COMMISSION DECISION

of 2 June 1999

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

(notified under document number SEC(1999) 802)

(1999/396/EC, ECSC, Euratom)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 218 thereof,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 16 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 131 thereof,

Whereas:

(1) Regulation (EC) No 1073/1999 of the European Parliament and of the Council [1] and Council Regulation (Euratom) No 1074/1999 [2] concerning investigations conducted by the European Anti-Fraud Office (hereinafter '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 Euratom Treaty;

(2) the responsibility of the 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 procedings;

(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 its administrative autonomy, the Commission 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, 12, second and third paragraphs, 13, 14, 16 and 17, first paragraph, of the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants (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 of the Commission or members of the Commission's staff 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, and in particular the Protocol on privileges and immunities, 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 or agencies themselves and should in no way reduce the legal protection of the persons concerned;

(7) pending the amendment of the Staff Regulations, practical arrangements should be laid down stipulating how the Members of the Commission and its officials and servants are to cooperate in the smooth operation of the internal investigations;

(8) the Commission's Decision of 14 July 1998 concerning investigations carried out by the Task Force 'Coordination of the fight against fraud', together with its implementing rules of 9 December 1998, should be repealed,

[1] OJ L 136, 31.5.1999, p. 1.
[2] OJ L 136, 31.5.1999, p. 8.

HAS DECIDED AS FOLLOWS:

Article 1

Duty to cooperate with the Office

The Secretary-General, the services and any official or servant of the Commission 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 the texts implementing them, Members of the Commission shall cooperate fully with the Office.

Article 2

Duty to supply information

Any official or servant of the Commission 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 of the Commission or members of the Commission's staff not subject to the Staff Regulations, shall inform without delay his Head of Service or Director-General or, if he considers it useful, the Secretary-General of the Commission or the Office direct.

The Secretary-General, the Directors-General and the Heads of Service of the Commission 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.

Officials or servants of the Commission shall in no way suffer inequitable or discriminatory treatment as a result of having communicated the information referred to in the first and second paragrpahs.

Members of the Commission who acquire knowledge of facts as referred to in the first paragraph shall inform the President of the Commission or, if they consider it useful, the Office direct.

Article 3

Assistance from the Security Office

At the request of the Director of the Office, the Commission's Security Office shall assist the Office in the practical conduct of investigations.

Article 4

Informing the interested party

Where the possible implication of a Member, official or servant of the Commission 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, official or servant of the Commission 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, official or servant of the Commission to give his views may be deferred in agreement with the President of the Commission or its 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 a Member, official or servant of the Commission 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 in writing.

Article 6

Waiver of immunity

Any request from a national police or judicial authority regarding the waiver of immunity from judicial proceedings of an official or servant of the Commission concerning possible cases of fraud, corruption or any other illegal activity shall be transmitted to the Director of the Office for his opinion. If a request for waiver of immunity concerns a Member of the Commission, the Office shall be informed.

Article 7

Repeal

The Commission's Decision of 14 July 1998 concerning investigations carried out by the Task Force 'Coordination of the fight against fraud', together with its implementing rules of 9 December 1998, are hereby repealed.

Article 8

Effective date

This Decision shall take effect on 1 June 1999.

Done at Brussels, 2 June 1999.

For the Commission

The President

Jacques SANTER