



**COUNCIL OF  
THE EUROPEAN UNION**

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**COVER NOTE**

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from: Mr Matthias Taube, Chair of the Management Board of the Agency for the operational management of large-scale IT systems in the area of freedom, security and justice

to: Mr Herman Van Rompuy, President of the European Council

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Subject: Accession of the European Agency for operational management of large-scale IT systems in the area of freedom, security and justice to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by the European Anti-Fraud Office (OLAF)

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Delegations will find attached the Decision of the Management Board of the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Union's interests.



Brussels, 31.07.2012  
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Mr Herman Van Rompuy  
President of the  
Council of the European Union  
Rue de la Loi 175,  
B-1048 Brussels

**Subject: Accession of the European Agency for operational management of large scale IT systems in the area of freedom, security and justice to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by the European Anti-Fraud Office (OLAF)**

Dear Mr Van Rompuy,

I would hereby like to inform you that the European Agency for the operational management of large-scale systems in the area of freedom, security and justice has acceded to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by the European Anti-Fraud Office (OLAF).

Attached please find Management Board decision No 027 of 2012 adopted at its meeting on 28 June 2012 which follows closely the text of the model decision annexed to the Interinstitutional Agreement of 25 May 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' interests.

Yours faithfully,

Matthias Taube  
Chair of the Management Board  
of the Agency

Copy: Mr Uwe Corsepius, Secretary General - Council of the European Union

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**DECISION OF THE MANAGEMENT BOARD  
OF THE EUROPEAN AGENCY FOR THE OPERATIONAL MANAGEMENT OF  
LARGE-SCALE IT SYSTEMS IN THE AREA OF FREEDOM, SECURITY AND JUSTICE**

**of 28 of June 2012**

**concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Union's interests**

THE MANAGEMENT BOARD OF THE EUROPEAN UNION AGENCY FOR THE OPERATIONAL MANAGEMENT OF LARGE-SCALE INFORMATION SYSTEMS IN THE AREA OF FREEDOM, SECURITY AND JUSTICE

Having regard to Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice<sup>1</sup> and in particular Article 35 thereof,

Whereas:

- (1) Regulation (EC) No 1073/1999 of the European Parliament and of the Council<sup>2</sup> and Council Regulation (Euratom) No 1074/1999<sup>3</sup> concerning investigations conducted by the European Antifraud 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 Treaty on European Union, the Treaty on the Functioning of the European Union, 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 Union's 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;

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<sup>1</sup> OJ L 286, p. 1

<sup>2</sup> OJ L 136, 31.5.1999, p. 1

<sup>3</sup> OJ L 136, 31.5.1999, p. 8

- (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 Union, as referred to in Articles 11, 11a, 12, 12b, 13, 16 and 17 of the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union (hereinafter referred to as "the Staff Regulations"), detrimental to the interests of the Union 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, a failure as referred to in Article 86 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 Union not subject to the Staff Regulations;
- (5) Such investigations should be conducted in full compliance with the relevant provisions of the Treaty on European Union and the Treaty on the Functioning of the European Union, 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 Union 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;

HAS DECIDED AS FOLLOWS:

*Article 1*

**Duty to cooperate with the Office**

The Executive Director, the services and any manager, official or servant of the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (hereinafter referred to as "the Agency" 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 Treaty on European Union and the Treaty on the Functioning of the European Union, in particular the Protocol on privileges and immunities, and of the texts implementing them, members of the Agency's Management Board and of the Advisory groups shall cooperate fully with the Office.

## *Article 2*

### **Duty to supply information**

Any official or servant of the Agency 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 Union, 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 Union liable to result in disciplinary or, in appropriate cases, criminal proceedings, or a failure to comply with the analogous obligations of the members of the Management Board and of the Advisory Groups, managers or members of staff not subject to the Staff Regulations, shall inform without delay his or her Head of Unit or the Executive Director or if he considers it useful the Office direct.

The Chairperson of the Management Board, the Executive 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.

Managers, officials or servants of the Agency 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 of the Management Board and of the Advisory Groups who acquire knowledge of facts as referred to in the first paragraph shall inform the Chairperson of the Management Board or, if they consider it useful, the Office direct.

## *Article 3*

### **Assistance from the security office**

At the request of the Director of the Office, the Agency'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 of the Management Board or of the Advisory Groups, the Executive Director, or any manager, official or servant or members 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 member, manager, official or servant of the Agency may not be drawn once the investigation has been completed without the interested party's having been enabled to express his or her views on all the facts which concern him or her.

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, manager, official or servant of the Agency to give his or her views may be deferred in agreement with the Executive Director.

*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 of the Management Board or of the Advisory Groups, the Executive Director or any manager, official or servant of the Agency against whom allegations have been made, the internal investigation concerning him or her 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 a manager, official or servant of the Agency concerning possible cases of fraud, corruption or any other illegal activity shall be transmitted to the Director of the Office for his or her opinion. If a request for waiver of immunity concerns a member of the Management Board or of the Advisory Groups of the Agency, the Office shall be informed.

*Article 7*

**Effective date**

This Decision shall take effect on 29 June 2012.

Done in Tallinn, 28 June 2012  
For the Management Board

Matthias Taube  
Chairperson

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