



COMMISSION OF THE EUROPEAN COMMUNITIES

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**Proposal for a  
COUNCIL REGULATION (EC, Eu  
establishing a European Fraud Investigation Office**

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(presented by the Commission)

## EXPLANATORY MEMORANDUM

### Introduction

1. When Parliament adopted the Bösch Report on UCLAF<sup>1</sup> on 7 October 1998, the Commission undertook to present, by the beginning of December, a proposal for a legislative instrument for the establishment of a European Fraud Investigation Office to conduct external and internal investigations in total independence and without any form of subordination to the Commission. The importance attached by the institutions and the Member States to combating fraud and all forms of illegal activity to the detriment of the Communities' financial interests is such that all available means should be deployed to fully attain this objective.
2. The purpose of this proposal is to establish a European Fraud Investigation Office as an autonomous body with its own legal personality, entrusted with investigations into fraud detrimental to the Community budget both in the Member States (external investigations) and within the Community institutions and bodies (internal investigations). The Office will be a body wholly independent of the European Commission. It will be responsible for the investigations currently conducted by the Task Force for Coordination of the Fight against Fraud (UCLAF) in the European Commission.
3. This assignment of investigative functions to an Office aims to offer every institutional and organisational assurance that investigation operations will be carried out in full independence while at the same time securing the very highest level of expertise and professionalism by putting in place a specialised investigation body.
4. The Office will be responsible solely for the conduct of the investigations. The Commission is made responsible by the Treaties for a number of specific functions in the fight against fraud, which it will continue to discharge. First, there is the right of initiative in respect of legislation etc. and its task of assisting the Member States in the coordination of their anti-fraud activities (Article 209a EC, Article 183a Euratom). This task was given added force by the Amsterdam Treaty (Article 280 EC). Then there are the specific responsibilities borne by the Commission in the implementation of the budget (Article 205 EC, Article 179 Euratom) and in the discharge procedure (Article 206 EC, Article 180b Euratom). These responsibilities will not be affected by the transfer of the investigative function outside the Commission. And, of course, it goes without saying that the Commission's function as guardian of the Treaty is wholly preserved.
5. To comply with the principle of the demarcation of the Commission's powers by the Treaty, the proposal fully maintains the coordination role conferred on the Commission. An example concerns external investigations, i.e. investigations to be conducted in the Member States. The actual conduct of the investigations is all

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<sup>1</sup> Resolution A4-0297/98 on the independence, role and status of the Unit for Coordination of the Fight against Fraud (UCLAF).

that will be in the hands of the Office. Their preparation and commencement will be organised in close cooperation between the Member States concerned, the Office and the Commission. The actual request will be made by the Commission, acting at the request of the Member State or States concerned or of the Office or of its own motion. But once the investigation has commenced, the Commission will have no further influence over its conduct, which will be entirely in the hands of the Office. Follow-up measures will be organised by the Commission, which will receive the final report. Follow-up will be organised by the Commission in close cooperation with the Member State or States concerned. The Commission thus remains fully capable of exercising its functions as guardian of the Treaties and of coordinating the fight against fraud.

6. Likewise, as regards internal investigations, that is to say investigations within a Community institution or body, the Office will be responsible solely for conducting the investigation itself. The decision giving the Office the task of carrying out internal investigations will define the manner in which such investigations will be carried out (see point 12). The Office will be closely involved in the launching of such investigations, in particular by enabling the Office to commence such an investigation on its own initiative. The result of an investigation will be transmitted in the form of a report to the institution or body which has been investigated. It will be for that institution or body to take the requisite follow-up action.

The Commission, which thus plays its role in commencing and organising the follow-up of both external and internal investigations - the latter as far the investigation concerns the Commission itself - will continue to fully exercise its responsibilities in this area.

7. Apart from this principal function of conducting investigations (Article 2, first paragraph), the Office may engage in certain other activities directly linked to the fight against fraud, such as participating in the development of anti-fraud policy and of the infrastructure for intelligence-gathering and exploitation (Article 2, second paragraph).
8. As regards the conferment of powers on the Office, a distinction must be made between external and internal investigations.

#### External investigations

9. The powers in relation to external investigations hitherto conferred on the Commission by the Community legislature will have to be transferred to the Office as regards actual investigations (Article 3(1)). First, this concerns the on-the-spot checks and inspections provided for by Regulation No 2185/96<sup>2</sup> and

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<sup>2</sup> Council Regulation (Euratom, EC) 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 irregularities: OJ L 292, 15.11.1996, p. 2.

those provided for by sectoral Regulations such as Regulation No 729/70<sup>3</sup>. Moreover, the participation of Office officials in on-the-spot checks and inspections, which will remain within the responsibility of the Commission as guardian of the Treaty (Article 9(1) of Regulation No 2988/95), may be found useful<sup>4</sup>.

