



COMMISSION EUROPÉENNE  
SECRÉTARIAT GÉNÉRAL

La Secrétaire générale

Bruxelles, le  
SG/DCB/CK/ ARES(2012)



NOTE A L'ATTENTION DE

**M. ROMERO – SJ**  
**MME SOUKA – DG HR**  
**M. JOUANJEAN – DG BUDG**  
**M. GRAY – IAS**  
**M. KESSLER – OLAF**

**Objet:      compte rendu de la réunion du « Clearing House » du 24 janvier 2012**

Je vous prie de bien vouloir trouver ci-joint le compte rendu de la réunion du 24 janvier.  
La prochaine réunion se tiendra le **6 mars**, de 10h à 12h (BERL, salle Ortoli).

Catherine Day

Annexe

Copies : Mme Williams (HR/IDOC)



## COMPTE RENDU DE LA REUNION DU 24 JANVIER 2012

**Participants :** C. DAY, SG ; L. ROMERO et J.P. KEPPELNE, SJ ; I. SOUKA, HR ; K. WILLIAMS et R. SLOOTJES, HR/IDOC ; H. JOUANJEAN, BUDG ; B. GRAY, IAS ; G. KESSLER, M. PECORARO et T. WILLEMS, OLAF ; D. CLAEYS BOUUAERT et C. KELLER, SG.

### 1. ADOPTION DE L'ORDRE DU JOUR

L'ordre du jour est adopté sans commentaire particulier.

### 2. CAS PARTICULIERS

➤ *deleted.*

### 3. QUESTIONS HORIZONTALES

#### Whistleblowers

M. Slootjes indique que le document soumis par HR/IDOC vise à améliorer la compréhension par le personnel des règles relatives au "whistleblowing", et fait notamment suite à l'étude remise à la Cocobu par Price Waterhouse Coopers. HR/IDOC souhaite recueillir les premiers commentaires des membres du Clearing House, étant entendu que le document ensuite sera soumis à une consultation interservices formelle.

➤ *deleted.*

### 4. DIVERS

### 5. CALENDRIER DES PROCHAINES REUNIONS

6 mars  
24 avril  
26 juin

## BRIEFING ON WHISTLEBLOWING – PWC STUDY

This briefing deals with the whistleblowing study that was commissioned by the CoCoBu and carried out by PriceWaterhouseCoopers (PWC). The report on the study was presented in an open hearing on 25 May 2011.

The briefing concludes that many of the recommendations in the study can be addressed by revamping a Commission Communication of February 2004 on the subject. An outline of a policy document is annexed to this briefing.

The whistleblowing rules are set out in the Articles 22a and 22b of the Staff Regulations. To summarise:

If a member of staff becomes aware of any serious wrongdoing, he should transmit it in writing and without delay to his direct superior or Director General, to the Secretary General, or to the European Anti Fraud Office (OLAF) directly (Article 22a, 'internal' whistleblowing).

If neither the Commission nor OLAF has taken appropriate action within a reasonable period, the member of staff who reported the wrongdoing has the right to bring his concerns to the attention of the President of either the Council, the European Parliament or the Court of Auditors, or to the Ombudsman (Article 22b, 'external' whistleblowing).

According to these rules, whistleblowers should not suffer adverse effects from having blown the whistle in both cases.

### 1. The study

The study<sup>1</sup> is an analysis of best international practices with the aim of identifying an 'optimal' whistleblowing system. It identifies scope for improvement of the EU system and gives a number of recommendations to achieve this improvement.

While the study covers all institutions, the focus is mainly on the Commission. The study gives a broad overview of the existing infrastructure (OLAF, IDOC, Clearing House, PIF, Ethics Correspondents) and then describes some case studies, based on the experiences of disaffected 'whistleblowers' who have taken their concerns public in the past [REDACTED]. In the second half of the report, the study examines international practices and then presents a 'benchmarking exercise', which identifies the flaws in the EU system, before arriving at conclusions and recommendations.

The study lists the following deficiencies:

1. Linked to the absence of an integrated organisational approach:

---

<sup>1</sup> "Corruption and conflict of interests in the European Institutions: the effectiveness of whistleblowers" (IP/D/ALL/FWC/2009-056 PE 453.222).

