

Official Journal

of the European Communities

ISSN 0378-6978

L 136

Volume 42

31 May 1999

English edition

Legislation

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I

(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

COUNCIL REGULATION (EURATOM) No 1074/1999
of 25 May 1999
concerning investigations conducted by the European Anti-Fraud Office (OCAF)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 203 thereof,

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

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Court of Auditors ⁽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 under Article 179 of the Euratom Treaty; whereas the importance of action to that end is confirmed by Article 183a of the Euratom 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 ensure cooperation between the Member States and the Commission to protect the Communities' financial interests;

(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 and 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;

(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 ⁽⁵⁾; 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 ⁽⁶⁾;

⁽¹⁾ OJ C 21, 26.1.1999, p. 10.

⁽²⁾ Opinion delivered on 6 May 1999 (not yet published in the Official Journal).

⁽³⁾ Opinion delivered on 15 April 1999 (not yet published in the Official Journal).

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

⁽⁵⁾ OJ L 292, 15.11.1996, p. 2.

⁽⁶⁾ OJ L 312, 23.12.1995, p. 1.

- (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 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;
- (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 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; 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,

HAS 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 Atomic Energy 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 Atomic Energy 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 Atomic Energy 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 Atomic Energy 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 activ-

ities 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 Council 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 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 information 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 Council 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 or body, 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 other servants of offices and agencies, to cooperate with and supply information to the Office's employees;
- (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, insofar 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, insofar 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 Article 194 of the Treaty are applied.

*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.

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

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 Council 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 ten 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, office or agency 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 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 Council

The President

H. EICHEL

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)⁽¹⁾,

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⁽²⁾,

(1) Whereas Regulation (EC) No 1073/1999 of the European Parliament and of the Council⁽³⁾ and Council Regulation (Euratom) No 1074/1999⁽⁴⁾ 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,

⁽¹⁾ OJ C 328, 26.10.1998, p. 95.

⁽²⁾ See page 20 of this Official Journal.

⁽³⁾ See page 1 of this Official Journal.

⁽⁴⁾ 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⁽¹⁾ and Council Regulation (Euratom) No 1074/1999⁽²⁾ 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,

⁽¹⁾ OJ L 136, 31.5.1999, p. 1.

⁽²⁾ 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)

COMMISSION

COMMISSION DECISION

of 28 April 1999

establishing the European Anti-fraud Office (OLAF)

(notified under document number SEC(1999) 802)

(1999/352/EC, ECSC, Euratom)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

the Unit for the Coordination of Fraud Prevention (UCLAF);

Having regard to the Treaty establishing the European Community, and in particular Article 162 thereof,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 16 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 131 thereof,

- (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 to the detriment of the Communities' financial interests; whereas the importance of action to that end is confirmed by Article 209a of the EC Treaty, Article 78i of the ECSC Treaty, Article 183a of the Euratom Treaty as well as by Article 280 of the EC Treaty as formulated by the Treaty of Amsterdam;
- (2) Whereas all available means need to be deployed to fully attain this objective, notably in terms of investigation functions devolved to the Community level, while the current allocation and balance of responsibilities as between the national and Community levels should be maintained;
- (3) Whereas the task of carrying out administrative investigations for the purpose of protecting the financial interests of the Communities has until now been conferred on the Task Force for Coordination of Fraud Prevention, which succeeded

- (4) Whereas the need to increase the effectiveness of the fight against fraud and other illegal activities detrimental to the financial interests of the Communities requires the establishment of a European Anti-fraud Office (OLAF), hereinafter referred to as 'the Office' which must exercise its investigation powers in full independence;
- (5) Whereas the independence of the Director of the Office and the role of the Surveillance Committee arising from this Decision, and from the EC and Euratom Regulations concerning the investigations conducted by the Office, seek to guarantee the Office's proper conduct of investigations without interfering with its other tasks, such as those which are the prerogative of the Commission, in particular in matters of legislation;
- (6) Whereas the responsibility of the Office should involve, over and above the protection of financial interests, all the activities linked with the protection of Community interests from irregular acts likely to lead to administrative or penal proceedings;
- (7) Whereas the definition of the functions of the Office should include the tasks carried out up to now by the Task Force for Coordination of Fraud Prevention, in particular those tasks concerning the preparation of legislative and regulatory provisions in the areas of activity of this Office, including instruments which fall under Title VI of the Treaty on European Union,

HAS DECIDED AS FOLLOWS:

Article 1

Establishment of the Office

A European Anti-fraud Office (OLAF), hereinafter referred to as 'the Office', is hereby established. The Office shall replace the Task Force for Coordination of Fraud Prevention and take over all its tasks.

