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REPORT

on the amendments to the Rules of Procedure following the Interinstitutional Agreement of 25 May 1999 on the internal investigations conducted by the European Anti-Fraud Office (OLAF)

Committee on Constitutional Affairs

Rapporteur: Giorgio Napolitano

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By letter of 2 August 1999 the President of Parliament referred possible changes to the Rules of Procedure following the Interinstitutional Agreement of 25 May 1999 to the Committee on Constitutional Affairs as the committee responsible and to the Committee on Budgetary Control for its opinion. At the sitting of 7 October 1999 she announced that she had done so.

The Committee on Constitutional Affairs decided to draw up a report and appointed Mr Giorgio Napolitano rapporteur at its meeting of 22-23 September 1999.

It considered the draft report at its meeting of 14 October 1999.

At the latter meeting it adopted the proposal for a decision unanimously.

The following were present for the vote: Napolitano, chairman and rapporteur; Voggenhuber, Schleicher, and Beazley, vice-chairmen; Almeida Garrett, Corbett, Dimitrakopoulos, Duff, Dupuis, Gil-Robles, Kaufmann, Leinen, H.P. Martin, Méndez de Vigo, Poos (for Tsatsos), Rothley (for Barón Crespo), Salafranca (for Maij-Weggen) and Väyrynen (for Malmström).

The opinion of the Committee on Budgetary Control is attached.

The report was tabled on 21 October 1999.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

A
PARLIAMENT'S RULES OF PROCEDURE

Present text

Proposed new text

(Amendment 1)
Rule 9a (new)

**Internal investigations conducted by the
European Anti-Fraud Office (OLAF)**

The common rules comprising the measures needed to facilitate the smooth running of investigations conducted by the Office shall be applicable within Parliament, pursuant to the Parliament Decision annexed to these Rules of Procedure.

PROPOSAL FOR A DECISION

Decision concerning amendments to the Rules of Procedure following the Interinstitutional Agreement of 25 May 1999 on the internal investigations conducted by the European Anti-Fraud Office (OLAF)

The European Parliament,

- having regard to the Interinstitutional Agreement of 25 May 1999¹,
 - having regard to Rules 181 and 186(c) of its Rules of Procedure,
 - having regard to the report of the Committee on Constitutional Affairs and the opinion of the Committee on Budgetary Control (A5-0036/1999),
1. Decides to amend its Rules of Procedure as indicated above;
 2. Approves the attached Decision concerning internal investigations conducted by the Anti-Fraud Office, which reproduces the model Decision annexed to the Interinstitutional Agreement of 25 May 1999, with only those technical adjustments required for its application within the European Parliament;
 3. Decides that this Decision be annexed to the Rules of Procedure, and that a footnote to that effect be inserted under the new Rule;
 4. Instructs its President to forward this Decision to the Commission and Council.

¹ OJ L 136, 31 May 1999, p. 15
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European Parliament Decision 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 and annexing the Decision to the Rules of Procedure

The European Parliament

- having regard to the Treaty establishing the European Community, and in particular Article 199 thereof,
- having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 25 thereof,
- having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 112 thereof,
- having regard to the European Parliament's Rules of Procedure, and in particular Rule 186(c) thereof,

Whereas:

- (1) Regulation (EC) No 1073/1999 of the European Parliament and of the Council² and Council Regulation (Euratom) No 1074/1999³ concerning investigations conducted by the European Anti-Fraud 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 the Euratom Treaty;
- (2) The responsibility of the European Anti-Fraud 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 proceedings;
- (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 their administrative autonomy, all the institutions, bodies and offices and agencies 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 and the Conditions of Employment of Other Servants of the European Communities (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

² OJ L 136, 31.5.1999, p. 1

³ OJ L 136, 31.5.1999, p. 8

Regulations, or a failure to comply with the analogous obligations of the Members or staff of the European Parliament 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, in particular the Protocol on privileges and immunities, of 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, offices 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 institutions and bodies, the managers of the offices and agencies and the officials and servants of the institutions, bodies and offices and agencies are to cooperate in the smooth operation of the internal investigations,

HAS DECIDED AS FOLLOWS:

Article 1

Duty to cooperate with the Office

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

Article 2

Duty to supply information

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

The Secretary-General, the Directors-General and the Heads of Service of the European Parliament 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 European Parliament must in no way suffer inequitable or discriminatory treatment as a result of having communicated the information referred to in the first and second paragraphs.

