II

(Acts whose publication is not obligatory)

COMMISSION

THE EUROPEAN ANTI-FRAUD OFFICE (OLAF)

RULES OF PROCEDURE OF THE OLAF SUPERVISORY COMMITTEE

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THE SUPERVISORY COMMITTEE,

having regard to Article 11(6) of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) [1],

HEREBY ADOPTS THE FOLLOWING RULES OF PROCEDURE:

TITLE I

ROLE AND RESPONSIBILITIES OF THE OLAF SUPERVISORY COMMITTEE

Article 1

Tasks

1. The Supervisory Committee of the European Anti-Fraud Office, hereinafter referred to as 'OLAF', shall have the task of reinforcing the independence of the Office in relation to any government, institution, body or agency.

2. To that end, the Supervisory Committee shall regularly monitor the Office's investigative role and reinforce the independence of the Director in the exercise of the powers conferred on him by Regulation (EC) No 1073/1999.

Article 2

Compliance with the law

The Committee shall ensure that OLAF activities are conducted in full compliance with human rights and fundamental freedoms and in accordance with the Treaties and with secondary legislation, including the Protocol on the Privileges and Immunities of the European Communities and the Staff Regulations of officials.

Article 3

Procedures

1. Investigative activity shall be monitored in accordance with the following procedures:

(a) the Committee shall examine the information on investigative activity supplied on a regular basis by the Director of OLAF;

(b) the Committee shall have access to all documents and files held by and data stored by OLAF;

(c) the Committee may make use of inspections, expert reports, or studies;

(d) the Committee may hear representatives of institutions, bodies, or agencies pursuant to Article 7 of Regulation (EC) No 1073/1999.

It shall refrain from interfering with the conduct of investigations in progress.

2. The Committee shall issue opinions to the Director at his request or on its own initiative. Opinions shall be delivered subject to the conditions set out in Articles 21 to 24 of these Rules of Procedure, without prejudice to any other provisions that might apply.

3. The Committee shall supervise implementation of Article 8 of Regulation (EC) No 1073/1999 and Articles 286 and 287 of the EC Treaty relating to confidentiality and data protection, in particular by regularly reviewing the procedures employed by the Office for that purpose, and include implementation of the above provisions among the criteria forming the basis for its monitoring of investigative activity.

Article 4

Means of action

1. To enable it to perform its role, the powers conferred on the Supervisory Committee shall be those laid down in Regulation (EC) No 1073/1999.

2. The Committee may report to the European Parliament, the Council, the Commission, and, in so far as is appropriate in the light of its powers, the Court of Auditors on the findings of and action taken on investigations carried out by the Office. Where it thinks fit, it may likewise submit comments to those institutions on the operation of the Office.

3. The Committee shall submit at least one progress report a year to the above institutions.

4. The Committee shall act upon requests for advice and deliver opinions as provided for in Regulation (EC) No 1073/1999 when a matter has been referred to it by the proper authority.

5. The Committee shall have its own budget, which shall be covered by the OLAF budget.

TITLE II

MEMBERSHIP AND OPERATION OF THE SUPERVISORY COMMITTEE

Article 5

Status of the Supervisory Committee

1. The Supervisory Committee shall consist of five independent persons not holding a Community post or office appointed by common accord of the European Parliament, the Council, and the Commission on the basis of their expertise and all necessary guarantees as to their independence.

2. Members of the Supervisory Committee shall perform their role in complete independence. They shall neither seek nor take instructions from any government or from any institution, body, or agency.

Article 6

Term of office of Supervisory Committee members

1. Members shall serve for a three-year term of office and may be reappointed for one further term.

2. On expiry of their term, Committee members shall remain in office until they have been reappointed or replaced.

[1] OJ L 136, 31.5.1999, p. 1.

3. When a member is prevented for any reason from serving on the Committee, he shall inform the Committee chairman.

4. If a member resigns his seat, he shall inform the Committee of his decision.

Article 7

Ethics

1. Members shall inform the Committee of any circumstance likely to undermine the principle of independence of their office as set out in Article 5 above.

2. Members shall refrain from seeking or accepting any office or responsibility, particularly from the European institutions, which might create a conflict of interests.

3. When commenting in public, orally or in writing, on the activities of the Committee and OLAF, members shall do so in keeping with their collective responsibility.

4. Members shall be bound by the obligation to respect professional secrecy laid down in Article 287 of the EC Treaty. Where information comes to their knowledge while carrying out their duties, they shall treat it as confidential. They shall remain subject to that obligation after leaving office.

