

EUROPEAN INVESTMENT BANK

August 2004

PV/04/11

BOARD OF GOVERNORS

**Minutes of the Decision of 27 July 2004 requested by written procedure**

**OLAF: DECISION ON MEASURES TO COMBAT FRAUD**

CONFIDENTIAL

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**OLAF: Decision on measures to combat fraud**

The BOARD OF GOVERNORS had been invited, by letter dated 30 June 2004, to state its position in accordance with the written procedure provided for in Article 5 of the Rules of Procedure.

The request had been submitted on the basis of Document CG 04/14, containing a proposal from the EIB's Board of Directors to approve the new provisions applicable to the Bank with respect to combating fraud (reproduced in the Annex hereto), pursuant to the ruling of the Court of Justice.

The CHAIRMAN recorded on 27 July 2004 that the BOARD OF GOVERNORS decided to approve this document and the decision on measures to combat fraud.

Date:

The Chairman:

P. SOLBES MIRA

The Secretary:

E. UHLMANN

Annex: Text of the Board of Governors' decision

ANNEXText of the Board of Governors' decision relating to OLAF and measures to combat fraud

concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' financial interests

## THE BOARD OF GOVERNORS OF THE EUROPEAN INVESTMENT BANK

Having regard to Articles 9, 266, 267 and 280 of the EC Treaty,

Having regard to the Protocol on the Statute of the European Investment Bank (hereinafter 'the Bank') annexed to the EC Treaty,

Having regard to Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999<sup>(1)</sup> and Council Regulation (EURATOM) No 1074/1999 of 25 May 1999<sup>(2)</sup> (hereinafter 'the Regulations') concerning investigations conducted by the European Anti-Fraud Office (hereinafter 'the Office'),

## Whereas:

(1) Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (EURATOM) No 1074/1999 provide that the Office is to initiate and conduct administrative investigations within the institutions, bodies, offices and agencies established by, or on the basis of, the EC and Euratom Treaties, for the purpose of fighting fraud, corruption and any other illegal activity affecting the financial interests of the Communities;

(2) Such investigations 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 and of the Statute of the Bank and the rules governing its staff, and may not affect the responsibilities and administrative autonomy of the Bank or in any way reduce the legal protection of the persons concerned;

(3) Article 4(6) of the Regulations provides for a decision to be adopted by each institution, body, office or agency which shall in particular include rules concerning, firstly, a duty on the part of members, officials and other servants of the institutions and bodies, and managers, officials and servants of offices and agencies, to cooperate with and supply information to the Office's servants, and, secondly, the procedures to be observed by the Office's employees when conducting internal investigations and the guarantees of the rights of persons concerned by an investigation;

(4) Article 287 of the EC Treaty stipulates that the members of the institutions of the Community, the members of committees, and the officials and other servants of the Community shall be required, even after their duties have ceased, not to disclose

information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components;

(5) In addition, the Bank, the members of its organs and its staff are required to maintain especially strict conditions of secrecy because of the banking nature of the institution, in particular with regard to information involving third parties and their banking relationship with the Bank; whereas the officials and agents of the Office should therefore allow for compliance with this rule in the appropriate context when carrying out their duties in relation to the Bank, particularly in view of any liabilities that may be incurred;

(6) An institutional system has been created by the EC Treaty, of which the Statute of the Bank forms part, and tasks have been entrusted to the Bank by Article 267 of the Treaty in particular;

(7) In general the members of the Board of Governors, the Board of Directors and the Audit Committee mostly perform duties on a national basis and thereby remain subject to national law; whereas this Decision should therefore be applied only to professional activities carried out by these persons in their capacity as members of the Bank's organs;

(8) Pursuant to Article 2(1), last subparagraph, of the Commission Decision of 28 April 1999 establishing the Office<sup>(3)</sup>, the latter may be entrusted, by the institutions, bodies, offices or agencies, with investigations in areas other than those referred to in the first recital above;

(9) In accordance with this provision, the Secretary General of the Bank may entrust to the Office the task of conducting 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 members of the Bank's organs or its staff, as referred to the rules governing its staff, detrimental to the interests of the European Communities and liable to result in disciplinary or, in appropriate cases, criminal proceedings, or serious misconduct necessitating economic compensation;

(10) Practical arrangements should be laid down stipulating how the members of the Bank's organs and its staff are to cooperate in the smooth operation of the internal investigations;

(11) This Decision shall apply to the members of the Bank's organs, its staff and all other persons engaged in its service,

HAS DECIDED AS FOLLOWS:

*Article 1*

**Duty to supply information**

1. Any member of the Bank's staff 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 financial interests of the Communities shall inform without delay the Secretary General or the Head of Internal Audit or, if he considers it useful, the Office direct. In the same circumstances, the members of the Bank's organs shall inform the President or, if they consider it useful, the Office direct.
2. The Secretary General and the Head of Internal Audit together – or, where appropriate, the President – shall transmit without delay to the Office any evidence of which they are aware from which the existence of irregularities as referred to in paragraph 1 above may be presumed.
3. The Bank's staff and the members of its organs must in no way suffer inequitable or discriminatory treatment as a result of having communicated the information referred to in paragraphs 1 and 2 above.

