



EUROPEAN
COURT
OF AUDITORS

Eduardo Ruiz García

Secretary-General



Médiateur européen

- 5 NOV. 2014

Date d'arrivée

Ms Emily O'Reilly
European Ombudsman
1, Avenue du Président Robert Schuman
CS 30403
F-67001 Strasbourg Cedex
France

31 October 2014

Subject: Court of Auditors' internal rules of procedure for providing information in the event of serious irregularities ("whistleblowing")

Ref.: Your letter of 24 July 2014 and our reply of 5 September 2014

Dear Mrs O'Reilly,

With reference to your letter of 24 July 2014, informing the President of the European Court of Auditors of your own-initiative inquiry concerning whistleblowing, and in addition to the information provided in our letter of 5 September 2014, I am pleased to send you a copy of the Court of Auditors' internal rules on whistleblowing. These rules have just been adopted this week, following consultation of the Staff Committee.

As regards your question how third parties, such as contractors and subcontractors, could be encouraged to report serious irregularities and how they might best be protected if they do so, I would like to refer to point VIII. of the attached internal rules on whistleblowing, according to which the provisions of those rules apply *mutatis mutandis* to economic operators participating in procurement procedures of the Court of Auditors, to contractors of our institution and their staff.

Please do not hesitate to contact us should you have any further questions or suggestions relating to the whistleblowing policy of the European Court of Auditors.

Yours sincerely,

Annex

12, rue Alcide De Gasperi - L-1615 Luxembourg

T +352 4398 45620

SGLO50626EN01-14PP

eca.europa.eu



EUROPEAN
COURT
OF AUDITORS

Secretary-General

SGL042875EN01-14PP-whistleblowing-OR.doc

Rules of procedure for providing information in the event of serious irregularities ("whistleblowing")

I. Introduction

The Court of Auditors' ethical guidelines¹ stress the importance for the Court of defending values such as integrity and of ensuring that this principle guides its staff's conduct towards each other, the Court's institutional or commercial partners, stakeholders in the Court's audits, and the general public.

As the guardian of the European Union's finances, the Court of Auditors has significant public responsibility, requiring it to ensure that no legal or ethical rules are infringed in the course of its activities.

Establishing a facility for providing information in the event of serious irregularities helps to consolidate a culture of public responsibility and probity. Channels for providing such information are envisaged in the Staff Regulations², as is protection for whistleblowers against any form of retaliation.

These rules of procedure seek to define the rights and obligations of the respective parties when implementing this facility for providing confidential information.

II. Obligation to provide information in the event of serious irregularities

1. Staff are required to provide information about any serious irregularity of which they become aware in the course of their duties.

In this context, "serious irregularity" means any illegal activity, particularly instances of suspected fraud and active or passive corruption, which is detrimental to the Union's interests and serious professional misconduct committed by Members, the Secretary-General, officials, other servants, seconded national experts, trainees in an institution, companies or their staff taking part in public procurement procedures initiated by the Court, or the Court's contractors or their staff.

2. The following information shall not be provided:

- insignificant facts or information relating to a person's private life, not impinging on his or her work;
- differences of opinion or interpretation vis-à-vis the Court's policies and rules of procedure;
- matters relating to a whistleblower's legal position for which he/she may have recourse to appeal under the Staff Regulations;
- conflicts between staff;

1 Decision No 66-2011 laying down Ethical Guidelines for the European Court of Auditors adopted on 20 October 2011 by the Court.

2 Articles 22a, 22b and 22c of the Staff Regulations of Officials, as applied to other servants by Articles 11 and 81 of the Conditions of Employment of Other Servants (hereafter "the CEOS").

- information already within the public domain or which has already been provided by the same whistleblower;
 - rumours.
3. For certain situations, the Staff Regulations and the Court's rules of procedure lay down specific procedures for providing an appropriate response to the problems in question. In such cases, members of staff should first follow the procedures specifically laid down for their situation, i.e.:
 - Article 21a of the Staff Regulations concerning orders considered irregular or likely to give rise to serious difficulties;
 - Court of Auditors Decision No 97-2004 establishing arrangements for cooperating with the European Anti-fraud Office as regards providing the Office with access to audit-related information about facts established in the course of an audit carried out by the Court that may entail irregularity or fraud;
 - the Guideline on handling information which the Court has received about cases of fraud, corruption or any other suspected illegal activity, concerning cases brought to the Court's attention by a third party;
 - Decision No 61-2006 on the protection of persons working at the Court of Auditors against harassment, concerning instances of harassment where the whistleblower is either the victim of the alleged harassment or the contact person.
 4. Anyone who prevents a member of staff from doing his/her duty as regards drawing attention to serious irregularities may be subject to disciplinary proceedings.

III. Conditions for providing information

1. Information about a serious irregularity must be provided in writing, preferably using the specimen formal statement provided for this purpose (available on the Intranet).
2. The person providing the information must identify himself/herself when providing the information. He/she then assumes the status of "whistleblower" within the meaning of these rules of procedure.
3. The information provided must contain all evidence of which the whistleblower is aware.
4. The whistleblower shall act in good faith, insofar as he/she must reasonably and honestly believe that the information provided and/or the allegation entailed are accurate and valid.
5. Whistleblowers are presumed to be acting in good faith unless there is evidence to the contrary. However, the onus of proof is reversed if the whistleblower peddles a rumour or makes unverifiable accusations that are detrimental to another person's integrity or reputation.
6. To ensure that information is handled in accordance with these rules of procedure, it is important that the member of staff who becomes party to the information should pass it on without delay.

