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(Acts whose publication is obligatory)

REGULATION (EC) No 1073/1999 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 25 May 1999

concerning investigations conducted by the European Anti-Fraud Office (OLAF)

THE EUROPEAN PARLIAMENT AND THE COUNCIL
OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 280 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the Court of Auditors ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

(1) Whereas the institutions and the Member States attach great importance to the protection of the Communities' financial interests and to the fight against fraud and any other illegal activities detrimental to the Communities' financial interests; whereas the Commission's responsibility in that connection is closely bound up with its duty to implement the budget pursuant to Article 274 of the Treaty; whereas the importance of action to that end is confirmed by Article 280 of the EC Treaty;

(2) Whereas the protection of the Communities' financial interests extends not only to the management of budget appropriations but also to all measures affecting or liable to affect their assets;

(3) Whereas all available means must be deployed fully to attain this objective, notably in the context of investigative duties devolving upon the Community, while the current distribution and balance of responsibilities as between the national and Community levels should be maintained;

(4) Whereas to reinforce the means available for combating fraud, while respecting the principle of each institution's internal organisational autonomy, the Commission has established among its own departments by Decision 1999/352/EC, ECSC, Euratom ⁽⁴⁾, a European Anti-Fraud Office (hereinafter 'the Office') with responsibility for conducting administrative fraud investigations; whereas it has given this Office full independence to exercise its investigative function;

(5) Whereas the responsibility of the Office as set up by the Commission extends beyond the protection of financial interests to include all activities relating to safeguarding Community interests against irregular conduct liable to result in administrative or criminal proceedings;

(6) Whereas it is appropriate to provide that the Office ensures cooperation between the Member States and the Commission to protect the Community's financial interests provided for in Article 280 of the EC Treaty;

(7) Whereas, given the need to step up the fight against fraud, corruption and any other illegal activities detrimental to the Communities' financial interests, the Office must be able to conduct internal investigations in all the institutions, bodies, offices and agencies established by or on the basis of the EC and Euratom Treaties (hereinafter 'the institutions, bodies, offices and agencies');

(8) Whereas Decision 1999/352/EC, ECSC, Euratom provides that for the purposes of investigations the Office shall exercise the powers conferred by the Community legislator, subject to the limits and conditions laid down thereby;

⁽¹⁾ OJ C 21, 26.1.1999, p. 10.

⁽²⁾ Opinion delivered on 14 April 1999 (not yet published in the Official Journal).

⁽³⁾ Opinion of the European Parliament delivered on 6 May 1999 (not yet published in the Official Journal). Council Decision of 25 May 1999.

⁽⁴⁾ See page 20 of this edition of the Official Journal.

