



COMMISSION OF THE EUROPEAN COMMUNITIES

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Amended proposal for a
COUNCIL REGULATION

concerning investigations conducted by the Fraud Prevention Office

(presented by the Commission pursuant to Article 189a (2) of the EC Treaty)

Draft
INTERINSTITUTIONAL AGREEMENT

concerning internal investigations by the Fraud Prevention Office

Draft
COMMISSION DECISION

establishing a Fraud Prevention Office

(presented by the Commission)

EXPLANATORY MEMORANDUM

Introduction

1. On 1 December 1998 the Commission presented a proposal for a Council Regulation establishing a European Fraud Investigation Office (COM(1998) 717final). The purpose of this proposal was to set up an autonomous body, with its own legal personality and without any form of subordination to the Commission, to be entrusted with the task of carrying out external and internal investigations as part of the fight against fraud affecting the Community budget. Thus, the Commission was proposing that the fraud investigation function hitherto performed by one of its own departments - UCLAF - would be exercised entirely by an outside body.
2. During discussions on this proposal in the European Parliament and the Council, it emerged that the proposed approach did not meet with broad support and that there was a clear preference for maintaining a Fraud Prevention Office within the Commission, while guaranteeing its independence in discharging its fraud investigation function.

The Commission has decided to follow this new approach and is accordingly presenting an amended proposal.

3. Since the new approach does not involve the establishment by the Community legislative of a body with its own legal personality, but the setting-up of an Office within the Commission, it falls to the Commission to set up the Fraud Prevention Office (hereinafter "the Office") by an internal decision, in accordance with the principle that each institution exercises the power of self-organisation.

The Commission undertakes to establish such an Office and to lay down rules which guarantee it full independence in discharging its fraud investigation function. It will adopt these rules as soon as agreement is reached between the institutions concerning the conditions and procedures governing internal administrative investigations (see point 5 below).

The operational independence of the Office vis-à-vis the Commission in external and internal fraud investigations will be guaranteed by the provision that the Director may neither seek nor take instructions; the Director will act as appointing authority for the staff of the Office and authorising officer for the special budget heading of the Office.

4. The purpose of this Regulation is to lay down general rules on the investigations carried out by the Office.

In the field of external administrative investigations, the Office will exercise the powers of investigation conferred on the Commission by Community fraud legislation, on the terms and in accordance with the procedures laid down by the relevant Community instruments.

5. By contrast, in the field of internal administrative investigations, all that exists at present are measures internal to each institution. For example, the Commission laid down the conditions and procedures governing internal investigations to be carried out by UCLAF in an internal decision of 14 July 1998, together with the rules of application it adopted on 9 December 1998.

Nevertheless, since it is proposed that the Office will conduct administrative investigations with a view to protecting the financial interests of the Communities not only within the Commission but also within the other Community institutions and bodies, the conditions and procedures for such investigations, and in particular the rights and obligations of officials and other servants of the institutions and bodies in relation to such investigations, must be laid down.

To this end, the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the Communities must be amended. However, the process of amending the Staff Regulations could be a lengthy one. It is therefore proposed that, pending amendment of the Staff Regulations, each institution and body should adopt an internal decision laying down the terms and conditions under which the Office will carry out investigations internal to the institution or body in question, together with guarantees for officials in relation to such investigations. To prevent wide divergences in the rules laid down by these decisions, the Commission proposes that an Interinstitutional Agreement be concluded which would determine jointly (preferably by approving a model decision) the conditions and procedures to be adopted by the internal decisions of each institution and body.

Amendment of Articles

6. Article 1 of the original proposal has been deleted, as under the new approach it is no longer the Community legislative which is to set up an independent body outside the Commission, but the Commission itself which is to establish the Office among its own departments.

As a result, the provisions laying down the legal framework for the external independent body have also been deleted, either because they serve no purpose under the new approach (in particular Articles 8, 10(2), 12, 13, 14(1) and 15 of the original proposal) or because they will be included *mutatis mutandis* in the internal Commission decision establishing the Office.

