

P51: Procedure for reporting improprieties (Internal Control Standard 14)

1. Purpose and scope

EEA Internal Control Standard 14 “reporting improprieties”¹ provides that “appropriate procedures, in addition to reporting to the direct superior, shall be established and communicated to staff covering the reporting of suspected improprieties. Persons complying with the above obligations must not suffer inequitable or discriminatory treatment as a result of communicating such information.”

The purpose of this procedure is to help people within the EEA to express and report their concerns in an appropriate way, if they suspect fraud, corruption or other serious wrongdoing in the organisation.

If staff members observe an irregularity and believe it was caused by a simple error of application or negligence not detrimental to the interests of the Communities, staff members should not follow this procedure, but inform their hierarchy along the established reporting lines. It should be checked whether in these cases the procedure for reporting an exception or an internal control weakness applies (see procedures regarding Internal Control Standards 18 and 20).

2. Procedure sections

P51a: Internal procedure

P51 b: Obligations of OLAF

P51c: If no action is taken by OLAF

3. Control and maintenance

Procedure owner and ultimate approver of this procedure and its updates: the Executive Director as Authorising Officer.

This procedure will be updated when there is a change in the Internal Control Standards of the EEA, and when modification of the documents in reference occurs.

4. Terms and definition

OLAF: European Anti-Fraud Office

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

FIP: Financial Irregularities Panel

See art.47 (5) of the EEA Financial Regulation of 19 December 2008.

Improprieties:

Not only cover irregular financial transactions but also extends to all other forms of serious professional wrongdoing. This is especially the case when an irregularity is caused intentionally by artificially creating conditions required for obtaining an advantage contrary to the objectives of applicable Community law.

¹ EEA Internal Control Standards adopted by the Management Board in November 2005

5. Documents

- Checklist for preparing the note on suspected serious wrongdoing (annex 1 to this procedure).
- Standard form for reporting suspected serious wrongdoing (annex 2 to this procedure).

6. Methods

P51a: Internal procedure

1. Initiating person

According to Commission legislation applicable to the EEA², all officials and other agents have a duty of information on serious wrongdoing. The Staff Regulations³ includes two articles (22(a) and 22(b)) which place a duty on all staff to report on such concerns. These Staff Regulations also apply to all staff members of the EEA.

Therefore, any member of staff of the EEA has the duty to report on the following:

- evidence/facts suggesting possible illegal activity, including fraud or corruption, detrimental to the interests of the Communities;
- evidence/facts suggesting serious failure to comply with professional obligations of officials or other servants of the Communities.

The duty of information does only apply to evidence/facts received by staff members in the course of or in connection with the performance of their duties.

When reporting presumed serious wrongdoing, staff members are not expected to prove their presumption. Nevertheless, they should be reasonably assured that the presumption is true. In case concerns turn out not to be correct, but the staff members could not have been expected to realise that, they will not lose protection from adverse consequences (see point 4 below).

However, even if there is substance to the information itself, the protection can be lost if staff members make unwarranted or damaging allegations that they cannot show to be honest or reasonable. Thus, whenever staff members are contemplating an external disclosure, they will be well-advised to let the facts speak for themselves.

In case of doubt and if staff members find it appropriate, they should consult the EEA's legal adviser and/or the internal audit capability function.

2. Reporting serious wrongdoing

All staff members are obliged to report evidence and facts on presumed serious wrongdoings without delay and in writing.

² See Commission Decision on raising concerns about serious wrongdoings (C(2002)845 of 04/04/2002), Commission Decision concerning the terms and conditions for internal investigations (...) (1999/396/EC, ECSC, Euratom)

³ Staff Regulations of Officials and conditions of employment of other servants of the European Community
01.01.2005

Before preparing the note for reporting improprieties, the checklist in annex 1 to this procedure should be filled in.

For drawing up the note, the standard form in the annex 2 to this procedure should be used.

- a) In general, all staff members of the EEA have a choice to inform either⁴
- their immediate superior and their Head of Programme or
 - the Executive Director or
 - the Chairperson of the EEA's Management Board or
 - directly the European Anti-Fraud Office (OLAF).

If it is not suspected that the direct superior and/or the Head of Programme are involved in the presumed irregularity, the hierarchical structure should be respected when information on wrongdoing is passed on. Only if it is believed that not only the superior and Head of Programme but also the Executive Director is involved in the presumed wrongdoing, should the report be sent to the Chairperson of the EEA's Management Board or directly to OLAF.