- (9) Whereas the Office should be entrusted with the exercise of the powers conferred on the Commission by Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities⁽¹⁾; whereas the Office must also be allowed to exercise the other powers conferred on the Commission to conduct on-the-spot checks and inspections in the Member States, notably for the purpose of detecting irregularities as required by Article 9 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests⁽²⁾;
- (10) Whereas these investigations must be conducted in accordance with the Treaty and in particular with the Protocol on the privileges and immunities of the European Communities, while respecting the Staff Regulations of officials and the conditions of employment of other servants of the European Communities (hereinafter referred to as 'the Staff Regulations'), and with full respect for human rights and fundamental freedoms, in particular the principle of fairness, for the right of persons involved to express their views on the facts concerning them and for the principle that the conclusions of an investigation may be based solely on elements which have evidential value; whereas to that end the institutions, bodies, offices and agencies must lay down the terms and conditions under which such internal investigations are conducted; whereas consequently the Staff Regulations should be amended in order to lay down the rights and obligations of officials and other servants as regards internal investigations;
- (11) Whereas these internal investigations can be conducted only if the Office is guaranteed access to all premises of the institutions, bodies, offices and agencies and to all information and documents held by them;
- (12) Whereas to ensure that the Office is independent in carrying out the tasks conferred on it by this Regulation, its Director must be given the power to open an investigation on his own initiative;
- (13) Whereas it is for the competent national authorities or the institutions, bodies, offices or agencies, as the case may be, to decide what action should be taken on completed investigations on the basis of the report drawn up by the Office; whereas it should nevertheless be incumbent upon the Director of the Office to forward directly to the judicial authorities of the Member State concerned information acquired by the Office in the course of internal investigations concerning situations liable to result in criminal proceedings;
- (14) Whereas the terms on which the Office's employees will discharge their duties and the terms governing the Director's exercise of his responsibility for the conduct of investigations by the Office's employees should be laid down;
- (15) Whereas, for the sake of successful cooperation between the Office, the Member States and the relevant institutions, bodies, offices and agencies, the reciprocal exchange of information must be organised, subject to rules of confidentiality where information is subject to professional secrecy, while ensuring that it enjoys the proper data protection;
- (16) Whereas, to ensure that the findings of investigations conducted by the Office's employees are taken into account and that the requisite follow-up action is taken, the reports should have the status of admissible evidence in administrative and judicial proceedings; whereas, to that end, they should be drawn up in a manner compatible with the rules governing administrative reports in the Member States;
- (17) Whereas the Office should enjoy independence in the discharge of its function; whereas, to reinforce that independence, the Office should be subject to regular monitoring of its investigative function by a Supervisory Committee, made up of outside independent persons highly qualified in the Office's fields of activity; whereas the Committee's duties should also include assisting the Office's Director in discharging his responsibilities;
- (18) Whereas administrative investigations should be conducted under the authority of the Director of the Office, in full independence from the institutions, bodies, offices and agencies and from the Supervisory Committee;

⁽¹⁾ OJ L 292, 15.11.1996, p. 2.

⁽²⁾ OJ L 312, 23.12.1995, p. 1.

- (19) Whereas it should be incumbent on the Director of the Office to ensure the protection of personal data and respect for confidentiality of information gathered in the course of the investigations; whereas officials and other servants of the Communities should be assured of legal protection equivalent to that provided for by Articles 90 and 91 of the Staff Regulations;
- (20) Whereas the activities of the Office should be assessed after a three-year period;
- (21) Whereas this Regulation in no way diminishes the powers and responsibilities of the Member States to take measures to combat fraud affecting the Communities' financial interests; whereas entrusting to an independent Office the task of conducting external administrative investigations in this area is accordingly in full compliance with the subsidiarity principle laid down by Article 5 of the Treaty; whereas the operation of the Office is likely to step up the fight against fraud, corruption and any other illegal activities affecting the Communities' financial interests and is therefore compatible with the proportionality principle,

HAVE ADOPTED THIS REGULATION:

Article 1

Objectives and tasks

1. In order to step up the fight against fraud, corruption and any other illegal activity affecting the financial interests of the European Community, the European Anti-Fraud Office established by Commission Decision 1999/352/EC, ECSC, Euratom (hereinafter 'the Office') shall exercise the powers of investigation conferred on the Commission by the Community rules and Regulations and agreements in force in those areas.
2. The Office shall provide the Member States with assistance from the Commission in organising close and regular cooperation between their competent authorities in order to coordinate their activities for the purpose of protecting the European Community's financial interests against fraud. The Office shall contribute to the design and development of methods of fighting fraud and any other illegal activity affecting the financial interests of the European Community.
3. Within the institutions, bodies, offices and agencies established by, or on the basis of, the Treaties (hereinafter 'the institutions, bodies, offices and agencies'), the Office shall conduct administrative investigations for the purpose of:

- fighting fraud, corruption and any other illegal activity affecting the financial interests of the European Community,
- investigating to that end serious matters relating to the discharge of professional duties such as to constitute a dereliction of the obligations of officials and other servants of the Communities liable to result in disciplinary or, as the case may be, criminal proceedings, or an equivalent failure to discharge obligations on the part of members of institutions and bodies, heads of offices and agencies or members of the staff of institutions, bodies, offices or agencies not subject to the Staff Regulations of officials and the Conditions of employment of other servants of the European Communities ('the Staff Regulations').

