

**Committee of the Regions****DECISION No 508 - 2015**
laying down
RULES ON WHISTLEBLOWING**THE COMMITTEE OF THE REGIONS**

- Having regard to** the Staff Regulations of Officials of the European Union (henceforth "Staff Regulations"), and in particular Articles 22a, 22b and 22c thereof, and the Conditions of Employment of Other Servants of the European Union (henceforth "CEOS"), and in particular Articles 11 and 81 thereof, as laid down by Council Regulation (EEC, Euratom, ECSC) n°259/68¹ and last modified by Regulation (EU, Euratom) n°1023/2013 of the European Parliament and the Council²;
- Having regard to** the Decision of the Committee of the Regions n°26/2004 of 10 February 2004 concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' interests, replacing the previous Decision of 17 November 1999, and in particular Article 2 thereof;
- Having regard to** the Rules of Procedure of the Committee of the Regions (henceforth "COR"), and in particular Rule 73 thereof;
- Having regard to** the Opinion of the Staff Committee of 14 December 2015;
- Having regard to** the Opinion of the European Data Protection Supervisor (henceforth "EDPS") of 8 December 2015 on the notification for prior checking regarding the COR's internal rules on whistleblowing;
- Whereas** rules and procedures regarding whistleblowing, in addition to protecting whistleblowers, are a key instrument in avoiding serious misconduct in public administrations;
- Whereas** encouraging the reporting of serious misconduct or concerns in good faith necessitates assurance of the utmost confidentiality and greatest degree of protection against retaliation, as well as guidance in understanding the types of situation where the obligation of whistleblowing applies and to whom and how it should be addressed.

HAS DECIDED AS FOLLOWS:

¹ OJ L 56, 4.3.1968, p. 1.

² OJ L 287, 29.10.2013, p. 15.

Article 1: Scope

1. This Decision shall apply to situations in accordance with the conditions and definitions set out in Articles 22a, 22b and 22c of the Staff Regulations.
2. This Decision shall apply to officials of the COR as defined in Article 1 of the Staff Regulations and to servants of the COR as defined in Article 1 of the CEOS³.
3. Wherever applicable, this Decision shall also apply by analogy⁴ to seconded national experts, trainees, interim staff, local agents, but also to external whistleblowers, such as external contractors, sub-contractors and their employees irrespective of their status or work contract⁵.
4. For the purposes of this Decision, the above persons shall be jointly referred to as "staff member".

Article 2: Definitions

1. For the purpose of these rules, a *whistleblower* is a staff member who, in good faith, reports facts discovered in the course of or in connection with his or her duties which s/he honestly and reasonably believes suggest the possible existence of serious misconduct by staff members working in the COR's General Secretariat, by COR Members or by any other person in the service of or carrying out work for the COR.
2. *Serious misconduct* is any illegal activity, including fraud, corruption, theft, serious violation of rules on public procurement that is detrimental to the interests of the Union, or any conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of the person concerned.
3. Disclosure is made *in good faith* if the whistleblower honestly and reasonably believes that the information disclosed and any allegation contained in it, is substantially true. Good faith is presumed unless and until proven otherwise.⁶
4. *Retaliation* is defined as any direct or indirect action or threat of action which results from the whistleblowing and which is unjustly detrimental to the whistleblower, including, among other things, harassment, discrimination, negative appraisals and acts of vindictiveness.
5. *Anonymity* refers to the situation whereby the identity of the source of the information is not known and is not revealed to the recipient(s) of the information.
6. *Manager* means a recipient of the information, being a Head of Unit, a Director or the Secretary-General of the COR, or persons in an equivalent position.
7. *Person concerned* means any staff member, any Member of the COR or any other person in the service of or carrying out work for the COR that is allegedly involved in serious misconducts.

³ References in this Decision to the Staff Regulations and the appointing authority are to be understood as applicable by analogy to corresponding provisions of the CEOS and the authority entitled to conclude contracts.

