



ANTICORRUPTION CITY TOOLKIT

WHISTLEBLOWING TOOL GUIDELINES

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1. WHAT IS WHISTLEBLOWING AND WHO ARE THE BENEFICIARIES OF THIS TOOL (TO WHOM IS THIS TOOL ADDRESSED)?

The disclosure of misconduct/wrongdoing of an individual or organization in the context of a work-based relationship is commonly called whistleblowing¹.

Whistleblowers are individuals who report cases of maladministration, corruption and other illicit behavior within their organization².

Potential whistleblowers are often discouraged from reporting their concerns or suspicions for fear of retaliation. The importance of providing balanced and effective whistleblower protection is increasingly acknowledged at both European Union (European Union Directive 2019/1937) and international level³ (United Nations Convention Against Corruption 2004, Art. 33)⁴.

The ACT!WB tool is mainly addressed to municipalities, who seek an effective system for reporting misbehaviors, and for following-up on reported cases, while ensuring high protection and privacy of the reporting persons (whistleblowers). Any persons employed by or collaborating with the municipality, or an owned/controlled company, or supply company can report misbehaviors experienced or witnessed within one of these organizations.

2. WHAT MISCONDUCT/WRONGDOING IS THE TOOL ADDRESSING?

Misconduct/wrongdoing refers to a failure by a staff member to comply with his or her obligations under the national law, or under the European Union and international laws, or the Staff Regulations and Rules or other relevant administrative issuances and organizational policies.

This includes, but is not limited to: abuse or misuse of organizational property and funds, including for personal gain or gain by another; abuse of position, including for personal gain or gain by another; solicitation or receipt of "kickbacks" or bribes; willful misrepresentation (fraud); corruption; sabotage; coercion; collusion; embezzlement; work harassment; sexual harassment; discriminatory practices; retaliation, including retaliation against alleged whistleblowers; abuse of authority; and conflicts of interest⁵.

The EU Directive 2019/1937⁶ refers to "breaches of the Union law, regardless of whether they are categorised under national law as administrative, criminal or other types of breaches, that may cause serious harm to the public interest, in that they create significant risks for the welfare of society", and identifies more specific areas where whistleblowing protection shall

¹ United Nations Joint Inspection Unit (2018). Review Of Whistle-Blower Policies And Practices In United Nations System Organizations. United Nations, Geneva. https://www.unjiu.org/sites/www.unjiu.org/files/jiu_rep_2018_4_english_0.pdf; UNCAC Coalition - <https://uncaccoalition.org/learn-more/whistleblowing/>

² UNODC (2004). The Global Programme Against Corruption UN Anti-Corruption Toolkit. United Nations, Vienna.

³ EU 2019/1937

⁴ Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

⁵ United Nations Joint Inspection Unit (2018). Review Of Whistle-Blower Policies And Practices In United Nations System Organizations. United Nations, Geneva, p. 5.

⁶ EU 2019/1937 (p. 1)

be applied⁷: A) Public Procurement Fraud and Corruption; B) Financial services, products and markets, and prevention of money laundering and terrorist financing; C) product safety and compliance; D) transport safety; E) protection of the environment; F) radiation protection and nuclear safety; G) food and feed safety, animal health and animal welfare; H) public health; I) consumer protection; L) protection of privacy and personal data, and security of network and information systems.

Additional breaches considered in the EU Directive are: breaches affecting the financial interests of the Union as referred to in Article 325 TFEU and as further specified in relevant Union measures; and breaches relating to the internal market, as referred to in Article 26(2) TFEU, including breaches of Union competition and State aid rules, as well as breaches relating to the internal market in relation to acts which breach the rules of corporate tax or to arrangements the purpose of which is to obtain a tax advantage that defeats the object or purpose of the applicable corporate tax law.

3. WHO ARE THE SUBJECTS INVOLVED?

3.1 The whistleblower

The whistleblower is the main actor of the procedure. He can blow the whistle to the prescribed internal channel and needs to be protected against retaliation. The first protection concerns his/her identity, which cannot be revealed during the investigations of the report.

Potential whistleblowers include all employees, collaborators, contractors and suppliers, those whose working relationship has ended and those in a selection pre-contractual process.

3.2 The reported person and potential witnesses mentioned in the report

Reported persons and potential witnesses must be treated as fairly as the whistleblower, especially concerning the protection of their identity during investigations and hearings.

3.3 The recipients of reports

The recipient of the report has the responsibility to process the report, without exposing the whistleblower and the other subjects included in the report to any risk or damage. When involving other offices, he/she needs to submit selected information only. The recipient should also assess the accuracy of the allegations made in the report and, where relevant, address the breach reported, including through actions such as an internal enquiry, an investigation, prosecution, an action for recovery of funds, or the closure of the procedure⁸.

3.4 Other subjects and offices involved

The recipient can involve other internal offices in order to check the reported information. These offices are meant to provide information, when requested. Office for disciplinary proceedings plays a key role in the process in case retaliations are proven.

The recipient can only submit to external regulators a report with its findings after the internal investigation is completed.

⁷ EU 2019/1937 (pp. 34-35).

⁸ EU 2019/1937 (p. 37).