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

This article applies without prejudice to confidentiality requirements laid down in law or the European Parliament's Rules of Procedure.

Article 3

Assistance from the security office

At the request of the Director of the Office, the European Parliament'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 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 European Parliament 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 European Parliament to give his views may be deferred in agreement with the President or the 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 European Parliament 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 the immunity from judicial proceedings of an official or servant of the European Parliament 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 European Parliament, the Office shall be informed.

Article 7

Effective date

This Decision shall take effect on the date of its adoption by the European Parliament.

B

EXPLANATORY STATEMENT

1. On 6 May 1999⁴ Parliament approved an Interinstitutional Agreement concerning internal investigations by the European Anti-Fraud Office (OLAF), which was signed by President GIL-ROBLES on 25 May 1999 and published in the Official Journal on 31 May 1999⁵.
2. The purpose of the Interinstitutional Agreement is to lay down certain procedures for implementing the regulations concerning investigations conducted by the European Anti-Fraud Office⁶ relating to administrative investigations within the institutions.
3. In order to ensure that such investigations are carried out under the same conditions in all the Community institutions, agencies or bodies, the Interinstitutional Agreement of 25 May 1999 marks the agreement of the three major institutions to the adoption of common rules for the terms and conditions for such internal investigations; the common rules are set out in a 'model Decision' annexed to the Agreement.
4. The institutions which are parties to the Agreement have undertaken to make the common rules immediately applicable by each adopting an internal decision in accordance with the model, pursuant to the procedure laid down by its own internal Rules of Procedure, and not to deviate therefrom save where their own particular requirements make such deviation a technical necessity⁷.
5. The Council and the Commission adopted their Decisions on 25 May 1999 and 2 June 1999, respectively⁸. The Commission made minimal technical adjustments (addition of citations, elimination of the term 'manager', which is irrelevant in its case, and replacement of the phrase 'the institution, body, office or agency' by 'the Commission'). The Council made more wide-ranging adjustments, in order to extend the scope of its Decision to cover 'Members of the Council and of its bodies' in respect of any failure to comply with 'the obligations imposed [on them] by Community law'⁹ (if it had not done so, the Decision would not have been applicable to the members of COREPER, for instance).
6. There has been some delay in Parliament fulfilling its undertaking, owing to the period in question (changeover from one parliamentary term to another) and to the uncertainty at the outset regarding the need to draw a distinction between a decision applicable to Members and one applicable to officials and servants.
7. It now appears, in fact, that the new Rule 186(c), which was recently added to the Rules of Procedure, provides a convenient way to resolve this matter by means of a Parliament Decision, incorporating the requisite technical adjustments in relation to the model

⁴ Minutes of the sitting of 6 May 1999

⁵ OJ L 136, 31 May 1999, p. 15

⁶ Regulation (EC) No 1073/99 of the European Parliament and of the Council (OJ L 136, 31.5.1999, p. 1) and Council Regulation (Euratom) No 1074/99 (OJ L 136, 31.5.1999, p. 8) concerning investigations conducted by the European Anti-Fraud Office (OLAF)

⁷ Paragraph 2 of the Interinstitutional Agreement of 25 May 1999

⁸ OJ L 149, 16.6.1999, p. 36 and p. 57, respectively

⁹ See the end of Recital 4 of the Council Decision

Decision, to be annexed to the Rules of Procedure (see below a table indicating the adjustments concerned).

