Council of the European Union
General Secretariat

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LEGAL ACTS

Subject:	DECISION No 3/2016 OF THE SECRETARY-GENERAL OF THE COUNCIL adopting internal rules for reporting serious irregularities - Procedures for the implementation of Articles 22a, 22b and 22c of the Staff Regulations and 66.8 of the Financial Regulation

DECISION NO 03/2016
OF THE SECRETARY-GENERAL OF THE COUNCIL

adopting internal rules for reporting serious irregularities
Procedures for the implementation of Articles 22a, 22b and 22c of the Staff Regulations and 66.8 of the Financial Regulation

THE SECRETARY-GENERAL OF THE COUNCIL,

Having regard to Articles 22a, 22b and 22c of the Staff Regulations of Officials of the European Union (SR) laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68[1], as amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013[2],

Having regard to Article 66.8 of the Financial Regulation laid down by Regulation (EU, Euratom) 966/2012 of the European Parliament and of the Council of 25 October 2012[3],

Having regard to Council Decision 2013/811/EU of 17 December 2013 determining for the General Secretariat of the Council the appointing authority and the authority empowered to conclude contracts of employment and repealing Decision 2011/444/EU[4],

After consulting the Staff Committee,

Whereas:

(1) Officials, temporary staff and contract staff have the obligation to report serious irregularities, misconduct or negligence they discover in the course of the performance of their duties.

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[1] OJ L 56, 4.3.1968, p.1.
[2] OJ L 287, 29.10.2013, p.15.
[3] OJ L 298, 26.10.2012, p.1.
[4] OJ L 355, 31.12.2013, p. 91.

(2) The procedures to be followed for reporting such serious irregularities, including the protection of the legitimate interests of those officials, temporary and contract staff, shall be laid down, as well as a procedure for the handling of their complaints,

HAS DECIDED AS FOLLOWS:

Article 1

The internal rules for reporting serious irregularities as set out in the Annex shall apply within the General Secretariat of the Council.

Article 2

This Decision shall take effect on the day of its adoption.

Done at Brussels,

Jeppe TRANHOLM-MIKKELSEN

ANNEX

Internal Rules on Reporting Serious Irregularities

Procedures for the implementation of Articles 22a, 22b and 22c of the Staff Regulations and 66.8 of the Financial Regulations

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1. BASIC PRINCIPLES

"Whistleblowing" is the practice of reporting serious irregularities, misconduct or negligence within an organisation. Under the Staff Regulations and the Financial Regulation, staff members of the General Secretariat of the Council (GSC) have the obligation to report any such irregularities that they have discovered in the course of their duties. These internal rules set out the procedures to be followed for reporting serious irregularities, including what, when and to whom staff members should report.

The basic principles of reporting serious irregularities are the following:

- Staff members have the obligation to report serious irregularities such as possible illegal activities, serious professional misconduct and any financial irregularities.
- Staff members have a choice between reporting channels: the first line of reporting is the normal chain of hierarchy (Head of Unit, Director, Director-General, Secretary-General) or the European Anti-Fraud Office (OLAF). Under certain conditions, staff may address their concerns to another EU institution as an option of last resort. In case of financial irregularities, the staff member may also report directly to the Irregularity Panel[1].
- The GSC will provide protection for reporting staff members who invoke these procedures: if serious irregularities are reported reasonably and honestly, the staff member shall not suffer any prejudicial effects for fulfilling their obligation.
- Complaints against the way a reporting staff member has been treated will be dealt with confidentially and with due care by the GSC.

[1] For the current composition of the panel see Secretary-General Decision 173/2012 of 31 December 2012. For more information see also DOMUS: http://domus/dga4-budget/htmls_en/RolesActors/fight_against_fraud.htm.

1.1. To whom do these rules apply

These internal rules apply to all members of staff, including seconded national experts[2], irrespective of their administrative position.

Although the Staff Regulations' rules on reporting serious irregularities do not apply to trainees and interim and/or external staff working within the GSC premises, these persons are encouraged to make use of the procedures set out in these internal rules. The GSC shall ensure that any such person making use of the possibility to report serious irregularities shall not suffer any prejudicial effects on the part of the GSC, provided they act reasonably and honestly.

2. WHICH IRREGULARITIES TO REPORT

A staff member who, acting reasonably and honestly, in the course of or in connection with his or her duties discovers facts which point to the existence of serious irregularities, is obliged to report this. The reporting should be done in writing, without delay and contain all evidence of which the staff member is aware. Staff members who act pursuant to this obligation are also designated in this document as *reporting staff members*.