⁴ The referred categories of persons are not submitted to the statutory obligations and rights as the staff members defined in Article 1(2) of the present Decision, however, and as far as applicable, equivalent protection and/or equivalent measures should by analogy be granted and applied.

⁵ The present Decision is not deemed applicable to the Members of the COR, but might be used by analogy as guidance for their obligation of whistleblowing pursuant to Article 2 of COR Decision n°26/2004.

⁶ See the judgment of the General Court (Appeal Chamber) of 8 October 2014, T-530/12P, paragraph 117 ff.

Article 3: Obligation to inform

1. Pursuant to Article 22a of the Staff Regulations, reporting in good faith facts which suggest the existence of possible serious misconduct in the COR is an obligation for all staff members⁷.
2. Any staff member who prevents another staff member from carrying out his/her duty as regards drawing attention to serious misconduct may be subject to disciplinary proceedings⁸.
3. In the case of alleged serious misconduct that can also be qualified as a violation of Article 12a of the Staff Regulations, the staff member who is allegedly the victim of harassment can opt to report the alleged serious misconduct by way of whistleblowing, independently from the procedure as set out in Decision n°362/2010 concerning psychological and sexual harassment at work within the Secretariat of the COR.⁹
4. The obligation to inform is not intended to apply to the reporting of the following types of information among others:
 - information already in the public domain (for example: newspaper articles, publicly available audits);
 - unsubstantiated rumours and hearsay;
 - matters of a trivial nature;
 - disagreements over legitimate policy;
 - information revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and of data concerning health or sex life¹⁰
 - documents, deeds, reports, notes or information in any form whatsoever held for the purpose of, or created or disclosed to the official in the course of, proceedings in legal cases, whether pending or closed;
 - information that did not come to light in the course of or in connection with the performance of the duties of the person making the report.
5. Pursuant to the concept of good faith, the present rules shall equally not apply to disclosures that cannot be considered reasonable or honest, such as:
 - repeated disclosures of alleged facts aimed merely at paralysing a service or broad publicity to parties other than the competent authority or body;
 - defamatory, false or unverifiable accusations with the aim of harming another person's integrity or reputation or owing to a personal grievance or animosity with the prospect of gaining a personal advantage.

⁷ Persons defined in Article 1(3) of the present Decision are not covered by the obligation to report under Article 22a of the Staff Regulations, but are strongly encouraged to report facts of serious misconduct. In such cases, they will be granted the same level of protection as the one provided for the persons defined in Article 1(2) of the present Decision. See footnote 4.

⁸ Disciplinary measures pursuant to the Staff Regulations are only applicable to persons defined in Article 1(2) of the present Decision. Equivalent measures may be envisaged for persons defined in Article 1(3) of the present Decision. See footnote 4.

⁹ Concerning the voluntary nature of reporting in the case of harassment, see the judgment of the General Court (Appeal Chamber) of 8 October 2014, T-530/12P, paragraphs 106-109.

¹⁰ Such information is qualified as special category of data pursuant to the definition of Article 10(1) of Regulation (EC) n°45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1) (hereafter "Regulation (EC) n°45/2001"). Such information may only be revealed if indispensable for the compliance of the whistleblowing obligation; otherwise, if not falling under the exceptional authorisation foreseen pursuant Article 10(2) of Regulation (EC) n°45/2001, it shall be erased by the recipient of the information.

Article 4: Reporting procedures

The report shall be made in writing¹¹, without delay and by explicitly indicating that the reporting is made in the quality of whistleblower.

The whistleblower determines the most appropriate channel for reporting the alleged serious misconduct, either by reporting internally, according to paragraph 1 of the present Article, or directly to the European Anti-Fraud Office (henceforth "OLAF"), according to paragraph 2 of the present Article. Provided the conditions set out in Article 22b of the Staff Regulations are met, the whistleblower may further report externally to other EU institutions, according to paragraph 3 of the present Article.

Any such report, whether made internally or to OLAF, should contain the available facts and/or evidence in order to facilitate a full investigation on the matter, where appropriate.

