

Decision by the Management Committee of the Body of European Regulators for Electronic Communications (BEREC) concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Unions' interests

The Management Committee of the Body of European Regulators for Electronic Communications (BEREC),

Having regard to the Council and European Parliament Regulation (EC) n° 1211/2009 of 25 November 2009 establishing BEREC and the Office¹ and in particular Article 16 thereof.

Whereas:

(1) Regulation (EC) No 1073/1999 of the European Parliament and of the Council² and Council Regulation (Euratom) No 1074/1999³ concerning investigations conducted by the European Antifraud Office (OLAF) provide that OLAF is to initiate and conduct administrative investigations within the institutions, agencies, bodies and offices established by or on the basis of the Treaty on the Functioning of the European Union;

(2) The responsibility of OLAF 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 exploiting existing expertise in the area of administrative investigations;

(4) Therefore, on the basis of their administrative autonomy, all the institutions, agencies, bodies and offices should entrust to OLAF the task of conducting internal administrative investigations with a view to bringing to light serious situations relating to the discharge of professional duties which may constitute a failure to comply with the obligations of officials and servants of the Union, as referred to in Articles 11, 12, second and third paragraphs, 13, 14, 16 and 17, first paragraph, of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities (hereinafter referred to as 'the Staff Regulations'), detrimental to the interests of the Union and liable to result in disciplinary or, in appropriate cases, criminal proceedings, or serious misconduct, as referred to in Article 22 of the Staff Regulations, or a failure to comply with the analogous obligations of the Members, managers or members of staff of the institutions, bodies and offices and agencies of the Union not subject to the Staff Regulations;

¹ OJ L 337, 18.12.2009, p.1.

² OJ L 136, 31.5.1999, p. 1.

³ OJ L 136, 31.5.1999, p. 8.

(5) This decision shall therefore be fully applicable to the officials and servants of the BEREC Office, to the members of the Management Committee and to members of staff not subject to the Staff Regulations, including seconded experts;

(6) Such investigations should be conducted in full compliance with the relevant provisions of the Treaties establishing the European Union, in particular the Protocol on privileges and immunities, of the texts implementing them and the Staff Regulations;

(7) Such investigations should be carried out under equivalent conditions in all the Union institutions, agencies, bodies and offices; assignment of this task to OLAF should not affect the responsibilities of the BEREC Office and should in no way reduce the legal protection of the persons concerned;

(8) In accordance with Article 16 of the Council and European Parliament Regulation (EC) n° 1211/2009 and the Inter-institutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the European Commission, practical arrangements should be laid down by the BEREC Office stipulating how the members of the Management Committee, the managers, the officials and servants of the BEREC Office and the members of the staff not subject to the Staff Regulations are to cooperate in the smooth operation of the internal investigations,

HAS DECIDED AS FOLLOWS:

Article 1

Duty to cooperate with OLAF

The members of the Management Committee, the Administrative Manager, any manager, official or servant of the BEREC Office and members of the staff not subject to the Staff Regulations shall be required to cooperate fully with OLAF's agents and to lend any assistance required to the investigation. With that aim in view, they shall supply OLAF's agents with all useful information and explanations.

Article 2

Duty to supply information

Any official or servant of the BEREC Office, any member of the Management Committee, manager or member of the staff not subject to the Staff Regulations who becomes aware of evidence which gives rise to a presumption of the existence of possible cases of fraud, corruption or any other illegal activity detrimental to the interests of the Union, or of serious situations relating to the discharge of professional duties which may constitute a 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 failure to comply with the analogous obligations of managers or members of staff not subject to the Staff Regulations, shall inform in writing and without delay his/her immediate superior, or the Administrative Manager of the BEREC Office or the Chair of the Management Committee, as the case may be or, if he/she considers it useful, the OLAF directly.

The Chair of the Management Committee, the Administrative Manager and the Heads of Service of the BEREC Office shall transmit without delay to OLAF any evidence of which they are aware from which the existence of irregularities as referred to in the first paragraph may be presumed.

Officials or servants of the BEREC Office, members of the Management Committee, managers or members of staff not subject to the Staff Regulations must in no way suffer inequitable or discriminatory treatment as a result of having communicated the information referred to in the first and second paragraphs.

Article 3

Assistance from the BEREC office

At the request of the Director of OLAF, members of BEREC Office's staff shall assist OLAF in the practical conduct of investigations.

Article 4

Informing the interested party

Where the possible implication of a member of the Management Committee, manager, official or servant or a member of the staff not subject to the Staff Regulations emerges, the interested party shall be informed rapidly as long as this would not be harmful to the investigation. In any event, conclusions referring by name to a member of the Management Committee, manager, official or servant of the BEREC Office or a member of the staff not subject to the Staff Regulations may not be drawn once the investigation has been completed without the interested party's having been enabled to express his views on all the facts which concern him/her.

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 of the Management Committee, manager, official or servant of the BEREC Office or the member of the staff not subject to the Staff Regulations to give his views may be deferred in agreement with the Chair of the Management Committee or the Administrative Manager.

Article 5

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 the Management Committee, manager, official or servant of the BEREC Office or a

member of the staff not subject to the Staff Regulations against whom allegations have been made, the internal investigation concerning him shall be closed, with no further action taken, by decision of the Director of OLAF, who shall inform the interested party in writing.

Article 6

Waiver of immunity

Any request from a national police or judicial authority regarding the waiver of the immunity from judicial proceedings of a manager, official or servant of the BEREC Office, members of staff not subject to the Staff Regulations or member of the Management Committee if applicable, concerning possible cases of fraud, corruption or any other illegal activity shall be transmitted to the Director of OLAF for his opinion.

Article 7

Effective date

This Decision shall take effect on the date of its signature and shall be published on the website of the BEREC Office.

Done at Amsterdam, 30 September 2010

For the Management Committee,

John Doherty
2010 Chair