

# EUROPEAN CENTRAL BANK

## DECISION OF THE EUROPEAN CENTRAL BANK

of 7 October 1999

on fraud prevention

(ECB/1999/5)

(1999/726/EC)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as the 'Statute') and in particular to Article 12.3 thereof;

Having regard to the proposal of the Executive Board of the European Central Bank (ECB);

Having regard to the opinion of the Staff Committee of the ECB;

(1) Whereas the ECB, together with the institutions of the European Communities and the Member States, attaches great importance to the protection of the Communities' financial interests and to efforts to combat fraud and other illegal activities detrimental to the Communities' financial interests;

(2) Whereas the Cologne European Council in June 1999 considered it eminently desirable that the ECB should join the institutions of the European Communities in efforts to combat fraud within the European Union;

(3) Whereas the ECB attaches great importance to the protection of its own financial interests and to efforts to combat fraud and other illegal activities detrimental to its financial interests;

(4) Whereas all available means must be fully deployed to attain these objectives, notably in the context of investigative duties devolving upon the ECB and the institutions of the European Communities, while maintaining the current distribution and balance of responsibilities

between the ECB and the institutions of the European Communities;

(5) Whereas the institutions of the European Communities and the Member States have taken action to combat fraud and other illegal activities detrimental to the Communities' financial interests on the basis of Article 280 of the Treaty establishing the European Community (hereinafter referred to as the 'Treaty');

(6) Whereas the independence of the ECB is provided for by the Treaty and the Statute; whereas, in accordance with the Treaty and the Statute, the ECB has its own budget and its own financial resources separate from those of the European Communities;

(7) Whereas, to reinforce the means available for combating fraud, by Decision 1999/352/EC, ECSC, Euratom <sup>(1)</sup>, the Commission has established among its own departments a European Anti-Fraud Office (OLAF) with responsibility for conducting administrative investigations to this end;

(8) Whereas combating fraud and other illegal activities detrimental to the financial interests of the ECB is a core function of the Directorate for Internal Audit and whereas that Directorate is responsible for conducting administrative investigations within the ECB to this end;

(9) Whereas combating fraud and other illegal activities within the ECB should be understood as covering similar activities as defined by the European Parliament, the Council of the European Union and the Commission of the European Communities in the first subparagraph of paragraph 1 of the Interinstitutional Agreement of 25 May 1999 <sup>(2)</sup>;

(10) Whereas, to enhance and reinforce the independence of the activities of the Directorate for Internal Audit in combating fraud and other illegal activities detrimental to the financial interests of the ECB, this Directorate should report to an anti-fraud committee made up of highly qualified outside independent persons on these issues,

<sup>(1)</sup> OJ L 136, 31.5.1999, p. 20.

<sup>(2)</sup> OJ L 136, 31.5.1999, p. 15.

HAS DECIDED AS FOLLOWS:

*Article 1*

**ECB anti-fraud committee**

1. An anti-fraud committee shall be established in order to reinforce the independence of the Directorate for Internal Audit in its activities and reporting concerning all issues related to the prevention and detection of fraud and other illegal activities detrimental to the financial interests of the ECB and compliance with relevant internal standards and/or codes of conduct of the ECB. The composition and powers of the anti-fraud committee shall be laid down by this Article.

2. The anti-fraud committee shall be responsible for both the regular monitoring and the discharge of the activities referred to in paragraph 1 within the ECB by the Directorate for Internal Audit.

3. The anti-fraud committee shall be composed of three outside independent persons who possess outstanding qualifications relevant to the activities of the anti-fraud committee. They shall be appointed by a decision of the Governing Council, which shall be published in the *Official Journal of the European Communities*.

4. The term of office of members of the anti-fraud committee shall be three years and this shall be renewable only once. On expiry of their term of office members shall remain in office until their appointments are renewed or until they are replaced, as the case may be.

5. In carrying out their duties, the members of the anti-fraud committee shall neither seek nor take instructions from the decision-making bodies of the ECB, from institutions or bodies of the European Communities, from any government or from any other institution or body.

6. The anti-fraud committee shall appoint its chairperson and adopt its own rules of procedure. It shall take its decisions by a majority of its members.