10. All these instruments will have to be amplified to clarify the specific powers conferred on the Office and the terms governing their exercise. The Commission will propose separate instruments for this purpose. And subsequent instruments could confer new powers of like nature on the Office (Article 3(3)).

#### Internal investigations

11. The organisation of such investigations is currently within the sole powers of the relevant institution or body. The Commission issued rules governing them on 14 July 1998<sup>5</sup>. Internal investigations relate primarily to the relationship between the institution or body and its officials and other staff. The proper host structure for specific rules governing internal investigations would therefore be the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities. Locating them in the Staff Regulations would make it possible to:

- cover all cases of fraud affecting the Communities' financial interests within an institution, irrespective of the context (Community or second or third pillars);
- automatically cover all institutions and bodies or independent agencies to which the Staff Regulations apply.

Such rules would give the Office the necessary powers in relation to internal investigations, govern their commencement and monitoring and provide for the requisite protection of fundamental individual rights.

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<sup>3</sup> E.g. Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy: OJ L 94, 28.4.1970, p. 13; Council Regulation (EEC) No 595/91 of 4 March 1991 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organisation of an information system in this field and repealing Regulation (EEC) No 283/72, OJ L 67, 14.3.1991, p. 11; Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments: OJ L 374, 31.12.1988, p. 1; Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund OJ L 130, 25.5.1994, p. 1; Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax: OJ L 155, 7.6.1989, p. 9; Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters: OJ L 82, 22.3.1997, p. 1.

<sup>4</sup> Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests: OJ L 312, 23.12.1995, p. 1.

<sup>5</sup> Commission Decision of 14.7.1998 on inquiries conducted by the Task Force for Coordination of the Fight against Fraud.

12. Pending possible amendments to the Staff Regulations, the details of which remain to be examined, the proposal provides for an intermediate solution so that as soon as the Regulation enters into force internal investigations can be commenced at the request of an institution. Such investigations are at the institutions' discretion, and they may decide to confer powers on the Office. The same applies to existing agencies and bodies. The conditions governing such investigations and the rules for the protection of the persons involved will fall to be settled by a decision of each institution. The institutions should coordinate on the rules to be laid down in such decision. Such a decision should also provide that the Office is closely involved in the launching of any internal investigation, in particular by enabling the Office to commence such an investigation on its own initiative. For the Commission, the Decision of 14 July 1998 and its rules of application, now in preparation, provide the basic elements of such an approach.
13. The proposal regulates a number of principles for the conduct of investigations, confidentiality and reporting (Articles 4 to 7; see also corresponding points of explanatory memorandum). As the Office will operate within the framework of the Regulations listed above at points 9 *et seq.*, it will have to abide by the more precise rules contained therein.
14. On the institutional front, a light structure is proposed. The Office will be headed by a Director, as legal representative, appointed on a Commission proposal by the Board of Management (Article 10). The provisions governing the structure have been guided by the concern to ensure a majority presence of high-level experts offering the necessary assurances as to independence. The Board of Management will be composed of nine members, six of them being independent experts (half of these being designated by the European Parliament and half by the Council), two being Commission representatives and one representing the Court of Auditors (Article 9). The Staff Regulations and the Protocol on Privileges and Immunities will apply to Office staff (Articles 11 and 12). The requisite rules for the Office's budget and Financial Control are also laid down (Article 13).
15. The proposal contains rules to ensure proper legal protection for acts of the Office adversely affecting other persons (Article 14). This protection is given both to third parties and to officials and other servants of the institutions and bodies in the event of internal investigations. There are also rules to govern the Office's contractual and non-contractual liability (Article 15).
16. In the current state of Community law, the Treaties provide no specific legal basis for the Regulation establishing the European Fraud Investigation Office, which will therefore have to be based on Article 235 of the EC Treaty and Article 203 of the Euratom Treaty. But the Amsterdam Treaty creates a specific legal basis - the new Article 280 EC empowers the Community legislative authorities to adopt 'the necessary measures in the fields of the prevention of and fight against fraud affecting the financial interests of the Community', by the codecision procedure; the Commission will present an amended proposal as soon as the Amsterdam Treaty is in force, using this new provision.

## Commentary on the articles

### Article 2      Objective and tasks

As explained above, the main task of the Office will be to carry out internal and external administrative investigations. But it will be important to use the Office's experience and technical knowledge to help the institutions and the Member States in their respective activities to combat fraud.

### Article 3      Investigations

See the detailed explanation at point 8 of the introduction.