Serious irregularities include facts that give rise to a presumption of the existence of possible illegal activity, including fraud or corruption, that is detrimental to the interests of the Union. They also include serious professional misconduct, that may constitute serious failures to comply with the obligations of officials, either intentional or by negligence.

2.1. What do not constitute serious irregularities

Some types of information do not qualify as serious irregularities that need to be reported within the meaning of these internal rules such as:

- information already in the public domain;

[2] By virtue of Articles 8(6) and 8(7) of Council Decision 2015/1027 of 23 June 2015 concerning the rules applicable to experts on secondment to the General Secretariat of the Council and repealing Decision 2007/829/EC.

– unsubstantiated rumours;

– matters of a trivial nature;

– information relating to a person's private life, not impinging on his or her work;

– disagreements over legitimate policy.

For some situations, specific procedures are available which should be followed, for instance:

– claims of harassment or personal disagreements or conflicts with colleagues[3];

– situations that personally and directly affect the staff member concerned where he/she could submit a request or a complaint to the Appointing Authority pursuant to the procedures set out in Article 90 of the Staff Regulations.

A malicious or frivolous report does not constitute a reasonable and honest disclosure under these internal rules and may lead to disciplinary measures, particularly if false accusations are made.

3. REPORTING PROCEDURES

3.1. Internal reporting procedures

Staff members who, in the course of or in connection with their duties, discover that serious irregularities as indicated in section 2 above may have occurred or may be occurring are obliged to report this discovery forthwith and in writing.

The obligation of the staff members to report shall be exercised as follows:

[3] Victims of alleged harassment can make use of the procedures set out in Decision 15/2015 of the Secretary-General of the Council concerning psychological and sexual harassment at work, published in Staff Note 14/15.

a) either to the immediate superior, the Director or the Director-General. In the case of financial irregularities staff members may also contact the Financial Irregularities Panel;

b) if the reporting staff member considers it useful, including but not limited to situations when there is a concern that disclosure may lead to retaliation or that the intended recipient of the report is personally implicated in the serious irregularities, the staff member may address his or her report directly to the Secretary-General or to OLAF. OLAF can be notified by post or through the online Fraud Notification System[4].

Any GSC staff member to whom a serious irregularity is reported under this section shall provide an acknowledgement of receipt to the reporting staff member. The acknowledgment of receipt shall mention the official responsible for the follow-up procedure, the fact that a period of time to take appropriate action will be set by the responsible official and that the reporting staff member will receive an indication of that period of time within 60 days according to art. 22b in the Staff Regulations.

3.2. Follow-up to internal reports by the General Secretariat of the Council

The Director-General of Administration (*hereinafter, the DGA*) is responsible for handling all cases of internal reporting of serious irregularities (other than those reported to the Financial Irregularities Panel or OLAF). Any GSC staff member to whom a serious irregularity is reported pursuant to the procedures detailed in section 3.1 above, shall inform the DGA immediately and transmit to him or her the entire file received.

The DGA shall decide on the appropriate follow-up to the reporting, which could include: conducting an administrative investigation, further reporting of the information to OLAF or informing the national authorities. If required, the DGA may also request clarifications or additional information from the reporting staff member. The reporting staff member shall cooperate in good faith with the GSC during the examination of the reported information.

[4] http://ec.europa.eu/anti_fraud/investigations/report-fraud/index_en.htm.

Where the circumstances permit, the reporting staff member shall be informed of the outcome of the procedure, provided this is consistent with the rights of any affected party.

In case the DGA has an actual or potential conflict of interest in handling a case where serious irregularities have been reported, the DGA shall immediately transmit the entire file to the Secretary-General. In case the GSC staff member to whom a serious irregularity is reported pursuant to the procedures detailed in section 3.1 above considers that the DGA has an actual or potential conflict of interests he or she may also inform and transmit the entire file received directly to the Secretary-General. Upon receiving the file pursuant to the exceptions indicated in this paragraph, the Secretary-General may designate an official to handle the file and to exercise all the rights and duties of the DGA as mentioned in the second and third paragraphs of this section.

3.3. External reporting procedures

Within 60 days from the acknowledgment of receipt received by the reporting staff member, the DGA (or the Secretary General, as the case may be) shall give the reporting staff member an indication of the period of time that he/she considers reasonable and necessary to take appropriate action.

