



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.5.2006
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Preliminary draft

COMMISSION DECISION

**amending its Decision (1999/352/EC, ECSC, Euratom) of 28 April 1999 establishing the
European Anti-fraud Office (OLAF)**

{COM (2006) 244 }

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COMMISSION DECISION

amending its Decision (1999/352/EC, ECSC, Euratom) of 28 April 1999 establishing the European Anti-fraud Office (OLAF)

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 Atomic Energy Community, and in particular Article 131 thereof,

Whereas:

- (1) [Begin with a capital letter ...].
- (2) [...].

HAS DECIDED AS FOLLOWS:

Article 1

Commission Decision 1999/352/EC, ECSC, Euratom is amended as follows:

- (1) Article 2 is amended as follows:

(a) The third subparagraph of paragraph 1 is replaced by the following:

“The Office shall exercise the Commission’s powers in the above areas as they are defined in the provisions established in the framework of the Treaties and relevant regulations, and subject to the limits and conditions laid down therein. It shall act in the framework of its work programme and ensure that its resources are used efficiently so that the Community’s financial interests are effectively protected. It shall ensure that the means employed are proportionate to the potential financial loss and to the facts in question. It shall inform the competent Commission departments of the action taken, in particular on the basis of Articles 3(4) and 10(1) of Regulations (EC) No 1073/1999 and (Euratom) No 1074/1999.”

(b) The fourth subparagraph of paragraph 1 is deleted.

(c) Paragraph 5(b) is replaced by the following:

“(b) ensuring the collection and analysis of information. In this connection, the Office shall carry out strategic anti-fraud analysis. It shall collect, evaluate, process and analyse data

relating to fraud adversely affecting the Community's financial interests, in accordance with arrangements to be determined by Commission decision;"

(d) The following paragraph 6a is added:

"6a. Subject to the diplomatic immunity of the Commission delegations, the Director-General of the Office may at any time pass on information obtained during investigations carried out by the Office to the competent authorities of the third countries concerned and to the international organisations concerned. Any such transmission shall be carried out under the responsibility of the Commission after prior consultation of its competent departments, and in particular the Secretariat-General, the Legal Service, the RELEX Directorate-General and, where appropriate, the directorate-general responsible for relations with the third countries concerned or the international organisation concerned. The consultation procedures shall take account of the need for effectiveness and secrecy of the investigation."

(2) The following Article 4a is inserted:

"Article 4a

Review adviser

1. The Director-General of the Office shall, following a call for applications within the Commission and the other institutions and acting on a proposal from the Supervisory Committee, appoint a Review Adviser for a non-renewable term of five years. The Review Adviser shall have recognised experience and expertise in performing duties related to the review of investigations carried out by the Office and shall have sufficient seniority to ensure his authority and independence.

The Supervisory Committee shall draw up its proposal on the basis of a list of several candidates selected by the Commission departments concerned.

The Review Adviser shall act in complete independence.

The Review Adviser shall neither seek nor take instructions from anyone in the performance of his duties. He shall perform no functions within the Office other than monitoring compliance with procedures.

Before adopting any disciplinary measure concerning the Review Adviser, the Director-General of the Office shall consult the Supervisory Committee.

2. Anyone personally implicated by an investigation may ask the Review Adviser to give an opinion regarding the procedural guarantees provided for in Articles 6(5) and 7a of Regulations (EC) No 1073/1999 and (Euratom) No 1074/1999. The Review Adviser may also issue opinions on such matters on his own initiative.

The Review Adviser shall give his opinion within fifteen working days of receiving the request; this time limit may be extended by fifteen working days in particularly complex cases. The opinion shall be forwarded to the Director-General of the Office, who shall decide on the action to be taken. A copy of the opinion shall be communicated forthwith to the applicant.

3. Cases shall be referred to the Review Adviser by the Director-General of the Office in the circumstances referred to in Article 6(7) and the third subparagraph of Article 7a(2) of Regulations (EC) No 1073/1999 and (Euratom) No 1074/1999. The Director-General of the Office may submit any request to the Review Adviser in connection with the review of investigations.

In all the cases referred to in this paragraph, the Review Adviser shall within fifteen working days deliver an opinion addressed to the Director-General of the Office; he shall transmit a copy of the opinion forthwith to the secretary-general of the institution, body, office or agency concerned.”

(3) Article 5 is replaced by the following:

“Article 5

Director-General

1. The Office shall be headed by a Director-General, appointed by the Commission for a non-renewable term of seven years, after concerting with the representatives of the other institutions meeting with the Supervisory Committee as part of the structured dialogue. The consultation shall be organised on the basis of a list of candidates drawn up by the Commission, following a call for applications, and shall take place not later than six months before the end of the term of office of the outgoing Director-General.

The Director-General shall be responsible for the Office’s conduct of investigations.

2. The Commission shall exercise, with regard to the Director-General, the powers conferred on the appointing authority. Any measure under Article 90 of the Staff Regulations of Officials of the European Communities or Articles 9 and 10 of Annex IX thereto shall be taken by reasoned decision of the Commission, after consulting the Supervisory Committee, meeting with the representatives of the other institutions as part of the structured dialogue. The decision shall be communicated for information to the European Parliament, the Council and the Supervisory Committee.”

(4) Article 6 is amended as follows:

(a) Paragraph 1 is replaced by the following:

“1. Without prejudice to the Commission decision of 28 April 2004¹ and any future decisions the Commission may take pursuant to Article 2(1) of the Staff Regulations of Officials of the European Communities concerning the exercise of certain powers provided for therein, the Director-General of the Office shall exercise, with regard to the staff of the Office, the powers conferred by the Staff Regulations of Officials of the European Communities on the appointing authority and by the Conditions of Employment of Other Servants of the Communities on the authority authorised to conclude contracts of employment. He shall be permitted to delegate those powers. In accordance with the Staff Regulations and the

¹ Commission Administrative Notice No 31-2004 of 5 May 2004, as amended by the Commission decision of 7 July 2004 (C(2004) 2286/3), published as Administrative Notice No 99-2004 of 19 July 2004, as amended by the Commission decision of 16 June 2005, published as Administrative Notice No 47-2005 of 24 June 2005.

Conditions of Employment of Other Servants, he shall lay down the conditions and detailed arrangements for recruitment, in particular as to the length of contracts and their renewal.”

(b) Paragraph 2 is replaced by the following:

“2. After consulting the Supervisory Committee, the Director-General shall send the Director-General for Budgets a preliminary draft budget to be entered in the annex concerning the Office to the Commission section of the general budget of the European Union.”

(c) Paragraph 3 is replaced by the following:

“3. The Director-General shall act as authorising officer for implementation of the appropriations entered in the annex concerning the Office to the Commission section of the general budget of the European Union and the appropriations entered under the anti-fraud budget headings for which powers are delegated to him in the internal rules on implementation of the general budget. He shall be permitted to subdelegate his powers to staff members subject to the Staff Regulations of Officials or Conditions of Employment of Other Servants in accordance with the abovementioned internal rules.”

(5) Articles 3, 6(1), (2) and (3) and 7 are amended as follows:

“Director” is replaced by “Director-General”.

Article 2

This Decision shall take effect on the date of the entry into force of the Regulations amending Regulation (EC) No 1073/1999 and Regulation (Euratom) No 1074/1999.

Done at Brussels,

For the Commission

The President