### Article 4      Investigations procedure

This provision lays down the basic principles for carrying out any investigation: the Director's responsibility, the fact that the officials must have a general authorisation plus a specific authorisation for the investigation in question and the general obligations of the Office's and the Member States' officials. Nonetheless, it is clear that every investigation must be carried out in accordance with the specific rules pursuant to which the Office is empowered to carry out the investigation (cf. Article 3).

### Article 5      Exchange of information

The aim of this provision is to ensure that the Office can obtain any information that might be useful in carrying out its investigations, whether this information is held by the Commission, by another institution or body or by a Member State. Externalising the administrative investigations should not lead to a reduction in information sources for the investigators as compared to the current situation, whereby the Commission can use all the information it holds.

The Office is not obliged to wait for an investigation to be closed before sending information on the investigations to the Member States or institutions or bodies concerned or, if appropriate, to national prosecutors. There may be situations in which it is appropriate or even necessary to immediately inform an authority of certain facts that have been discovered. It is for the Office to determine whether or not such notification is appropriate (paragraph 4).

### Article 6      Confidentiality and data protection

The Office's investigations are, of course, subject to professional secrecy and the information obtained must enjoy the protection given to similar information at national level. Article 6(1) thus takes over Article 8(1) of Regulation No 2185/96.

Furthermore, the Office itself must fully observe the relevant provisions on the protection of personal data (paragraph 2).

### Article 7      Investigation report

At the end of any investigation, the Office will draw up a report which will constitute the basis on which the Commission or other institution or body will decide what follow-up action to take. If necessary, the Commission must inform the competent

national authorities of the report so that they can take appropriate follow-up action (see, for example, Article 8(2) of Regulation No 2185/96).

This provision also determines the legal value of the final reports within the internal legal order of the Member State (following Article 8(3) of Regulation No 2185/96).

#### Article 8      Legal personality

Granting the Office legal personality ensures its full autonomy from the Community institutions and the Member States.

#### Article 9      Board of Management

The Commission proposes that the composition of the Board of Management should be mixed. On the one hand, it would seem useful that representatives of the two institutions which are directly responsible for protecting the Community's financial interests - the Commission (see Articles 205 and 209a of the EC Treaty) and the Court of Auditors (Article 188c EC) - should be included on the Board of Management, so as to allow consultation between these two institutions and the Office. At the same time, in order to guarantee the Office full autonomy, the Board of Management will include independent figures nominated by the Council and Parliament. These independent figures must be experts in the fight against fraud so that the Board of Management can also give its opinion to the Director as provided for in paragraph 6. However, the Board of Management may not interfere in investigations in progress, which remain the responsibility of the Director alone (Article 4(1)).

#### Article 10      Director

It is proposed that the Director be appointed by the Board of Management, on a proposal from the Commission. Giving the Commission the right of proposal is justified by its experience in this area and its ongoing responsibility for the fight against fraud. But since it is the Board of Management which appoints the Director (or, alternatively, refuses to appoint the person proposed by the Commission and asks it to propose someone else), the Director's independence from the Commission is assured.

#### Articles 11 to 13 Staff, Privileges and immunities, Budget

These are the classic provisions of regulations setting up agencies (cf. for example Articles 11, 14 and 12 of Council Regulation No 1035/97 establishing a European Monitoring Centre on Racism and Xenophobia<sup>6</sup>).

However, it should be noted that, in order to guarantee the Director's autonomy vis-à-vis the Board of Management in terms of carrying out investigations, it is provided that it should be the Director who will act as appointing authority for the staff. As he himself will be the appointing authority, it must also be determined who, if necessary, will have disciplinary power over the Director. It is proposed that this be the Board of Management.

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<sup>6</sup> OJ L 151, 10.6.1997, p. 1.

## Articles 14 and 15      Judicial review, liability

Externalising the task of carrying out administrative investigations in the fight against fraud must not lead to a reduction in legal protection for the people involved as compared with the current situation. It is therefore provided that the people concerned will have the same legal remedies as at present, being able to appeal against the Office in the same way that they now can against the Commission, i.e.

- claim for damages (Articles 178 and 215 EC): Article 15;
- proceedings for annulment (Article 173 EC) and for failure to act (Article 175 EC): Article 14(1). The second subparagraph of Article 14(1) recalls the principle of Article 176 EC that in the case of annulment of an act (or of illegal failure to act) the institution concerned must take the necessary measures to comply with the judgment of the Court; for the Office, the consequence of this may be that, following the annulment of an act by the Court, not only must the annulled act be removed from the investigation dossier, but so must other documents and information obtained by inspections and checks which were carried out pursuant to the annulled act.