7. The new Article 1 lays down clearly the function of the Office, namely to carry out external and internal administrative fraud investigations.

The Office's tasks are specified further in Article 3 (external investigations) and the new Article 4 (internal investigations). Note that the amended proposal now provides that the Office will carry out fraud investigations internal to the institutions and bodies. Contrary to the provisions of Article 3(2) of the original proposal, the institutions and bodies can no longer choose whether or not to confer this task on the Office.

The proposal now lays down the powers enjoyed by the Office vis-à-vis all the institutions and bodies: it has access to premises, information and all documents (new Article 4(1)). As explained at point 5 above, the conditions and procedures for internal investigations, in particular the rights and obligations of officials and the related guarantees (Article 4(2)), will be laid down by internal decisions of each institution and body, the content of which should be largely identical as a result of the Interinstitutional Agreement, pending amendment of the Staff Regulations.

8. In practice the Office's independence in discharging its investigative function is enshrined in the right granted to its Director to open an external or internal investigation on his own initiative (new Article 5). Member States may also ask for an external investigation to be opened and each institution and body may ask the Office to carry out an internal investigation in its departments.

The Office's independence is further enshrined in the right to transmit information obtained during internal investigations direct to the judicial authorities of the Member State in question, without having to ask for the prior agreement of the institution or body concerned (new Article 10(1)).

The Office's independence is also guaranteed by the procedure for appointing its Director and by the provision that he may not seek or take any instructions in carrying out his duties.

9. As the Office will not be a body with its own legal personality, it cannot have a Board of Management. However, the Commission feels that the Office should be assisted by a Supervisory Committee, made up of independent persons who are experts in the Office's field of activity (new Article 11).

This Committee will monitor the work of the Office (see in particular new Article 6(5)), reporting its findings to the institutions, and assist the Office by formulating opinions (new Article 11(5)).

10. Finally, for the purposes of reviewing the legality of the Office's activities in connection with external investigations, the remedies provided for by the EC Treaty (in particular Articles 173 and 178) may be pursued against the Commission. However, special provisions are still necessary for internal investigations, pending amendment of the Staff Regulations, as a normal appeal to the appointing authority under Article 90 of the Staff Regulations would have no legal force in view of the Office's independence, which prohibits the institutions and bodies from giving it instructions. It is therefore proposed that provision be made for appeals to the Director of the Office, with the possibility of subsequent referral to the Court of Justice in accordance with the procedures laid down in Articles 90 and 91 of the Staff Regulations (new Article 14).

**Amended proposal for a
COUNCIL REGULATION**

concerning investigations conducted by the Fraud Prevention Office

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 235 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 203 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the Opinion of the European Parliament²,

Having regard to the Opinion of the Court of Auditors³,

1. Whereas the institutions and the Member States attach great importance to the protection of the Communities' financial interests and to the fight against fraud and any other illegal activities to the detriment of the Communities' financial interests; whereas the importance of action to that end is confirmed by Article 209a of the EC Treaty and Article 183a of the Euratom Treaty;
2. Whereas all available means must be deployed to fully attain this objective, notably in terms of investigation functions devolved to the Community level, while the current distribution and balance of responsibilities as between the national and Community levels should be maintained;
3. Whereas to reinforce the means available for combating fraud, the Commission, by Decision 1999/.../EC, ECSC, Euratom⁴, established a Fraud Prevention Office (hereinafter "the Office") among its own departments with responsibility for conducting administrative fraud investigations; whereas it gave this Office full independence to exercise the on-the-spot checks and inspections provided for by Community law;
4. Whereas Decision 1999/.../EC, ECSC, Euratom provides that for the purposes of investigations the Office shall exercise the powers conferred by Community legislation, subject to the limits and conditions laid down thereby;

¹ OJ ...

² OJ ...

³ OJ ...