If no action is taken within that period of time, or if the staff member 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 reporting of serious irregularities as provided for in Article 22b SR. This Article gives the staff members the option of bringing their concerns to the attention of the President of either the Council, the European Commission, the European Parliament or the European Court of Auditors, or to the European Ombudsman. This option of last resort is only justified if the staff member honestly and reasonably believes that the information disclosed, and any allegation contained in it, are substantially true and if the GSC or OLAF were given a reasonable period of time to take the appropriate action.

4. PROTECTION FOR STAFF MEMBERS

Any reporting staff member who acts reasonably and honestly in accordance with the provisions of these internal rules shall not suffer any prejudicial effect from fulfilling their obligation. Staff members will not be expected to prove that the wrongdoing is occurring, nor will they lose their protection simply because their honest concern turned out to be unfounded.

The following protective measures apply:

- *Confidentiality of identity*

  The identity of the reporting staff member, the identity of the person potentially implicated in the alleged wrongdoings and the confidentiality of the report received shall be protected to the greatest extent possible during the procedure established in section 3.2. above for the follow-up to internal reports. The name of the reporting staff member shall not be revealed to the person(s) potentially implicated in the alleged wrongdoings except for the exercise of procedural guarantees that are indicated in Annex IX of the Staff Regulations or if the reporting staff member personally authorises the disclosure of his/her identity.

- *Avoid anonymous reporting*

  In order for the GSC to be able to apply protective measures, the reporting staff member should identify him or herself to the institution and observe the procedures as set out in these internal rules. Reporting anonymously would prevent investigators to request clarifications or additional information, if needed. As the identity of the staff member shall be protected to the greatest extent possible, reporting anonymously should be avoided. (see further point 5).

- *Mobility*

  If the reporting staff member wishes to be transferred to another GSC department in order to safeguard him- or herself against potential hostile reactions from his or her immediate work environment, he/she can make a request to the DGA or to the Secretary-General if the staff member is assigned to DGA. The DGA or the Secretary-General, as appropriate, shall take all reasonable steps to assist the person concerned in finding the type of post which matches his/her professional abilities.

- *Appraisal and promotion*

  Particular care will be taken during staff appraisal and promotion procedures to ensure that the reporting staff member suffers no adverse consequences in this context. Any reporting staff member who has formally invoked one of the procedures referred to in Articles 22a, 22b SR or Article 60 Financial Regulation, may request the appointment of an independent second reporting officer. Such a request may be made either before or after receipt of the draft report prepared by the first reporting officer.

- *Penalties for those taking retaliatory action*

  The GSC maintains a zero-tolerance policy towards any form of retaliation by staff members against a staff member who reports serious irregularities. No staff members or managers of the GSC may therefore use their position to prevent other staff members from complying with their obligation to report serious irregularities pursuant to the procedures detailed in section 3.1 above. In such cases, disciplinary measures can be taken. In case the reporting staff members consider that they have been the victim of retaliation as a result of the disclosure of a serious irregularity, they shall be entitled to ask for assistance from the GSC under Article 24 Staff Regulations. Staff members may also request that protective measures be adopted by individual decision according to the procedure set out in art. 90 (1) of the Staff Regulations. Such requests should be addressed to the DGA. Staff members may also file a complaint against any act affecting them adversely within the meaning of art. 90 (2) in the Staff Regulations.

- *Self-incrimination - limits*

  If the reporting staff member him/herself is implicated in the serious irregularities and decides to come forward and report these facts, this does not constitute a qualifying disclosure in the sense of these internal rules and therefore does not provide the reporting staff member with protection from any possible disciplinary action. However, the fact that the person concerned comes forward voluntarily can constitute attenuating circumstances in ensuing disciplinary proceedings.

- *Rights of persons implicated*

  The person(s) concerned or implicated in the alleged wrongdoings will be rapidly informed of the internal reporting, unless there are reasons to postpone communicating such information. In these cases, the reasons for delaying the transmission of the information to the implicated persons shall be recorded in writing. Their identity shall be protected to the greatest extent possible during the procedure for the follow-up to internal reports mentioned in section 3.2. above.

5. GUIDANCE AND SUPPORT

While reporting serious irregularities is an obligation under the Staff Regulation, some 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 GSC offers confidential and impartial guidance and support to such staff members. The task of helping staff members will lie with an experienced member of staff and an alternate, to be appointed by the Appointing Authority. These experienced staff members shall not be involved in financial management and shall be bound by the same rules regarding confidentiality and the protection of the staff members as indicated in section 4 above.