- No emphasis on the integrity and reputation of the EU institutions as a whole (no clear link with the codes of conduct);
  - No internal assessments of confidence in, knowledge about or experience with the whistleblowing rules;
  - Line management not properly briefed and trained on how to handle cases;
  - Ethics correspondents network only in European Commission (not in other institutions) and with a too limited scope (only for ethical questions, no monitoring rule in relation to whistleblowing);
  - Little effort to keep the arrangements alive among management and staff;
  - No incentive to report wrongdoing and no sanction when no (timely) reporting occurs;
2. No independent helpdesk exists offering confidential advice and support to (potential) whistleblowers;
  3. The assessment and investigation function is combined in one single EU body (OLAF), which is not (perceived as) independent;
  4. No valid tracking and tracing system for disclosures exists, and, as a consequence, there is no solid management reporting or staff reports.

Based on these findings, the study makes the following eight recommendations (with time horizon):

**Recommendation 1:** adoption of an integrated ethical compliance framework (middle term). According to PWC, an integrated policy should be elaborated, including multiple pathways for reporting wrongdoings. The whistleblowing policy of the EIB is cited as a good example.

**Recommendation 2:** demonstrate that the whistleblowing system works (middle term). PWC considered that for the purpose of their study, they only came across negative whistleblowing stories.

**Recommendation 3:** develop a coordinated system for tracking all significant reports of wrongdoing for the different reporting channels (middle term). The data thus gathered would allow the organisation to evaluate the policy and develop it further.

**Recommendation 4:** evaluate the working of the (new) whistleblowing provisions (long term). According to this recommendation, the levels of awareness of (and confidence in) the policy should regularly be assessed amongst staff and line managers.

**Recommendation 5:** organise internal support to potential whistleblowers (middle term). This is, according to the study, an 'unmet challenge' in the EU institutions.

**Recommendation 6:** set up an independent disclosure, advice and referral body (short term). The study considers it urgently necessary that an independent body outside the EU institutions

should be entrusted with advice and support to potential whistleblowers, as well as with the assessment of disclosures.

**Recommendation 7:** organise strong protection for bona fide whistleblowers (short term). According to the study, the most important protection mechanism is the confidential treatment of the identity of the whistleblower.

**Recommendation 8:** set up mechanisms to discourage malicious whistleblowers (short term). The report states that such mechanisms should be in place to avoid the perception amongst management that all whistleblowers are troublemakers with a hidden agenda.

## 2. Analysis

While the study has some weaknesses in its discussion of the EU whistleblowing system, it is fair to accept that there is room for improvement on some points.

The Commission (SG, IDOC, OLAF) has had the opportunity to provide input during the study. However, we have not had the opportunity to comment on the draft report, and it must be noted that some aspects of the whistleblowing rules and some input that we provided, have been misinterpreted. For example, at one point the report suggests that "compliance with these [whistleblowing] duties will result in 'prejudicial effects' on the part of the institution". The rules clearly state the contrary.

Another weakness is that the case studies described in the report concern persons who have publicly voiced their unhappiness about the handling of their case in the past: [REDACTED]

It should be noted (and it was pointed out to PWC) that both OLAF and IDOC deal with cases that have a bona fide whistleblower as initial source, which are not publicly known precisely because of the need to keep the identity of the whistleblowers confidential, and which were handled to the apparent satisfaction of the whistleblower. They did not result in case law. The PWC assessment of the EU system is therefore negatively affected insofar as it relies on the case studies.

More in general, the study states that the low number of whistleblower cases shows that the system does not function properly.

However, other organisations also have low numbers of whistleblowing cases, even in the US, where whistleblowing has a longer tradition than in the EU<sup>2</sup>.

In addition, in this respect, the OLAF statistics show that many OLAF investigations are opened as a result of requests from Commission management, where information available to them suggests a potential irregularity. This includes cases where individual members of staff have alerted their line management of their concerns in the normal course of their activities, but without reference to the whistleblowing rules. Whistleblowing would only become relevant in such cases as a fail-safe mechanism for those cases where no appropriate solution

---

<sup>2</sup> See "Ethical standards in the public sector", by Patricia E. Salkin, second edition, 2008, p. 192.

can be offered by or expected from the immediate environment of the staff member concerned.