Under the internal investigations led by the institutions and bodies, the officials now have the right - laid down in Articles 90 and 91 of the Staff Regulations of Officials - to submit a complaint to the appointing authority and, if this complaint is explicitly or implicitly rejected, an appeal to the Court of Justice, which has full jurisdiction. As the internal investigations carried out by the Office are not attributable to the appointing authority, an equivalent legal protection to Articles 90 and 91 of the Staff Regulations is provided in Article 14(2).

## Article 16      Progress report

It may happen that after a number of years experience will suggest the need to adjust the system in place. It is intended that the examination of this question should be formalised, by asking the Commission to draw up a progress report on the Office's activities.

## Article 17      Entry into force

As for any agency with legal personality, a seat must be designated for the Office. Community practice in this matter is that the location of the seat of agencies, under Article 216 EC, should be decided by common agreement between the Governments of the Member States (cf. Decision of 29 October 1993, C323/1). When the seat has been determined, the regulation can enter into force. It should be noted, however, that the Office will be able to carry out investigations only when, in accordance with Article 3(1), other instruments confer on the Office the task of carrying out external investigations and when, in accordance with Article 3(2), decisions by the institutions and bodies give the Office the task of carrying out internal investigations.



**Proposal for a  
COUNCIL REGULATION (EC, Euratom)  
establishing a European Fraud Investigation Office**  
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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 235 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 203 thereof,

Having regard to the proposal from the Commission<sup>7</sup>,

Having regard to the Opinion of the European Parliament<sup>8</sup>,

Having regard to the Opinion of the Court of Auditors<sup>9</sup>,

1. Whereas the institutions and the Member States attach great importance to the protection of the Communities' financial interests and to the fight against fraud and all illegal activities detrimental to the Communities' financial interests; whereas the importance of action to that end is confirmed by Article 209a of the EC Treaty and Article 183a of the Euratom Treaty;
2. Whereas all available means must be deployed to fully attain this objective, notably in terms of investigation functions devolved to the Community level, while the current distribution and balance of responsibilities as between the national and Community levels should be maintained;
3. Whereas for the effective attainment of these objectives the requisite autonomy in the investigative function should be secured; whereas to boost the means available for combating fraud a body should be established with adequate legal, administrative and financial autonomy to enable it to exercise, in full independence, the on-the-spot checks and inspections provided for by Community law, without jeopardising the responsibilities and powers exercised by the institutions in accordance with the Treaties;
4. Whereas a body should accordingly be established with legal personality, to be known as the European Fraud Investigation Office (hereinafter referred to as "the Office") and to be responsible for anti-fraud administrative investigations in the Member States and within the institutions and bodies established by or on the basis of the Treaties;

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5. Whereas to boost the effectiveness of the fight against fraud and other illegal activities detrimental to the Communities' financial interests it is necessary that the Office assist the Commission and, where appropriate, the other institutions and bodies established by the Treaties or by secondary legislation; whereas it is important in this context that the Office should be able to conduct its investigations without affecting the Commission's role and responsibilities for implementing the budget, for monitoring the application of Community law and for coordinating the Member States' anti-fraud activities, or the responsibilities of the Court of Auditors for verifying the legality and regularity of Community revenue and expenditure;
6. Whereas the Commission must be in a position to instruct the Office to conduct on-the-spot checks and inspections in the Member States or to take part in them, notably for the purpose of detecting irregularities as required by Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests<sup>10</sup> and Council Regulation (Euratom, EC) 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 irregularities<sup>11</sup>, or in accordance with the sectoral regulations; whereas to that end the conditions governing such investigations should be laid down in a separate instrument to determine the allocation of tasks and organise the smooth functioning of cooperation between the Commission and the Office, in particular with respect to the preparation of investigations with the Member States and action thereafter;
7. Whereas, given the need to boost internal investigations in the institutions and other bodies established by the Treaties and secondary legislation, the Office should be given the requisite authority to conduct such investigations in full independence;
8. Whereas the terms on which the Office's agents will discharge their duties and the terms governing the Director's exercise of his responsibility for the conduct of investigations by the agents should be laid down;
9. Whereas, for the sake of successful cooperation between the Commission and the Office and between the Office and the Member States, the relevant institutions and other bodies, the exchange of information must be organised, subject to rules of confidentiality where information is subject to professional secrecy, while ensuring that it enjoys the proper data protection;
10. Whereas, to ensure that the results of investigations conducted by the Office's staff are taken into account and that the Commission is able to take the requisite follow-up action, their reports should have the status of admissible evidence in administrative and judicial proceedings, and whereas, to that end, they should be drawn up in a manner compatible with the rules governing administrative reports in the Member States;

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<sup>10</sup> OJ L 312, 23.12.1995, p. 1.

