



MANAGEMENT BOARD DECISION

of 16/12/2004

**CONCERNING THE TERMS AND CONDITIONS FOR INTERNAL INVESTIGATIONS IN
RELATION TO PREVENTION OF FRAUD, CORRUPTION AND ANY ILLEGAL ACTIVITY
DETRIMENTAL TO THE COMMUNITIES' INTERESTS**

THE MANAGEMENT BOARD OF ENISA

Having regard to the Regulation (EC) No. 460/2004¹ of the European Parliament and of the Council of 10th March 2004, hereinafter called the "Regulation", establishing a European Network and Information Security Agency, hereinafter called "the Agency" and in particular Article 16 thereof;

Whereas:

- (1) Regulation (EC) No 1073/1999 of the European Parliament and of the Council² and Council Regulation (Euratom) No 1074/1999³ 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, 11bis, 12ter, 13, 16 and 17 of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European

¹ OJ L 77, 13.3.2004, p.1.

² OJ L 136, 31.5.1999, p. 1.

³ OJ L 136, 31.5.1999, p. 8.

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) 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,

HAS DECIDED AS FOLLOWS:

Article 1

Duty to cooperate with the Office

The Executive Director, any manager, official or servant of the 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.

Article 2

Duty to supply information

1. Any official who, in the course of or in connection with the performance of his/her duties, becomes aware of facts which gives rise to a presumption of the existence of possible illegal activity, including fraud or corruption, detrimental to the interests of the Communities, or of conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of officials of the Communities shall without delay inform either his/her immediate superior or his/her Executive Director or, if he/she considers it useful, the European Anti-Fraud Office (OLAF) direct.

Information mentioned in the first subparagraph shall be given in writing.

This paragraph shall also apply in the event of serious failure to comply with a similar obligation on the part of an official of the Agency or any other person in the service of or carrying out work for the Agency.

2. Any official receiving the information referred to in paragraph 1 shall without delay transmit to OLAF any evidence of which he/she is aware from which the existence of the irregularities referred to in paragraph 1 may be presumed.
3. An official shall not suffer any prejudicial effects on the part of the Agency as a result of having communicated the information referred to in paragraphs 1 and 2, provided that he/she acted reasonably and honestly.
4. Paragraphs 1 to 3 shall not apply to documents, deeds, reports, notes or information in any form whatsoever held for the purposes of, or created or disclosed to the official in the course of, proceedings in legal cases, whether pending or closed.

Article 3

Assistance from the security officer

At the request of the Director of the Office, the Agency's security officer shall assist the Office in the practical conduct of investigations.

Article 4

Informing the interested party

1. Whenever an investigation by OLAF reveals the possibility of the personal involvement of an official, or a former official of the Agency, that person shall rapidly be informed, provided this is not harmful to the investigation. In any event, conclusions referring by name to an official may not be drawn once the investigation has been completed without that official concerned having been given the opportunity to comment on facts concerning him/her. The conclusions shall make reference to these comments.
2. In cases that demand 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 official to comment may, in agreement with the Appointing Authority, be deferred. In such cases, no disciplinary proceedings may be opened before the official has been given a chance to comment.

Article 5

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

If, following an OLAF investigation, no case can be made against an official about whom allegations have been made, the investigation in question shall be closed, with no further action taken, by decision of the Director of OLAF, who shall inform the official and his institution in writing. The official may request that this decision be inserted in his/her personal file.

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 Agency concerning possible cases of fraud, corruption or any other illegal activity shall be transmitted to the Director of the Office for his/her opinion.

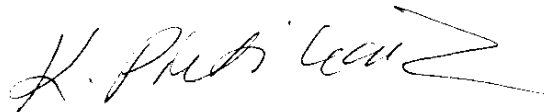
Article 7

Effective date

This Decision shall take effect on the date of its signature.

Done at Brussels, 16/12/2004

For the Management Board



Kristiina Pietikäinen
Chairperson of the Management Board