The study however also has its merits: it offers a comprehensive overview of international best practices and highlights the importance of having solid reporting channels in place: tip-offs are by far the most common detection method for fraud worldwide (slightly more than 40%) and Europe-wide (40%). Consequently, the study underlines that having clear, well-known and trusted reporting channels in place is of key importance for reducing the losses that organisations suffer through fraud.

It is worth noting that the study does not insist on changing the Staff Regulations; it makes it clear that enhancing *confidence* in the system is crucial. For this, according to the study, a legalistic 'tick-box' response is not sufficient. More benefits can be expected from improving the effectiveness of the rules *in practice*.

The study repeatedly mentions the policy document of the EIB as an example of good practice that is lacking in other EU institutions. It must be conceded that the Commission's on-line ethics guide<sup>3</sup> offers little information on how the Commission deals with whistleblowing cases.

Some further aspects of whistleblowing can be found in specific rules, working arrangements and case law, but they are not brought together in a comprehensive policy document on whistleblowing and they are largely unknown to staff. As any whistleblowing system stands or falls with the confidence that staff have in it, the study provides an opportunity to take a policy initiative in this area and to communicate the Commission's whistleblowing policy to staff.

This initiative will allow the Commission to address most of the criticism and the recommendations made in the study. In addition, the past has shown that, while there are few whistleblowing cases, they can be damaging for the reputation of the Commission if not handled properly from the outset. A clear policy in this area is not only helpful for members of staff who are unsure of whether or not to report certain facts, but also helps to protect the Commission against ill-advised denunciations and damaging disclosure-related conflicts.

### 3. Way forward

The only official document adopted by the Commission on whistleblowing is a communication from Vice-President Kinnock to the Commission of February 2004 on how to enhance effective application of the whistleblowing rules and protection of whistleblowers<sup>4</sup>. This communication is however embryonic in nature and it pre-dates the administrative reform of 2004.

It is therefore proposed to adopt a policy document (in the form of a communication or of guidelines to staff), which aims at updating the whistleblowing policy of the Commission and bringing it in line with international best practices, as well as at enhancing the confidence of staff in its whistleblowing arrangements. This document should be adopted in agreement with OLAF, which is the body responsible for dealing with the kind of irregularities for which the whistleblowing rules were devised.

<sup>3</sup> [http://myintracomm.ec.europa.eu/hr\\_admin/en/ethics/Pages/index.aspx](http://myintracomm.ec.europa.eu/hr_admin/en/ethics/Pages/index.aspx).

<sup>4</sup> SEC(2004) 151/2 of 6 February 2004.

An outline of such a policy document is enclosed in annex. It is based on the policy of the EIB but adapted to the Commission and updated in light of recent developments.

It addresses the following recommendations in the study: 1 (integrated policy), 4 (evaluate provisions), 5 (internal support), 7 (protection) and 8 (discourage malicious whistleblowing).

Recommendation 2 (demonstrate that the system works) can be covered by the OLAF and IDOC activities reports.

Recommendation 3 (keep statistics) is provided for in the Commission's Anti-Fraud Strategy<sup>5</sup> and will be ensured by OLAF.

Recommendation 6 (set up an independent disclosure, advice and referral body outside of the EU institutions) can be rejected. Even if this suggestion would be feasible, the costs would outweigh the benefits given the low number of whistleblowing cases.

René SLOOTJES

Annex: draft policy document

---

<sup>5</sup> COM(2011) 376.

## **WHISTLEBLOWING – DRAFT POLICY DOCUMENT**

### **I. Introduction**

#### **I.1 General**

The existence of procedures for raising concerns about fraud, corruption or other serious wrongdoing is relevant for all responsible organisations and to the people who work there. This is because every organisation faces the risk of something going seriously wrong or of unknowingly harbouring a corrupt individual, no matter how good the internal control systems are. Where this has occurred, experience has shown that usually the first people to realise or suspect the problem will be those who work in or with the organisation. Yet unless the culture is one where employees believe that it is safe and accepted to raise such a concern, the chances are 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 persuade staff to report concerns internally is to provide clearly defined reporting channels as well as safe and accepted routes through which staff may raise concerns outside the organisation as an option of last resort.

