

EUROPEAN COMMISSION
DIRECTORATE-GENERAL
HUMAN RESOURCES AND SECURITY
IDOC - Investigation and Disciplinary Office
The Director

04.12.2012

Brussels,
 HR.IDOC.1/KW/cb-Ares(2012)

*Investigations and disciplinary matters**

NOTE FOR THE ATTENTION OF Ms CATHY JAMES

Subject: Guidelines on whistleblowing – your email of 29 May

Dear Ms James,

First of all, my apologies for this belated response to the comments included in your message. Due to the fact that a lot of internal resources have been tied up in the revision procedure for the Staff Regulations, the adoption process for the whistleblowing guidelines has incurred some delay.

I enclose for your information the guidelines as they are about to be adopted, on 6 December 2012, by the Commission.

You will see that we have incorporated some of your drafting suggestions. However, we were unable to include some other suggestions that were incompatible with the Staff Regulations.

For example; the Staff Regulations specify that the whistleblowing rules cover facts discovered *'in the course of or in connection with the performance of [an official's] duties'* and that these facts must be *'serious'*. Likewise, these rules make it clear that it is a duty to report serious wrongdoings. Other aspects are also determined by these rules, like the fact that the reporting should be done in writing, or the time period of 60 days for feedback to the whistleblower (this period applies unless *'the official can demonstrate that it is unreasonable having regard to all the circumstances of the case'*). You will find the relevant rules annexed to the guidelines.

We have carried out some redrafting with your comments in mind. The guidelines now explain that the Commission will also address information discovered in another context and that, while the Staff Regulations state that the reporting should be in writing, members of staff may of course seek oral advice and guidance.

* This marking means: This document and all related documents must be kept under lock and key and may not be divulged to any person other than those who are required to see them for the purposes of the procedure. These documents must be sent in a double envelope, by messenger or ARES sent directly to the person concerned.

As to your comment on the absence of a provision on compensation, we are of course aware that in the UK, one of the purposes of the whistleblowing rules is to protect employees against unfair dismissal as a result of having 'blown the whistle'. At the Commission, disciplinary procedures are handled centrally and they are elaborate and rich in checks and balances (meaning that, for instance, summary dismissals or dismissals by a direct line manager are not possible). The statute of civil servant in the EU context itself provides a high level of protection to staff. This reduces the need for specific provisions to protect staff against unfair dismissals and to provide for compensation in that specific scenario.

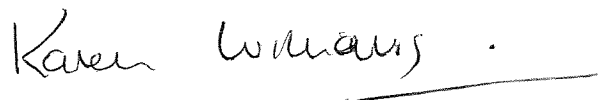
More in general, it should be borne in mind that the EU whistleblowing system is conceived from the perspective of enhancing the detection of fraud, corruption and similarly serious irregularities and to bring these matters to the attention of OLAF. You are therefore right in assuming that, while the whistleblower has a choice of reporting channels, the information should end up with OLAF.

Finally, I understand your point that some terms may seem vague ('serious' wrongdoings, etc.). We intend to post these guidelines on an intranet site together with some FAQ's that give concrete examples to staff of the type of information that should be reported under these rules. It is of course impossible to give a precise definition of what is and what is not 'serious'. This being said, we have provided staff with some context in the guidelines by referring to similar rules that apply to less serious situations, such as Article 21a of the Staff Regulations, which provides that staff shall alert their superior if an instruction is not in line with the rules or is likely to give rise to serious difficulties.

However, we have maintained the provision that frivolous information is not covered by the whistleblowing rules, as we have had to strike a delicate balance between the various cultures in the member states, some of which have had an unfortunate experience in the not too distant past with 'informants'. We are therefore keen to limit the scope of these guidelines to situations where there is an overriding interest for the service to have it reported.

I hope this information is of use to you.

On behalf of Vice-President Šefčovič, responsible for staff matters, and of Ms Irene Souka, our Director-General, I would like to thank you sincerely for your kind cooperation and your valuable input during the preparation of this text.

A handwritten signature in black ink, reading "Karen Williams", followed by a horizontal line.

Karen WILLIAMS

C.c: Mr Christian Linder, member of the private office of Vice-President Šefčovič