<sup>11</sup> OJ L 292, 15.11.1996, p. 2.

11. Whereas the Office should enjoy the fullest autonomy in the discharge of its function; whereas the Board of Management should accordingly be composed not only of representatives of the institutions directly responsible for the protection of the Communities' financial interests but also of independent personalities being experts in the Office's field of activity;
12. Whereas administrative investigations should be conducted under the sole responsibility of the Director of the Office, in full independence from the Community institutions and bodies and from the Board of Management;
13. Whereas entrusting to an independent body the task of conducting administrative investigations for the protection of the Communities' financial interests should not have the effect of reducing the level of legal protection enjoyed by the persons concerned, in particular as regards the protection of personal data and respect for confidentiality of information gathered in the course of investigations; whereas provision should accordingly be made for jurisdiction to be conferred on the Court of Justice of the European Communities to review the legality of acts performed by the Office and to rule in cases concerning the non-contractual liability of the Office; whereas officials and other servants of the Communities should enjoy legal protection equivalent to that provided for by Articles 90 and 91 of the Staff Regulations of officials of the European Communities and by the conditions of employment of other servants of the European Communities;
14. Whereas the activities of the Office should be assessed after a three-year period;
15. Whereas this Regulation in no way diminishes the powers and responsibilities of the Member States to take measures to combat fraud affecting the Communities' financial interests; whereas the establishment of an independent Office to conduct the external administrative investigations in this area hitherto conducted by the Commission is accordingly in full compliance with the subsidiarity principle laid down by Article 3b of the EC Treaty; whereas the establishment of the Office is accordingly likely to boost the fight against fraud and other illegal activities affecting the Communities' financial interests and is therefore compatible with the proportionality principle;
16. Whereas the EC Treaty confers no powers for the adoption of this Regulation other than those provided for by Article 235, and the EAEC Treaty confers no powers other than those provided for by Article 203,

HAS ADOPTED THIS REGULATION:

*Article 1*

**Establishment of the Office**

A European Fraud Investigation Office (hereinafter referred to as "the Office") is hereby established.

## *Article 2*

### **Objective and tasks**

1. In order to step up the fight against fraud and any other illegal activity affecting the financial interests of the European Community and the European Atomic Energy Community, the Office shall assist the Commission and the other institutions and bodies set up by, or on the basis of, the EC and EAEC Treaties establishing these Communities (hereinafter referred to as "the institutions and bodies"), by conducting administrative investigations in the Member States and within the institutions and bodies.
2. The Office may also:
  - (a) support the Commission in developing a concept for the fight against fraud and any other illegal activity affecting the financial interests of the Communities;
  - (b) help develop the necessary infrastructure;
  - (c) help collect and analyse information;
  - (d) take part in the Commission's cooperation with the Member States;
  - (e) give technical support to the Commission, the other institutions and bodies and the competent national authorities.

## *Article 3*

### **Investigations**

1. The Commission may, on its own initiative or at the request of a Member State or the Office, ask the Office to:
  - (a) carry out on-the-spot inspections and checks in the Member States as provided for in Regulation (Euratom, EC) No 2185/96;
  - (b) carry out on-the-spot inspections and checks as provided for by the sectoral rules referred to in Article 9(2) of Regulation (EC, Euratom) No 2988/95;
  - (c) take part in the on-the-spot inspections and checks by the Commission in the Member States referred to in Article 9(1) of Regulation (EC, Euratom) No 2988/95.

These inspections and checks, and the participation in these inspections and checks, hereinafter referred to as "external investigations", shall be carried out under the conditions and in accordance with the procedures provided for by the instruments conferring on the Office the power to carry out external investigations.

2. Every institution or body may confer on the Office the task of carrying out administrative investigations internal to that institution or body (hereinafter: "internal investigations"), by way of a decision laying down the conditions and rules under which internal investigations are to be conducted.

The institutions shall collaborate on the content of such a decision.

3. The Office may be asked to undertake investigations in other fields.

#### *Article 4*

##### **Investigations procedure**

1. The Director of the Office shall be responsible for the carrying out of the investigations.
2. The Office's officials shall exercise their powers on production of a written authorisation showing their identity and their position.
3. For each action, the Office's officials shall be equipped with a document issued by the Director indicating the subject matter and purpose of the investigation.
4. During the on-the-spot inspections and checks, the inspectors shall adopt an attitude compatible with the rules and practices governing the officials of the Member State concerned.
5. The Member States shall ensure that their competent authorities give the necessary support to enable the inspectors to perform their task.