Viewed in this way, these arrangements are simply good management and a means of putting into practice the principle of accountability. By providing a safety valve to the management line, they improve 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) in 2004.

While these rules have already triggered a number of significant investigations by the European Anti-Fraud Office (OLAF), the Commission is aware that staff may be reticent to make full use of the whistleblowing arrangements, because of a fear of negative repercussions on their reputation or career. This explanatory document is therefore intended to ensure that members of staff who report serious wrongdoings in good faith are afforded the utmost confidentiality and greatest degree of protection against any retaliation or reprisals as a result of their whistleblowing.

Furthermore, 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 they may be required to make use of these arrangements, and to whom they should address their concerns.

Accordingly, the Commission has adopted/DG HR has issued the following communication/guidelines in agreement with OLAF.

#### **I.2. Basic principles**

- The persons concerned must have a choice between a number of reporting channels for whistleblowing. They must be able to bypass the normal chain of hierarchical command if they consider this to be the safest option. Under certain conditions, staff may address their concerns to another EU institution as an option of last resort.
- Members of staff must not under any circumstances be subject to reprisals or retaliation for whistleblowing.
- Members of staff who report serious irregularities in good faith must be protected and their identity must remain confidential.
- The reported facts must be verified in the appropriate manner and, if they are confirmed, the Commission will take all necessary steps to identify appropriate remedies.
- The rights of defense of any person implicated by the reported incidents must be respected.
- Malicious or frivolous whistleblowing will not be tolerated.

### **1.3. Scope of the policy**

The Commission's whistleblowing rules and policy apply to all members of staff, irrespective of their administrative position<sup>1</sup>.

### **1.4. Definitions**

For the purpose of this policy, a whistleblower is a member of staff, acting in good faith, who reports facts discovered in the line of duty which point to the existence of serious irregularities. The reporting should be done in writing and without delay.

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 does not cover all cases of non-respect of obligations under the Staff Regulations, but only serious professional wrongdoings, and particularly those that may be detrimental to the financial interests of the European Union.

Accordingly, the following types of disclosures do not qualify as whistleblowing in the sense of these rules:

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

---

<sup>1</sup> 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 will be protected against retaliation if they do so in good faith.

- Unsubstantiated rumours and hearsay;
- Abusive disclosures (repeated disclosures aimed at paralysing a service);
- Personnel issues where staff have a personal interest in the outcome;
- Disagreements over policy;
- Personal disagreements or conflicts with colleagues or hierarchy;
- Harassment claims;
- Matters of a trivial nature;
- Information not linked to the performance of one's duties;
- Malicious, frivolous or potentially defamatory disclosures (i.e. false or unverifiable accusations with the aim of harming another person's integrity or reputation);
- Information discovered a long time before the date of disclosure.

"Good faith" can be taken to mean the unequivocal belief in the veracity of the reported facts, i.e. the fact that the member of staff reasonably and honestly believes the transmitted information to be true. Good faith is presumed unless and until proven otherwise.

"Retaliation" and "reprisals" are defined as any direct or indirect action or threat of action which is unjustly detrimental to the whistleblower and resulting from the whistleblowing, including, but not limited to, harassment, discrimination, negative appraisals and acts of vindictiveness.

"Confidentiality of identity" means that the identity of the whistleblower is known to the recipient of the information, but is kept confidential vis-à-vis the person(s) potentially implicated in the serious irregularity reported.

"Anonymity" refers to the situation whereby the identity of the source of the information is not known to the recipient.

Staff members who make a report in bad faith, particularly if it is based knowingly on false or misleading information, shall not be protected and shall be subject to disciplinary measures. The burden of proof in this context is on the Commission.

## **II. Reporting procedures**

### *Internal whistleblowing – first option*

Staff members who, in the course of or in connection with their duties, discover that serious irregularities may have occurred or may be occurring, are obliged to report

this discovery forthwith and in writing to either their immediate superior or to their Director-General or Head of Service.

#### *Second option*

If there is a concern that this disclosure may lead to reprisals or that the intended recipient of the report is personally implicated in the serious irregularities, then the staff member may also bypass this direct means of internal reporting and address his or her report to the Secretary-General or directly to OLAF. OLAF may also be notified through the Fraud Notification System<sup>2</sup>.