8. The adjustments made to adapt the model Decision to Parliament's needs include a change in the date on which the Decision is to take effect, in order to take account of the delay that has already affected Parliament.
9. The proposed solution satisfies in full the concerns expressed by the Committee on Budgetary Control in its opinion.

Technical adjustments made to the model Decision to produce the draft Decision submitted for Parliament's approval

	Model Decision - Interinstitutional Agreement of 25 May 1999 -	Draft Parliament Decision
Title	(INSTITUTION/BODY or OFFICE/AGENCY) DECISION of ... 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	EUROPEAN PARLIAMENT DECISION of ... 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
Citations	Having regard to <u>(legal basis)</u>	- having regard to <u>the Treaty establishing the European Community, and in particular Article 199 thereof,</u> - <u>having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 25 thereof,</u> - <u>having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 112 thereof,</u> - <u>having regard to the European Parliament's Rules of Procedure, and in particular Rule 186(c) thereof,</u>
	Whereas:	Whereas:
Recitals	(1) Regulation (EC) No 1073/1999 of the European Parliament and of the Council ¹⁰ and Council Regulation (Euratom) No 1074/1999 ¹¹ concerning investigations conducted by the European Anti-Fraud 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 the Euratom Treaty; (2) The responsibility of the European Anti-Fraud 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 proceedings;	(1) Regulation (EC) No 1073/1999 of the European Parliament and of the Council ¹² and Council Regulation (Euratom) No 1074/1999 ¹³ concerning investigations conducted by the European Anti-Fraud 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 the Euratom Treaty; (2) The responsibility of the European Anti-Fraud 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 proceedings;

¹⁰ OJ L 136, 31.5.1999, p. 1

¹¹ OJ L 136, 31.5.1999, p. 8

¹² OJ L 136, 31.5.1999, p. 1

¹³ OJ L 136, 31.5.1999, p. 8

	(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;	(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 their administrative autonomy, all the institutions, bodies and offices and agencies 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 and the Conditions of Employment of Other Servants of the European Communities (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, <u>managers</u> or <u>members of staff of the institutions, bodies and offices and agencies of the Communities</u> not subject to the Staff Regulations;	(4) Therefore, on the basis of their administrative autonomy, all the institutions, bodies and offices and agencies 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 and the Conditions of Employment of Other Servants of the European Communities (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 or staff of the <u>European Parliament</u> 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, in particular the Protocol on privileges and immunities, of the texts implementing them and the Staff Regulations;	(5) Such investigations should be conducted in full compliance with the relevant provisions of the Treaties establishing the European Communities, in particular the Protocol on privileges and immunities, of 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, offices or agencies themselves and should in no way reduce the legal protection of the persons concerned;	(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, offices 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 institutions and bodies, the managers of the offices and agencies and the officials and servants of the institutions, bodies and offices and agencies are to cooperate in the smooth operation of the internal investigations,	(7) Pending the amendment of the Staff Regulations, practical arrangements should be laid down stipulating how the members of the institutions and bodies, the managers of the offices and agencies and the officials and servants of the institutions, bodies and offices and agencies are to cooperate in the smooth operation of the internal investigations,

	HAS DECIDED AS FOLLOWS:	HAS DECIDED AS FOLLOWS:
Article 1	Duty to cooperate with the Office The Secretary-General, the services and any <u>manager, official or servant of (the institution, body, office or agency)</u> 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.	Duty to cooperate with the Office The Secretary-General, the services and any official or servant of the <u>European Parliament</u> 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 of the texts implementing them, <u>members</u> shall cooperate fully with the Office.	Without prejudice to the relevant provisions of the Treaties establishing the European Communities, in particular the Protocol on privileges and immunities, and of the texts implementing them, <u>Members</u> shall cooperate fully with the Office.