7. The Director of Internal Audit shall forward a programme of its activities referred to in paragraph 1 above to the anti-fraud committee each year. The Directorate for Internal Audit shall keep the anti-fraud committee regularly informed of these activities, in particular its investigations, the results thereof and the actions taken in that connection. The anti-fraud committee may, where appropriate, instruct the Directorate for Internal Audit with regard to its performance of these activities.

In the event that an investigation has been in progress for more than six months, the Director of Internal Audit shall inform the anti-fraud committee of the reasons for it not yet having been possible to wind up the investigation, and also of the expected date of completion. In such a case the anti-fraud committee shall inform the Governing Council.

The Director of Internal Audit shall inform the anti-fraud committee of cases in which the management of the ECB or the decision-making bodies of the ECB has failed to act on

recommendations regarding an issue of fraud prevention and detection or regarding compliance with relevant internal standards and/or codes of conduct of the ECB. The Director of Internal Audit shall inform the anti-fraud committee of cases in which information needs to be forwarded to the judicial authorities of a Member State.

8. The Anti-Fraud Committee shall present at least one report a year on its activities to the Governing Council, the external auditors of the ECB and the European Court of Auditors. The Committee shall submit reports to the Governing Council, the external auditors of the ECB and the European Court of Auditors on the results of the Directorate for Internal Audit's investigations and the action taken in their respect.

9. The anti-fraud committee shall be responsible for the relations with the Supervisory Committee of the European Anti-Fraud Office (OLAF) referred to in Article 11 of Regulation (EC) No 1073/1999 of the European Parliament and of the Council <sup>(1)</sup>. These relations shall follow the principles established by a decision of the ECB.

10. The anti-fraud committee may inform the competent national judicial authority where reasonable evidence shows that there may have been a breach of national criminal law.

*Article 2*

**Responsibility for reporting on fraud issues**

The Directorate for Internal Audit is, in accordance with this Decision and the procedures in force within the ECB, responsible for investigating and reporting on all issues related to the prevention and detection of fraud and other illegal activities detrimental to the financial interests of the ECB and on compliance with relevant internal standards and/or codes of conduct of the ECB.

*Article 3*

**Independence**

In order to ensure that the Directorate for Internal Audit is able to investigate and report on all issues relating to fraud prevention and detection effectively and with the required level of independence, the Director of Internal Audit shall report to the anti-fraud committee referred to in Article 1 of this Decision on fraud issues.

*Article 4*

**Information to investigated persons**

Where possible personal implications emerge from a fraud investigation, the Director of Internal Audit shall inform the persons concerned rapidly as long as this would not be harmful to the investigation. In any event, conclusions referring to persons by name may not be drawn before the persons concerned have been given the opportunity to express their views on all the facts which concern them.

If, following an investigation, no case can be made against the person against whom allegations have been made, the investigations concerning him/her shall be closed, with no further action being taken, by a decision of the Director of Internal Audit, who shall inform the person concerned in writing.

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

*Article 5***Conduct of activities**

The activities referred to in this Decision shall be carried out subject to both the rules of the Treaties, in particular Article 6 of the Treaty on European Union, and the Protocol on the privileges and immunities of the European Communities with due regard to the Conditions of employment for staff of the European Central Bank and the Conditions of short-term employment.

Staff of the ECB shall, and any other person may, inform the anti-fraud committee or the Directorate for Internal Audit of any fraud or illegal activities detrimental to the financial interests of the ECB. Staff of the ECB must in no way suffer inequitable or discriminatory treatment as a result of having contributed to the activities of the anti-fraud committee or the Directorate for Internal Audit referred to in this Decision.

*Article 6***Complaints**

Any member of the staff of the ECB may submit to the Executive Board or the anti-fraud committee a complaint in respect of an act or omission having an adverse effect on

him/her committed by the Directorate for Internal Audit as part of the activities referred to in this Decision.

*Article 7***Confidentiality**

Any information obtained in the course of fraud investigations, whatever its form, shall be subject to professional secrecy as laid down in Article 38 of the Statute. The members of the anti-fraud committee shall be obliged to adhere to this professional secrecy.

*Article 8***Publication and effective date**

This Decision shall be published in the *Official Journal of the European Communities*.

This Decision shall take effect upon its publication.

Done at Frankfurt am Main, 7 October 1999.

*The President of the ECB*

Willem F. DUISENBERG

---