

Helsinki, 23 April 2009
Doc: MB/30/2009 final

**DECISION CONCERNING TERMS AND CONDITIONS FOR
INTERNAL INVESTIGATIONS IN RELATION TO THE PREVENTION
OF FRAUD, CORRUPTION AND ANY ILLEGAL ACTIVITY
DETRIMENTAL TO THE COMMUNITIES' INTERESTS**

(Document adopted by the Management Board)

THE MANAGEMENT BOARD OF THE EUROPEAN CHEMICALS AGENCY

Having regard to Article 98(2) of Regulation (EC) No 1907/2006 of the European Parliament and the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directive 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC,

Whereas:

(1) Regulation (EC) No 1073/1999 of the European Parliament and of the Council concerning investigations conducted by the European Anti-Fraud Office (hereinafter referred to as 'the 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) These administrative investigations aim at (1) fighting fraud, corruption and any illegal activity undermining the financial interests of the Communities, and (2) bringing to the light 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 persons 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, 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.

(4) In accordance with Article 98(2) of Regulation (EC) No 1907/2006, the European Chemicals Agency (hereinafter referred to as 'the Agency') shall be bound by 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 the Office and shall issue, without delay, the appropriate provisions applicable to all of its staff.

(5) Therefore, on the basis of its administrative autonomy, the Agency 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 the members of staff of the Agency subject to the Staff Regulations, as referred to in Articles 11, 11a, 12b, 13, 16, 17 or 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 as referred to in Article 86 of the Staff Regulations, or a failure to comply with the analogous obligations of the members of staff of the Agency not subject to the Staff Regulations.

(6) Such administrative investigations by the Office 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, the Seat Agreement between the European Chemicals Agency and the Republic of Finland and the Staff Regulations.

(7) Such administrative 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.

(8) Practical arrangements should be laid down stipulating how the Agency is to cooperate in the smooth operation of the internal investigations.

HAS ADOPTED THIS DECISION:

Article 1
Subject

This Decision contains the internal rules of the Agency 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 2
Duty to cooperate with the Office

The Agency shall cooperate fully with the Office's agents and shall lend any assistance required to an investigation. With that aim in view, the staff members designated by the Executive Director to assist in the investigation 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 Agency's Management Board shall cooperate fully with the Office.

Article 3
Duty to supply information

1. Any member of the Agency staff, whether or 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 the members of staff of the Agency subject to the Staff Regulations liable to result in disciplinary or, in appropriate cases, criminal proceedings, or a failure to comply with the analogous obligations of members of staff not subject to the Staff Regulations, shall inform without delay his/her Head of Unit or Director or, if he considers it useful, the Executive Director or the Office directly thereof.

2. The Executive Director, Directors and Heads of Unit 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. 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 4

Protection when supplying information

1. Members of staff of the Agency must in no way suffer inequitable or discriminatory treatment as a result of having communicated the information referred to in Article 3, in as far as they acted in good faith.
2. Any member of staff of the Agency, whether or not subject to the Staff Regulations who discloses information referred to in Article 3 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 to the Agency and has allowed the Office or the Agency the period of time set by the Office or the Agency, given the complexity of the case, to take appropriate action. The member of staff of the Agency shall be duly informed of that period of time within 60 days.
3. The period referred to in paragraph 2 shall not apply when the member of staff of the Agency, whether or not subject to the Staff Regulations, can demonstrate that it is unreasonable having regard to all the circumstances of the case.

Article 5

Assistance from the Security Manager

At the request of the Director of the Office, the Agency's Security Manager shall assist the Office in the practical conduct of investigations.

Article 6

Informing the interested party

Where the possible implication of a staff member, whether or 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 this person 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/her. The conclusions shall mention these views.

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 staff member to give his/her views may be deferred in agreement with the Executive Director or the Chairman of the Management Board respectively.

Article 7

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 staff, whether or 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 his/her personal file.

Article 8

Waiver of immunity

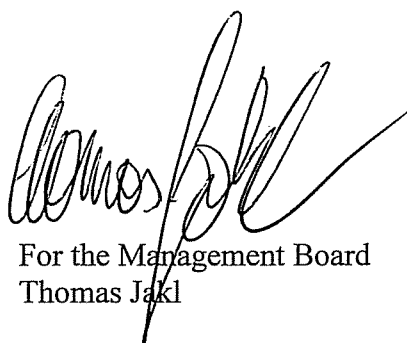
Any request from a national police or judicial authority regarding the waiver of the immunity from judicial proceedings of a member of the Agency staff, whether or not subject to the Staff Regulations, concerning possible cases of fraud, corruption or any other illegal activity shall be transmitted to the Director of the Office for his opinion.

Article 9

Entry into force

This Decision shall enter into force on the day of its adoption.

Done at Helsinki, 23 April 2009.


For the Management Board
Thomas Jakl