Article 2

Tasks of the Office

1. The Office shall exercise the Commission's powers to carry out external administrative investigations for the purpose of strengthening the fight against fraud, corruption and any other illegal activity adversely affecting the Community's financial interests, as well as any other act or activity by operators in breach of Community provisions.

The Office shall be responsible for carrying out internal administrative investigations intended:

- (a) to combat fraud, corruption and any other illegal activity adversely affecting the Community's financial interests,
- (b) to investigate serious facts linked to the performance of professional activities which may constitute a breach of obligations by officials and servants of the Communities likely to lead to disciplinary and, in appropriate cases, criminal proceedings or an analogous breach of obligations by Members of the institutions and bodies, heads of the bodies or members of staff of the institutions and bodies not subject to the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the Communities.

The Office shall exercise the Commission's powers as they are defined in the provisions established in the framework of the Treaties, and subject to the limits and conditions laid down therein.

The Office may be entrusted with investigations in other areas by the Commission or by the other institutions or bodies.

2. The Office shall be responsible for providing the Commission's support in cooperating with the Member States in the area of the fight against fraud.

3. The Office shall be responsible for the activity of developing a concept for the fight against fraud as referred to in paragraph 1.

4. The Office shall be responsible for the preparation of legislative and regulatory initiatives of the Commission

with the objective of fraud prevention as referred to in paragraph 1.

5. The Office shall be responsible for any other operational activity of the Commission in relation to the fight against fraud as referred to in paragraph 1, and in particular:

- (a) developing the necessary infrastructure;
- (b) ensuring the collection and analysis of information;
- (c) giving technical support, in particular in the area of training, to the other institutions or bodies as well as to the competent national authorities.

6. The Office shall be in direct contact with the police and judicial authorities.

7. The Office shall represent the Commission, at service level, in the forums concerned, in the fields covered by this Article.

Article 3

Independence of the investigative function

The Office shall exercise the powers of investigation referred to in Article 2(1) in complete independence. In exercising these powers, the Director of the Office shall neither seek nor take instructions from the Commission, any government or any other institution or body.

Article 4

Surveillance Committee

A Surveillance Committee shall be established, the composition and powers of which shall be laid down by the Community legislature. This Committee shall be responsible for the regular monitoring of the discharge by the Office of its investigative function.

Article 5

Director

1. The Office shall be headed by a Director, nominated by the Commission, after consulting in European Parliament and the Council, for a term of five years, which may be renewed once. With a view to nominating the Director, the Commission shall, once a favourable opinion has been given by the Surveillance Committee, draw up a list of several suitably qualified candidates, following a call for applications which shall, if appropriate, be published in the *Official Journal of the European Communities*.

The Director shall be responsible for the carrying out of investigations.

2. The Commission shall exercise, with regard to the Director, the powers conferred to the appointing authority. Any measure under Articles 87, 88 and 90 of the Staff Regulations of Officials of the European Communities shall be taken, after consulting the Surveillance Committee, by reasoned decision of the Commission. The decision shall be communicated for information to the European Parliament and the Council.

Article 6

Operation of the Office

1. The Director of the Office shall exercise, with regard to the staff of the Office, the powers conferred by the Staff Regulations of Officials of the European Communities on the appointing authority and by the Conditions of Employment of Other Servants of the Communities on the authority authorised to conclude contracts of employment. He shall be permitted to delegate those powers. In accordance with the Staff Regulations and the Conditions of Employment of Other Servants, he shall lay down the conditions and detailed arrangements for recruitment, in particular as to the length of contracts and their renewal.
2. After consulting the Surveillance Committee, the Director shall send the Director-General for Budgets a preliminary draft budget to be entered in the special heading for the Office in the annual general budget.
3. The Director shall act as authorising officer for implementation of the special budget heading for part A of the budget, concerning the Office, and the specific

anti-fraud headings of part B. He shall be permitted to delegate his powers.

4. Commission decisions concerning its internal organisation shall apply to the Office in so far as they are compatible with the provisions concerning the Office adopted by the Community legislator, with this Decision and with the detailed rules implementing it.

Article 7

Effective date

This Decision shall take effect on the date of the entry into force of the European Parliament and Council Regulation (EC) concerning investigations carried out by the European Anti-fraud Office. Up to the first day of the month following the appointment of the Director of the Office, the current business of the Office shall be dealt with by the Director of the Task Force for Coordination of Fraud Prevention.

Done at Brussels, 28 April 1999.

For the Commission
The President
Jacques SANTER