



**Decision No 22/2021
of 10 November 2021
of the Management Board**

**concerning the terms and conditions for internal investigations at the
European Labour Authority in relation to the prevention of fraud,
corruption and any illegal activity detrimental to the interests of the Union**

THE EUROPEAN LABOUR AUTHORITY,

Having regard to Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344¹ (hereinafter 'Regulation (EU) 2019/1149'), and in particular Article 37 thereof,

Having regard to 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 OLAF² (hereinafter the 'Interinstitutional Agreement'),

Having regard to Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 establishing the European Anti-Fraud Office³ (hereinafter referred to as 'OLAF'),

Having regard to the Regulation (EU, EURATOM) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999⁴ (hereinafter referred to as the 'OLAF Regulation'),

Having regard to Council Regulation (EC, Euratom) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities⁵,

Having regard to Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC⁶ (hereinafter referred to as 'Regulation 2018/1725'),

Having regard to the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union as laid down by Council Regulation (EEC, EURATOM, ECSC) 259/1968⁷ (hereinafter referred to as the 'Staff Regulations and CEOS'), and

¹ OJ L 186, 11.7.2019, p. 21.

² OJ L 136, 31.5.1999, p. 15.

³ OJ L 136, 31.05.1999, p. 20.

⁴ OJ L 248, 18.9.2013, p. 1.

⁵ OJ L 292, 15.11.1996, p. 2.

⁶ OJ L 295, 21.11.2018, p. 39–98.

⁷ OJ L 56, 4.3.1968, p. 1–7.

last amended by Regulation (EU, EURATOM) 1023/2013 of the European Parliament and the Council of 22 October 2013, and in particular Articles 11 to 26a, Title VI and Annex IX of the Staff Regulations applicable by analogy to temporary agents and contract agents by virtue of Articles 11, 50a, 81 and 119 of the CEOS,

Whereas:

- (1) Article 37 of the founding Regulation provides that, in order to facilitate the fight against fraud, corruption and any other illegal activity under the OLAF Regulation, the Authority shall accede to the Interinstitutional Agreement and that it shall adopt appropriate provisions applicable to all employees of the Authority using the template set out in the Annex to that Agreement;
- (2) Article 1(4) of the OLAF Regulation provides that OLAF shall conduct internal administrative investigations for the purpose of fighting fraud, corruption and any other illegal activity affecting the financial interests of the Union within the institutions, bodies, offices and agencies established by, or on the basis of, the Treaties. To that end, OLAF shall investigate serious matters relating to the discharge of professional duties constituting a dereliction of the obligations of officials and other servants of the Union liable to result in disciplinary or, as the case may be, criminal proceedings, or an equivalent failure to discharge obligations on the part of members of institutions and bodies, their alternates, heads of offices and agencies or staff members of institutions, bodies, offices or agencies not subject to the Staff Regulations;
- (3) The responsibilities of OLAF, as established by Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999, extend beyond the protection of financial interests to include all activities related to the need to safeguard the interests of the Union against irregular conduct liable to give rise to administrative disciplinary or criminal proceedings;
- (4) Pursuant to Article 2(1) last subparagraph of Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999, OLAF may be entrusted by the European Commission or by the other institutions or bodies with investigations in other areas than the ones referred to in recital (2) above;
- (5) The scope of the fight against fraud should be broadened and its effectiveness enhanced by exploiting existing expertise in the area of administrative investigations;
- (6) Therefore, on the basis of its administrative autonomy, the Authority entrusts OLAF with 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 other servants of the Union, as referred to, in particular, in Articles 11 to 26a of the Staff Regulations and Articles 11 and 81 of the CEOS, detrimental to the interests of the Union and liable to result in disciplinary or, in appropriate cases, criminal proceedings, or serious misconduct and/or failure, as referred to, in particular, in Articles 22, 22(a) and 22 (b) of the Staff Regulations and Articles 11 and 81 of the CEOS, or a failure as referred to in Article 86 of the Staff Regulations and Articles 50a and 119 of the CEOS, or an equivalent failure to comply with the analogous obligations of the members of the Management Board, their alternates and assistants, members of staff of the Authority not subject to the Staff Regulations or the CEOS, seconded national experts and other staff referred to in Article 33 of Regulation (EU) 2019/1149;

- (7) Pursuant to Article 4(1) and (7) of Regulation (EU, EURATOM) No 883/2013, internal investigations at the Authority shall be conducted in accordance with Regulation (EU, EURATOM) No 883/2013, Commission Decision 352/1999 and with the present decision adopted by the Authority. This decision includes, in particular, a duty on the part of the members of the Management Board, their alternates and assistants, the Executive Director, all the staff of the Authority, all seconded national experts, staff members of the Authority not subject to the Staff Regulations and the CEOS, and other staff referred to in Article 33 of Regulation (EU) 2019/1149 to cooperate with and supply information to OLAF, while ensuring the confidentiality of internal investigations;
- (8) Such investigations should be conducted in full compliance with the Treaties, and in particular Protocol No 7 on the privileges and immunities of the European Union, and the Staff Regulations and CEOS;
- (9) Such investigations should be carried out under equivalent conditions in all the Union institutions, bodies, offices and agencies; assignment of this task to OLAF should not affect the responsibilities of the Authority and should in no way reduce the legal protection of the persons concerned;
- (10) Practical arrangements stipulating how the Executive Director of the Authority, members of the Management Board, their alternates and assistants, seconded national experts, the staff of the Authority subject or not to the Staff Regulations and CEOS are to cooperate with the staff of OLAF in the smooth operation of the internal investigations are required;