*Article 2*

**Procedures for cooperation with the Office**

1. The Secretary General, Internal Audit and the services and staff of the Bank shall be required to cooperate fully with the Office's agents and to lend any assistance required to the investigations. With that aim in view, they shall supply the Office's agents with all useful information and explanations.
2. Where the Director of the Office decides to initiate an investigation within the Bank, he shall contact the latter's Secretary General and inform him of the purpose of the investigation, how it is to be conducted and the names of the agents responsible for carrying it out.
3. 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, the members of the Bank's organs shall cooperate fully with the Office.
4. With regard to information relating to the activity of the Bank's Audit Committee, set up pursuant to Article 14 of its Statute, the provisions of Decision No 99/45 of the European Court of Auditors of 23 September 1999 laying down rules for cooperation with the Office in respect of access by the latter to information concerning the Court's audits shall be applied *mutatis mutandis*, in the version initially adopted (annexed).

*Article 3*  
**Banking activities**

1. Given the nature of the Bank's activities, access to certain types of sensitive information may be subject to special procedures in accordance with paragraph 2 below.

In this context, sensitive information shall be regarded as that involving third parties and their banking relations with the Bank, the disclosure of which would be liable to affect the tasks entrusted to the Bank by the EC Treaty or to engage its liability.

2. The President or, in his absence, his representative, shall decide on the form of access to the information concerned and the procedures for providing it to the Office. The Bank shall take account of the most significant factors, such as the degree of sensitivity of the information requested by the Office, its importance for the investigation and the seriousness of the suspicions of fraud communicated by the Office to the Bank, the risk involved to the Bank's tasks, reputation and standing in the event of disclosure, and any liability to third parties. The Bank shall consider all possible ways of transmitting the information to the Office, including, where necessary, doing so without identifying the persons, transactions or amounts concerned.

The Bank shall justify any decision taken on this basis to the Office.

3. When transmitting information to the Office as part of its investigations, the Bank shall indicate, of its own accord or upon request, which information is of a particularly confidential nature. In accessing this information, the Office shall undertake to maintain secrecy and, should Article 8(2), second subparagraph, of the Regulations need to be applied, to take all steps, including issuing the necessary warnings, to ensure that confidentiality is respected. Where a criminal offence is suspected, this shall not prejudice the possibility of the Office referring the matter to the judicial authorities in order to allow for the necessary criminal proceedings.

*Article 4*  
**Assistance from the staff of the Bank**

At the request of the Director of the Office, the staff of the Bank in general, and in particular those designated by the Secretary General and the Head of Internal Audit, shall assist the Office in the practical conduct of investigations.

*Article 5*  
**Informing the interested party**

1. Where the possible implication of a member of an organ of the Bank or of its staff 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 a

member of an organ of the Bank or of its staff 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.

2. In cases necessitating the maintenance of absolute secrecy for the purposes of the investigation and requiring the use of investigative procedures falling within the remit of a national judicial authority, compliance with the obligation to invite the member, manager or employee of the Bank to give his views may be deferred in agreement with the President or the Secretary General respectively.

*Article 6*

**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 an organ of the Bank or of its staff 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 and the Bank in writing.

*Article 7*

**Waiver of immunity**

Any request from a national police or judicial authority regarding the waiver of the immunity from judicial proceedings of a manager or employee of the Bank concerning possible cases of fraud, corruption or any other illegal activity shall be transmitted to the Director of the Office for his opinion. If a request for waiver of immunity concerns a member of the Bank's organs, the Office shall be informed.

**Article 8**

Assistance from the Office in other areas

The Secretary General may entrust to the Office the task of conducting 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 Bank's staff, liable to result in disciplinary or, in appropriate cases, criminal proceedings.

*Article 9*

**Amendment of internal provisions**

The Management Committee shall amend the Bank's internal provisions in order to adapt them to this Decision.

*Article 10*  
Entry into force

This Decision shall enter into force on the day of its approval by the Board of Governors.

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<sup>(1)</sup> OJ L 136, 31.5.1999, p. 1

<sup>(2)</sup> OJ L 136, 31.5.1999, p. 8

<sup>(3)</sup> OJ L 136, 31.5.1999, p. 20

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<sup>(2)</sup> OJ L 136, 31.5.1999, p. 8

<sup>(3)</sup> OJ L 136, 31.5.1999, p. 20