⁴ (See page ... of this Official Journal).

5. Whereas the Office should be entrusted with the exercise of the powers conferred on the Commission by Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities⁵; whereas the Office must also be allowed to exercise the other powers conferred on the Commission to conduct on-the-spot checks and inspections in the Member States, notably for the purpose of detecting irregularities as required by Article 9 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests⁶;
6. Whereas, given the need to step up the fight against fraud and any other illegal activities to the detriment of the Communities' financial interests, the Office must be able to conduct internal investigations in the institutions and other bodies established by or on the basis of the EC and Euratom Treaties (hereinafter "the institutions and bodies");
7. Whereas investigations must be conducted with full respect for human rights and fundamental freedoms, in particular the principle of fairness, for the right of persons involved to express their views on the facts concerning them and for the principle that the conclusions of an investigation may be based solely on elements which have evidential value; whereas to that end the institutions and bodies must lay down the terms and conditions under which such internal investigations are conducted; whereas the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants (hereinafter "the Staff Regulations") should be amended in order to lay down the rights and obligations of officials and other servants as regards internal investigations;
8. Whereas such internal investigations can be conducted only if the Office is guaranteed access to all premises of the institutions and bodies and all information and documents held by them;
9. Whereas to ensure that the Office is independent in carrying out the tasks conferred on it by this Regulation, its Director must be given the power to open an investigation on his own initiative, at the request of a Member State or, where appropriate, at the request of an institution or body;
10. Whereas it is for the competent national authorities or the institutions and bodies, as the case may be, to decide what action should be taken on completed investigations on the basis of the report drawn up by the Office; whereas to step up the fight against fraud, the Director should be authorised to send information on investigations in progress direct to the relevant judicial authorities at any time, if he sees fit;
11. Whereas the terms on which the Office's agents will discharge their duties and the terms governing the Director's exercise of his responsibility for the conduct of investigations by the Office's officials should be laid down;

⁵ OJ L 292, 15.11.1996, p. 2.

⁶ OJ L 312, 23.12.1995, p. 1.

12. Whereas, for the sake of successful cooperation between the Office, the Member States and the relevant institutions and other bodies, the reciprocal exchange of information must be organised, subject to rules of confidentiality where information is subject to professional secrecy, while ensuring that it enjoys the proper data protection;
13. Whereas, to ensure that the results of investigations conducted by the Office's officials are taken into account and that the requisite follow-up action is taken, the reports should have the status of admissible evidence in administrative and judicial proceedings; whereas, to that end, they should be drawn up in manner compatible with the rules governing administrative reports in the Member States;
14. Whereas the Office should enjoy independence in the discharge of its function; whereas it must nevertheless be able to draw on the opinion of anti-fraud experts; whereas to that end the Office should be assisted by a Supervisory Committee, made up of independent persons being experts in the Office's field of activity;
15. Whereas administrative investigations are to be conducted under the authority of the Director of the Office, in full independence from the Community institutions and bodies and from the Supervisory Committee;
16. Whereas entrusting to the Office the task of conducting administrative investigations for the protection of the Communities' financial interests should not have the effect of reducing the level of legal protection enjoyed by the persons concerned, in particular as regards the protection of personal data and respect for confidentiality of information gathered in the course of investigations; whereas officials and other servants of the Communities should be assured of legal protection equivalent to that provided for by Articles 90 and 91 of the Staff Regulations;
17. Whereas the activities of the Office should be assessed after a three-year period;
18. Whereas this Regulation in no way diminishes the powers and responsibilities of the Member States to take measures to combat fraud affecting the Communities' financial interests; whereas entrusting to an independent Office the task of conducting external administrative investigations in this area is accordingly in full compliance with the subsidiarity principle laid down by Article 3b of the EC Treaty; whereas the operation of the Office is likely to step up the fight against fraud and any other illegal activities detrimental to the Communities' financial interests and is therefore compatible with the proportionality principle;
19. Whereas the EC Treaty confers no powers for the adoption of this Regulation other than those provided for by Article 235, and the Euratom Treaty confers no powers other than those provided for by Article 203,