4. HOW TO SUBMIT A REPORT?

4.1 Secure IT platform

The IT reporting platform is the recommended internal reporting channel, because it is secured from a technological point of view and it allows to submit a report by filling a questionnaire that facilitates the follow-up investigations by the recipient. It further allows the confidential or anonymous exchange of information between the whistleblower and the recipient.

4.2 Other reporting channels

Besides the online platform, other reporting channels should enable persons to report in writing and submit reports by post, by physical complaint box(es), or to report orally, by telephone hotline or other voice messaging system, or both. Upon request by the reporting person, such channels should also enable reporting by means of physical meetings (confidential hearings), within a reasonable timeframe⁹.

5. HOW TO MANAGE A WHISTLEBLOWING REPORT?

5.1 Confidentiality and anonymity

The difference between confidentiality and anonymity is that in the first case the recipient knows the identity of the whistleblower. In either case, the recipient must protect the whistleblower and be careful not to share information that could lead to possible discriminations.

5.2 Timeliness and follow up to the report

The recipient must reply to the whistleblower within 7 days and complete an investigation of the report within 3 months (additional 3 months can be added in special circumstances).

The recipient must keep the whistleblower updated on the progresses of the investigation and must provide a feedback when this is closed.

5.3 Interaction with other subjects and offices involved

During the management of the report, the recipient can interact with other internal offices, requesting evidence or documents. The recipient cannot reveal personal information included in the report when asking this information.

When the recipient needs to transmit the findings of an investigation to an external authority, it should not forward the original report from the whistleblower but the results of the investigation.

5.4 Management of information and data retention

All information gathered through this process must be treated confidentially. They must be recorded in protected servers and don't have to be disclosed to third parties.

The recipient should retain data, in accordance with provisions under the GDPR: only necessary data must be recorded and kept, and only for the amount of time requested to complete the investigations and the treatment of the report and consequent actions.

⁹ EU 2019/1937 (p. 25).

6. PROTECTIONS FOR THE SUBJECTS INVOLVED

6.1 Legal protections

Whistleblowers are protected against any retaliation¹⁰ that they may suffer because of the whistleblowing report. Any organizational measure needs to be based on reasons unrelated to the report. Protection also includes indirect actions against the whistleblower, such as refusing a promotion at work, forbidding the access to training courses, etc.

People mentioned in the report are protected from libel and slanders from the whistleblower.

6.2 Organizational protections

The main way to protect all the subjects involved in whistleblowing mechanisms is by treating the report with confidentiality during the entire process.

The IT globaleaks platform adopted by the Municipality is the safest way to protect the whistleblower during the initial phase of the process, because it allows to submit an internal disclosure through a safe channel, and it allows a secure dialogue between the whistleblower and the recipient.

The recipient must treat the reported information with confidentiality also during investigations, only involving the relevant offices and by sharing the minimum information useful to gather evidence.

6.3 Protections for the reported person and other actors involved

All the subjects mentioned in the report should benefit from the same level of confidentiality granted to the whistleblower.

Any disciplinary proceeding involving them should not be based on the whistleblowing report only but on separate evidence gathered during the investigation.

7. SANCTIONS

7.1 Reported person

The reported person could suffer a disciplinary proceeding if the whistleblowing report proves to be right. If a criminal liability arises, the internal recipient could forward his findings to the judiciary authority, too.

7.2 Recipient

The internal officer receiving the whistleblowing reports could be sanctioned for several actions or inactions:

- hindering or attempting to hinder reporting;
- retaliating against whistleblowers and connected people;
- bringing vexatious proceedings against whistleblowers;

¹⁰ Any direct or indirect detrimental action recommended, threatened or taken towards an individual who has previously reported misconduct/wrongdoing or participated in an oversight activity. United Nations Joint Inspection Unit (2018). Review Of Whistle-Blower Policies And Practices In United Nations System Organizations. United Nations, Geneva https://www.unjui.org/sites/www.unjui.org/files/jiu_rep_2018_4_english_0.pdf

- breaching the duty of maintaining the confidentiality of the identity of reporting persons.

7.3 Whistleblower

The whistleblower could be sanctioned if the report is proven to be maliciously wrong or if he reports without following the correct procedures and exposing the reported persons. If a whistleblowing report is not correct, it does not mean it is rightful.

8. FURTHER RECOMMENDATIONS

8.1 Clear set of rules

The whistleblowing procedure and reporting channels need to be published on the website of the municipality and needs to be accessible to all the subjects who could submit a report, based on the law.

8.2 Organizational culture

Whistleblowing is promoted within the municipality. The IT platform is a channel that allows secure reporting. Moreover, the recipient official is granted with power and independence to investigate the reports.

8.3 Communication, dissemination and training of employees

The existence of internal whistleblowing procedures is promoted through dedicated training programmes and communicated on billboards within the municipality. Annual seminars for employees on prevention of corruption include sessions on whistleblowing.

8.4 Whistleblowing and personal grievance

Whistleblowing concerns reports of illicit activities or irregularities that harm diffused interests or the municipality. Complaints regarding the working conditions of the reporting person only need to be treated within the grievance procedure, unless the complaint follows a report previously submitted that determined a retaliation.

8.6 Rewards or incentives

The municipality may provide for rewards in favour of the person that reported the irregularities and allowed the discovery by internal offices. Rewards could also be non-monetary and are not set by specific rules but may vary based on the specific context.