

DECISION n°08
of the Administrative Board of the European Railway Agency
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 ERA ADMINISTRATIVE BOARD,

Having regard to Regulation (EC) No 881/2004 of the European Parliament and of the Council ⁽¹⁾ establishing a European Railway Agency (hereinafter referred to as "the Agency") and in particular Article 41, paragraph 1 and 2 thereof,

Whereas:

- (1) Regulation (EC) No 1073/1999 of the European Parliament and of the Council ⁽²⁾ and Council Regulation (Euratom) No 1074/1999⁽³⁾ concerning investigations conducted by the European Anti-Fraud Office (hereinafter referred to as "the 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 Treaties (hereinafter referred to as "the Institutions");
- (2) These administrative investigations aim at (1) fighting fraud, corruption and any illegal activity undermining the financial interests of the Communities, and (2) bringing to light the facts, related to the exercise of professional activities, which can constitute a serious failure to the obligations of the officials and servants of the Communities or to the similar obligations of the members and managers of the Institutions or of the members of their personnel who are not subject to the Staff Regulations of officials of the European Communities or to the Conditions of Employment of Other Servants of the European Communities (hereinafter referred to as 'the Staff Regulations');
- (3) The European Parliament, the Council of the European Union and European Commission stressed that the responsibility of the Office, as established by Commission Decision 1999/352/EC, ECSC, Euratom, of 28 April 1999⁽⁴⁾, extends beyond the protection of the financial interests to include all the activities relating to the need to safeguard Community interests against irregular conduct liable to give rise to administrative or criminal proceedings;
- (4) In accordance with Regulation n° 881/2004 Article 41 paragraph 2, the Agency shall adopt the necessary provisions applicable to all Agency staff in order to combat fraud, corruption and any other illegal activity. In addition, Article 41 paragraph 2 stipulates, that the Agency shall accede to the Inter-institutional 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 carried out by the European Anti-Fraud Office (OL A F)⁽⁵⁾: it is up to the Agency to formalise this accession and adopt the necessary implementing measures in order to facilitate the control of the administrative investigations of the Office within the Agency;
- (5) The Administrative Board of the Agency, thus, decides to entrust to the Office the task of conducting internal administrative investigations as foreseen in Regulations No 1073/1999 and 1074/1999, 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 namely in Articles 11, 11a, 12b, 13, 16, 17, 22a, of 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 Agency not subject to the Staff Regulations;
- (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;

¹ OJ L 220, 21.6.2004, p. 3

² OJ L 136, 31.5.1999, p. 1

³ OJ L 136, 31.5.1999, p. 8

⁴ OJ L 136, 31.5.1999, p.20

⁵ OJ L 136, 31.5.1999, p.15

- (7) Finally, 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;

HAS DECIDED AS FOLLOWS:

Article 1

Accession of the Agency to the Inter-institutional Agreement

The Agency accedes to the Inter-institutional 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 carried out by the European Anti-Fraud Office (OLAF).

Article 2

Subject

In addition to the accession of the Agency to the Agreement referred to above, this decision contains the internal rules in relation to fighting fraud, corruption and irregularities as well as the provisions intended to facilitate the administrative investigations of the Office within the Agency.

Article 3

Duty to cooperate with the Office

Any official or servant of the Agency as well as any member of staff of the Agency 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.

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 of the Administrative Board shall cooperate fully with the Office.

Article 4

Duty to supply information (1)

1. Any official or servant of the Agency, any member of staff of the Agency 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 Members of the Administrative Board, members of staff not subject to the Staff Regulations or service providers acting on behalf of the Agency

shall inform without delay his/her Head of Unit, the Executive Director or, if he/she considers it useful, the Chairman of the Administrative Board or the Office directly.

2. The Chairman of the Administrative Board, the Executive Director and Head of Units, 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 paragraph 1 may be presumed.
3. Officials, servants or members of staff of the Agency 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 paragraphs 1 and 2, in as far as they acted in good faith.

Members of the Administrative Board who acquire knowledge of facts as referred to in the first paragraph shall inform the Chairman or, if they consider it useful, the Office directly.

4. Paragraphs 1 to 3 shall not apply to documents, deeds, reports, notes or information, in any form whatsoever held for the purposes of, created or disclosed in the course of, proceedings in legal cases whether, pending or closed.

Article 5

Duty to supply information (II)

1. Any official or servant of the Agency, any member of staff of the Agency not subject to the Staff Regulations, the Executive Director or Member of the Administrative Board which discloses information referred to in Article 4 to the President of the Commission, or of the Court of Auditors, or of the Council, or of the European Parliament or to the European Ombudsman, shall not suffer any prejudicial effects on the part of the Agency, provided that both of the following conditions are met:
 - he/she honestly and reasonably believes that the information disclosed and any allegation contained in it, are substantially true; and
 - he/she has previously disclosed the same information to the Office or in the Agency and has allowed to the Office or to the Agency the time set by the Office or the Agency, given the complexity of the case, to take appropriate action. The official or servant of the Agency, the member of staff of the Agency not subject to the Staff Regulations, the Executive Director or the Member of the Administrative Board are informed of that period of time within 60 days.
2. The period referred to in paragraph 1 shall not apply when the official or servant of the Agency, the member of staff of the Agency not subject to the Staff Regulations, the Executive Director or the Member of the Administrative Board can demonstrate that it is unreasonable having regard to all the circumstances of the case.
3. Paragraphs 1 and 2 shall not apply to documents, deeds, reports, notes or information, in any form whatsoever held for the purposes of, created or disclosed in the course of, proceedings in legal cases whether, pending or closed.

Article 6

Assistance from the security officer

At the request of the Director of the Office, the Agency' security officer shall assist the Office in the practical conduct of investigations within the Agency.

Article 7

Informing the interested party

1. Where the possible implication of an official or servant of the Agency, a member of staff of the Agency not subject to the Staff Regulations, the Executive Director or a Member of the Administrative Board 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 one of those persons may not be drawn once the investigation has been completed without the interested party having been enabled to express his views on all the facts which concern him. The conclusions shall mention these views.
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 person concerned to give his views may be deferred in agreement with the Chairman of the Administrative Board or the Executive Director of the Agency respectively.

Article 8

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

If, following an internal investigation, no case can be made out against an official or servant of the Agency or a member of staff of the Agency 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. The interested party may ask that this decision appears in its personal file.

Article 9

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 Agency or a member of staff of the Agency 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 Administrative Board the Office shall be informed.

Article 10

Effective date

This Decision shall take effect on the date of its adoption by the Administrative Board. It will be published on the Agency's internet site.

Done at Lille, 17/10/2006

For the Administrative Board

The Chairman

REINO LAMPINEN