HAS ADOPTED THIS REGULATION:

Article 1

Objective and tasks

In order to step up the fight against fraud and any other illegal activity detrimental to the financial interests of the European Community and the European Atomic Energy Community, the Fraud Prevention Office (hereinafter "the Office") shall conduct administrative investigations in the Member States and within the institutions and bodies set up by or on the basis of the EC and Euratom Treaties (hereinafter "the institutions and bodies").

Article 2

Definition

For the purposes of this Regulation, "investigations" shall mean all inspections, checks, and measures undertaken by agents of the Office in the performance of their duties with a view to combating fraud and any other illegal activities detrimental to the financial interests of the Communities and establishing, where necessary, the unlawful nature of such activities.

Article 3

External investigations

The Office shall exercise the power to carry out on-the-spot inspections and checks in the Member States conferred on the Commission by Regulation (EC, Euratom) No 2185/96.

As part of its investigative function, the Office shall carry out the inspections and checks referred to in Article 9 of Regulation (EC, Euratom) No 2988/95.

These inspections and checks (hereinafter "external investigations") shall be carried out under the conditions and in accordance with the procedures provided for by this Regulation and by the instruments conferring on the Commission the power to carry out external investigations.

Article 4

Internal investigations

1. The Office shall carry out administrative investigations internal to the institutions or bodies, with a view to protecting the financial interests of the Communities.

These administrative investigations (hereinafter "internal investigations") shall be carried out under the conditions and in accordance with the procedures provided for by this Regulation and, until such time as the Staff Regulations of Officials of the Communities and the Conditions of Employment of Other Servants of the Communities (hereinafter "the Staff Regulations") are amended, by decisions adopted by each institution and body. The institutions shall consult each other on the rules to be laid down by such decisions.

The Office shall have access to all information held by the institutions and bodies and to their premises. The institutions and bodies shall be informed whenever the Office's agents carry out an investigation on their premises or consult a document or information held by them. The Office may take a copy of any document or information held by the institutions and bodies and, if necessary, confiscate it to ensure there is no danger of it disappearing.

Where it appears that an official or servant may be personally involved, the institution or body to which he or she belongs shall be informed if an internal investigation is opened or pursued regarding that person.

2. The conditions and procedures for internal investigations shall include the following rules:
 - (a) a duty on the part of officials and servants of the institutions and bodies to cooperate with and supply information to the Office's agents;
 - (b) the obligation for the Office to give prior notice of access to information and to the premises of the institutions and bodies, and on the opening or pursuit of an investigation regarding an official or servant who is personally involved;
 - (c) the rules of procedure to be observed by the Office's agents when conducting internal investigations and guarantees of the rights of persons concerned by an internal investigation.

Article 5

Opening of investigations

1. External investigations shall be opened by a decision of the Director of the Office, acting on his own initiative or following a request from a Member State.
2. Internal investigations shall be opened by a decision of the Director of the Office, acting on his own initiative or following a request from the institution or body in which the investigation is to be conducted.

Article 6

Investigations procedure

1. The Director of the Office shall be responsible for the carrying out of the investigations.
2. The Office's agents shall exercise their powers on production of a written authorisation showing their identity and their position.

3. For each action, the Office's agents shall be equipped with a document issued by the Director indicating the subject matter and purpose of the investigation.
4. During on-the-spot inspections and checks, the Office's agents shall adopt an attitude compatible with the rules and practices governing officials of the Member State concerned, and, where appropriate, respect the Staff Regulations and the decisions referred to in the second subparagraph of Article 4(1).
5. Investigations shall be conducted continuously over a period proportional to the circumstances and complexity of the case. Where an investigation has been in progress for more than twelve months, the Director shall explain to the Supervisory Committee referred to in Article 11 why it cannot yet be concluded and state the estimated time required to complete the work.
6. The Member States shall ensure that their competent authorities give the necessary support to enable the Office's agents to fulfil their task.

