
DECISION n°: 2007/08 FRA MB

SUBJECT: Adoption of 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

PERSON RESPONSIBLE: Director

THE MANAGEMENT BOARD OF THE EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

HAVING REGARD to the Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights,

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 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 particular, in Articles 11, 11a, 12b, 13, 16 and 17 of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities (hereafter referred to as "the Staff Regulations"), detrimental to the interests of the Communities and liable to result

¹ OJL 136, 31.5.1999, P. 1.

² OJL 136, 32.5.1999, P. 8.

in disciplinary or, in appropriate cases, criminal proceedings, or serious misconduct/failure, as referred to, in particular, in Article 22 and 22a of the Staff Regulations, or a failure as referred to in Article 86 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.

HAS ADOPTED the following decision:

1. Duty to cooperate with the Office

The Director, the services and any manager, official or servant of the European Union Agency for Fundamental Rights, hereafter referred to as "the Agency", as well as members of 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, members of the Agency's Management Board shall cooperate fully with the Office.

2. Duty to supply information

Any official or servant of the 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 or her Head of Unit or the Agency's Director as the case may be or, if he or she considers it useful, the Office direct.

The Chair of the Management Board, the Director or managers of the 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 Agency or members of staff not subject to the Staff Regulations 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 of the Management Board who acquire knowledge of facts as referred to in the first paragraph shall inform the Chair of the Management Board or, if they consider it useful, the Office direct.

3. Assistance from the security office/relevant official

At the request of the Director of the Office, the Agency's security office or relevant official shall assist the Office in the practical conduct of investigations.

4. Informing the interested party

Where the possible implication of a member of staff, manager, official or servant or members of staff not subject to the Staff Regulations 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 of staff, manager, official or servant or member of staff not subject to the Staff Regulations of the Agency may not be drawn once the investigation has been completed without the interested party's having had the opportunity to express his or her views on all the facts which concern him or her. The conclusions shall make reference to these views.

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 of staff, manager, official or servant of the Agency or member of staff not subject to the Staff Regulations to give his or her views may be deferred in agreement with the Chair of the Management Board or the Director of the Agency respectively. In such cases, no disciplinary proceedings may be opened before the interested party has been given a chance to comment.

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 of staff, manager, official or servant of the Agency or member of staff not subject to the Staff Regulations against whom allegations have been made, the internal investigation concerning him or her shall be closed, with no further action taken, by decision of the Director of the Office, who shall inform the interested party in writing. The interested party may request that this decision be inserted in his or her personal file.

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 or member of staff not subject to the Staff Regulations concerning possible cases of fraud, corruption or any other illegal activity shall be transmitted to the Director of the Office for his or her opinion. If a request for waiver of

immunity concerns a member of the Management Board of the Agency, the Office shall be informed.

7. Effective date

This Decision shall take effect on the date of its publication in the Official Journal of the European Communities.

Vienna, 23 October 2007



Anastasia Crickley

Chairperson of the FRA Management Board