

# Regulations on Reporting Wrongdoings

Esprit Schools

The Executive Board of the Association of Schools ;  
in view of the decision of consent of the Joint Participation Council dated 13 May 2008;

## **DECIDES**

to approve the following regulations  
Esprit Regulations on Reporting Wrongdoings

### **Article 1 Definitions**

The following definitions apply in these regulations:

- employee: a member of staff who has an employment contract with the employer Esprit
- confidential advisor: the official who has been appointed as such by the Executive Board.
- hotline: an external committee or person who has been appointed for this purpose by the Executive Board: the Municipal Government Whistleblowers Committee, P.O. Box 30435, 2500 GK THE HAGUE.
- a suspected wrongdoing: a suspicion based on reasonable grounds relating to Esprit where the employee works regarding:
  - a. an offence;
  - b. a violation of laws or policies;
  - c. misleading the judiciary;
  - d. a danger to public health, safety or the environment, or
  - e. consciously withholding information about these crimes.

## **Internal procedures**

### **Article 2 Internal reporting**

1. A member of staff who wants to report a suspected wrongdoing should report it to his immediate superior, their manager or the confidential advisor.
2. The member of staff can ask the confidential advisor not to reveal his identity to the Executive Board. The member of staff can always withdraw this request.
3. The manager or the confidential advisor is responsible for making sure the Executive Board is informed immediately about a suspected wrongdoing and about the date on which the report was received.
4. In response to a report of a suspected wrongdoing, the Executive Board immediately starts an investigation.
5. The Executive Board sends a confirmation of receipt to the member of staff or the confidential advisor who reported a suspected wrongdoing. The confirmation of receipt refers to the suspected wrongdoing that was reported and the moment at which the member of staff or the confidential advisor reported it to the manager.

### Article 3 Position

1. The Executive Board informs the member of staff or the confidential advisor in writing, within six weeks, about their position regarding the suspected wrongdoing that was reported.
2. If this position cannot be given within six weeks, the Executive Board can postpone dealing with it for at the most four weeks. In that case, the Executive Board informs the member of staff or the confidential advisor about this in writing.

## External procedures

### Article 4 The hotline

1. The Executive Board appoints one or more persons who will be responsible for the hotline.
2. The task of this hotline is to investigate a suspected wrongdoing that was reported by a member of staff and to advise the Executive Board about it.
3. If the hotline is made up of several persons, this will always be an uneven number, including the chair. In this case, a secretary, a deputy chair and other deputising members can be appointed. They decide by a simple majority of votes.

### Article 5 Reporting via the hotline

1. A member of staff can report a suspected wrongdoing to the hotline within a reasonable period of time, if:
  - a. he does not agree with the position as defined in article 3;
  - b. he has not received a position within the specified period as defined in article 3.
2. The member of staff can ask the hotline not to disclose his identity. He can always revise this request.

### Article 5a Reporting directly to the hotline

In the event that substantial interests hinder making use of the internal procedures, a member of staff can, in a departure from articles 2, 3 and 5, first para., report a wrongdoing directly to the hotline.

### Article 6 Confirmation of receipt and the investigation

1. The hotline confirms receipt of a report about a suspected wrongdoing to the member of staff who reported the suspicion.
2. If the hotline feels that its task requires an investigation, then it will initiate an investigation.
3. In the interests of the investigation about a suspected wrongdoing that is reported, the hotline is competent to obtain all information from the Executive Board that it feels is necessary to determine its advice. The Executive Board provides the hotline with the requested information.
4. The hotline can delegate the investigation or aspects thereof to one of its members or to an expert.
5. The hotline will be informed if certain information provided by the Executive Board is, due to its confidential nature, solely for the purpose of informing the

hotline. The hotline safeguards information of a confidential nature against access by unauthorised persons.

#### **Article 7 Inadmissibility**

1. The hotline declares the report inadmissible if:
  - a. the wrongdoing is of insufficient consequence;
  - b. the member of staff failed to follow the procedures described in article 2, and article 5a does not apply, or
  - c. the member of staff did follow the procedures described in article 2, but the periods mentioned in article 3 have not yet lapsed.
  - d. the report is not made within a reasonable period of time.

