

DECISION AB n° 05/2012

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

THE ADMINISTRATIVE BOARD OF THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing the Agency for the Cooperation of Energy Regulators (hereafter referred to as the "Agency"), and in particular to Article 26 (2) thereof;

Whereas:

- (1) Regulation (EC) No 1073/1999 of the European Parliament and of the Council¹ and Council Regulation (Euratom) No 1074/1999² 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 OJ L 136, 31.5.1999, p. 1.

² 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;
- (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, managers or members of staff of the institutions, bodies and offices and agencies of the Communities 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

1. The Director of the Agency, members of the Agency's bodies, any servant of the Agency and members of staff not subject to the Staff Regulations 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.
2. 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, the Director of the Agency, members of the Agency's bodies, any servant of the Agency and members of staff not subject to the Staff Regulations shall cooperate fully with the Office.

Article 2

Duty to supply information

1. Any servant of the Agency, member of the Agency's bodies and member of staff not subject to the Staff Regulations 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, managers or members of staff not subject to the Staff Regulations, shall inform without delay his manager or the Director or the Chairman of the Administrative Board or, if he considers it useful, the Office directly.
2. The Chairman of the Administrative Board, the Director or the managers of the Agency 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.
3. Servants of the Agency, managers, members of the Agency's bodies, or members of staff not subject to the Staff Regulations 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.

Article 3

Assistance from the security office

1. At the request of the Director of the Office, the Agency's Local Informatics Security Officer (LISO) and deputy LISO shall assist the Office in the practical conduct of investigations.

Article 4

Informing the interested party

1. Where the possible implication of a servant of the Agency, member of the Agency's bodies, or member of staff not subject to the Staff Regulations 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 servant of the Agency, member of the Agency's bodies, or member of staff not subject to the Staff Regulations 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.
2. 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 servant of the Agency, member of the Agency's bodies, or member of staff not subject to the Staff Regulations to give his views may be deferred in agreement with the Chairman of the Administrative Board or the Director.

Article 5

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

1. If, following an internal investigation, no case can be made out against a servant of the Agency, member of the Agency's bodies, or member of staff not subject to the Staff Regulations 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

1. Any request from a national police or judicial authority regarding the waiver of the immunity from judicial proceedings of a servant of the Agency, member of the Agency's bodies, or member of staff not subject to the Staff Regulations 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 Agency, the Office shall be informed.

Article 7
Effective date

This Decision shall take effect on the day following this of its adoption.

Done at Ljubljana on 13 March 2012

For the Administrative Board:

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by several vertical strokes and a horizontal line at the bottom, all enclosed within a large, sweeping loop.

Piotr Woźniak
Chairman of the ACER Administrative Board

