

**EUROPEAN CENTRE FOR DISEASE PREVENTION AND CONTROL
THE MANAGEMENT BOARD**

Decision

**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**

THE MANAGEMENT BOARD OF THE EUROPEAN CENTRE FOR DISEASE
PREVENTION AND CONTROL

Having regard to Regulation (EC) no 851/2004 of the European Parliament and of the Council of 21 April 2004 establishing a European Centre for disease prevention and control

Whereas:

(1) Regulation (EC) No 1073/1999 of the European Parliament and of the Council¹ and Council Regulation (Euratom) No 1074/1999² concerning investigations conducted by the European Anti-fraud Office (hereinafter referred to as the 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, 11a, 13, 16 and 17 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 or in Article 86 of the Staff Regulations, or a failure to comply with the analogous obligations of the Members, managers or members

¹ OJ L 136, 31.5.1999, p.1

² OJ L 136, 31.5.1999, p.8

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) It shall be appropriate to determine, taking into account of the new provisions of the Staff Regulations which entered into force on 1st May 2004, the practical arrangements whereby the members of the institutions and bodies, the managers of the offices and agencies, the officials and servants of the institutions, bodies and offices and agencies and the members of their staff not subject to the Staff Regulations, are to cooperate in the smooth operation of the internal investigations,

HAS DECIDED AS FOLLOWS:

Article 1

Duty to cooperate with the Office

The Director, the members of the Management Board and of the Advisory Forum, any official or servant of the Centre and the members of its staff not subject to the Staff Regulations 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, they shall cooperate fully with the Office.

Article 2

Duty to supply information

Any official or servant of the Centre or member of the Management Board or Advisory Forum or member of staff not subject to the Staff Regulations who, in the course of or in connection with the performance of his duties, becomes aware of facts 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 conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of officials or servants of the Communities, or a serious failure to comply with the analogous obligations of the members of the Management Board or Advisory Forum or members of staff not subject to the Staff Regulations, shall inform without delay his immediate line manager or Director or the chairman of the Management Board, or, if he considers it useful, the Office direct. This information shall be given in writing.

The Director, the chairman of the Management Board or managers of the Centre 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.

Any Member of the Management Board or Advisory Forum, official, servant of the Centre or member of staff not subject to the Staff Regulations shall not suffer any prejudicial effects as a result of having communicated the information referred to in the first and second paragraphs, provided that he acted reasonably and honestly.

Article 3

Assistance from the security office

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

Article 4

Informing the interested party

Whenever an investigation by the Office reveals the possibility of the personal involvement of the director, any member of the Management Board or Advisory Forum, official or servant of the Centre, or former Official or servant, or member of staff not subject to the Staff Regulations, that person shall be informed rapidly, provided this is not harmful to the investigation. In any event, conclusions referring by name to any of the aforementioned persons may not be drawn once the investigation has been completed without the interested party having been given the opportunity to comment on facts concerning him. The conclusions shall make reference to these comments.

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 interested party to give his views may be deferred in agreement with the Director of the Centre or, where necessary, the chairman of the Management Board. In such cases, no disciplinary proceedings may be opened before the interested party has been given a chance to comment.

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 the interested party about 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 and the Centre in writing. The interested party may request that this decision be inserted in his 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 beneficiary of such immunity at the Centre

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

Article 7

Effective date

This Decision shall take effect on the day it is adopted by the Management Board.

Done at Bilthoven

Date 1 March 2005

For the European Centre for Disease Prevention and Control

M Sprenger
Chair of the Management Board



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