#### **Article 8 Substantive advice by the hotline**

1. If the suspected wrongdoing reported is admissible, then the hotline informs the Executive Board of its findings regarding the report of a suspected wrongdoing in the form of advice within six weeks. The hotline sends a copy of the advice to the member of staff, paying due heed to any confidential nature of the information supplied to the hotline.
2. If the advice cannot be given within six weeks, the hotline can extend the period by at the most four weeks. The hotline informs the Executive Board and the member of staff about this in writing.
3. The advice is published in anonymous form and with due observance of any confidential nature of information supplied to the hotline and the relevant statutory provisions, in a way that the hotline deems appropriate, except where this is prevented by substantial interests.

#### **Article 9 Detailed position**

1. Within two weeks of receiving the advice described in article 8, the Executive Board informs the member of staff and the hotline, in writing, about the details of its position.
2. A member of staff who asked the hotline not to reveal his identity is informed about the details of the position by the hotline.
3. Advice that departs from the detailed position is supported with grounds.

#### **Article 10 Annual report**

1. The hotline draws up an annual report.
2. The report contains anonymised details, paying due heed to the applicable statutory provisions, on:
  - a. the number and the nature of the reports of a suspected wrongdoing;
  - b. the number of reports that did not lead to an investigation;
  - c. the number of investigations carried out by the hotline, and
  - d. the number of times the hotline issued advice and the nature of that advice.
3. This annual report is sent to the Executive Board and the Joint Works Council and published.

**Article 11 Coming into effect**

1. These regulations came into effect on 13 May 2008

# Explanation of Esprit's Regulations on Reporting Wrongdoings

The concept of **whistleblowing** is synonymous with the concept of 'reporting wrongdoings'. Whistleblowing is the phenomenon that employees pass on certain information from within and about their organization to outsiders (for instance, the press) in order to draw attention to a wrongdoing within their organization. In everyday speech, the term whistleblowing also refers to employees who draw attention to a wrongdoing within their organization.

## **Objective of these regulations**

The aim of these whistleblowing regulations is to rapidly bring suspected wrongdoings up for discussion by the responsible party, without any negative consequences for the employee who took the initiative in the matter.

## **A short description of the regulations**

A member of staff is requested to first discuss a suspected wrongdoing internally. He can get a confidential advisor to do this if he does not want to reveal his identity. The Executive Board is bound to adopt a position in response to the report within a short period of time. If the member of staff is not satisfied about how the Executive Board dealt with it, he can approach an external hotline. The latter examines the report and advises the Executive Board accordingly. In exceptional cases the member of staff can apply directly to the external hotline.

## **Protection of legal status**

A member of staff who adheres to these whistleblowing regulations when reporting a wrongdoing has acted "as befits a good employee". The same is true even if the suspicion eventually proves to be unfounded. A requirement of protection is that the member of staff behaved in good faith. Protection is only intended for members of staff who suspect, in all loyalty and conscience, that something is amiss within the organization. In situations in which, for instance, invented suspicions are reported with the aim of reflecting badly on or damaging another official, such protection clearly does not apply. Such abuse of these procedures may be punished. A member of staff who is/was involved in a wrongdoing and who reports it may be confronted with negative consequences regarding his legal status due to his involvement (and not for reporting it).

## **The publication of information**

A member of staff who makes public statements about a wrongdoing shall not automatically be reproached for dereliction of duty. Statements that are and are not allowable will depend on the specific situation: the seriousness of the case, the nature of the statement, the care exercised, the position of the member of staff, etc. A member of staff who does not act in accordance with the internal reporting procedures must have urgent reasons for having acted in this way.