Article 7

Exchange of information

The institutions and bodies and, insofar as national law allows, the Member States shall, at the request of the Office or of their own initiative, send the Office any document or information they hold which is necessary for current investigations.

They shall also send the Office any document or information they hold which they consider useful in a general sense for the prevention of fraud or any other illegal activity detrimental to the Communities' financial interests.

Article 8

Confidentiality and data protection

1. Information obtained in the course of external and internal investigations, in whatever form, shall be subject to professional secrecy and shall enjoy the protection given to similar information by the national law of the Member State in which it was collected and by the corresponding provisions applicable to the Community institutions and bodies.

Such information may not be communicated to persons other than those within the Community institutions and bodies or in the Member States whose functions require them to know it, nor may it be used for purposes other than to prevent fraud and any other illegal activities detrimental to the financial interests of the Communities, without the prior consent of the Member State in which the information was gathered or the institution or body concerned.

2. The Director shall ensure that the Office's agents and the other persons acting under his authority observe the Community and national provisions on the protection of personal data, in particular those provided for by Directive 95/46/EC of the European Parliament and of the Council⁷.

Article 9

Investigation report

1. On completion of an investigation carried out by the Office, the latter shall draw up a final report, under the authority of the Director, specifying the facts established, the financial loss, if any, and the findings of the investigation.
2. In drawing up final reports, account shall be taken of the procedural requirements laid down in the national law of the Member State concerned. Reports shall constitute admissible evidence in administrative or judicial proceedings of the Member State in which their use proves necessary, in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors. They shall be subject to the same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors and shall be of identical value to such reports.
3. Reports drawn up following an external investigation and any useful related documents shall be sent to the competent authorities of the Member States in question.
4. Reports drawn up following an internal investigation and any useful related documents shall be sent to the institution or body concerned.

Article 10

Follow-up to investigations

1. Without prejudice to Articles 8 and 9, the Office may at any time, if it considers it appropriate, send information obtained during the course of external investigations to the competent authorities in the Member States in question, as well as information obtained during the course of internal investigations to the institution or body concerned. In the latter case the Office shall also directly inform the judicial authorities of the Member State in question if it considers it necessary in view of the seriousness of the information obtained. It shall inform the Supervisory Committee thereof.
2. In the case of an internal investigation, the institution or body concerned shall decide on the action to be taken on the basis of the report drawn up by the Office.

⁷ OJ L 281, 23.11.1995, p. 31.

Article 11

Supervisory Committee

1. The Office shall be assisted by a Supervisory Committee, composed of five independent persons who possess the qualifications required for appointment in their respective countries, to senior judicial or supervisory posts or for the teaching of public or criminal law at university level. They shall be appointed by common accord of the European Parliament, the Council and the Commission.

2. The term of office of members shall be three years. This term of office shall be renewable.

On expiry of their term of office, members shall remain in office until their appointments are renewed or until they are replaced.

3. In carrying out their duties, members shall neither seek nor take instructions from any government or any institution or body.

4. The Supervisory Committee shall appoint its Chairman.

It shall adopt its own rules of procedure.

5. At the Director's request or on its own initiative, the Supervisory Committee shall give its opinion to the Director on the Office's activities, without, however, interfering with investigations in progress. Every year the Director shall lay the annual investigation programme before the Supervisory Committee.

6. The Supervisory Committee shall adopt an annual report and transmit it to the institutions.

Article 12

Director

The Office shall be headed by a Director, nominated by the Commission, after consulting the European Parliament and the Council, for a term of five years, which may be renewed once. With a view to nominating the Director, the Commission shall, after a favourable opinion has been given by the Supervisory Committee, draw up a list of several suitably qualified candidates following a call for applications which shall, if appropriate, be published in the *Official Journal of the European Communities*.