1. Internal whistleblowing

If the internal reporting channel is chosen, the whistleblower shall report this discovery forthwith to a manager of his/her choice as defined in Article 2(7), of the present Decision or to the Secretary-General.

If there is a concern that the disclosure of alleged serious misconduct may lead to retaliation or that the intended recipient of the report is the person concerned, the whistleblower should address his or her report directly to the Secretary-General, unless s/he deems it appropriate to report directly to OLAF.

If the disclosed information concerns the Secretary-General, the whistleblower may pass on information directly to OLAF, as envisaged in Article 22a of the Staff Regulations.

Managers who receive a whistleblowing report shall pass it on promptly to the Secretary-General, unless the latter is the person concerned. If the Secretary-General is not the person concerned, managers are also required, in accordance with Article 22a(2) of the Staff Regulations, to transmit to OLAF without delay any information on the basis of which serious misconduct may be presumed; however the responsibility for ensuring that this requirement is met shall rest with the Secretary-General. If the Secretary-General is the person concerned, managers are required to transmit the report to OLAF without delay.

The duty of managers to notify OLAF of information received on the basis of the whistleblowing rules does not of itself discharge them from their own responsibilities to tackle the wrongdoing. Managers will therefore have to reflect on whether the evidence provided reveals shortcomings that could be redressed or requires other measures in addition to the transmission of the information to OLAF.

In particular, if following the emergence of such information it should happen that a procedural or organisational change could prevent the risk of serious professional wrongdoings in the future, such measures should be considered and, where appropriate, taken as soon as possible. Care should be taken to ensure that any such measure does not harm any future OLAF investigation into the reported facts. In case of doubt, managers are therefore advised to consult OLAF before taking any such measures.

2. Whistleblowing to OLAF

If the external reporting channel is chosen, the whistleblower shall address his/her report directly to OLAF.¹²

¹¹ Prior to reporting, a staff member may seek guidance and support as described in Article 12 of the present Decision. This does not have to be done in writing.

¹² This is notably - though not exclusively - the case when s/he is concerned that the disclosure of serious misconduct may lead to retaliation or that the intended recipient(s) of the report is/are personally implicated in the irregularities.

Where a whistleblower directly reports to OLAF, it is for the latter to decide how to proceed in accordance with its legal framework. Pursuant to COR Decision n°26/2004, the COR shall assist OLAF in its investigations.

3. *External whistleblowing – option of last resort*

If the whistleblower has reported information internally or to OLAF and no action is taken within the period of time set pursuant to Article 5 of the present rules, or if the whistleblower can demonstrate that the period set is unreasonable in light of all the circumstances of the case, s/he has the right to bring his/her concerns to the attention of the President of either the Commission, the Council, the European Parliament or of the Court of Auditors, or to the European Ombudsman pursuant to Article 22b of the Staff Regulations.

This option is however only applicable when the following conditions set out in Article 22b of the Staff Regulations are met:

(a) the official or servant honestly and reasonably believes that the information disclosed, and any allegation contained in it, are substantially true; and

(b) the official or servant has previously disclosed the same information to OLAF or the COR and has allowed OLAF or the COR the period of time set by OLAF or the COR, given the complexity of the case, to take appropriate action.

Article 5: Information rights of whistleblowers

If a whistleblower reports internally s/he shall be:

- provided with an acknowledgement of receipt as quickly as possible and, in any event, within five working days;
- informed, as soon as possible and, in any event, no later than 60 days following receipt of the report, which appropriate action will be taken and/or when, and who will be responsible for dealing with the matter.

The manager should inform the whistleblower if a report has been or will be made to OLAF or if further internal reporting has been or will be initiated. The manager should also inform the whistleblower whether internal measures, including administrative investigation, have been or will be undertaken and the outcome thereof.

According to Article 22b of the Staff Regulations, if a whistleblower reports to OLAF, the latter shall duly inform him or her within 60 days of the period of time set to take appropriate action.