HAS DECIDED AS FOLLOWS:

Article 1

Duty to cooperate with OLAF

- (1) The Executive Director of the Authority, any official or other servant of the Authority, as well as seconded national experts, and other staff referred to by Article 33 of Regulation (EU) 2019/1149 shall cooperate fully with the staff of OLAF and shall lend any assistance required to the investigation related to fraud or corruption or to any other illegal activity detrimental to financial interests of the Union or to serious matters relating to the discharge of professional duties constituting a dereliction of the obligations of officials and other servants of the Union liable to result in disciplinary or, as the case may be, criminal proceedings, or an equivalent failure to discharge obligations on the part of the members of the Management Board, their alternates and assistants and the staff members of the Authority not subject to the Staff Regulations or CEOS, seconded national experts and other staff referred to in Article 33 of the Regulation (EU) 2019/1149. With that aim in view, they shall supply the staff of OLAF with all useful information and explanations.
- (2) Without prejudice to the relevant provisions of the Treaties and of the texts implementing them, members of the Management Board and their alternates shall

cooperate fully with OLAF and shall lend assistance as provided in paragraph (1) above.

Article 2

Duty to supply information

- (1) The Executive Director of the Authority, members of the Management Board, their alternates, assistants, seconded national experts, any member of the staff of the Authority and other staff referred to by Article 33 of Regulation (EU) 2019/1149 who, in course of or in connection with the performance of his/her duties, becomes aware of information and/or 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 matters relating to the discharge of professional duties constituting a dereliction of the obligations of officials or other servants of the Union liable to result in disciplinary or, in appropriate cases, criminal proceedings, or a failure to comply with the analogous obligations on the part of members of the Management Board, their alternates, assistants, seconded national experts, any member of the staff of the Authority and other staff referred to by Article 33 of Regulation (EU) 2019/1149 as well as the members of staff not subject to the Staff Regulations, shall inform without delay, in writing, as follows: in case of the Executive Director of the Authority or a member of the Management Board, the Chairperson of the Management Board or in case of a member of the staff of the Authority his/her immediate superior or the Executive Director of the Authority, or in both cases, where he/she has justified reasons to consider that the procedure set out in this paragraph would prevent a proper reporting to OLAF, shall inform OLAF directly.
- (2) The Chairperson of the Management Board, the Executive Director or any manager or member of the staff of the Authority shall transmit to OLAF without delay any information and/or evidence of which he/she is aware, from which the existence of irregularities as referred to in paragraph (1) may be presumed.
- (3) Neither the Executive Director nor any member of the staff of the Authority or seconded national expert shall in no way suffer inequitable or discriminatory treatment as a result of having communicated the information referred to in paragraphs (1) and (2), provided that he/she acted reasonably and honestly.

Article 3

Assistance from the security service

At the request of the Director-General of OLAF, addressed to the Executive Director of the Authority, a service responsible for security shall assist OLAF in the practical conduct of investigations.

Article 4

Informing the person concerned

- (1) Whenever an investigation by OLAF reveals the possible implication of the Executive Director of the Authority, a member of the Management Board, their alternates, assistants, seconded national experts or a member of the staff of the Authority and other staff referred to by Article 33 of Regulation (EU) 2019/1149, the person concerned shall be informed as soon as possible provided that this is not harmful to

the investigation. In any event, conclusions referring by name to the Executive Director of the Authority, a member of the Management Board, their alternates, assistants, seconded national experts, or a member of the staff of the Authority other staff referred to by Article 33 of Regulation (EU) 2019/1149, may not be drawn up without the persons concerned having been given the opportunity to comment on all the facts that concern them. The final investigation report shall make reference to any such comments.

- (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 Executive Director of the Authority, a member of the Management Board, their alternates, assistants, seconded national experts or a member of the staff of the Authority and other staff referred to by Article 33 of Regulation (EU) 2019/1149 to give comments may be deferred in agreement with, in case of the Executive Director of the Authority or a member of the Management Board, their alternates, with the chairperson of the Management Board, and in case of a member of the staff of the Authority, seconded national expert, other staff referred to by Article 33 of Regulation (EU) 2019/1149, with the Executive Director of the Authority respectively. In such cases, no disciplinary proceedings may be opened before the person concerned has been given an opportunity to comment.

Article 5

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

If, on completion of an internal investigation within the Authority by OLAF, no case can be made out against the person(s) concerned, the internal investigation shall be closed, with no further action taken, by decision of the Director-General of OLAF, who shall inform the person concerned 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 the Executive Director of the Authority, or a member of the staff of the Authority concerning possible cases of fraud, corruption or any other illegal activity shall be transmitted to the Director-General of OLAF for his/her opinion. If a request for waiver of immunity concerns a national member of the Management Board, or a seconded national expert, OLAF shall be informed.

Article 7

Seconded national experts

For the purpose of this Decision, seconded national experts, including National Liaison Officers, shall be regarded as members of the staff of the Authority not subject to the Staff Regulations and CEOS.

Article 8

Entry into force

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

For the Management Board

(e-signed)

Tom BEVERS

Chair of the Management Board