Article 2

Administrative investigations

Within the meaning of this Regulation, 'administrative investigations' (hereinafter 'investigations') shall mean all inspections, checks and other measures undertaken by employees of the Office in the performance of their duties, in accordance with Articles 3 and 4, with a view to achieving the objectives set out in Article 1 and to establishing, where necessary, the irregular nature of the activities under investigation. These investigations shall not affect the powers of the Member States to bring criminal proceedings.

Article 3

External investigations

The Office shall exercise the power conferred on the Commission by Regulation (Euratom, EC) No 2185/96 to carry out on-the-spot inspections and checks in the Member States and, in accordance with the cooperation agreements in force, in third countries.

As part of its investigative function, the Office shall carry out the inspections and checks provided for in Article 9(1) of Regulation (EC, Euratom) No 2988/95 and in the sectoral rules referred to in Article 9(2) of that Regulation in the Member States and, in accordance with the cooperation agreements in force, in third countries.

Article 4

Internal investigations

1. In the areas referred to in Article 1, the Office shall carry out administrative investigations within the institutions, bodies, offices and agencies (hereinafter 'internal investigations').

These internal investigations shall be carried out subject to the rules of the Treaties, in particular the Protocol on privileges and immunities of the European Communities, and with due regard for the Staff Regulations under the conditions and in accordance with the procedures provided for in this Regulation and in decisions adopted by each institution, body, office and agency. The institutions shall consult each other on the rules to be laid down by such decisions.

2. Provided that the provisions referred to in paragraph 1 are complied with:

- the Office shall have the right of immediate and unannounced access to any information held by the institutions, bodies, offices and agencies, and to their premises. The Office shall be empowered to inspect the accounts of the institutions, bodies, offices and agencies. The Office may take a copy of and obtain extracts from any document or the contents of any data medium held by the institutions, bodies, offices and agencies and, if necessary, assume custody of such documents or data to ensure that there is no danger of their disappearing,
- the Office may request oral information from members of the institutions and bodies, from managers of offices and agencies and from the staff of the institutions, bodies, offices and agencies.

3. Under the conditions and in accordance with the procedures laid down by Regulation (Euratom, EC) No 2185/96, the Office may carry out on-the-spot inspections at the premises of economic operators concerned, in order to obtain access to information relating to possible irregularities which such operators might hold.

The Office may, moreover, ask any person concerned to supply such information as it may consider pertinent to its investigations.

4. The institutions, bodies, offices and agencies shall be informed whenever employees of the Office conduct an investigation on their premises or consult a document or request information held by such institutions, bodies, offices and agencies.

5. Where investigations reveal that a member, manager, official or other servant may be personally involved, the institution, body, office or agency to which he belongs shall be informed.

In cases requiring absolute secrecy for the purposes of the investigation or requiring recourse to means of investigation falling within the competence of a national judicial authority, the provision of such information may be deferred.

6. Without prejudice to the rules laid down by the Treaties, in particular the Protocol on privileges and immunities of the European Communities, and to the provisions of the Staff Regulations, the decision to be

adopted by each institution, body, office or agency as provided for in paragraph 1, shall in particular include rules concerning:

- (a) a duty on the part of members, officials and other servants of the institutions and bodies, and managers, officials and servants of offices and agencies, to cooperate with and supply information to the Office's servants;
- (b) the procedures to be observed by the Office's employees when conducting internal investigations and the guarantees of the rights of persons concerned by an internal investigation.

Article 5

Opening of investigations

External investigations shall be opened by a decision of the Director of the Office, acting on his own initiative or following a request from a Member State concerned.

Internal investigations shall be opened by a decision of the Director of the Office, acting on his own initiative or following a request from the institution, body, office or agency within which the investigation is to be conducted.

Article 6

Investigations procedure

1. The Director of the Office shall direct the conduct of investigations.

2. The Office's employees shall carry out their tasks on production of a written authorisation showing their identity and their capacity.

3. The Office's employees shall be equipped for each intervention with a written authority issued by the Director indicating the subject matter of the investigation.

4. During on-the-spot inspections and checks, the Office's employees shall adopt an attitude in keeping with the rules and practices governing officials of the Member State concerned, with the Staff Regulations and with the decisions referred to in the second subparagraph of Article 4(1).