- b) Obligation for Heads of Programme and the Executive Director

If they have been informed about the presumed irregularity referred to above and if the matter involves wrongdoing for which OLAF is competent, they are required

- to transmit any evidence without delay to OLAF (see point 3 below), and
- to inform the Chairperson of the EEA's Management Board about this bilateral contact with OLAF⁵

- c) Staff involved in financial management and control of transactions

They are acting under the EEA Financial Regulation of 19 December 2008 which sets forth additional reporting obligations if faced with apparently irregular transactions (as described in Art. 41). However, the reporting duty under the rules described as the whistleblowing rules takes precedence over the reporting duty set forth in the EEA Financial Regulation of 19 December 2008 Art. 41.

It follows that a financial officer, when faced with an apparently serious irregularity of a financial transaction,

- should inform the authorities as stated in a) above (Staff Regulations, Art. 22(a))
- and should in addition inform the Financial Irregularities Panel (FIP or PIF) through the Panel Secretary provided by DG ADMIN (Art. 47(5) of the EEA Financial Regulation of 19 December 2008).

3. Follow up of the note reporting an impropriety

If the Heads of Programme and/or the Executive Director are the addressees of the note reporting an impropriety, the addressed Head of Programme and the Executive Director as well as both the EEA's legal adviser and internal audit capability function should examine it. The Executive Director should decide whether the presumed irregularity falls under the investigative competence of OLAF.

⁴ See art. 22 (a) of the Staff Regulations of Officials and conditions of employment of other servants of the European Community 01.01.2005

⁵ See SEC(2004)408 by Mr.D.O'Sullivan of 01.04.2004

If this is the case, the Executive Director transmits the note and its attachments to the Director General of OLAF; a copy of the note is sent to the Chairperson of the Management Board of the EEA.

All notes reporting improprieties and all correspondence referring to it are filed by the EEA's internal audit capability function who keeps the register and ensures the follow-up of all cases sent to OLAF.

4. Protection from adverse consequences

A Commission Communication⁶ provides for specific measures to ensure a maximum of protection for staff members who make proper use of the whistleblowing procedure:

- Information relating to the identity of the whistleblower will be treated confidentially
- Staff concerned will find it easier to move to another service in order to safeguard them against hostile reactions from the immediate working environment

The protection scheme is applicable only if the staff member concerned

- acted reasonably and honestly, fairly and not out of personal interest, and
- informed only the authorised persons, listed under points 3 and 6 above, about the presumed wrongdoing and thus respected the principles of impartiality and loyalty to the Communities (see Articles 17 and 17a of the Staff Regulations).

P51b: Obligations of OLAF

The responsibilities of OLAF include carrying out internal and external administrative investigations. When OLAF receives a note reporting a possible irregularity, without the EEA providing for evidence of effects on the Community financial interests, OLAF will verify whether the presumptions are true and well founded or not.

Upon receiving information from whistleblowers, OLAF must:

- inform the staff member concerned or the Executive Director of the EEA within **60** days on how much time is needed to take appropriate action, and
- take appropriate action within the period of time indicated. Normally, OLAF sends a report to the Executive Director of the EEA with its conclusion and recommendations with administrative and legislative measures to be considered by the EEA or other parties.

If no appropriate action is taken within that time, the staff member may turn to another EU institution as a last resort (see procedure below).

OLAF has established within its Magistrates Unit a Helpdesk as an initial contact point to provide advice and assistance to whistleblowers. The Helpdesk telephone number is **67732** and can be contacted during normal Commission working hours.

⁶ Commission Communication SEC(2004)151 – 06/02/2004 and Commission Decision on raising concerns about serious wrongdoings (C(2002)845 of 04/04/2002)

P51c: If no action is taken by OLAF

As a last resort, that means, if and only if OLAF has taken no appropriate action within a reasonable period of time, staff members, who reported the wrongdoing, have the right to bring their concerns to the attention of either

- the President of the Council,
- the President of the European Parliament,
- the President of the Court of Auditors, or
- the European Ombudsman.

As this is an option of last resort, it is justifiable only if

- the staff member raising the concerns honestly and reasonably believes that the information disclosed, and any allegation contained in it, are substantially true, and
- the staff member has allowed OLAF a reasonable period of time to take the appropriate action (see Staff Regulations Art. 22(b)).

Please note that the staff members' duties of discretion and of loyalty imply that reporting serious wrongdoings beyond these institutions (e.g. to the press) is not permitted.