The recipient of the information is in turn obliged to transmit the information thus received without delay to OLAF. Therefore, while the staff member concerned has a choice of reporting channels, the information should ultimately reach OLAF in a short period of time.

#### *External whistleblowing – option of last resort*

OLAF or the Commission must give the whistleblower within 60 days of receipt of the information an indication of the period of time that it considers reasonable and necessary to take appropriate action.

If no action is taken within that period of time, or if the whistleblower can demonstrate that the period of time set is unreasonable in light of all the circumstances of the case, he or she may make use of the possibility of external whistleblowing as provided for in Article 22b of the Staff Regulations.

Under this Article, if neither the Commission nor OLAF has taken appropriate action within a reasonable period, the staff member who reported the wrongdoing has the right to bring his or her concerns to the attention of the President of either the Council, the Parliament or the Court of Auditors, or to the Ombudsman. In this case, the whistleblower protection continues to apply.

However, the duties of discretion and of loyalty imply that this is an option of last resort, justifiable only if the official concerned honestly and reasonably believes that the information disclosed, and any allegation contained in it, are substantially true and if s/he has allowed the Commission or OLAF a reasonable period of time to take the appropriate action.

The Commission generally receives and handles large quantities of confidential information, much of it highly sensitive and some of it of great commercial value. The Commission is under the obligation to ensure that this confidentiality is maintained and Commission staff members are therefore necessarily subjected to a duty of discretion.

Under the present rules and arrangements, the possibility of external disclosure is therefore limited to other EU institutions, which are clearly able to hold the Commission to account because of their institutional role, but are also themselves

---

<sup>2</sup> [http://ec.europa.eu/anti\\_fraud/contact\\_us/index\\_en.html](http://ec.europa.eu/anti_fraud/contact_us/index_en.html)

subjected to the duty of discretion. This means of external disclosure therefore strikes an effective balance between the public interests of confidentiality and loyalty and those of transparency and accountability.

It is up to the staff member to choose the most appropriate channel for reporting the serious irregularities that they must disclose. However, if a matter is reported to an authority that is not competent to deal with it, it is up to that authority to transmit, in the strictest confidence, the relevant information and documents to the competent authority and to inform the member of staff accordingly.

### **III. Protection for whistleblowers**

Any staff member who reports a serious irregularity, provided that this is done in good faith and in compliance with the provisions of this policy, shall be protected against any acts of retaliation.

It should be noted that staff members will not be expected to prove that the wrongdoing is occurring, nor will they lose protection simply because their concern turned out to be unfounded, provided that they could not have been expected to realise that. However, even if there is substance to the information itself the protection may be lost if the staff member makes unwarranted or damaging allegations that s/he cannot show to be honest or reasonable. The effect of this is that wherever a staff member is contemplating a disclosure in the sense of this policy, it is advisable to let the facts speak for themselves.

As explained above, these provisions are concerned with disclosure of information pointing to fraud, corruption and other comparable serious wrongdoings. The whistleblowing procedures are not intended to be used as substitutes for grievance procedures where staff have some personal interest in - or seek to dictate - the outcome. They are also inappropriate for dealing with disagreements over policy. Their purpose is to allow the staff member to raise a concern about wrongdoings so that those in charge may look into it. Therefore, should it be proved that a staff member has reported information to their hierarchy or OLAF maliciously or frivolously, that staff member would be exposed to disciplinary proceedings.

The protection continues to apply in cases of external disclosures, provided that the staff member honestly and reasonably believes that the information and any allegation in it are substantially true. As the honesty and reasonableness of this belief will be assessed at the time any wider disclosure is made, account will be taken of any information the staff member has had from the Commission and from OLAF in response to him/her raising the concern first with them.

Finally, if the staff member makes the disclosure for purposes of private gain – for instance by selling the information to external parties – he or she will forfeit this protection as that would not be a legitimate disclosure in the sense of the whistleblowing rules. Similarly, if the staff member is him- or herself implicated in the serious irregularities and decides to come forward and report the serious irregularities, this fact may constitute an attenuating circumstance in any ensuing disciplinary proceedings, but it is not a qualifying disclosure in the sense of this policy

and does not provide him or her with full protection against disciplinary consequences on the basis of the whistleblowing rules.