The Director shall neither seek nor take instructions from any government or any institution or body in the performance of his duties with regard to the opening and carrying out of external and internal investigations or to the drafting of final reports following such investigations.

The Director shall report regularly to the European Parliament and the Council on the findings of investigations carried out by the Office, while respecting the confidentiality of those investigations, the fundamental rights of the persons concerned and, where judicial proceedings are instituted, respecting all national provisions applicable to such proceedings.

Article 13

Budget

The appropriations for the Office, the total amount of which shall be entered under a special budget heading within Part A of the section of the general budget of the Communities relating to the Commission, shall be set out in detail in an annex to that Part.

The posts allocated to the Office shall be listed in an annex to the Commission's establishment plan.

Article 14

Judicial review

Until such time as the Staff Regulations are amended, any official or other servant of the Communities may submit to the Director of the Office a complaint against an act adversely affecting him committed by the Office as part of an internal investigation, in accordance with the procedures laid down in Article 90(2) of the Staff Regulations. Article 91 of the Staff Regulations shall apply to decisions taken with regard to such complaints.

Article 15

Progress report

During the third year following the entry into force of this Regulation, the Commission shall transmit to the European Parliament and the Council a progress report on the Office's activities together, where appropriate, with proposals to modify or extend its tasks.

Article 16

Entry into force

This Regulation shall enter into force on 1 June 1999.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President

Draft
INTERINSTITUTIONAL AGREEMENT

concerning internal investigations by the Fraud Prevention Office

THE EUROPEAN PARLIAMENT, THE COUNCIL OF THE EUROPEAN UNION AND
THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Referring to the conclusions of the Council of 15 March 1999, adopted following detailed discussions with the representatives of the European Parliament and the Commission,

Noting Commission Decision 1999/.../EC, ECSC, Euratom of ... 1999 establishing a Fraud Prevention Office⁸; having regard to Council Regulation (EC, Euratom) No ... of ... 1999 concerning investigations conducted by the Fraud Prevention Office⁹, which provides that the Office will initiate and conduct administrative fraud investigations within the institutions and bodies established by or on the basis of the EC and Euratom Treaties,

Whereas such investigations must be carried out under equivalent conditions whatever the institution or body concerned; whereas conferment of this task on the Office does not affect the responsibilities of the institutions and bodies and in no way reduces the legal protection of the persons concerned; whereas the institutions and bodies must therefore consult each other in order to establish common rules pending amendment of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the Communities (hereinafter "the Staff Regulations"),

Calling on the other institutions and bodies to accede to this Agreement,

HEREBY AGREE:

- 1 To adopt common rules to enable the Fraud Prevention Office to conduct investigations within their institutions. These rules shall consist of the implementing measures required to ensure the smooth operation of the internal investigations. Pending amendment of the Staff Regulations, these implementing measures shall cover in particular the rights and duties of officials and other servants in relation to investigations conducted within their institution, while fully respecting the principles of human rights and the protection of fundamental freedoms.
2. To draw up such rules and make them immediately applicable by adopting an internal decision based on the model attached to this Agreement and not to deviate from that model save where this is necessary for the particular requirements of their institution.
3. To recognise the need to send the Office, for an opinion, any request for the waiver of immunity from jurisdiction of an official or other servant relating to possible illegal acts committed in fields falling within the remit of the Office.

⁸ OJ L ...

⁹ OJ L ...

4. To send the Office the provisions they have drawn up to implement this Agreement, in accordance with the attached decision.

This Agreement may be amended only with the express consent of the signatory institutions.

This Agreement shall enter into force on 1 June 1999.