## Per article explanation

### Article 1 Definitions

- *a member of staff*  
The regulations adopt a broad concept of employee. It includes employees who work on the basis of appointment or an employment contract. Trainees and temporary staff are not included in the concept of members of staff.
- *confidential advisor*  
For Esprit an external confidential advisor who already functions on matters pertaining to the right of complaint also fulfils the function of confidential advisor within the context of these whistleblowing regulations.
- the Esprit hotline is affiliated with an existing hotline, the (national) Municipal Government Whistleblowers Committee. This hotline is independent and bound by the “Municipal Government Whistleblowers Committee decree 2003” - see appendix
- *suspected wrongdoing*  
The suspected wrongdoing must relate to the entire Esprit organization. Examples that can be cited are theft, fraud or the bribery of officials or Executives, situations involving risks, the intentional misuse of rules or intentional deceit. Milder cases, such as stealing office supplies, are also subject to the regulations. If a member of staff raises a minor wrongdoing by reporting it, this could indicate that the organization culture is not open enough or that the management does not respond adequately to inappropriate behaviour.  
This could form a reason for the Executive Board to take measures in order to avoid more serious wrongdoings.  
In principal, policy choices that a member of staff regards as incorrect are not covered by the definition. This is in principle because in theory a policy choice could conceal a wrongdoing. Nor are conflicts relating to legal status covered by the definition of a wrongdoing. Furthermore, a member of staff may not seek personal gain by reporting.

### Article 2 Internal reporting

The point of departure of these whistleblowing regulations is that they enable the Executive Board to take its own measures in response to a report. The usual route would be to report via the management. In some situations a member of staff will opt to report via a confidential advisor. For example in a situation in which the management is involved in the wrongdoing, the member of staff wants to conceal his identity or the Executive Board is involved in the wrongdoing. In the latter case the confidential advisor could take a different direction by approaching one of the other members of the Executive Board or members of the Supervisory Council.

If the Executive Board starts an investigation, it is sometimes advisable to contact the reporting member of staff directly. However, if the member of staff does not want his identity disclosed, the confidential advisor could provide information for the investigation on his behalf.

### **Article 3 Position**

The Executive Board must have adopted a position within six weeks. It must be established whether there is a basis for the report and, if so, which measures need to be taken to resolve the wrongdoing or prevent any repeat. Sometimes this will not be possible within six weeks because the case demands further investigation. It is recommended that this is stated in the notification postponing a provisional position, and/or when reporting on the investigation to date. The member of staff must be able to assess whether his report is being seriously investigated.

### **Article 4 The hotline**

The title 'External procedures' shows that the hotline must be an external authority or person. The hotline must be at liberty to form its own judgement. Esprit is affiliated with the Municipal Government Whistleblowers Committee, as are many municipalities. This committee is formed from members who have the confidence of both employers' and employees' organizations, which ensures an attempt is made to arrive at the best possible balancing of interests.

### **Article 5 Reporting via the hotline**

The main rule is that the member of staff reports his suspicion of a wrongdoing via the external hotline if he has already followed the internal procedures and this did not lead to a result that he considers satisfactory. This could be the case if the member of staff received no information whatsoever from the Executive Board within the stipulated six-week period. The member of staff could also apply to the hotline if the Executive Board did not acknowledge the existence of a wrongdoing or if the measures taken by the Executive Board have not (or will not), in the opinion of the member of staff, resolve the wrongdoing.

The member of staff should report within a reasonable period of time. The hotline shall decide what is reasonable and this will depend on the circumstances. For instance, six months can be a reasonable period of time in a situation in which the Executive Board promised to take measures within that period but has neglected to do so.

The member of staff can ask the hotline not to reveal his identity. Reporting via the confidential advisor is not possible via the external procedures.

### **Article 5a Reporting directly to the hotline**

This article is an exception to the principle that a report should first be made internally. It offers a member of staff an opportunity to apply to the external hotline without having first followed the internal procedures. This should be due to substantial interests that suggest the undesirability of following the internal procedures. The hotline subsequently assesses whether the case does indeed involve such interests. If not then the member of staff may be advised to report the case internally after all.

