

Comunidades Europeas
TRIBUNAL DE CUENTAS

De Europæiske Fællesskaber
REVISIONSRETTE

Europäische Gemeinschaften
RECHNUNGSHOF

Ευρωπαϊκές Κοινοότητες
ΕΛΕΓΚΤΙΚΟ ΣΥΝΕΔΡΙΟ

European Communities
COURT OF AUDITORS



Communautés européennes
COUR DES COMPTES

Comunità Europee
CORTE DEI CONTI

Europese Gemeenschappen
REKENKAMER

Comunidades Europeias
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Euroopan yhteisöjen
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Europeiska gemenskaperna
REVISIONSRÄTTEN

Decision No 99-2004 concerning the rules concerning arrangements for cooperation by the Members of the Court in 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 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 (hereinafter called "the Office")¹, and in particular Article 4(1) and (6) thereof,

Whereas under the terms of Regulations Nos 1073/1999 and 1074/1999, 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 which may 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");

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 Members of the institutions and bodies 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;

¹ OJ L 136, 31.5.1999, pp. 1-14.

Whereas in the case of officials and other servants of the Court those rules have been included in Decision 98-2004 of the Court of 16 December 2004;

Whereas the Court of Auditors and its Members must be completely independent in the performance of the auditing task conferred upon them 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 should in no way reduce the legal protection of the persons concerned;

Whereas practical arrangements should be laid down stipulating how the Members are to cooperate in ensuring that internal investigations proceed smoothly,

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 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.

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

1. Where, outside the context of audit work, a Member of the Court 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 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, heads of offices and agencies or members of staff not subject to the Staff Regulations, he shall inform the President without delay.
2. If the evidence referred to in paragraph 1 relates to the President, the Member shall inform the Member senior in age under the terms of Article 5 of the Rules of Procedure.
3. The President or the Member acting in his stead, as appropriate, shall inform the Member in possession of the information of the time limit within which he proposes to react by either notifying the facts to the other Members of the Court for a decision or forwarding them direct to the Office.

In setting the time limit account shall be taken of the extent of the facts, the necessity of organising an investigation and the urgency caused by the facts in question.

4. Before the time limit expires the President may decide to extend it once only for a period not exceeding half the time initially set. He shall inform the Member concerned of his decision and the reasons for it.
5. On expiry of the time limit, or of the extension provided for in paragraph 4 above, the Member who became aware of facts as referred to in paragraph 1 may inform the Court thereof or, if he considers it useful, may inform the Office direct.

Article 3 – Arrangements 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.

In the context of the investigation Members of the Court shall cooperate fully with the Office.

Article 4 - Informing the interested party

Where the possible implication of a Member 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 a Member 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 concerned by the investigation to give his views may be deferred in agreement with the President of the Court.

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 a Member in relation to 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 information.

Article 7 - Entry into force

This Decision shall enter into force with immediate effect.

Luxembourg, 16 December 2004

For the Court of Auditors

Juan Manuel Fabra Vallés
President