For the European Parliament

*For the Council of the
European Union*

*For the Commission of the
European Communities*

The President

The President

The President

DRAFT

(to be published in the OJEC)

COMMISSION DECISION
of 1999
establishing a Fraud Prevention Office

(1999/ ... /EC, ECSC, Euratom)

THE COMMISSION OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Community, and in particular Article 162 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,

1. Whereas the institutions and the Member States attach great importance to the protection of the Communities' financial interests and to the fight against fraud and any other illegal activities to the detriment of the Communities' financial interests; whereas the importance of action to that end is confirmed by Article 209a of the EC Treaty, Article 78i of the ECSC Treaty and Article 183a of the Euratom Treaty;
2. Whereas all available means must be deployed to fully attain this objective, notably in terms of investigation functions devolved to the Community level, while the current distribution and balance of responsibilities as between the national and Community levels should be maintained;
3. Whereas the task of carrying out administrative investigations for the purpose of protecting the financial interests of the Communities has until now been conferred on the Task Force for Coordination of Fraud Prevention, which succeeded the Unit for the Coordination of Fraud Prevention (UCLAF);
4. Whereas the need to increase the effectiveness of the fight against fraud and other illegal activities detrimental to the financial interests of the Communities requires the establishment of a Fraud Prevention Office, which must exercise its investigation powers in full independence;
5. Whereas the definition of the functions of the Office must include the transfer to it of the duties of the Task Force for Coordination of Fraud Prevention,

HAS DECIDED AS FOLLOWS:

Article 1

Establishment of the Office

A Fraud Prevention Office, hereinafter referred to as the "Office", is hereby established.

Article 2

Tasks of the Office

1. The Office shall exercise the Commission's powers to carry out external and internal administrative investigations for the purposes of protecting the financial interests of the Communities, as conferred on it by the Community legislator, subject to the limits and conditions laid down thereby.

The Office may be entrusted with investigations in other areas by the Commission or by the other institutions and bodies set up by, or on the basis of, the Treaties (hereinafter "the institutions and bodies").

2. The Office shall be responsible for developing a concept for the fight against fraud and any other illegal activity detrimental to the financial interests of the Communities.
3. The Office shall be responsible for the preparation of legislative and regulatory initiatives of the Commission in the fight against fraud and any other illegal activity detrimental to the Communities' financial interests without prejudice to the sectoral tasks of other services of the Commission.
4. The Office shall be responsible for any other operational activity of the Commission in relation to the prevention of fraud and any other illegal activity detrimental to the financial interests of the Communities, and in particular:
 - (a) developing the necessary infrastructure;
 - (b) ensuring the collection and analysis of information;
 - (c) providing the Commission's help in cooperation with the Member States;
 - (d) giving technical support to the other institutions and bodies and the competent national authorities.
5. The Office shall be in direct contact with the police and judicial authorities.

Article 3

Independence of the investigative function

The Office shall exercise the powers of investigation referred to in Article 2(1) in complete independence. In exercising these powers, the Director of the Office shall neither seek nor take instructions from the Commission, any government or any other institution or body.

Article 4

Supervisory Committee

In discharging its investigative function, the Office shall be assisted by a Supervisory Committee, the composition and powers of which shall be laid down by the Community legislature.

Article 5

Director

1. The Office shall be headed by a Director, nominated by the Commission, after consulting the European Parliament and the Council, for a term of five years, which may be renewed once. With a view to nominating the Director, the Commission shall, after a favourable opinion has been given by the Supervisory Committee, draw up a list of several suitably qualified candidates, following a call for applications which shall, if appropriate, be published in the *Official Journal of the European Communities*.

The Director shall be responsible for the carrying out of investigations.

2. The Commission shall exercise, with regard to the Director, the powers conferred on the appointing authority. Any measure under Articles 87, 88 and 90 of the Staff Regulations of Officials of the European Communities shall be taken, after consulting the Supervisory Committee, by reasoned decision of the Commission, which shall be communicated for information to the European Parliament and the Council.