The following specific protective measures apply:

#### *Confidentiality of identity*

The protection of a person reporting a serious irregularity in good faith shall be guaranteed first of all by the fact that their identity will be treated in confidence. This means that their name will not be revealed to the person(s) potentially implicated in the alleged wrongdoings, unless the whistleblower personally authorises the disclosure of his/her identity or this is a requirement in any subsequent criminal law proceedings. In all other cases, the Commission and OLAF are committed to keeping the identity of the whistleblower confidential,

In this respect the Court has ruled that disciplinary procedures that are opened on the basis of information of which the source is not revealed are regular, as long as it does not affect the possibility of the person who is subject to a subsequent disciplinary procedure to comment on the facts or documents transmitted, or on the conclusions that the Commission draws from them<sup>3</sup> The disciplinary rules of the Commission allow it to keep the identity of the whistleblower confidential, while ensuring that the rights of defense of the person concerned are fully respected.

#### *Mobility*

If the member of staff concerned wishes to be moved to another Commission department in order to safeguard him or her against potential hostile reactions from his or her immediate work environment, then the Commission will take reasonable steps to facilitate such a move. In practice, those members of staff who consider it necessary to move to a different DG or service will be able to address themselves to the Central Career Guidance Service (SCOP) in DG HR, who will provide them with counseling in order to identify the type of post which fits their profile and professional aspirations.

In urgent and duly justified cases, the decision of transfer in application of Article 7.1 of the Staff Regulations will be taken by the Director-General of DG HR, and by the Secretary General of the Commission for staff working in DG HR.

#### *Appraisal and promotion*

Particular care will be taken during staff appraisal and promotion procedures to ensure that the whistleblower suffers no adverse consequences in this context. Accordingly, the new appraisal system provides for the possibility of the whistleblower to ask that the role of appeals assessor is taken on by the Director-General of DG HR or by the Secretary General.

More in general, where members of staff consider that they have been the victim of retaliation as a result of the disclosure of a serious irregularity, they shall be entitled

---

<sup>3</sup> Judgment of 15 May 1997, N / Commission (T-273/94, RecFP\_p.\_II-289) (cf. point 81).

to ask for assistance from the Commission under Article 24 of the Staff Regulations and to request that protective measures be adopted. Such requests should be addressed to DG HR.

#### *Anonymity*

Naturally, in order for the Commission to be able to apply protective measures, the staff member concerned should identify him- or herself as a whistleblower to the institution, and to observe the procedures as outlined above.

By offering protection to those who have acted responsibly and openly, these arrangements reduce the need and justification for anonymity. Experience shows that anonymous information is more often frivolous, malicious and unreliable than information coming from known sources, and anonymity deprives the investigative services from the possibility of asking the source for clarification or more information.

For these reasons, anonymous reporting is not encouraged and is not covered by the whistleblowing rules and arrangements.

#### *Penalties for those taking retaliatory action*

No members of staff or managers of the Commission may use their position to prevent other members of staff from complying with their obligation to report serious irregularities.

Any form of retaliation undertaken by a staff member against any person for reporting a serious irregularity in good faith is prohibited. In such cases, disciplinary measures shall be taken.

#### **IV. Feedback to the whistleblower**

According to Article 22b of the Staff Regulations, OLAF or the Commission must give the whistleblower within 60 days of receipt of the information an indication of the period of time that it considers reasonable and necessary to take appropriate action. If no action is taken within that period of time, or if the whistleblower can demonstrate that the period of time set is unreasonable in light of all the circumstances of the case, he or she may address his or her concerns to one of the other institutions referred to above.

It should be noted that the whistleblower is entitled to receive information about the action taken, but that it is up to OLAF and/or the Commission to determine the appropriate course of action.

#### **V. Guidance and support**

While reporting serious irregularities is an obligation under the Staff Regulations, the Commission is aware that staff may be reticent to come forward and report their concerns. In order to help staff who are unsure of whether or not certain facts should be reported, the Commission offers confidential and impartial guidance and support to (potential) whistleblowers.

Guidance to potential whistleblowers in an early stage also helps to avoid ill-advised reporting, which may cause frustration to the staff member concerned and may be detrimental to the interests and the reputation of the Commission. This guidance therefore lessens the risks of disclosure-related conflicts.

