

SCHIEBLE Christoph (HR)

From: FEUGIER Jean-Luc (HR)
Sent: Thursday 1 March 2012 15:05
To: LINDER Christian (CAB-SEFCOVIC)
Cc: SCHIEBLE Christoph (HR); SLOOTJES Rene (HR)
Subject: FW: Ares(2012)227556 Guidelines on Whistleblowing version 24 February 2012.doc
Attachments: Ares(2012)227556 Guidelines on Whistleblowing version 24 February 2012.doc

Comme demandé, voici le texte des LD.

jluc

From: SCHIEBLE Christoph (HR)
Sent: Thursday, March 01, 2012 3:03 PM
To: FEUGIER Jean-Luc (HR)
Subject: Ares(2012)227556 Guidelines on Whistleblowing version 24 February 2012.doc

Jean-Luc

Voilà la version clean.

Bât

Christoph

<<...>>



EUROPEAN COMMISSION

Brussels, XXX
[...] (2012) XXX draft

COMMUNICATION TO THE COMMISSION

Communication from Vice-President Šefčovič to the Commission on whistleblowing

This communication replaces the Communication of Vice-President Kinnock to the Commission of 9 February 2004 on how to enhance effective application of the whistleblowing rules and protection of whistleblowers (SEC(2004 151/2), which is hereby abrogated

- For this purpose, members of staff 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 who report serious irregularities in good faith must not under any circumstances be subject to reprisals or retaliation for whistleblowing. They 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 verify the reported facts and to identify appropriate remedies.
- 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 Commission's whistleblowing rules and guidelines apply to all members of staff, irrespective of their administrative position¹.

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 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 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:

¹ 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.

"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 and used on a strict need-to-know basis.

"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.

2. 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 System⁶.

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.

⁶ http://ec.europa.eu/anti_fraud/contact_us/index_en.html

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 them⁷ The disciplinary rules of the Commission allow it to keep the identity of the whistleblower confidential, while ensuring that the rights of defence 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 may address themselves to the Central Career Guidance Service (SCOP)⁸ 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 protective measure of a 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.

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.

⁷ Judgment of 15 May 1997, N / Commission (T-273/94, RecFP_p._II-289) (cf. point 81).

⁸ http://myintracomm.ec.europa.eu/hr_admin/en/career_management/Pages/index.aspx#1

5. 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 point of contact 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 the Network of Ethics Correspondents of the Commission. Each DG and service of the Commission has one or several designated Ethics Correspondents⁹, who are trained to provide guidance to staff on ethical issues, including whistleblowing.

These designated officials 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.

Naturally, this guidance function is without prejudice to the possibility of staff members to consult their line manager, or a specialised service¹⁰.

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.

In case of doubt, staff are encouraged to seek the guidance offered to them when contemplating a disclosure under the whistleblowing rules.

⁹ http://myintracomm.ec.europa.eu/hr_admin/en/ethics/Pages/index.aspx

¹⁰ Examples are OLAF, IDOC, DG HR.B.1 (ethics, rights and obligations) and SG.B.4 (public service ethics).

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.

SCHIEBLE Christoph (HR)

From: SLOOTJES Rene (HR)
Sent: Wednesday 14 March 2012 9:51
To: SCHIEBLE Christoph (HR)
Subject: FW: Communicating the new whistleblowing approach

Christoph,

Could you come up with some anonymised examples? One is the case Renault (Geneviève); another is Ms Silver (retaliation). Volker Effenberg, section head for internal investigations, might have more examples to give.

PS isn't today the final day of the CIS?

René

From: GRAVILI Antonio (COMM)
Sent: Wednesday, March 14, 2012 9:25 AM
To: PIPER Martin (HR); JONES Chris (HR); SLOOTJES Rene (HR)
Cc: JARDINE Norman (HR); CARRUTHERS Marilyn (COMM)
Subject: RE: Communicating the new whistleblowing approach

Dear all

Chris and I followed up our meeting by discussing this at the Cab meeting yesterday. To my surprise, they were pretty unanimous that the VP should not put his face to this by appearing in the press room. They were happy, however, for me to do a press release (some 'anonymised' examples would be essential here), and for Chris to tweet and blog the press release. They also liked the idea of the VP doing a video for internal communication, but not for external communication.

Please keep me posted as the guidelines progress through the machine.

Antony

From: PIPER Martin (HR)
Sent: Wednesday, March 07, 2012 9:29 AM
To: JONES Chris (HR); GRAVILI Antonio (COMM); SLOOTJES Rene (HR)
Cc: JARDINE Norman (HR)
Subject: Communicating the new whistleblowing approach

Dear All

I'm the HR Desk Officer in Unit D.3 responsible for IDOC.

Norman Jardine has asked me to set up a meeting (see his message below) to discuss whistleblowing and communication...

Could I have some idea of when you would be available - I have to report back to Norman before the 15th March - so would need to meet before then.

Regards

Martin

Martin Piper
Web Editor

<< OLE Object: Picture (Metafile) >>

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DG HR
Unit D3 Communication

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From: JARDINE Norman (HR)
Sent: Tuesday, March 06, 2012 5:41 PM
To: PIPER Martin (HR)
Cc: SLOOTJES Rene (HR)
Subject: A job for you.....

Martin,

As Desk Officer for the IDOC area, can you arrange a meeting between yourself, Rene Slootjes, Chris Jones and Antoni Gravili to discuss communication issues relating to a new policy on Whistleblowing? Purpose also includes just the fact you get to know each other and that IDOC can benefit from Gravili/Jones experience in external communication, as we would like to communicate our new Whistleblowing approach to the outside world as well as internally.

ASAP, please

Norman Jardine
Head of Unit

<< OLE Object: Picture (Metafile) >>

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Communication Unit

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