Article 8

Disciplinary procedure applicable to Supervisory Committee members

Any member of the Supervisory Committee who has infringed an obligation referred to in Article 7 above may be suspended by a decision carried by a majority of the votes cast in a secret ballot. The member concerned shall be heard before the decision is taken but shall not take part in the discussion. The Committee chairman shall inform the European Parliament, the Council, and the Commission of the decision.

Article 9

Legal protection

When carrying out their duties, members of the Supervisory Committee shall enjoy the legal protection of the Community as provided for in Article 288 of the EC Treaty.

Article 10

Chairmanship

1. The Committee shall elect a chairman from among its members by majority vote.

2. The chairman shall be elected for a term of one year and may be re-elected. The election shall be held at the last meeting chaired by the outgoing chairman.

3. Where the chairman is prevented for any reason from performing his duties over a long period, he shall inform the members of his situation. In that event, a new chairman shall be elected by the procedure set out in paragraph 1 above.

Article 11

Powers of the chairman

1. The chairman shall represent the Committee and chair its meetings. He shall ensure that its proceedings are properly conducted. He shall convene Committee meetings and determine where, on what date, and at what time they shall take place. He shall draw up the draft agenda and implement OLAF Supervisory Committee decisions.

2. Where he is temporarily unable to perform his duties, the chairman may request a Committee member to deputise for him.

3. If the chairman is absent and the procedure referred to in paragraph 2 above has not been employed, the office of chairman shall be exercised by the oldest member.

4. The chairman shall be responsible for the secretariat attached to the Supervisory Committee.

5. The chairman shall have full power to send or reply to letters concerning Supervisory Committee activities. He shall inform Committee members of the letters which he has received or to which he has replied. He shall determine which matters should be referred to the members for discussion.

6. The chairman or a majority of the members may request the Director of OLAF or his representative to attend meetings. Any representative of institutions, bodies, or agencies established by the Communities, Member States, or associated States may be invited to attend the proceedings when the Committee deals with specific agenda items.

Article 12

Meetings

1. The OLAF Supervisory Committee shall exercise its powers when meeting in a body. It shall meet at least ten times a year. The Supervisory Committee shall have a quorum only if the majority of its members, namely three, are present. It shall also meet on the initiative of the chairman and whenever a majority of the members have submitted a reasoned written request or made an oral request at an earlier meeting. The Director of OLAF shall be entitled to propose to the chairman that items be placed on the agenda or the Supervisory Committee convened. His proposals shall be supported by any document appropriate for that purpose.

2. Other than in cases which the chairman considers urgent, notices of meetings shall be sent in sufficient time to reach the recipients at least one week before the meeting in question. The notice shall include the draft agenda and the documents required for the meeting, unless the nature of the documents is such that they cannot be attached. The final agenda shall be adopted at the beginning of each meeting.

3. Any member may request the chairman to place items or specific matters on the draft agenda or add such items thereto.

Article 13

Voting procedure

1. Decisions shall be taken by a simple majority on a proposal from the chairman. If a member is absent and the vote is tied, or if it should prove impossible to secure a majority within the Committee, the chairman shall have a casting vote.

2. On a proposal from a member, a vote may be taken by secret ballot.

Article 14

Working methods

1. Meetings of the Supervisory Committee shall not be held in public. Its proceedings, and documents of any description giving rise to those proceedings, shall be confidential, unless the Supervisory Committee decides otherwise.

2. Documents and information submitted by the Director of OLAF shall be subject to the provisions of Article 287 of the EC Treaty on the protection of confidentiality.

3. The Supervisory Committee shall act on the basis of documents and draft opinions, reports, or decisions.

4. Documents and draft opinions, reports, or decisions shall be drawn up in at least two of the three working languages adopted by the Committee. Where necessary, a member may request that any document be translated into his own language.

5. Opinions, reports, and decisions shall be adopted at meetings of the Supervisory Committee as a whole.

6. However, by way of exception to that principle, certain decisions may be taken by a written procedure if the Committee has approved the use of such a procedure at an earlier meeting. In urgent cases, the chairman shall be empowered to initiate a written procedure to consult the members. In either of the above cases, he shall forward a draft decision to the Committee members. If the members raise no objections to the draft decision within a time-limit to be specified by the chairman, namely five working days following receipt of the proposal, the proposal shall be deemed to have been adopted. If, within five working days of receipt of the draft decision, a member requests that it be discussed by the Supervisory Committee, the written consultation procedure shall be suspended.