<p>Article 2</p>	<p>Duty to supply information Any official or servant of (the <u>institution, body, office or agency</u>) 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, <u>managers</u> or <u>members of staff</u> not subject to the Staff Regulations, shall inform without delay his Head of Service or Director-General or, if he considers it useful, his Secretary-General or the Office direct.</p> <p>The Secretary-General, the Directors-General and the Heads of Service or <u>managers</u> of (the <u>institution, body, office or agency</u>) 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.</p> <p><u>Managers</u>, officials or servants of (the <u>institution, body, office or agency</u>) must in no way suffer inequitable or discriminatory treatment as a result of having communicated the information referred to in the first and second paragraphs.</p> <p>Members who acquire knowledge of facts as referred to in the first paragraph shall inform the President of the <u>institution (or body)</u> or, if they consider it useful, the Office direct.</p>	<p>Duty to supply information Any official or servant of the <u>European Parliament</u> who or any other illegal activity detrimental to the interests of the becomes aware of evidence which gives rise to a presumption of the existence of possible cases of fraud, corruption 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 or staff not subject to the Staff Regulations, shall inform without delay his Head of Service or Director-General or, if he considers it useful, his Secretary-General or the Office direct.</p> <p>The Secretary-General, the Directors-General and the Heads of Service of the <u>European Parliament</u> 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.</p> <p>Officials or servants of the <u>European Parliament</u> must in no way suffer inequitable or discriminatory treatment as a result of having communicated the information referred to in the first and second paragraphs.</p> <p>Members who acquire knowledge of facts as referred to in the first paragraph shall inform the President of <u>Parliament</u> or, if they consider it useful, the Office direct.</p> <p>This article applies without prejudice to confidentiality requirements laid down in law or in the European Parliament's Rules of Procedure.</p>
<p>Article 3</p>	<p>Assistance from the security office At the request of the Director of the Office, the (the <u>institution, body, office or agency</u>)'s security office shall assist the Office in the practical conduct of investigations.</p>	<p>Assistance from the security office At the request of the Director of the Office, the <u>European Parliament</u>'s security office shall assist the Office in the practical conduct of investigations.</p>
<p>Article 4</p>	<p>Informing the interested party Where the possible implication of a <u>member, manager</u>, official or servant 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 <u>member, manager</u>, official or servant of (the <u>institution, body, office or agency</u>) 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.</p> <p>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 <u>member, manager</u>, official or servant of (the <u>institution, body, office or agency</u>) to give his views may be deferred in agreement with the President or the Secretary-General respectively.</p>	<p>Informing the interested party Where the possible implication of a <u>Member</u>, official or servant 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 <u>Member</u>, official or servant of the <u>European Parliament</u> 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.</p> <p>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 <u>Member</u>, official or servant of the <u>European Parliament</u> to give his views may be deferred in agreement with the President or the Secretary-General respectively.</p>

Article 5	<p>Information on the closing of the investigation with no further action taken</p> <p>If, following an internal investigation, no case can be made out against a <u>member, manager</u>, official or servant of (the <u>institution, body, office or agency</u>) 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.</p>	<p>Information on the closing of the investigation with no further action taken</p> <p>If, following an internal investigation, no case can be made out against a <u>Member</u>, official or servant of the <u>European Parliament</u> 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.</p>
Article 6	<p>Waiver of immunity</p> <p>Any request from a national police or judicial authority regarding the waiver of the immunity from judicial proceedings of <u>a manager</u>, official or servant of (the <u>institution, body, office or agency</u>) 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 <u>member</u> of the <u>institution (or body)</u>, the Office shall be informed.</p>	<p>Waiver of immunity</p> <p>Any request from a national police or judicial authority regarding the waiver of the immunity from judicial proceedings of <u>an</u> official or servant of the <u>European Parliament</u> 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 <u>Member</u> of the <u>European Parliament</u>, the Office shall be informed.</p>
Article 7	<p>Effective date</p> <p>This Decision shall take effect on <u>1 June 1999</u>.</p>	<p>Effective date</p> <p>This Decision shall take effect on <u>the date of its adoption by the European Parliament</u>.</p>

OPINION

(Rule 162)

for the Committee on Constitutional Affairs

on amendment of the Rules of Procedure with a view to implementing the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office (OLAF)

Committee on Budgetary Control

Draftsman: Mr Herbert Bösch

PROCEDURE

At its meeting of 21 September 1999 the Committee on Constitutional Affairs appointed Mr Herbert Bösch draftsman.

