

MANAGEMENT BOARD

DECISION

<p>EFSA – European Food Safety Authority</p>	<p>Decision concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Union’s interests</p>	<p>Decision No.: mb161214-a6</p>
	<p>Effective Date: 14 December 2016</p>	<p>Supersedes: Management Board Decision mb 11.12.2002 – 7 ADOPTED of 11.12.2002 concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and other illegal activity detrimental to the Communities’ interests</p>

Approvals	Signature	Name
Originator		Bernhard Url (Executive Director)
Management Board	See Decision	Jaana Husu-Kallio (Chair of the MB)

<p>Introduction</p>	<p>The EFSA’s Anti-Fraud Strategy’s Action Plan adopted by the Management Board in March 2015 provided for the update of the MB’s decision of 2002 concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and other illegal activity detrimental to the Union’s interests.</p> <p>For Agencies the European Anti-Fraud Office (OLAF) is entrusted with the mandate to conduct such investigations. The legislative framework for the investigations conducted by OLAF has been revised in 2013 by Regulation (EU, EURATOM) No 883/2013, which also provides for a duty of the agencies to cooperate with OLAF in the course of such investigations.</p> <p>The present Decision revises the one of 2002 on the same topic, by giving account of this new legislative framework.</p>
<p>Description</p>	<p>Compared to the previous framework, the revised Decision confines itself to amendments aimed at aligning the previous text with the wording and the framework of Regulation (EU, EURATOM) No 883/2013 and to terminological changes following the Treaty of Lisbon. It also gives account of the duty of the Authority to cooperate with OLAF in the course of its</p>

	investigations.
References	Regulation (EC) No 178/2002, Regulation (EU, EURATOM) No 883/2013
Abbreviations	<i>See Decision</i>

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DECISION OF THE EUROPEAN FOOD SAFETY AUTHORITY CONCERNING THE TERMS AND CONDITIONS FOR INTERNAL INVESTIGATIONS IN RELATION TO THE PREVENTION OF FRAUD, CORRUPTION AND ANY ILLEGAL ACTIVITY DETRIMENTAL TO THE UNION'S INTERESTS

THE MANAGEMENT BOARD OF THE EUROPEAN FOOD SAFETY AUTHORITY,

Having regard to Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority, (hereinafter referred to as "the Authority") and laying down procedures in matters of food safety¹, and in particular Article 25 and 26 thereof,

Having regard to Regulation (EU, EURATOM) No 883/2013 of the European Parliament and of the Council of 11 September 2013² concerning investigations conducted by the European Anti-fraud Office (OLAF), and in particular Article 1(5), 4(1) and 4(7) thereof,

Having regard to the rules of procedure of the Management Board of the European Food Safety Authority³, and in particular Article 8 thereof,

Whereas:

- (1) 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) (hereinafter referred to as "the Office" or "OLAF") provides that within the institutions, offices and agencies established by, or on the basis of, the Treaties, the Office shall conduct administrative investigations for the purpose of fighting fraud, corruption or any other illegal activity affecting the financial interests of the Union;
- (2) The responsibility of the Office as established by the Commission extends beyond the protection of financial interests to include all activities relating to the need to safeguard Union interests against irregular conduct liable to give rise to administrative or criminal proceedings;
- (3) The scope of the fight against fraud should be broadened and its effectiveness enhanced by deploying all available means to attain the objective of the protection of the financial interests of the Union and of the fight against fraud, corruption and other illegal activity affecting these interests;
- (4) Therefore, to reinforce the means available for combating fraud, while respecting the principle of their internal organizational autonomy, all the institutions, bodies, offices and agencies should entrust to the Office the task

¹ OJ L 31 of 01.02.2002, p. 1.

² OJ L 248 of 18.09.2013, p. 1.

³ mb 27 06 13 – Revised Management Board Rules of Procedure – ADOPTED.

of conducting internal administrative investigations with a view to bringing to light serious matters relating to the discharge of professional duties constituting a dereliction of the obligations of officials and other servants of the Union, as referred to in the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities⁴ (hereinafter referred to as 'the Staff Regulations'), 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, heads of offices and agencies or staff members of institutions, bodies, offices and agencies of the Union not subject to the Staff Regulations;

