

COMMISSION DECISION
on raising concerns about serious wrongdoings

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to Regulations (EC) N° 1073/1999 and (Euratom) N° 1074/1999 of 25.05.1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)¹;

Having regard to the Interinstitutional Agreement of 25.05.1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by OLAF²;

Having regard to Commission Decision 1999/396/EC, ECSC, Euratom of 2.06.1999 concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' interests³,

Whereas:

the White Paper on Reforming the Commission stated that the European institutions also needed provisions which, as a last resort and in exceptional circumstances, would permit staff to raise concerns with external bodies without fear of adverse consequences;

HAS ADOPTED THIS DECISION:

Article 1

1. Any official or servant, who becomes aware in the course of or in connection with the performance of his or her duties of evidence, which gives rise to a presumption of the existence of illegal activity including fraud or corruption, detrimental to the interests of the Communities, or of conduct relating to the discharge of professional duties which may constitute a serious 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 to comply with the analogous obligations of members of staff not subject to the Staff Regulations, shall inform without delay his or her Head of Service or Director General or, if he or she considers it useful, the Secretary General, or the persons in equivalent positions, or the European Anti-Fraud Office direct.

2. Any official or servant receiving such information shall transmit without delay to the European Anti-Fraud Office any evidence of which he or she is aware from which the existence of the irregularities referred to in paragraph 1 may be presumed.

¹ OJ L 136, 31.05.99, p. 1ff.

² OJ L 136, 31.05.1999, p. 15.

3. An official or servant shall not suffer any adverse consequences from the Commission alone as a result of having communicated the information referred to in paragraphs 1 and 2, provided that he or she acted reasonably and honestly.

Article 2

1. An official or servant who further discloses information as defined in Article 1 outside the Commission or the European Anti-Fraud Office shall not as a result suffer any adverse consequences from the Commission alone provided that all of the following conditions are met:

a) The official or servant honestly and reasonably believes that the information disclosed, and any allegation contained in it, are substantially true;

b) the official or servant has previously disclosed the same information to the European Anti-Fraud Office or to the Commission and has allowed a reasonable period of time for the Office or the Commission to take the appropriate action; and

c) the disclosure is made to the President of the Court of Auditors or of the Council of the European Union or of the European Parliament, or the European Ombudsman.

2. For the purposes of subparagraph (1)(b), and subject to paragraph (3), a reasonable period shall be the period which the Office or the Commission, as the case may be, has indicated as being necessary to carry out the investigations and, where necessary, take appropriate action. The official or servant shall be duly informed.

3. Paragraph (2) shall not apply where the official or servant can demonstrate that the period or periods indicated by the Office or the Commission is or are unreasonable having regard to all the circumstances of the case.

Article 3

The protection provided under Article 2 is without any prejudice to any personal liability which the official or servant making the disclosure may incur under relevant provisions of national law.

Article 4

This Decision shall take effect on the day of its adoption by the Commission.

Done at Brussels, [...]

For the Commission
[...]
Member of the Commission