence of irregularities as referred to in the first paragraph may be presumed.

Managers, officials or servants of (the institution, body, office or agency) must in no way suffer inequitable or discriminatory treatment as a result of having communicated the information referred to in the first and second paragraphs.

Members who acquire knowledge of facts as referred to in the first paragraph shall inform the President of the institution (or body) or, if they consider it useful, the Office direct.

*Article 3*

**Assistance from the security office**

At the request of the Director of the Office, the (the institution, body, office or agency)'s security office shall assist the Office in the practical conduct of investigations.

*Article 4*

**Informing the interested party**

Where the possible implication of a member, manager, official or servant emerges, the interested party shall be informed rapidly as long as this would not be harmful to the investigation. In any event, conclusions referring by name to a member, manager, official or servant of (the institution, body, office or agency) may not be drawn once the investigation has been completed without the interested party's having been enabled to express his views on all the facts which concern him.

In cases necessitating the maintenance of absolute secrecy for the purposes of the investigation and requiring the use of investigative procedures falling within the remit of a national judicial authority, compliance with the obligation to invite the member, manager, official or servant of (the institution, body, office or agency) to give his views may be deferred in agreement with the President or the Secretary-General respectively.

*Article 5*

**Information on the closing of the investigation with no further action taken**

If, following an internal investigation, no case can be made out against a member, manager, official or servant of (the institution, body, office or agency) against whom allegations have been made, the internal investigation concerning him shall be closed, with no further action taken, by decision of the Director of the Office, who shall inform the interested party in writing.

*Article 6***Waiver of immunity**

Any request from a national police or judicial authority regarding the waiver of the immunity from judicial proceedings of a manager, official or servant of (the institution, body, office or agency) concerning possible cases of fraud, corruption or any other illegal activity shall be transmitted to the Director of the Office for his opinion. If a request for waiver of immunity concerns a member of the institution (or body), the Office shall be informed.

*Article 7***Effective date**

This Decision shall take effect on 1 June 1999.

Done at

For (the institution, body, office or agency)

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