

DECISION
ADB(D) 11-2008

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 SESAR JOINT UNDERTAKING,

Having regard to the Statutes of the SESAR Joint Undertaking annexed to Council Regulation (EC) 219/2007 of 27 February 2007 and in particular article 20 thereof¹

Whereas:

- (1) Regulation (EC) No 1073/1999 of the European Parliament and of the Council² concerning investigations conducted by the European Antifraud Office provides 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;
- (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, 11a, 12b, 13, 16 and 17 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/failure, as referred to, in particular, in Article 22a of the Staff Regulations, or 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 Communities not subject to the Staff Regulations;
- (5) This decision shall therefore be fully applicable to
 - a. the members of the Administrative Board and any other body and committee,

¹ OJ L64, 2.3.2007, p. 11

² OJ L136, 31.5.1999, p. 1

- b. the Executive Director,
 - c. the managers, the officials and servants of the SESAR Joint Undertaking subject to the aforementioned Staff Regulations, any other member of the staff, seconded staff and consultant in any contractual form not subject to the aforementioned Staff Regulations (hereinafter referred to as “collaborators of the SESAR Joint Undertaking”).
- (6) 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;
- (7) 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;

In its ordinary meeting of 1 December 2008, **HAS DECIDED AS FOLLOWS:**

Article 1
Duty to cooperate with the Office

The Executive Director, the services and the collaborators of the SESAR Joint Undertaking 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, the members of any body of the SESAR Joint Undertaking shall cooperate fully with the Office.

Article 2
Duty to supply information

Any official and servant of the SESAR Joint Undertaking subject to the aforementioned Staff Regulations and any other member of the staff, seconded staff and consultant in any contractual form not subject to the aforementioned Staff Regulations of the SESAR Joint Undertaking 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 analogous obligations, shall inform without delay his³ manager, or the Executive Director or, if he considers it useful, his Director or the Office directly.

The Executive Director, the managers of the SESAR Joint Undertaking 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 “his” is used with the meaning of his or her in this document, and “him” with the meaning of him or her.

The collaborators of the SESAR Joint Undertaking 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 Administrative Board who acquire knowledge of facts as referred to in the first paragraph shall inform the Chairperson of the Administrative Board or, if they consider it useful, the Office directly.

Article 3 Assistance from the security office

At the request of the Director of the Office, the SESAR Joint Undertaking's security office, where constituted, shall assist the Office in the practical conduct of investigations.

Article 4 Informing the interested party

Where the possible implication of a collaborator of the SESAR Joint Undertaking or a member of any body of the SESAR Joint Undertaking 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 collaborator of the SESAR Joint Undertaking or a member of any body of the SESAR Joint Undertaking 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 of any body of the SESAR Joint Undertaking or the collaborator of the SESAR Joint Undertaking to give his views may be deferred in agreement with the Chairperson of the Administrative Board or the Executive Director 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 collaborator of the SESAR Joint Undertaking or a member of any body of the SESAR Joint Undertaking 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 and/or servant of the SESAR Joint Undertaking subject to the aforementioned 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 collaborator of the SESAR Joint Undertaking or a member of any body of the SESAR Joint Undertaking not subject to the Staff Regulations, the Office shall be informed.

Article 7
Effective date

This Decision shall take effect on the date of its approval.

Done in Brussels, 1 December 2008

For the Administrative Board

Daniel Calleja Crespo
The Chairperson

