

Comunidades Europeas
TRIBUNAL DE CUENTAS

De Europæiske Fællesskaber
REVISIONSRETEN

Europäische Gemeinschaften
RECHNUNGSHOF

Ευρωπαϊκές Κοινοότητες
ΕΛΕΓΚΤΙΚΟ ΣΥΝΕΔΡΙΟ

European Communities
COURT OF AUDITORS



Communautés européennes
COUR DES COMPTES

Comunità Europee
CORTE DEI CONTI

Europese Gemeenschappen
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REVISIONSRÄTTEN

Decision No 98-2004 of the Court of Auditors concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any other illegal activity detrimental to the Communities' financial interests

THE EUROPEAN COURT OF AUDITORS,

Having regard to the Treaty establishing the European Community, and in particular Articles 248 and 280 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 160A thereof,

Having regard to Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)¹, and in particular Article 4(1) and (6) thereof,

Having regard to Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities²,

Whereas under the terms of Regulations Nos 1073/1999 and 1074/1999, the European Anti-Fraud Office ("the Office") is to initiate and conduct investigations within the institutions, bodies and offices and agencies established by or on the basis of the Treaties for the purpose of preventing fraud, corruption and any other illegal activity detrimental to the financial interests of the Communities and 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 their obligations on the

¹ OJ L 136, 31.5.1999, pp. 1-14.

² OJ L 124, 27.4.2004, pp. 1-118.

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");

Whereas Regulations Nos 1073/1999 and 1074/1999 both provide in Article 4(1) and (6) that each institution, body, office or agency shall adopt a decision that includes in particular rules concerning a duty on the part of 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, 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;

Whereas the Court of Auditors must be completely independent in its performance of the audit task conferred upon it by the Treaties;

Whereas, therefore, the decision to be adopted by the Court under Article 4(1) and (6) of Regulations Nos 1073/1999 and 1074/1999 must not prejudice the Guideline on the processing of information received by the Court in relation to cases of possible fraud, corruption or any other illegal activity, nor prejudice Decision No 97-2004 of the Court of Auditors laying down rules for cooperation with the Office in respect of access by the latter to audit information, which means that the Office's access to audit documents is governed by Decision No 97-2004;

Whereas the aforementioned investigations should be conducted in full compliance with the relevant provisions of the Treaties establishing the European Communities, and in particular the Protocol on privileges and immunities, and of the texts implementing them and the Staff Regulations and should in no way reduce the legal protection of the persons concerned;

Whereas practical arrangements should be laid down stipulating how officials and other servants are to cooperate in ensuring that internal investigations proceed smoothly;

Whereas the obligations of Members of the Court in the framework of the internal investigations mentioned in this Decision are defined in the Code of Conduct applicable to the Members of the Court,

HAS ADOPTED THE FOLLOWING DECISION:

Article 1 - Field of application

This Decision shall apply to internal investigations conducted by the Office for the purpose of:

- fighting fraud, corruption and any other illegal activity affecting the financial interests of the Communities,
- 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 heads of offices and agencies or members of the staff of institutions, bodies, offices or agencies not subject to the Staff Regulations.

It shall not prejudice Decision No 97-2004 of the Court of Auditors laying down rules for cooperation with the Office in respect of access by the latter to audit information, nor the Guideline on the processing of information received by the Court in relation to cases of possible fraud, corruption or any other illegal activity.

Article 2 - Right to information and duty to supply information

The rights and duties of officials and other servants of the Court with regard to the disclosure of facts that give rise to a presumption of the existence of possible illegal activity are governed by Articles 22a and 22b of the Staff Regulations.

Article 3 - Procedures for cooperation with the Office

Whenever the Director of the Office intends to conduct an investigation within the Court of Auditors, he shall inform the Secretary-General of the Court of the subject of the investigation, the conditions in which it is to be conducted and the identity of the agents responsible for carrying it out.

All officials and other servants 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.

Reports drawn up by the Office following an internal investigation and any useful related documents shall be sent to the Secretary-General of the Court.

Article 4 - Informing the interested party

Where the possible implication of an official or servant of the Court 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 an official or servant 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 official or servant concerned by the investigation to give his views may be deferred in agreement with the Court, acting in its capacity as Appointing Authority, 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 the person 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 and the Court 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 an official or servant concerning possible cases of fraud, corruption or any other illegal activity affecting the financial interests of the Communities shall be forwarded to the Director of the Office for his opinion.

Article 7 - Entry into force

This Decision cancels and replaces Decision 99-50 of 16 December 1999. It shall enter into force with immediate effect.

Luxembourg, 16 December 2004

For the Court of Auditors,

Juan Manuel Fabra Vallés
President