- (5) The investigations should be conducted in full compliance with the Treaties, and in particular with Protocol 7 on the privileges and immunities of the Union, and with Regulation (EU, EURATOM) No 883/2013, while respecting the Staff Regulations, and with full respect for human rights and fundamental freedoms;
- (6) The investigations should be carried out under equivalent conditions in all the Union institutions, bodies, offices and agencies; assignment of this task to the Office should not affect the responsibilities of the institutions, bodies, offices and agencies themselves and should in no way reduce the legal protection of the persons concerned;
- (7) For the sake of successful cooperation with the Office in the course of its investigations, in accordance with Regulation (EU, EURATOM) No 883/2013 the Authority guarantees to the Office access to all its premises and to all information and documents held by it. Such access is subject to the conditions laid down by Regulation (EU, EURATOM) No 883/2013 and should respect the principles of confidentiality and the rules on data protection laid down in Regulation (EC) No 45/2001⁵;
- (8) Every staff member of the Authority shall cooperate with and supply information to the Office, while ensuring the confidentiality of the internal investigation.

HAS DECIDED AS FOLLOWS:

Article 1: Duty to cooperate with the Office

The Executive Director, members of the Authority's constitutive bodies, any official or other servant of the Authority and members of staff not subject to the Staff Regulations shall be required to cooperate fully with the Office's agents and to lend any assistance required to the investigation. With that aim in view, they shall supply the Office's agents with all useful information and explanations.

⁴ OJ 45 of 14.06.1962, p. 1385, as amended (last consolidated version published on OJ L 129 of 30.04.2014, p. 5).

⁵ OJ L 8 of 12.01.2001, p. 1.

Article 2: Duty to supply information

1. Any official or other servant of the Authority, member of its constitutive bodies or member of staff not subject to the Staff Regulations who, in the course or in connection with the performance of his duties, becomes aware of facts which give rise to a presumption of the existence of possible illegal activity, including fraud or corruption, detrimental to the interests of the Union, or of conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of officials or servants of the Union liable to result in disciplinary or, in appropriate cases, criminal proceedings, or a serious failure to comply with a similar obligation on the part of the members of constitutive bodies or members of staff not subject to the Staff Regulations, shall inform without delay in writing his/her immediate superior or the Executive Director or the Chairman of the Management Board, as the case may be, or, if he/she considers it useful, the Office direct.

2. The immediate superior or the Executive Director or the Chairman of the Management Board shall without delay transmit 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. Officials or other servants of the Authority, members of its constitutive bodies or members of staff not subject to the Staff Regulations shall not suffer any prejudicial effects on the part of the Authority as a result of having communicated the information referred to in the first and second paragraphs, provided that he/she acted reasonably and honestly.

Article 3: Assistance from the security office

At the request of the Director-General of the Office, the Authority's security office shall assist the Office in the practical conduct of investigations.

Article 4: Informing the interested party

1. As soon as an investigation reveals that an official or other servant of the Authority, a member of its constitutive bodies or member of staff not subject to the Staff Regulations may be a person concerned, that official or other servant of the Authority, a member of its constitutive bodies or member of staff not subject to the Staff Regulations shall be informed to that effect, provided that this does not prejudice the conduct of the investigation or of any investigative proceedings falling within the remit of a national judicial authority.

2. In any event, once the investigation has been completed and before conclusions referring by name to an official or other servant of the Authority, a member of its constitutive bodies or member of staff not subject to the Staff Regulations are drawn up, that person shall be given the opportunity to

comments on facts concerning him/her. The conclusions shall make reference to these comments.

3. In duly justified cases where it is necessary to preserve the confidentiality of the investigation and/or entailing the use of investigative procedures falling within the remit of a national judicial authority, compliance with the obligation to invite the official or other servant of the Authority, the member of its constitutive bodies or member of staff not subject to the Staff Regulations to give his/her views may be deferred by the Director-General of the Office.

Article 5: Information on the closing of the investigation with no further action taken

If, following an internal investigation, no case can be upheld against an official or other servant of the Authority, a member of its constitutive bodies or member of staff not subject to the Staff Regulations about whom allegations have been made, the internal investigation concerning him/her shall be closed, with no further action taken, by decision of the Director-General of the Office, who shall inform the interested party and his/her institution in writing. The interested party may request that this decision be inserted in his/her personal file.

Article 6: Waiver of immunity

Any request from a national police or judicial authority regarding the waiver of the immunity from judicial proceedings of an official or servant of the Authority, a member of its constitutive bodies or member of staff not subject to the Staff Regulations concerning possible cases of fraud, corruption or any other illegal activity shall be transmitted to the Director-General of the Office for his/her opinion.

Article 7: Effective date

The present Decision shall enter into force on the date following the date of its adoption.

Adopted in Parma on 14 December 2016

For EFSA's Management Board

Jaana Husu-Kallio

Chair of the Management Board