5. Investigations shall be conducted continuously over a period which must be proportionate to the circumstances and complexity of the case.

6. The Member States shall ensure that their competent authorities, in conformity with national provisions, give the necessary support to enable the Office's employees to fulfil their task. The institutions and bodies shall ensure that their members and staff afford the necessary assistance to enable the Office's agents to fulfil their task; the offices and agencies shall ensure that their managers and staff do likewise.

*Article 7***Duty to inform the Office**

1. The institutions, bodies, offices and agencies shall forward to the Office without delay any information relating to possible cases of fraud or corruption or any other illegal activity.
2. The institutions, bodies, offices and agencies and, in so far as national law allows, the Member States shall, at the request of the Office or on their own initiative, forward any document or information they hold which relates to a current internal investigation.

Member States shall forward the documents and information relating to external investigations in accordance with the relevant provisions.

3. The institutions, bodies, offices and agencies, and, in so far as national law allows, the Member States shall also send the Office any other document or information considered pertinent which they hold relating to the fight against fraud, corruption and any other illegal activity affecting the Communities' financial interests.

*Article 8***Confidentiality and data protection**

1. Information obtained in the course of external investigations, in whatever form, shall be protected by the relevant provisions.
2. Information forwarded or obtained in the course of internal investigations, in whatever form, shall be subject to professional secrecy and shall enjoy the protection given by the provisions applicable to the institutions of the European Communities.

Such information may not be communicated to persons other than those within the institutions of the European Communities or in the Member States whose functions require them to know, nor may it be used for purposes other than to prevent fraud, corruption or any other illegal activity.

3. The Director shall ensure that the Office's employees and the other persons acting under his authority observe the Community and national provisions on the protection of personal data, in particular those provided for in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽¹⁾.
4. The Director of the Office and the members of the Supervisory Committee referred to in Article 11 shall ensure that this Article and Articles 286 and 287 of the Treaty are applied.

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

*Article 9***Investigation report and action taken following investigations**

1. On completion of an investigation carried out by the Office, the latter shall draw up a report, under the authority of the Director, specifying the facts established, the financial loss, if any, and the findings of the investigation, including the recommendations of the Director of the Office on the action that should be taken.

2. In drawing up such reports, account shall be taken of the procedural requirements laid down in the national law of the Member State concerned. Reports drawn up on that basis shall constitute admissible evidence in administrative or judicial proceedings of the Member State in which their use proves necessary, in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors. They shall be subject to the same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors and shall be of identical value to such reports.

3. Reports drawn up following an external investigation and any useful related documents shall be sent to the competent authorities of the Member States in question in accordance with the rules relating to external investigations.

4. Reports drawn up following an internal investigation and any useful related documents shall be sent to the institution, body, office or agency concerned. The institution, body, office or agency shall take such action, in particular disciplinary or legal, on the internal investigations, as the results of those investigations warrant, and shall report thereon to the Director of the Office, within a deadline laid down by him in the findings of his report.

*Article 10***Forwarding of information by the Office**

1. Without prejudice to Articles 8, 9 and 11 of this Regulation and to the provisions of Regulation (Euratom, EC) No 2185/96, the Office may at any time forward to the competent authorities of the Member States concerned information obtained in the course of external investigations.
2. Without prejudice to Articles 8, 9 and 11 of this Regulation, the Director of the Office shall forward to the judicial authorities of the Member State concerned the information obtained by the Office during internal investigations into matters liable to result in criminal proceedings. Subject to the requirements of the investigation, he shall simultaneously inform the Member State concerned.

3. Without prejudice to Articles 8 and 9 of this Regulation, the Office may at any time forward to the institution, body, office or agency concerned the information obtained in the course of internal investigations.

Article 11

Supervisory Committee

1. The Supervisory Committee shall reinforce the Office's independence by regular monitoring of the implementation of the investigative function.

At the request of the Director or on its own initiative, the committee shall deliver opinions to the Director concerning the activities of the Office, without however interfering with the conduct of investigations in progress.

2. It shall be composed of five independent outside persons who possess the qualifications required for appointment in their respective countries to senior posts relating to the Office's areas of activity. They shall be appointed by common accord of the European Parliament, the Council and the Commission.