Article 15

Minutes

1. Minutes shall be taken of every Supervisory Committee meeting.

2. The draft minutes shall be drawn up by the secretariat under the supervision of the chairman and submitted to the members of the Supervisory Committee with a view to their approval at its next meeting.

3. Any member may propose at the time of approval that the minutes be altered. Members may likewise request that any documents deemed useful be attached to the minutes.

Article 16

Progress report

1. In accordance with Article 4(3) the Supervisory Committee shall adopt at least one progress report a year and send it to the institutions. The progress report shall cover the activities pursued in the exercise of the Committee's powers and contain an assessment of OLAF activities.

2. The progress report shall be submitted to the Committee by one or more rapporteurs.

3. The report may include an annex listing the opinions delivered by the Supervisory Committee.

4. The Supervisory Committee shall publish its progress report in the *Official Journal of the European Communities* after sending it to the European Parliament, the Council, and the Commission.

Article 17

Rapporteurs

1. To prepare for its discussions or proceedings, the Committee, on a proposal from the chairman, may appoint one or more rapporteurs from among its members.

2. If the matter to be dealt with is urgent, the chairman may make the appointment on his own initiative. In that event, he shall inform the Committee members forthwith.

3. The rapporteur shall consider the matter entrusted to his responsibility and submit a draft report to the Committee. Where necessary, he shall be assisted by the Supervisory Committee secretariat.

Article 18

Inspections, studies, and expert reports

1. When exercising its powers and responsibilities, the Supervisory Committee may conduct any inspection or commission any study, research, or expert report.

2. The Supervisory Committee may appoint one or more members to conduct such inspections, studies, or research. If the Committee or the appointed member considers it appropriate, the member may be assisted by officials or other servants of OLAF or Community institutions, bodies, or agencies.

3. Where the chairman believes a matter to be urgent, he may appoint the necessary members and experts on his own initiative. In that event, he shall inform the members of the Supervisory Committee without delay.

4. Members of the Supervisory Committee instructed to conduct inspections, studies, or research shall report to the Committee on the outcome of their work.

Article 19

Secretariat

1. The Supervisory Committee shall be provided with a secretariat to assist it in the performance of its duties. The secretariat shall be a permanent body, the staff of which shall be appointed by the Director of OLAF on a proposal from the chairman of the Supervisory Committee.

2. Secretariat staff shall be placed under the authority of the chairman of the Supervisory Committee and refrain from taking instructions from any other authority. Secretariat staff shall refrain from engaging in any other activity without the permission of the Supervisory Committee chairman.

3. Where information comes to their knowledge, secretariat staff shall be required to treat it as confidential. They shall remain bound by that obligation after leaving the service. If a member of the secretariat has infringed the obligation to respect confidentiality, the chairman of the Supervisory Committee shall request the Director of OLAF to institute disciplinary proceedings in accordance with the conditions set out in the Staff Regulations of officials.

4. The seat of the secretariat shall be determined by decision of the chairman of the Supervisory Committee.

5. The secretariat shall seek to ensure that the tasks entrusted to the Supervisory Committee are duly accomplished. It shall accordingly assist the chairman in the preparations for and the conduct of meetings. It shall draw up draft minutes of meetings. It shall supply Committee members with information and documents relating to every sphere of their activities. It shall assist members, especially when they act as rapporteurs, and, under the authority of the chairman, help to draft texts.

6. The head of the secretariat shall be responsible for assigning duties within the secretariat and for signing staff travel orders.

7. Expenditure to be incurred by the Committee shall be committed by the head of the secretariat, who shall be sub-delegated for that purpose.

TITLE III

RELATIONS BETWEEN THE COMMITTEE AND THE DIRECTOR OF OLAF

Article 20

Opinion procedure for appointment of the Director

1. The candidates' files sent to the Commission following the call for applications referred to in Article 12(2) of Regulation (EC) No 1073/1999 shall all be forwarded as quickly as possible to the chairman of the Supervisory Committee.

2. The files received shall be made available to the five members of the Committee.

3. The Supervisory Committee shall adopt a draft list of suitably qualified candidates likely to be endorsed in a favourable opinion.

4. The opinion shall include an explanatory statement, which may specify the criteria used by the Committee to assess the qualifications required. The draft list shall be put to the vote.

5. After the procedure has been completed, the chairman shall draw up a list of suitably qualified candidates endorsed by the Supervisory Committee.

6. If no candidate has been endorsed or if, on a proposal from a member, the Supervisory Committee so decides, the chairman shall inform the Commission that the Committee has voted to reject the list put forward.

7. The opinion drawn up on the above basis shall be sent to the Commission to be forwarded to Parliament and the Council.