It considered the draft opinion at its meetings of 21 September and 5 October 1999.

At the latter meeting it adopted the following conclusions unanimously.

The following took part in the vote: Theato, chairman; Bösch, vice-chairman and draftsman; van der Laan, vice-chairman; Blak, vice-chairman; Haug (for Kuhne) van Hulten, Jean-Pierre, Khanbai (for Sumberg pursuant to Rule 153(2)), Langenhagen, McCartin (for Costa), Mastorakis (for Hollande), Morgan, Pomés Ruiz, Staes, Tillich (for Stauner), Turmes and Virankoski (for Di Pietro).

GENERAL COMMENTS

1. Pursuant to Article 7(1) of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)¹⁴, all Community institutions are required to forward to OLAF without delay any information relating to possible cases of fraud or corruption or any other illegal activity.
2. Pursuant to Article 4(6) of the Regulation, each institution is to adopt a decision that includes rules in particular concerning:
 - * a duty on the part of members, officials and other servants to cooperate with and supply information to the OLAF's employees,
 - * the procedures to be observed by OLAF's employees and the guarantees of the rights of persons concerned by an internal investigation.
3. For the purpose of implementing the above provisions and in order to ensure that OLAF's

¹⁴ OJ L 136, 31.5.1999, p. 1
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investigations are as far as possible carried out under the same conditions in all institutions, Parliament, the Council and the Commission decided to adopt a set of common rules.

4. Those rules were laid down in an interinstitutional agreement¹⁵ that was approved by Parliament on 6 May 1999¹⁶ and signed by the Presidents of the three institutions on 25 May 1999.
5. Pursuant to that agreement, the purpose of internal investigations by OLAF is as follows:
 - fighting against fraud, corruption and any other illegal activity detrimental to the financial interests of the European Communities,
 - bringing to light serious situations relating to the discharge of professional duties which may constitute a failure to comply with the obligations of officials or other 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, managers or members of staff not subject to the Staff Regulations.
6. To this end, the Interinstitutional Agreement provides for a model decision containing the implementing provisions needed to ensure the due and proper conduct of OLAF's investigations in the institutions concerned. The model decision is binding in terms of its substance and wording, although it may, and must, be adapted for technical reasons to the particular situations prevailing in the individual institutions. The Council and the Commission have already adopted their respective decisions on the basis of the model decision and have published them¹⁷
7. Parliament has still to adopt its decision, although the Interinstitutional Agreement has been in force since 1 June 1999. Following the Committee on Budgetary Control's meeting of 30/31 August 1999, its chairman wrote to the President on 2 September informing her of the committee's view that the Interinstitutional Agreement could be implemented **immediately** in respect of Parliament's officials and other servants, provided the Bureau adopted a decision to that effect.
8. The Bureau can base such a decision on Rule 22(5) of the Rules of Procedure, pursuant to which the Bureau is to lay down regulations governing the situation of Parliament's officials and other servants. Plenary does not need to be consulted, because it approved the Interinstitutional Agreement and associated model decision on 6 May 1999 and hence manifested its political will to adopt such rules. However, such rules can be legally effective only if the Bureau adopts a decision to this effect, since plenary has delegated decisions on the status of officials and other servants to the Bureau pursuant to Rule 22(5).