The guidance and support function was until recently offered by the judicial and legal advice unit in OLAF. However, experience suggests that this is best carried out by a service not connected with the investigation function of OLAF, taking account of the fact that, in particular, support to whistleblowers is essentially the responsibility of the Commission as employer.

In agreement with OLAF, it has therefore been decided to transfer this function to **[to be determined. Possible options: HR.B.1. (ethics, rights and obligations); SG.B.4 (public service ethics); Mediation Service]**. The designated officials of this unit will provide confidential and impartial guidance on, for example, whether the information in question is covered by the whistleblowing rules, which reporting channel may best be used for the information concerned, and which alternative procedures are available if the information concerned does not qualify for whistleblowing ('signposting'). They will also be able to tender advice and guidance to staff members on protective measures that the staff member may wish to seek following the reporting.

In addition, the web-based Fraud Notification System of OLAF gives potential whistleblowers who hesitate to come forward the opportunity to enter into a dialogue with OLAF investigators, which allow these staff members to verify whether the information in their possession fall within the remit of OLAF and may therefore qualify for using the whistleblowing procedure.

Finally, each DG and service of the Commission has one or several designated Ethics Correspondents, who are trained to provide guidance to staff on ethical issues, including whistleblowing.

Staff are encouraged to make use of these facilities offered to them when contemplating a disclosure under the whistleblowing rules.

## **VI. Role of management**

It is important to note that the duty on managers to notify OLAF of information received on the basis of the whistleblowing rules does not of itself absolve 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 such information it occurs 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 that any such measure does not harm any future OLAF investigation into the reported facts, and managers are therefore advised to seek the agreement of OLAF before taking any such measures.

## **VII. Communication and awareness-raising**

In order to increase the awareness of the whistleblowing arrangements amongst staff, this policy will be given adequate publicity through the internal communication channels in the Commission and will be included in the course material of the Commission's courses and trainings on ethics and integrity.

#### **VIII. Revision**

The practical application and effectiveness of the whistleblowing policy set out in this document will be evaluated at the end of a period of three years following its adoption. In light of the results of this evaluation, the policy may be revised as appropriate.

*ANNEX: Staff Regulations – articles on whistleblowing*

**Article 22a**

1. Any official who, in the course of or in connection with the performance of his duties, becomes aware of facts which gives rise to a presumption of the existence of possible illegal activity, including fraud or corruption, detrimental to the interests of the Communities, or of conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of officials of the Communities shall without delay inform either his immediate superior or his Director-General or, if he considers it useful, the Secretary-General, or the persons in equivalent positions, or the European Anti-Fraud Office (OLAF) direct.

Information mentioned in the first subparagraph shall be given in writing.

This paragraph shall also apply in the event of serious failure to comply with a similar obligation on the part of a Member of an institution or any other person in the service of or carrying out work for an institution.

2. Any official receiving the information referred to in paragraph 1 shall without delay transmit to OLAF any evidence of which he is aware from which the existence of the irregularities referred to in paragraph 1 may be presumed.

3. An official shall not suffer any prejudicial effects on the part of the institution as a result of having communicated the information referred to in paragraphs 1 and 2, 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 purposes of, or created or disclosed to the official in the course of, proceedings in legal cases, whether pending or closed.

**Article 22b**

1. An official who further discloses information as defined in Article 22a to the President of the Commission or of the Court of Auditors or of the Council or of the European Parliament, or to the European Ombudsman, shall not suffer any prejudicial effects on the part of the institution to which he belongs provided that both of the following conditions are met:

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

(b) the official has previously disclosed the same information to OLAF or to his own institution and has allowed the OLAF or that institution the period of time set by the Office or the institution, given the complexity of the case, to take appropriate action. The official shall be duly informed of that period of time within 60 days.

2. The period referred to in paragraph 1 shall not apply where the official can demonstrate that it is unreasonable having regard to all the circumstances of the case.

3. Paragraphs 1 and 2 shall not apply to documents, deeds, reports, notes or information in any form whatsoever held for the purposes of, or created or disclosed to the official in the course of, proceedings in legal cases, whether pending or closed.