Article 21

Attendance of the Director of OLAF at Committee proceedings

1. Without prejudice to Article 11(1) above, the Director of OLAF may be invited to attend proceedings relating to his activities. Items specifically concerning him shall be identified in the draft agendas for Supervisory Committee meetings, which must be sent to him.

2. If he is unable to attend, the Director of OLAF may be authorised at his request to appoint a member of his staff to deputise for him.

Article 22

Action to be taken on information supplied by the Director of OLAF

1. In its progress report the Supervisory Committee shall review implementation of the OLAF work programme.

2. At each of its meetings the Committee shall consider the reports and information supplied by the Director of OLAF. It shall carry out any checks that it deems necessary in order to exercise its supervision after obtaining the requisite information from the Director.

3. Where an investigation has been in progress for more than nine months, the Committee shall consider why the investigation has proved impossible to conclude and what time might be needed to complete it.

4. The Committee shall consider the cases in which an institution, body, or agency has failed to act on recommendations made by the Director of the Office, referring for that purpose to a copy of the Director's comments. It shall also consider situations in which the work of OLAF investigators has been obstructed, delayed, or prevented. Where necessary, it shall send a reasoned opinion to the Director of OLAF or the institution, body, or agency concerned.

5. Where a case has to be passed on to the judicial authorities of a Member State, it shall be considered in the light of information supplied by the Director of OLAF before any information is communicated to the above authorities. Such cases shall be kept under review, also on the basis of information supplied by the Director.

6. Where the Director of OLAF receives a complaint from an official or servant of the Communities in connection with the judicial review of the Office's actions pursuant to Article 14 of Regulation (EC) No 1073/1999, he shall inform the Committee thereof.

7. The Committee shall consider proposals from the Director of OLAF for the preparation of the Commission's legislative and regulatory initiatives designed to improve fraud prevention or protection of the Communities' financial interests.

Article 23

Independence of and disciplinary procedure applicable to the Director of OLAF

1. The Director of OLAF shall inform the Committee of any measure, instruction, threat, or promise likely to cast doubt on his independence. Acting on its own initiative or on the initiative of the Director, the Supervisory Committee shall deliver an opinion on the matter referred to it.

2. Should the Director of OLAF be subject to or under threat of any form of disciplinary action instituted by the Commission, he shall supply all relevant information to the Supervisory Committee.

3. The Supervisory Committee shall deliver an opinion when it is consulted by the Commission pursuant to Article 12(4) of Regulation (EC) No 1073/1999.

Article 24

Confidentiality and processing of personal data

1. The Committee shall monitor the application of the provisions of Article 8 of Regulation (EC) No 1073/1999.

2. Acting on its own initiative or on the initiative of the Director, the Supervisory Committee may decide to deliver an opinion.

TITLE IV

BUDGETARY PROVISIONS

Article 25

Budget

1. The Committee shall deliver an opinion on the preliminary draft budget submitted by the Director of OLAF and addressed to the Commission Directorate-General for Budgets.

2. The Director of OLAF shall present to the Committee a regular report on the implementation of the budget.

3. The secretariat shall draw up annual budget proposals for the operating purposes of the Supervisory Committee. The proposals shall be forwarded to the Director of OLAF after they have been approved by the Supervisory Committee. The Supervisory Committee budget shall be entered as a separate section in the OLAF budget.

4. The costs incurred by the Supervisory Committee to enable it properly to perform its duties shall be charged to the Committee budget in accordance with rules that the Committee shall lay down. Expenditure shall be effected under the terms of the subdelegation provided for in Article 19(7), in accordance with the Financial Regulation.

TITLE V

TRANSITIONAL AND FINAL PROVISIONS

Article 26

Review and amendment of the Rules of Procedure

1. These Rules of Procedure shall be reviewed by the Supervisory Committee within two years of their entry into force.

2. Any member of the Committee may propose amendments at any time and submit them in writing to the Committee chairman. Amendments shall be put to the vote at the first meeting following their submission, in accordance with the voting procedure set out in Article 13 above.

Article 27

Entry into force, progress report and publication of the Rules of Procedure

1. These Rules of Procedure shall enter into force on the day following their adoption by the Supervisory Committee.

2. The Committee's progress report on OLAF's activities referred to in Article 15 of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 shall be placed on the agenda of the first meeting in January 2002.

3. After they have been adopted, the Rules of Procedure shall be published in the *Official Journal of the European Communities*.

Done at Brussels, 17 November 1999.

For the OLAF Supervisory Committee,

The Chairman

Mireille DELMAS-MARTY