Article 6

Operation of the Office

1. The Director 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 authorised to delegate those powers.
2. After consulting the Supervisory Committee, the Director shall send the Director-General for Budgets a preliminary draft budget to be entered in the special heading for the Office in the annual general budget.
3. The Director shall act as authorising officer for implementation of the special budget heading for the Office. He shall be authorised to delegate his powers.
4. Commission decisions concerning its internal organisation shall apply to the Office in so far as they are compatible with the provisions concerning the Office adopted by the Community legislator, with this Decision and with the detailed rules implementing this Decision.

Article 7

Replacement of UCLAF

The Office shall replace the Task Force for Coordination of Fraud Prevention.

Up to the first day of the month following the appointment of the Director of the Office, the function of Director of the Office shall be carried out by the Director of the Task Force for Coordination of Fraud Prevention.

Article 8

Entry into effect

This Decision shall take effect on 1 June 1999.

Done at Brussels,

*For the Commission
The President*

DRAFT

(to be published in the OJEC)

MODEL DECISION

[INSTITUTION] DECISION

of 1999

concerning the terms and conditions for internal investigations
in relation to the prevention of fraud and any illegal activity
detrimental to the Communities' financial interests

[INSTITUTION]

Having regard to [legal basis],

Whereas ...

Article 1

Duty of departments to inform the Office

The Directors-General and Heads of Service of [institution] shall transmit without delay to the Office any factual element of which they become aware which gives rise to the presumption of the existence of irregularities likely to constitute fraud, of fraud or of any other illegal financial activity.

Article 2

Duty of officials and servants to supply information

Any official or servant of [institution] who acquires knowledge of factual elements which give rise to the presumption of the existence of irregularities likely to constitute fraud, of fraud or of any other illegal financial activity, shall without delay inform his Director-General or Head of Service or, if he considers it useful, the Office directly.

Officials or servants of [institution] must in no way suffer inequitable or discriminatory treatment as a result of having communicated the information referred to in the first paragraph.

Article 3

Access to information and documents

The Office's agents shall have access to any relevant information and documentation held by the services or officials or servants of [institution], including information held in electronic form, in their work premises.

The Office's agents shall be authorised to take copies of all or part of the information and documentation referred to in the first paragraph. If the needs of the investigation so require, they may take away any originals of documents or data media.

Article 4

Assistance from the Security Office

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

Article 5

Duty to cooperate

The department, officials or servants of [institution] shall be required to cooperate fully with the Office's agents and to provide any assistance needed for the investigation. To this end, they shall provide the Office's agents with any useful information and explanations.

Article 6

Information concerning access to premises and internal documentation

The Director-General or Head of Service of [institution] shall be informed in advance, by the Director of the Office, of his intention to gain access to [institution] premises or internal documentation.

In an emergency, or when considerations of confidentiality preclude such advance notice, the Secretary-General and the Director-General for Personnel and Administration shall be informed in advance.

Article 7

Informing superiors about investigations

When the possibility of personal involvement by an official or servant of [institution] arises, the Secretary-General, the Director-General for Personnel and Administration and the Director-General or Head of Service concerned shall be informed by the Office that investigations have been opened or are being conducted.

Article 8

Informing the interested party about the investigation

Where Article 7 applies, the interested party must 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 of [institution] may not be drawn without the interested party having been in a position to express his views on all the facts which concern him.

Where, exceptionally, a case requires recourse to means of investigation which come under the responsibility of a national judicial authority and necessitate maintaining absolute secrecy for the purposes of the investigation, compliance with the obligation to give the official or servant of [institution] the opportunity to give his view may be deferred in agreement with the Secretary-General.

Article 9

Information on the closing of the investigation with no further action taken

If no charge can be upheld against the official or servant of [institution], 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 10

Waiver of immunity

Any request from a national police or judicial authority regarding the waiver of immunity from jurisdiction of an official or servant of [institution] concerning an internal case of irregularities, fraud or any other illegal economic or financial activity shall be transmitted to the Director of the Office for his opinion.

Article 11

Effective date

This Decision shall take effect on 1 June 1999.

Done at Brussels,

For [institution]

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