3. The term of office of members shall be three years and shall be renewable once.

4. On expiry of their term of office, members shall remain in office until their appointments are renewed or until they are replaced.

5. In carrying out their duties, they shall neither seek nor take instructions from any government or any institution, body, office or agency.

6. The Supervisory Committee shall appoint its chairman. It shall adopt its own rules of procedure. It shall hold at least 10 meetings per year. It shall take its decisions by a majority of its members. Its secretariat shall be provided by the Office.

7. The Director shall forward to the Supervisory Committee each year the Office's programme of activities referred to in Article 1 of this Regulation. The Director shall keep the committee regularly informed of the Office's activities, its investigations, the results thereof and the action taken on them. Where an investigation has been in progress for more than nine months, the Director shall inform the Supervisory Committee of the reasons for which it has not yet been possible to wind up the investigation, and of the expected time for completion. The Director shall inform the committee of cases where the institution, body, agency or office concerned has failed to

act on the recommendations made by it. The Director shall inform the committee of cases requiring information to be forwarded to the judicial authorities of a Member State.

8. The Supervisory Committee shall adopt at least one report on its activities per year which it shall send to the institutions. The committee may submit reports to the European Parliament, the Council, the Commission and the Court of Auditors on the results of the Office's investigations and the action taken thereon.

Article 12

Director

1. The Office shall be headed by a Director nominated by the Commission for a term of five years, which may be renewed once.

2. With a view to appointing the Director, the Commission shall, following a call for applications which shall, if appropriate, be published in the *Official Journal of the European Communities* and after a favourable opinion has been given by the Supervisory Committee, draw up a list of suitably qualified candidates. After consultations with the European Parliament and the Council, the Commission shall appoint the Director.

3. The Director shall neither seek nor take instructions from any government or any institution, body, office or agency in the performance of his duties with regard to the opening and carrying out of external and internal investigations or to the drafting of reports following such investigations. If the Director considers that a measure taken by the Commission calls his independence into question, he shall be entitled to bring an action against his institution before the Court of Justice.

The Director shall report regularly to the European Parliament, the Council, the Commission and the Court of Auditors on the findings of investigations carried out by the Office, whilst respecting the confidentiality of those investigations, the legitimate rights of the persons concerned and, where appropriate, national provisions applicable to judicial proceedings.

The above institutions shall ensure that the confidentiality of the investigations conducted by the Office is respected, together with the legitimate rights of the persons concerned, and, where judicial proceedings have been instituted, that all national provisions applicable to such proceedings have been adhered to.

4. Before adopting any disciplinary sanction against the Director, the Commission shall consult the Supervisory Committee. In addition, measures relating to disciplinary sanctions against the Director must be the subject of reasoned decisions, which shall be forwarded for information to the European Parliament and to the Council.

Article 13

Financing

The appropriations for the Office, the total amount of which shall be entered under a special budget heading within Part A of the section of the general budget of the European Union relating to the Commission, shall be set out in detail in an Annex to that Part.

The posts allocated to the Office shall be listed in an Annex to the Commission's establishment plan.

Article 14

Judicial review

Pending amendment of the Staff Regulations, any official or other servant of the European Communities may submit to the Director of the Office a complaint by virtue of this Article against an act adversely affecting him

committed by the Office as part of an internal investigation, in accordance with the procedures laid down in Article 90(2) of the Staff Regulations. Article 91 of the Staff Regulations shall apply to decisions taken with regard to such complaints.

The above provisions shall apply by analogy to the staff of the institutions, bodies, offices and agencies which are not subject to the Staff Regulations.

Article 15

Progress report

During the third year following the entry into force of this Regulation, the Commission shall transmit to the European Parliament and the Council a progress report on the Office's activities, accompanied by the Supervisory Committee's opinion, together, where appropriate, with proposals to modify or extend the Office's tasks.

Article 16

Entry into force

This Regulation shall enter into force on 1 June 1999.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 25 May 1999.

For the European Parliament

The President

J. M. GIL-ROBLES

For The Council

The President

H. EICHEL