#### *Article 5*

##### **Exchange of information**

1. The Commission and, if necessary, the other institutions and bodies, shall, at the request of the Office or of their own initiative, send the Office any document or information they hold which is necessary for current investigations.
2. The Commission may send the Office any document or information it holds which is useful in a general sense for the fight against fraud or any other illegal activity affecting the Communities' financial interests.
3. The Member States shall send the Office any document or information which they consider useful to a current investigation. They may also send the Office any document or information that they consider useful, in a general sense, in the fight against fraud or any other illegal activity affecting the Communities' financial interests.
4. Without prejudice to Articles 6 and 7, the Office may at any time, if it considers it appropriate, send information obtained in the course of external investigations to the Commission and to the competent authorities in the Member States in question, and also any information obtained in the course of internal investigations to the institution or body making the request for the investigation. In the latter case, the Office may also inform directly the prosecuting authorities

of the Member State concerned if it considers this necessary given the seriousness of the information obtained.

#### *Article 6*

#### **Confidentiality and data protection**

1. Information obtained in the course of external and internal investigations, in whatever form, shall be subject to professional secrecy and shall enjoy the protection given to similar information by the national law of the Member State in which it was collected and by the corresponding provisions applicable to the Community institutions.  
  
Such information may not be communicated to persons other than those within the Community institutions or in the Member States whose functions require them to know it, nor may it be used by Community institutions for purposes other than to ensure effective protection of the Communities' financial interests in all Member States, without the prior consent of the Member State in which the information was gathered or of the institution or body concerned.
2. The Director shall ensure that the inspectors and the other persons acting under his authority observe the Community and national provisions on the protection of personal data, in particular those provided for by Directive 95/46/EC of the European Parliament and of the Council<sup>12</sup>.

#### *Article 7*

#### **Investigation report**

1. On completion of an investigation carried out by the Office, the Office, led by the Director, shall draw up a final report specifying the facts established, the financial loss, if any, and the findings of the investigation.
2. In drawing up the final reports, account shall be taken of the procedural requirements laid down in the national law of the Member State concerned. The reports shall constitute admissible evidence in administrative or judicial proceedings of the Member State in which their use proves necessary, in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors. They shall be subject to the same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors and shall be of identical value to such reports.
3. Reports drawn up following an external investigation and any useful related documents shall be sent to the Commission.
4. Reports drawn up following an internal investigation and any useful related documents shall be sent to the institution or body raising the request for the investigation.

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<sup>12</sup> OJ L 281, 23.11.1995, p. 31.

5. The Commission or, if necessary, the institution or body concerned shall decide how to follow up the investigation on the basis of the report drawn up by the Office.

#### *Article 8*

#### **Legal personality**

1. The Office shall have legal personality.
2. The Office shall enjoy, in each of the Member States, the most extensive legal capacity accorded to legal persons under their respective laws.

#### *Article 9*

#### **Board of Management**

1. The Office shall have a Board of Management composed of nine members, as follows:
  - (a) three independent persons having expertise in the Office's field, appointed by the European Parliament;
  - (b) three independent persons having expertise in the Office's field, appointed by the Council;
  - (c) two representatives of the Commission;
  - (d) one representative of the Court of Auditors.
2. The term of office of the members referred to in paragraph 1(a) and (b) shall be three years. This term of office shall be renewable.

On expiry of their term of office, members shall remain in office until their appointments are renewed or until they are replaced.
3. Decisions by the Board of Management shall be taken by a majority of two-thirds of its members.
4. The Board of Management shall appoint its Chairman from the members referred to in points (a) and (b) of paragraph 1.
5. The Board of Management shall adopt its own rules of procedure.
6. At the Director's request or on its own initiative, the Board of Management shall give its opinion to the Director on the Office's activities, without, however, interfering with investigations in progress.
7. The Board of Management shall adopt the annual report and transmit it to the institutions.

## *Article 10*

### **Director**

1. The Office shall be headed by a Director appointed by the Board of Management on a proposal from the Commission for a period of five years, which shall be renewable.
2. The Director shall be the legal representative of the Office.

## *Article 11*

### **Staff**

1. The Staff of the Office shall be subject to the Rules and Regulations applicable to officials and other servants of the European Communities.
2. The Director shall exercise in respect of the staff the powers devolved upon the Appointing Authority.

The Board of Management shall exercise disciplinary authority over the Director.

3. The Board of Management, in agreement with the Commission, shall adopt the rules necessary for implementing paragraphs 1 and 2.

## *Article 12*

### **Privileges and immunities**

The Protocol on the Privileges and Immunities of the European Communities shall apply to the Office.

