

DECISION

OF THE GOVERNING BOARD OF THE EUROPEAN POLICE COLLEGE

1/2006/GB

CONCERNING THE TERMS AND CONDITIONS

FOR INTERNAL INVESTIGATIONS IN RELATION TO PREVENTION OF FRAUD,

CORRUPTION AND ANY ILLEGAL ACTIVITY DETRIMENTAL TO THE

COMMUNITIES' INTERESTS

Adopted by the Governing Board
on 13 January 2006

THE GOVERNING BOARD,

Having regard to the Council Decision 2005/681/JHA of 20 September 2005 establishing a European Police College (hereinafter referred to as "CEPOL"), and in particular Article 18 thereof;

Having regard to the 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;

Having regard to the accession of CEPOL to the Inter-institutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office;

Whereas:

- (1) The European Anti-fraud Office (hereinafter referred to as "OLAF") shall be able to initiate and conduct administrative investigations within CEPOL;
- (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 Community 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) OLAF was entrusted with 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 Communities, as referred to, in particular, in Articles 11 to 13, 16 and 17 of the Staff Regulations of Officials of the European Communities (hereinafter referred to as "the Staff Regulations") and Article 81 of the Conditions of Employment of Other Servants of the European Communities, detrimental to the interests of those Communities and liable to result in disciplinary or, in appropriate cases, criminal proceedings, or serious misconduct, as referred to, in particular, in Article 22(a) or 86 of the Staff Regulations, or a failure to comply with the analogous obligations of the members of staff of CEPOL not subject to the Staff Regulations;
- (5) 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 the Staff Regulations;
- (6) Such investigations should be carried out under equivalent conditions in all the Community institutions, bodies and offices and agencies; assignment of this task

to OLAF should not affect the responsibilities of CEPOL and should in no way reduce the legal protection of the persons concerned;

- (7) Rules concerning the duties of the Director of CEPOL and of the staff of the CEPOL Secretariat to inform and cooperate with OLAF's agents on procedures that need to be observed by the OLAF's agents when conducting an internal investigation, as well as the guarantees of the rights of persons concerned by an internal investigation are required.

HAS ADOPTED THIS DECISION:

Article 1
Duty to cooperate with the OLAF

The Director of the European Police College (hereinafter referred to as "CEPOL") and any member of staff of the CEPOL Secretariat as referred to in Article 13 of Council Decision 2005/681/JHA (hereinafter referred to as "member of staff of the CEPOL Secretariat") shall be required to cooperate fully with the agents of the European Anti-fraud Office (hereinafter referred to as "OLAF") and to lend any assistance required to the investigation related to cases of fraud or corruption or to any other illegal activity detrimental to financial interests of the Communities committed within CEPOL. With that aim in view, they shall supply the OLAF's agents with all useful information and explanations.

Article 2
Duty to supply information

- (1) The Director of CEPOL and any member of staff of the CEPOL Secretariat who, in course of or in connection with the performance of his duties, 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 Communities, 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 Communities liable to result in disciplinary or, in appropriate cases, criminal proceedings, or a failure to comply with the analogous obligations of the members of staff not subject to the Staff Regulations, shall inform without delay in case of the Director of CEPOL the chairperson of the Governing Board or in case of a member of staff of the CEPOL Secretariat his immediate superior or the Director of CEPOL, or in both cases, if he considers it useful, OLAF direct.
- (2) The chairperson of the Governing Board or any member of staff of the CEPOL Secretariat receiving the information referred to in paragraph (1) of this article shall transmit without delay to OLAF any evidence of which he is aware from which the existence of irregularities as referred to in paragraph (1) of this article may be presumed.

- (3) Neither the Director of CEPOL nor any member of staff of the CEPOL Secretariat shall in no way suffer inequitable or discriminatory treatment as a result of having communicated the information referred to in paragraphs (1) and (2) of this article, provided that he acted reasonably and honestly.
- (4) Paragraphs (1) to (3) shall not apply to documents, deeds, reports, notes or information in any form whatsoever held for the purpose of, or created or disclosed to the Director of CEPOL or the member of staff of the CEPOL Secretariat in the course of, proceedings in legal cases, whether pending or closed.

Article 3
Assistance from CEPOL

At the request of the Director of OLAF, addressed to the Director of CEPOL, a member of staff of the CEPOL Secretariat in charge of security shall assist OLAF in the practical conduct of investigations.

Article 4
Informing the interested party

- (1) Whenever an investigation by OLAF reveals the possible implication of the Director of CEPOL or a member of staff of the CEPOL Secretariat, 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 the Director of CEPOL or a member of the staff of the CEPOL Secretariat may not be drawn once the investigation has been completed without the interested parties having been enabled to express his views on all the facts which concern him. The conclusions shall make reference to these views.
- (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 Director of CEPOL or a member of staff of the CEPOL Secretariat to give his views may be deferred in agreement in case of the Director of CEPOL with the chairperson of the Governing Board and in case of a member of staff of the CEPOL Secretariat with the Director of CEPOL respectively. In such cases, no disciplinary proceedings may be opened before the interested party has been given a chance to comment.

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

If, following an investigation by OLAF, no case can be made out against the Director of CEPOL or a member of staff of the CEPOL Secretariat 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. The Director of CEPOL or the member of staff of the CEPOL Secretariat may request that this decision be inserted in his 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 the Director of CEPOL or a member of staff of the CEPOL Secretariat concerning possible cases of fraud, corruption or any other illegal activity shall be transmitted to the Director of OLAF for his opinion.

*Article 7
Transitional Provision*

Any person working with the CEPOL Secretariat on the basis of a contract agreed between CEPOL and an employment agency shall be regarded as member of the staff of the CEPOL Secretariat.

*Article 8
Effective date*

This Decision shall take effect on the day following that of its adoption.

Done at Brussels, 13 January 2006

For the Governing Board

*János Féherváry
Chair of the Governing Board*