In fact, a case will not lightly be regarded as involving substantial interests that could hinder a member of staff from first taking his report to the Executive Board. In itself, the estimation of the member of staff that an internal report would not make sense, for instance, because the Executive Board itself is involved in the wrongdoing, is not sufficient



reason to allow direct access to the hotline. For in principle, the Executive Board must be given an opportunity of formulating its vision about a suspected wrongdoing and in so doing take its own responsibility. From an objective point of view, if there is a risk that within the organization some evidence may be destroyed in response to an internal report, this could form a reason for reporting directly to the hotline.

Another substantial interest could exist if a member of staff has a well-founded reason to fear that his position would be under threat if he were to report the matter internally.

The urgency of a matter is not an argument for reporting directly to the hotline. If urgent action is required then reporting internally is more appropriate, because the Executive Board has the competence to take measures, while a hotline only advises.

The confidential advisor can play an advisory role in a case in which a member of staff is considering seeking direct access via the hotline.

#### **Article 6 Confirmation of receipt and the investigation**

The hotline provides the member of staff with a confirmation of receipt of a report.

Dealing with a report will often mean that the hotline initiates an investigation.

This article provides for, among other things, the information supplied by the Executive Board to the hotline. The Executive Board is allowed to inform the hotline about which information needs to be treated with confidentiality. The hotline must ensure confidentiality by, among other things, storing data securely. The member of staff who reported does not have a right to access information provided by the Executive Board. Depending on the case, the hotline's investigation may be for orientation purposes only or it may be in depth. The hotline can interview persons within the framework of their investigation. The hotline can also order an expert to carry out an investigation (for example, an accountant), or advise the Executive Board to carry out (or organize) such an investigation.

#### **Article 7 Inadmissibility**

When a report is received, the hotline assesses, based on the definitions in article 1, whether these whistleblowing regulations apply. If the person reporting is not a member of staff as defined in the regulations, then these regulations do not apply. In a case in which a report is sent to the Municipal Government Whistleblowers Committee, a check will be carried out to determine whether Esprit is affiliated with the committee. For application of the regulations, the case must involve a suspected wrongdoing as defined in the regulations. For instance, the suspected wrongdoing must be based on reasonable grounds and must relate to the Esprit organization.

Article 7 determines that a report is inadmissible if the wrongdoing is of insufficient consequence. This requirement applies only to procedures via the external hotline. It is no simple matter to indicate criteria for the 'substantiality' of a wrongdoing. In the future some case law may develop in this respect due to the advice of the Municipal Government Whistleblowers Committee and the Committee on Integrity in the Civil Service.

When determining admissibility, the hotline also assesses whether the member of staff has acted in accordance with these whistleblowing regulations. If the member of staff did not follow the internal procedures and there are no substantial interests for avoiding the

internal procedures, then the hotline will declare the report inadmissible. In that case the member of staff can still report the matter internally if he is so inclined.

There is the possibility that the hotline will only be able to make a decision on the admissibility of a report after carrying out an investigation of the facts.

The hotline's judgement that a report filed by a member of staff is inadmissible is not a decision as defined in the General Administrative Law Act. No appeal or objection is possible against the hotline's advice to the Executive Board.

#### **Article 8 Hotline's substantive advice**

The hotline is an authority that provides advice. The final decision regarding a suspected wrongdoing is taken by the Executive Board.

The advice of the hotline carries a great deal of weight and is published. This means people who are external to the Esprit organization can learn of it. Publication takes place with due heed to any information that may be of a confidential nature. The Municipal Government Whistleblowers Committee can announce advice by means of publication in the VNG (Association of Dutch Municipalities) magazine and on the websites of the VNG and the trade union confederations involved.

The hotline can decide against publication if there are substantial interests for so doing. For instance, a situation in which the hotline advises the Executive Board to start criminal proceedings. Publishing this advice could lead to evidence being destroyed within the organization.

#### **Article 9 Detailed position**

The Executive Board must adopt a detailed position about the suspected wrongdoing within two weeks of being advised by the hotline. That position could be, for example, to follow up the advice to start a detailed investigation, or to take certain measures.

If the member of staff opted not to reveal his identity, then the Executive Board informs the member of staff via the hotline. The confidential advisor plays no role during external procedures.