**CHECKLIST FOR PREPARING
THE NOTE ON SUSPECTED SERIOUS WRONGDOING**

1	<p>Before you consider writing a report on suspected serious wrongdoing, please consult these documents:</p> <ul style="list-style-type: none"> ▪ Articles 22 a and 22 b of the Staff Regulations and ▪ Reporting serious wrongdoing: Whistleblowing http://intracomm.cec.eu-admin.net/pers_admin/ethics/prevention/wrongdoing_en.html http://intracomm.cec.eu-admin.net/pers_admin/idec/whistleblowing_en.html ▪ Protection from adverse consequences - SEC(2004)151 of 06/02/2004 ▪ Conduct of administrative inquiries and disciplinary procedures http://intracomm.cec.eu-admin.net/pers_admin/ethics/prevention/disciplinary_en.html
2	<p>Do you believe you have received information on serious wrongdoing? That means:</p> <ul style="list-style-type: none"> ▪ evidence/facts that suggest possible illegal activity, including fraud or corruption, detrimental to the interests of the Communities, and/or ▪ evidence/facts that suggest serious failure to comply with professional obligations of officials of the Communities? <p>If you consider the irregularity not to be serious in this sense, you should not follow the whistleblowing procedure but inform your direct superior and/or Head of Programme along the established reporting lines.</p>
3	<p>Did you receive the information on possible wrongdoings in the course of or in connection with the performance of your duties? If not, you are not obliged to report on it.</p>
4	<p>Are you reasonably assured that your presumption is true? Do you have credible and reliable information? <i>Although you are not expected to prove your presumption or suspicion, you should make sure that the facts speak for themselves.</i></p>
5	<p>Do you believe that your direct superior and/or your Head of Programme are involved in the presumed irregularity as defined in point 2 above?</p> <ul style="list-style-type: none"> ▪ If no, you should report to your direct superior and your Head of Programme following the standard form (annex 2 to P51 - Procedure for Reporting improprieties - Internal Control Standard 14). ▪ If yes, you should send your report to the Executive Director.
6	<p>Do you suspect that not only your superior, the Head of Programme, but also the Executive Director is involved in the presumed irregularity as defined in point 2 above?</p> <ul style="list-style-type: none"> ▪ If no, you should send your report to the Executive Director. ▪ If yes, you should directly inform the EEA Management Board or OLAF.
7	<p>Are you a staff member involved in financial management and/or control of transactions? If yes</p> <ul style="list-style-type: none"> ▪ Please note that, in addition to points 5 and 6 you should also inform the Financial Irregularities Panel (FIP or PIF) through the Panel secretariat provided by DG ADMIN on any presumed financial irregularity. ▪ Please read the EEA Financial Regulations articles 41 and 47(5) and consult the document C(2003)2247/3 of 09/07/2003.
8	<p>When did you receive the information on possible wrongdoings? Please be reminded that you have to transmit this information as soon as you have discovered it, i.e. without delay.</p>
9	<p>Please make sure that you use the attached standard form for preparing your report regardless of the addressee specified in points 5, 6 and 7 above.</p>
10	<p>In case you should have any questions related to points 1 to 9 above and if you find it appropriate, please consult the EEA's legal officer and/or the internal audit capability function</p>
<p>Please be reminded that only as a last resort, if no action by OLAF, do you have the right to inform the President of the Council, the European Parliament, the Court of Auditors or the European Ombudsman.</p>	
<p>Please note that the duties of discretion and of loyalty also imply that reporting serious wrongdoings beyond these institutions (e.g. to the press) is not permitted.</p>	



**STANDARD FORM FOR
REPORTING SUSPECTED SERIOUS WRONGDOING**

TITLE:	
DESCRIPTION OF THE IRREGULARITY	
Nature and time frame	<p><i>Please briefly describe</i></p> <ul style="list-style-type: none"> - the nature of the presumed serious and professional wrongdoing, - which applicable rules and regulations were not complied with, - when the irregularity occurred for the first time and how often, - whether the situation persists or not. <p><i>Source of information (and its assessment) : please refer to the source of information as well as its assessment in terms of credibility and reliability.</i></p> <p><i>Motivation : please describe the possible causes of the presumed irregularity (negligence, intention or not known yet).</i></p> <p><i>Contact persons: Name / Unit / Phone</i></p> <p><i>Please list the staff members in charge of the process concerned, their unit, and phone number</i></p>
IMPACT ASSESSMENT (COMMUNITIES' INTERESTS AFFECTED)	
a) Non-Financial impact	Yes or No or unknown?
Observation	<i>Please briefly describe the kind of impact on Communities' interests the presumed irregularity has or might possibly have.</i>
b) Financial impact	Yes or No or unknown?
Revenue side	<i>Please describe the kind of impact the presumed irregularity has or might have in terms of under-evaluation of Communities' income (for example, duties, taxes or fines not collected that, under normal conditions, would be collected).</i>
Expenditure side	<i>Please describe the kind of impact the presumed irregularity has or might have in terms of misusing or misappropriation of Communities' resources, non-compliance with the principles of sound financial management and requirements of legality and regularity</i>
Amount involved (estimate)	<i>If possible, give an estimation of the potential losses (preferably in Euros).</i>
MEASURES OR ACTIONS ALREADY TAKEN OR TO BE TAKEN	
Already taken:	<i>Please describe appropriate measures that have been taken to mitigate the irregularity.</i>
Planned:	<i>Please describe appropriate measures planned or foreseen to mitigate the irregularity.</i>