IV. Channels for providing information

1. Members of staff shall pass on information about a serious irregularity to their immediate superior, who shall in turn pass it on to the Secretary-General.
2. Where they deem it appropriate, in particular if they believe that their direct superior is involved in the alleged irregularities, members of staff shall pass on the information directly to the Secretary-General or the President of the Court.
3. Members of staff may also pass on information directly to OLAF, as envisaged in Article 22a of the Staff Regulations.

4. If the information provided by a whistleblower implies the existence of a serious irregularity that is detrimental to the European Union's financial interests, the Secretary-General or the President of the Court shall pass on the information to OLAF as soon as possible.
5. In the case of a financial irregularity within the meaning of Article 75 of the rules for implementing the Financial Regulation, the whistleblower may elect to pass on the information to the Specialised Financial Irregularities Panel established by Decision No 16-2011.
6. If no appropriate action has been taken by the deadline set by the Court or by OLAF (see Section V) or if the whistleblower can show that the deadline is unreasonable given the circumstances of the case, he/she may, subject to the conditions laid down in Article 22b of the Staff Regulations, pass on the information concerning the serious irregularity to the President of the Council, the President of the Commission, the President of the Parliament or the European Ombudsman.

V. Handling of information

1. The Court shall acknowledge receipt of the information, stating that, within 60 days of providing the information, the whistleblower shall be informed of the deadline by which, taking into account the complexity of the case, the Court shall take the action required of it.
2. No more than 60 days after providing the information in writing, the whistleblower will also be informed, to the extent reasonably possible and appropriate having regard to the circumstances of the case and in particular to the rights of individuals, of how the information has been handled.
3. If necessary, the whistleblower must cooperate in good faith with the Court when it examines the information.

VI. Protection for whistleblowers

1. A whistleblower who has provided information about a serious irregularity by adhering to the conditions and channels stipulated in these rules of procedure shall be protected against retaliation.
2. Any form of retaliation against a whistleblower, whether or not he/she is a member of the Court's staff, is prohibited and will result in disciplinary action.
3. It shall be the whistleblower's responsibility to show that he/she has received adverse treatment.
4. Provided that the conditions for providing information which are stipulated by these rules of procedure have been observed, and in particular that the whistleblower has acted in good faith, the whistleblower shall be protected even if the information is ultimately found to be inaccurate.
5. The confidentiality of the whistleblower's identity shall be guaranteed unless the whistleblower personally allows his/her identity to be disclosed, or unless required as a result of legal proceedings that could be initiated in the light of the serious irregularities reported.
6. Where possible and as required, a whistleblower who applies to his/her Appointing Authority or AECCC may be transferred to another post within the Court and/or be appraised by a different assessor/review assessor.
7. A whistleblower who is subject to retaliation, or a member of staff pressured into not providing information, may seek assistance from the Court of Auditors under Article 24 the Staff Regulations.
8. If the retaliation to which a whistleblower considers himself/herself to have been subjected is the result of a decision concerning him/her that has been taken by the Appointing Authority or the AECCC, or is the result of the Appointing Authority or the AECCC having failed to implement a measure required by the Staff Regulations, the whistleblower may submit a complaint to the Appointing Authority or the AECCC in accordance with the procedure laid down in Article 90 of the Staff Regulations.

9. Except in the event of duly substantiated circumstances beyond its control, the Appointing Authority or the AECCC shall notify the whistleblower of its reasoned decision within two months of the complaint having been submitted. The whistleblower's identity shall remain confidential while the complaint is being dealt with.
10. Without prejudice to the previous paragraph, the Secretary-General of the Court shall act as the Appointing Authority or the AECCC for cases involving the protection of whistleblowers.
11. In any situation where a conflict of interests could result from the previous paragraph, the President or a Member of the Court whom he has appointed shall act as the Appointing Authority or AECCC for cases involving the protection of whistleblowers.
12. The following shall not be eligible for protection under these rules of procedure:
 - anyone who provides information which, according to these rules of procedure, should not be provided;
 - anyone who does not follow the channels for providing information as described in section IV;
 - anyone who remains anonymous for as long as he/she remains anonymous;
 - anyone who makes wrongful or detrimental allegations and who does not prove the honest or reasonable nature of such allegations, or that they are made in good faith in the public interest;
 - anyone who provides information with a view to deriving personal advantage therefrom;
 - anyone who is personally involved in the serious irregularities of which he/she intends to inform the Court.

VII. Consultation of ethics advisors

1. Ethics advisors, who are appointed by the Secretary-General, shall provide any members of staff who consult them with confidential and impartial advice regarding the provision of information about serious irregularities.
2. Under no circumstances shall an ethics advisor pass on information of any kind to which he/she has become party in the course of his/her duties [except where legally bound to do so].

VIII. Procurement procedures and contracts

These rules of procedure shall also apply to companies taking part in Court procurement procedures and to Court contractors and their staff. The Court's procurement notices and contracts contain specific provisions in this respect.

IX. Personal data

1. All data compiled for the purposes of handling information along the lines described in section V shall be handled in accordance with Regulation No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and with the Appointing Authority's Decision No 77-2006 implementing this Regulation in the context of Human Resources policies.
2. Such data may be retained for historical, scientific or statistical purposes but must be made anonymous five years after the procedure has been definitively closed. Every effort will be made to ensure that persons who are the subject of allegations will be protected from disclosure or retention of information or purported information which is not accurate.

Digitally signed by Eduardo Ruiz García
DN: cn=Eduardo Ruiz García, o=AECCC

Date: 2014.10.31 15:09:54 +01'00'

Eduardo Ruiz García