

DECISION
ADB(D)12-2018

Guidelines on Whistleblowing

THE ADMINISTRATIVE BOARD OF THE SESAR JOINT UNDERTAKING (SJU),
HAS DECIDED AS FOLLOWS:

1. INTRODUCTION

1.1. General

Having procedures for raising concerns about fraud, corruption or other serious wrongdoing is relevant for all responsible organisations and for the people who work there. While good internal control systems can reduce the probability of something going seriously wrong, this risk can never be reduced to zero. Where this risk materialises, the first people to realise or suspect the problem will often be those who work in or with the organisation. Yet unless the culture is one where employees believe that it is safe and accepted that such concerns are raised, the risk is that people will stay silent. This denies the organisation an important opportunity to detect and investigate the concern, to take any appropriate action and to protect its assets, integrity and reputation.

The most effective way to encourage staff to report concerns is to provide assurance of protection of their position. Clearly defined channels for internal reporting as well as safe and accepted routes through which staff may raise concerns outside the organisation as an option of last resort should be in place.

Viewed in this way, having whistleblowing procedures and whistleblower protection in place is simply a question of good management and a means of putting into practice the principle of accountability. They contribute to improving the diligence, integrity and responsibility of an organisation.

It is against this background that rules on whistleblowing were adopted and included in the Staff Regulations (Articles 22a and 22b)¹ in 2004. They complement the general principle of loyalty to the European Union, the obligation to assist and tender advice to superiors (Article 21) as well as the rules on how to deal with orders which are considered to be irregular or likely to give rise to serious difficulties (Article 21a).

While these rules have already triggered a number of significant investigations by the European Anti-Fraud Office (OLAF), some staff may be reticent to make full use of the whistleblowing procedure, because of a fear of negative repercussions on their reputation or career. As part of the SJU's duty to have regard for the interests of staff members (*'devoir de sollicitude'*), it is necessary to ensure that members of staff who report serious wrongdoings or concerns in good faith are afforded the utmost confidentiality and greatest degree of protection against any retaliation as a result of their whistleblowing.

¹ Articles 22a and 22b of the SR are applicable by analogy to temporary agents and contract agents, pursuant to Articles 11 and 81 of the CEOS.

As whistleblowing arrangements are widely recognised as an important tool to detect fraud, corruption and serious irregularities, it is important that staff fully understand the types of situations where the obligation to ‘blow the whistle’ applies, and to whom they should address their concerns. Providing guidance on this issue is part of the ‘s overall ethics policy, which aims *inter alia* at clarifying the rules regarding professional ethics in the SJU².

Accordingly, the SJU has issued the following guidelines, in agreement with OLAF.

1.2. Basic principles

- Members of staff have a duty to report serious irregularities.
- For this purpose, members of staff must have a choice between a number of reporting channels for whistleblowing, as determined under point 2. ‘Reporting procedures’. The principal channel is the normal chain of hierarchical command. If staff consider it to be safer to bypass the normal chain of hierarchical command, they must be able to do so. Under certain conditions, staff may address their concerns to another EU institution as an option of last resort.
- Members of staff who report serious irregularities in good faith must not under any circumstances be subject to retaliation for whistleblowing. They must be protected and their identity must remain confidential if they so desire.
- The SJU and/or OLAF must verify the reported facts in the appropriate manner and, if they are confirmed, the SJU will take all necessary steps to ensure the appropriate follow-up.
- The rights of defence of any person implicated by the reported incidents must be respected.
- Malicious or frivolous denunciations will not be tolerated.

1.3. Scope of the policy

The SJU’s whistleblowing rules and guidelines apply to all members of staff, irrespective of their administrative position³.

1.4. Definitions

For the purpose of these guidelines, a whistleblower is a member of staff, acting in good faith, who reports facts discovered in the course of or in connection with his or her duties which point to the existence of serious irregularities. The reporting should be done in writing and without delay, as determined under point 2. ‘Reporting procedures’.⁴

Under the whistleblowing rules, staff are obliged to report serious irregularities. In the present context, serious irregularities are illegal activities, including fraud and corruption, and serious professional wrongdoings. As the whistleblowing arrangements are essentially a detection mechanism to bring cases to the attention of OLAF, the duty to report concerns only serious professional wrongdoings, and particularly those that may be detrimental to the financial interests of the European Union.

Accordingly, not every disclosure of any type of information qualifies as whistleblowing in the sense of these rules. For example, the rules are not intended to apply to the reporting of the following types of information:

- Information already in the public domain (for example: newspaper articles, publicly available audits);
- Unsubstantiated rumours and hearsay;

² SJU ED Decision 296 of 25/02/2014

³ While the whistleblowing rules do not strictly speaking apply to seconded national experts, trainees, interim staff and local agents, these categories of staff are also encouraged to make use of the arrangements set out in this documents and the Agency undertakes to protect these categories of staff against retaliation if they do so in good faith.

⁴ Prior to reporting, a staff member may seek guidance and support as described in section 5. This does not have to be done in writing.