## *Article 13*

### **Budget**

1. Estimates shall be drawn up of all the Office's revenue and expenditure for each financial year, which shall correspond to the calendar year, and shall be entered in the Office's budget.
2. By February 15 of each year at the latest, the Director shall draw up the preliminary draft budget for the following financial year. The preliminary draft budget shall cover the operating expenditure scheduled for the following financial year. The Director shall submit the preliminary draft, together with an establishment plan, to the Board of Management.
3. The revenue and expenditure shown in the budget shall be in balance.
4. The Office shall be financed from the general budget of the European Communities, without prejudice to other resources.
5. The Office's expenditure shall include staff remuneration, administrative and infrastructure expenses and operating expenses.



6. The Board of Management shall adopt the draft budget and transmit it to the Commission. On this basis, the Commission shall draw up the corresponding estimates in the preliminary draft general budget of the European Communities, which it places before the Council pursuant to Article 203 of the EC Treaty and Article 177 of the EAEC Treaty.
7. The Board of Management shall adopt the Office's final budget before the beginning of the financial year, adjusting it where necessary to the Community subsidy and the Office's other resources.
8. The Director shall implement the Office's budget.
9. Monitoring of the commitment and payment of all the Office's expenditure and of the establishment and recovery of all its revenue shall be carried out by the Commission's Financial Controller.
10. By 31 March each year at the latest, the Director shall send the Commission, the Board of Management and the Court of Auditors the accounts for all the Office's revenue and expenditure in respect of the preceding financial year.

The Court of Auditors shall examine these accounts in accordance with Article 188c of the EC Treaty and Article 160c of the EAEC Treaty.

11. The Board of Management shall give a discharge to the Director for the implementation of the budget.
12. The Board of Management shall, after consulting the Commission and the Court of Auditors, adopt the internal financial provisions specifying in particular the arrangements for establishing and implementing the Office's budget.

#### *Article 14*

#### **Judicial review**

1. The Court of Justice of the European Communities shall have jurisdiction in actions brought against the Office under the conditions provided for in Articles 173 and 175 of the EC Treaty, without prejudice to the procedure provided for in paragraph 2.

The Office shall take the necessary measures to comply with the Court's judgment.

2. Any official or other servant of the Communities may submit to the Board of Management a complaint against an act adversely affecting him committed by the Office as part of an internal investigation. The complaint must be lodged within three months of the date on which the person concerned became aware of the act.

The Board of Management shall take a decision on the merits of the complaint within one month. If at the end of that period no reply to the request has been received, this shall be deemed to constitute an implied decision rejecting it.

Any decision, explicit or implicit, by the Board of Management shall be subject to appeal under Article 91 of the Staff Regulations of Officials of the European Communities.

*Article 15*

**Liability**

1. The Office's contractual liability shall be governed by the law applicable to the contract in question.

The Court of Justice shall have jurisdiction to give judgment pursuant to an arbitration clause contained in a contract concluded by the Office.

2. In the case of non-contractual liability, the Office shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by the Office or its servants in the performance of their duties.

The Court of Justice shall have jurisdiction in disputes relating to compensation for any such damage.

3. The personal liability of servants towards the Office shall be governed by the provisions applying to the staff of the Office.

*Article 16*

**Progress report**

During the third year following the entry into force of this Regulation, the Commission shall transmit to the European Parliament and the Council a progress report on the Office's activities, together with proposals, if appropriate, to modify or extend its tasks.

*Article 17*

**Entry into force**

This Regulation shall enter into force on the day following the date of the decision by the competent authorities on where the seat of the Office should be located.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council  
The President

## Financial statement

### **1. TITLE OF OPERATION**

Establishment of a decentralised Community agency "European Fraud Investigation Office".

### **2. BUDGET HEADING INVOLVED**

- Heading to be entered in Section III (Commission) of the general budget of the European Communities for financing the operations of the Office.
- Part A as regards the expenditure of the Commission departments concerned.

### **3. LEGAL BASIS**

Council Regulation establishing a European Fraud Investigation Office.

### **4. DESCRIPTION OF OPERATION**

#### *4.1 General objective*

- The Office will be an agency independent of the Commission, with its own legal personality, entrusted with investigations currently conducted by the Task Force for Coordination of the Fight against Fraud (UCLAF) within the Commission.

The Office will be responsible solely for investigations. In time, however, the Office may engage in certain other activities, such as helping to devise an anti-fraud policy, to develop infrastructure or to collect and analyse information.

This is because the Treaties give the Commission responsibility for a number of specific functions, in particular as regards implementation of the budget, protection of the Communities' financial interests and combating fraud, which it will continue to discharge.

- To comply with the principle of the demarcation of the Commission's powers by the Treaty, the Commission will retain its coordination role.