AMENDMENT TO THE RULES OF PROCEDURE NEEDED

9. The situation with regard to Members of the European Parliament is different. The Interinstitutional Agreement approved by plenary on 6 May 1999 expressly includes

¹⁵ OJ L 136, 31.5.1999, p. 15

¹⁶ See Minutes of 6 May 1999, Part II

¹⁷ OJ L 149, 16.6.1999, p. 36 (Decision of the Council of 25 May) and p. 57 (Decision of the Commission of 2 June)

Members of the institutions, including, therefore, Members of the European Parliament, and lays down relevant rules. This, too, therefore involves nothing more than technical implementation of the Interinstitutional Agreement.

10. In this case, however, technical implementation cannot be achieved by means of a Bureau decision, because Parliament has not delegated responsibility to the Bureau as it has in the case of officials and other servants. In order that the provisions of the Interinstitutional Agreement may be put into effect, Parliament must adopt a decision amending its Rules of Procedure.
11. However, the substance of such an amendment is to a large extent determined by the Interinstitutional Agreement and may not under any circumstances contradict that agreement or the OLAF Regulation. It must essentially lay down the following in order to comply with the Interinstitutional Agreement:
 - * the duty of Members to cooperate fully with OLAF,
 - * a duty on the part of Members to inform OLAF, directly or through the President of Parliament, if they become aware of possible cases of fraud, corruption or other illegal activity detrimental to the interests of the European Communities,
 - * a requirement to inform the Members concerned if accusations are made against them.
12. Adhering as closely as possible to the wording of the model decision, your draftsman has drafted a new rule to be added to the Rules of Procedure, which the committee responsible is recommended to incorporate. The text proposed by your draftsman could raise the question of what would happen if OLAF became aware of facts that could be held against a Member and could possibly constitute the basis for criminal proceedings.
13. This question need not be addressed in the Rules of Procedure as binding provisions already exist in Article 10(2) of the OLAF Regulation, pursuant to which OLAF is required to forward to the national judicial authorities any information it may have concerning matters liable to result in criminal proceedings. It is then up to the national judicial authorities, if appropriate, to request waiver of immunity in respect of the Member concerned. The procedure for waiver of immunity is, however, already laid down in Rule 6 of the Rules of Procedure.
14. Your draftsman therefore recommends that the text he has proposed as an addition to the Rules of Procedure be inserted in Chapter I (Members of the European Parliament) immediately before the rule on waiver of immunity.
15. Alternatively, the provisions relating to OLAF could be annexed to the Rules of Procedure, pursuant to Rule 186(c). If the committee responsible were to opt for this solution, however, it should be ensured that the text has the same legally binding effect. Decisions to annex provisions to the Rules are adopted by a majority of the votes cast. Pursuant to Article 199 of the EC Treaty, however, Parliament is required to adopt its Rules of Procedure acting by a majority of its Members.

CONCLUSIONS

- A. The Committee on Budgetary Control recommends the committee responsible to

incorporate in its report the following text as an addition to the Rules of Procedure:

New Article 5a of the Rules of Procedure to ensure compliance with the requirements of the Interinstitutional Agreement on OLAF, to be inserted before Rule 6 in Chapter I of the Rules of Procedure.

1. Without prejudice to the relevant provisions of the Treaties establishing the European Communities, in particular the Protocol on privileges and immunities, and of the texts implementing them, Members shall cooperate fully with the European Anti-fraud Office (OLAF).
2. Members shall inform the President or, if they consider it useful, the Office directly, if they acquire knowledge of factual elements which give rise to the presumption of the existence of possible cases of fraud, corruption or any other illegal activity detrimental to the interests of the Communities or 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 liable to result in disciplinary or, in appropriate cases, criminal proceedings, or a failure to comply with the similar obligations of the Members, heads or members of staff not subject to the Staff Regulations.
3. Where the possibility of the implication of a Member emerges, 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 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.
4. 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 to give his views may be deferred in agreement with the President.
5. If, following an internal investigation, no case can be made against a Member 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.
6. The Office shall be informed of requests for waiver of immunity concerning Members.