In addition, the web-based Fraud Notification System of OLAF[5] gives staff who contemplate a disclosure and who hesitate to come forward the opportunity to enter into a dialogue with OLAF investigators. Such a dialogue can initially be anonymous, and can take place before a person decides to come forward and make use of the procedures on reporting serious irregularities. This will also give the OLAF investigators the opportunity to verify whether the information in the staff member's possession falls within the remit of OLAF competencies.

Staff Members are encouraged to first seek guidance when contemplating a disclosure under articles 22a or 22b SR.

6. COMPLAINTS BY STAFF MEMBERS WHO REPORTED SERIOUS IRREGULARITIES

If, despite the guarantees and procedures set out in these internal rules, a staff member who reported serious irregularities feels that he/she has not been treated correctly after, or in consequence of, the fulfilment of his/her obligations under Article 22a or 22b SR, he/she can file a complaint. The staff member should lodge the complaint within three months after the incorrect treatment has occurred, using the form for requests and complaints under Article 90 SR[6]. The staff member's complaint shall be handled confidentially following the complaint procedures as set out in Article 90(2) SR. The GSC shall strive to handle these complaints swiftly and, where warranted by the circumstances, before the deadline of four months as set out in Article 90(2).

7. COMMUNICATION AND AWARENESS-RAISING

In order to improve staff awareness, these internal rules and the relevant provisions (Articles 22a, 22b and 22c SR and Article 60 Financial Regulation) will be communicated to all new staff members as part of the induction process.

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5 http://ec.europa.eu/anti_fraud/investigations/report-fraud/index_en.htm.
6 http://domus-portal/en/supportandservices/Pages/complaintsappeals.aspx.

8. ANNUAL REPORTING

The GSC Administration will ensure annual reporting on staff members who report serious irregularities within the GSC. It shall also give details of the activities mentioned under 7.

9. DATA PROTECTION

Any processing of personal data in application of these rules is subject to Regulation (EC) Nº 45/2001[7].This processing operation has been notified to the Data Protection Officer and to the European Data Protection Supervisor.

If the information provided during the internal reporting contains personal data that clearly are not relevant for the purpose of investigating serious irregularities, these data should be erased from the report and not further processed.

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[7] Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1).

ANNEX TO ANNEX

Legal Provisions

Article 22a Staff Regulations

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 Union, 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 Union 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 Staff Regulations

5. 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.

6. 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.

7. 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.

Article 22c Staff Regulations

In accordance with Articles 24 and 90, each institution shall put in place a procedure for the handling of complaints made by officials concerning the way in which they were treated after or in consequence of the fulfilment by them of their obligations under Article 22a or 22b. The institution concerned shall ensure that such complaints are handled confidentially and, where warranted by the circumstances, before the expiry of the deadlines set out in Article 90.

The appointing authority of each institution shall lay down internal rules on *inter alia*:

– the provision to officials referred to in Article 22a(1) or Article 22b of information on the handling of the matters reported by them,

– the protection of the legitimate interests of those officials and of their privacy, and

– the procedure for the handling of complaints referred to in the first paragraph of this Article.

Article 24 Staff Regulations

The Union shall assist any official, in particular in proceedings against any person perpetrating threats, insulting or defamatory acts or utterances, or any attach to person or property to which he or a member of his family is subjected by reason of his position or duties.

It shall jointly and severally compensate the official for damage suffered in such cases, in so far as the official did not either intentionally or through grave negligence cause damage and has been unable to obtain compensation from the person who did cause it.

Article 66(8) Financial Regulation

If a member of staff, involved in the financial management and control of transactions, considers that a decision he or she is required by his or her superior to apply or to agree to is irregular or contrary to the principle of sound financial management or the professional rules which that member of staff is required to observe, he or she shall inform his or her hierarchical superior accordingly. If the member of staff does so in writing, the hierarchical superior shall reply in writing. If the hierarchical superior fails to take action or confirms the initial decision or instruction and the member of staff believes that such confirmation does not constitute a reasonable response to his or her concern, the member of staff shall inform the authorising officer by delegation in writing. If that officer fails to take action, the member of staff shall inform the relevant panel referred to in Article 73(6).

In the event of any illegal activity, fraud or corruption which may harm the interests of the Union, the member of staff shall inform the authorities and bodies designated by the applicable legislation. Contracts with external auditors carrying out audits of the financial management of the Union shall provide for an obligation of the external auditor to inform the authorising officer by delegation of any suspected illegal activity, fraud or corruption which may harm the interests of the Union.