Through its role of triggering and following up external investigations and its involvement in any internal investigations, the Commission will continue to discharge its responsibilities to the full.

As the Commission has commitments towards non-member countries (commercial policy, generalised preferences system, etc.) it will remain responsible for conducting and coordinating Community investigation missions in those countries.

The Commission will also remain in charge of the technical operational assistance to be supplied to the criminal prosecution authorities as regards the protection of the Communities' financial interests, a mission and role which are conferred on it by the third-pillar protocols and convention for the criminal law protection of the Communities' financial interests.

#### *4.2 Period covered and arrangements for renewal*

The Office is set up for indefinite duration. An evaluation of its activities will be conducted at the end of the third year following its establishment.

### **5. BUDGET DETAILS**

Non-compulsory expenditure

### **6. CLASSIFICATION OF EXPENDITURE/REVENUE**

#### *6.1 Type of expenditure*

Administrative expenditure, comprising in particular staff costs, running costs and other administrative and infrastructure expenditure.

#### *6.2 Type of revenue*

The Office is financed entirely from the general budget of the European Communities

### **7. FINANCIAL IMPACT**

See point 10.

### **8. FRAUD PREVENTION MEASURES**

The Commission's Financial Controller will control the commitment and payment of all the Office's expenditure. The Office's Board of Management will grant the discharge to the Director in respect of implementation of the budget. The Board of Management will, after consulting the Commission, adopt the internal financing provisions specifying the arrangements for establishing and implementing the Office's budget.

## 9. ELEMENTS OF COST-EFFECTIVENESS ANALYSIS

The two arms of the budgetary authority (European Parliament – Bösch report of 22 September and Council - Ecofin Council conclusions of 23 November 1998) have called for the fight against fraud to be stepped up, as regards the conduct of external investigations in the Member States and also in the case of internal investigations within the Community institutions and bodies. This political will is reflected in the establishment of the independent European Fraud Investigation Office, and also in the tightening-up of the Commission's coordination activities (coordination with the Office and the Member States in the case of external investigations, and with the institutions or bodies concerned in the case of internal investigations).

The interconnection and complementarity of all these missions must be taken into account when it comes to determining resources, with due allowance being made for the stepping-up of activities requested by the budgetary authority.

Analysis of the budgetary costs entailed by the establishment of the Office must make full allowance for the need to link and coordinate the tasks the Commission will continue to discharge and those to be performed by the Office.

The expected efficiency gains resulting from the establishment of the Office are to be found in its independence. The induced budgetary costs are therefore justified, in that they are directly linked to the achievement of the operation.

Three types of measure are therefore necessary:

1. Initially, transfer of investigation activities from the Commission to the Office (transfer of the staff to undertake these specific activities together with administrative management and support staff - Division Heads, Team Leaders, assistants, secretariat).
2. Followed by increase in number of investigators in response to the request of the budgetary authority and in the light of the evaluation of the Office's activities.
3. Finally, the coordination and interface functions within the Commission will have to be developed. There will have to be liaison interfaces for each area of activity (by budgetary area of investigation, i.e. agriculture – market organisations, trade in agricultural products; Structural Funds; direct expenditure - external action, internal policies; anti-corruption; own resources - traditional own resources, VAT) within the Commission (UCLAF) responsible for coordination with the Office.

## 10. ADMINISTRATIVE EXPENDITURE

### 10.1 Effect of the transfer on the number of posts

Type of post		Staff to be assigned to managing the operation		Of which			
		European Fraud Investigation Office	Task Force UCLAF	European Fraud Investigation Office		Task Force UCLAF	
				Resources from Task Force UCLAF	Additional resources	Transfer to the European Fraud Investigation Office	Additional resources
Officials	A	7	3	5	2	-5	3
	B	11	1	10	1	-10	1
	C	8	2	5	3	-5	2
Subtotal		26	6	20	6	-20	6
Temporary staff	A	9		9		-9	
	B	7		7		-7	
	C	-					
Subtotal		16		16		-16	
National experts		4		4		-4	
Total		46	6	40	6	-40	6

### *10.2 Effect on the number of posts*

On the basis of the annual cost of a Commission official in Brussels (ECU 110 000 a year) the annual financial impact would be:

- Existing resources (to be transferred to the Office):	ECU 4 400 000
- Additional resources:	ECU 1 320 000
of which: Office:	ECU 660 000
UCLAF:	ECU 660 000
<b>TOTAL :</b>	<b>ECU 5 720 000</b>

### *10.3 Overall impact for future budget years*

The allocation of additional resources required for the operation of the Office will be assessed in the light of the evaluation of the Office's activities and the requests from the budgetary authority.

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