Article 6: Follow-up to the whistleblowing report

1. If the report has been addressed to OLAF, the relevant rules and procedures shall apply.¹³

¹³ See notably Article 5(4) of Regulation (EU, Euratom) No 883/2013 of the European Parliament and the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation

2. If OLAF decides not to open an investigation, the COR may launch an internal administrative investigation, where this is deemed appropriate.
3. Whenever necessary, the whistleblower must cooperate in good faith with the COR and OLAF when they examine the information.

Article 7: Protection of whistleblowers

1. A whistleblower who has provided information pursuant to the rules and procedures of the present Decision, shall be protected against acts of retaliation, reprisal or discrimination at the workplace linked to or resulting from whistleblowing. Any such actions against a whistleblower are prohibited and may result in disciplinary action. The same protection is granted to staff members who have supported in any manner a whistleblower.
2. A whistleblower who believes that an action affecting him or her adversely has taken place at the workplace in retaliation for a report made under these rules, should notify the Secretary-General, who will examine the matter. The burden of proof lies with the person presumed responsible for the adverse treatment, who shall prove that it was motivated by reasons other than the reporting.
3. The whistleblower is not expected to prove that the misconduct is reprehensible, nor will s/he lose protection because his/her honest and reasonable concern proved to be unfounded.
4. Pursuant to Article 24 of the Staff Regulations, whistleblowers or staff members that are prevented or discouraged from providing information shall have the possibility of requesting the appointing authority's assistance.
5. Pursuant to Article 90 of the Staff Regulations, whistleblowers or staff members shall have the right to address the appointing authority in order to appeal against a decision or failure to act on the latter's part regarding the way in which they were treated after or in consequence of the fulfilment by them of their obligations under Article 22a or 22b of the Staff Regulations. The complaint shall be handled confidentially and, where warranted by the circumstances, before the expiry of the deadlines set out in Article 90 of the Staff Regulations.
6. Where a whistleblower or a staff member, who was involved in a serious misconduct subsequently, decides to disclose such serious misconduct, the fact of having reported the matter may be taken into account, in his or her favour, in any disciplinary procedure.

Article 8: Mobility

1. The COR shall take reasonable steps to facilitate the request of a whistleblower, who, in order to be protected against any possible retaliation, wishes to be moved to another position for which s/he qualifies within the COR.
2. In urgent and duly justified cases, the appointing authority shall proceed, as a protective measure, to a transfer pursuant to Article 7(1) of the Staff Regulations.
3. If, for the same reasons, a whistleblower seeks a transfer to another EU body, the COR shall support and assist with this request as much as possible.

Article 9: Confidentiality and anonymity

1. The confidentiality of the whistleblower's identity shall be guaranteed, meaning that his/her name will not be revealed to the person concerned or to any other person not related to the procedure¹⁴, unless the whistleblower authorises the disclosure of his/her identity or this is a requirement in any subsequent related legal proceedings¹⁵.
2. The whistleblower should identify himself/herself in his/her report, in order to benefit from the rights granted to them under the present Decision. Anonymous whistleblowing is not encouraged but will still be processed.¹⁶

Article 10: Appraisal and promotion

1. Whistleblowing shall be mentioned in the whistleblower's staff report only where s/he explicitly requests or agrees that such references should be included.
2. During staff appraisal and promotion procedures, assessors shall ensure that whistleblowers suffer no adverse consequences of their whistleblowing. Where the whistleblower's hierarchy is implicated in the alleged misconduct, the Secretary-General shall designate an alternative appraiser and/or take on the role of appeal assessor. In this case, the Secretary-General shall ensure that an ad hoc appeal procedure is put in place.
3. To the extent that this may be possible, the fact of having made a report under these rules will be looked upon favourably for the purposes of appraisal reports or promotion.

Article 11: Abuse of process

If a staff member did not act in good faith, notably if s/he knowingly reported false information, s/he may be subject to disciplinary measures. The burden of proof in this respect shall lie with the appointing authority.

Article 12: Guidance and support

1. The Secretary-General may appoint ethics counsellors who shall provide any staff members who consult them with confidential and impartial guidance regarding the rules and procedures related to whistleblowing. Such guidance should aim to avoid misreporting which may cause frustration to the whistleblower as well as to the staff member concerned and which may be detrimental to the interest and reputation of the COR.

¹⁴ See the possibility of lodging a complaint pursuant to Art. 33 of Regulation (EC) n°45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1) (henceforth "Regulation (EC) n°45/2001").

¹⁵ See the requirements for disclosure of personal data pursuant to Articles 7, 8 and 9 of Regulation (EC) n°45/2001.

¹⁶ Anonymous whistleblowing deprives the investigative services of the possibility of requesting clarification and enhances the risk of frivolous, malicious or unreliable information. In the event a potential whistleblower still prefers to stay anonymous, OLAF's web-based Fraud Notification System offers the facility for entering into an initially anonymous dialogue with specialised staff before a person decides to come forward and make use of the whistleblowing procedures. Initial anonymity is thus possible within this special procedure with OLAF.

The ethics counsellors are bound by an increased obligation of confidentiality. However, they are not exempted from their obligation of reporting, when provided with information disclosing the identity of the person concerned and/or with factual information on the alleged serious misconduct. In order to safeguard the total independence of ethics counsellors vis-à-vis all staff members, they shall not participate in the workings of other bodies involved in whistleblowing proceedings.

2. Guidance may also be sought from the person responsible for ethical and statutory matters in the Directorate for Human Resources.
3. In addition, through OLAF's web-based Fraud Notification System¹⁷ potential whistleblowers are given the opportunity to enter into dialogue with OLAF investigators, allowing them to verify whether the information in their possession falls within the remit of OLAF.

Article 13: Rights of persons concerned

1. Persons concerned shall be informed in good time of the allegations made against them. Such notification may be deferred where there is a substantial risk that such notification would jeopardise the ability of OLAF or COR, in the absence of an investigation by OLAF, to effectively investigate the allegation or gather the necessary evidence.
3. Upon termination of an investigation, any persons concerned shall be informed as soon as possible of the results of the investigation and be given the opportunity to comment on the facts concerning them subject to and in accordance with the applicable rules and guidelines concerning investigations conducted by OLAF¹⁸ or internally by the COR.
4. The COR shall provide support to the staff members who have suffered from any negative consequence resulting from incorrect reports or from reports made maliciously based on information known to be false or incorrect.
5. The confidentiality of the person concerned's identity shall be guaranteed, meaning that his or her name shall not be revealed to any person not related to the procedure and for whom it is not indispensable to be informed of his or her identity, unless the person concerned authorises the disclosure of his or her identity or this is a requirement in any subsequent related legal proceedings¹⁹.

Article 14: Data protection

1. Any processing of personal data in application of these rules is subject to Regulation (EC) n° 45/2001²⁰ and shall be carried out in accordance with that Regulation and with the EDPS's opinion²¹ on this matter.
2. Whistleblowers have the possibility of lodging a complaint before the EDPS against any breach of confidentiality and data protection rules regarding their situation.²²

¹⁷ http://ec.europa.eu/anti_fraud/olaf-and-you/report-fraud/index_en.htm.

¹⁸ See OLAF Regulation, as well as the Guidelines on Investigation Procedures for OLAF Staff (1 October 2013, http://ec.europa.eu/anti_fraud/documents/gip/gip_18092013_en.pdf).

¹⁹ See the requirement of disclosure of personal data pursuant to Articles 7, 8 and 9 of Regulation (EC) n°45/2001.

²⁰ See footnote 14 of the present Decision.

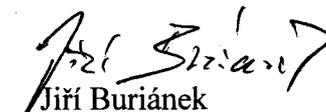
²¹ See EDPS's Opinion on a notification for prior checking regarding the COR Rules on Whistleblowing of 8 December 2015, EDPS reference 2015-0897.

²² See footnote 14 of the present Decision.

Article 15: Entry into force

This Decision shall enter into force on the first day of the month following its signature.

Done at Brussels, **18 DEC. 2015**


Jiří Buriánek
Secretary-General