

Non-official translation in English; the Regulations in Dutch are official and decisive.

# TU Delft Regulation on Complaints about Research Integrity 2020<sup>1</sup>

## The Executive Board of Delft University of Technology

Considering the following,

The Netherlands Code of Conduct for Research Integrity 2018 sets out the principles of research integrity and the ensuing guidelines for good research practices, which are also endorsed by the university and serve as guidelines for a university as referred to in Section 1.7 of the Higher Education and Research Act (WHW).

Within TU Delft, all parties involved in research are personally responsible for maintaining research integrity. Everyone is required to make every effort to ensure that the standards are duly observed.

If research misconduct is suspected, a complaint may be lodged. The university is responsible for ensuring a scrupulous and fair procedure for the handling of complaints and the subsequent decision-making. This Regulation has been drawn up for that purpose.

Furthermore, this Regulation shall, as far as possible, be applied by analogy if an investigation into possible research misconduct is initiated at the request of the Executive Board of the university without a complaint having been lodged.

and,

Having regard to Section 1.7 of the Higher Education and Research Act (WHW);

Having heard the Central Student Council (meeting of 19 December 2019);

Having heard the employee organisations in the Local Consultation Body (meeting of 2 December 2019);

With the consent of the Works Council (meeting of 19 December 2019);

adopts the following rules.

### Article 1. Definition of terms

The following definitions apply in this Regulation:

- a. *Code of Conduct*: Netherlands Code of Conduct for Research Integrity 2018;
- b. *research misconduct*: acts or omissions that lead to research misconduct within the meaning of Section 5.2 under A 1, 2, or 3 of the Code of Conduct;
- c. *complaint*: a written report regarding alleged research misconduct committed by a staff member;
- d. *complainant*: the person who submits a complaint to the Executive Board;

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<sup>1</sup> This is a translation of the Dutch version of the regulation. In case of a conflict between the English and Dutch version of the regulation, the Dutch version will prevail and will be binding.

- e. *accused*: the staff member whose conduct is the subject of a complaint or whose actions are the subject of an investigation by the committee at the request of the Executive Board;
- f. *staff member*: a person who is or has been employed by TU Delft or who otherwise works or has worked under the responsibility of TU Delft; this also includes persons who are not, or who are only part-time, employees of TU Delft, insofar as they participate in TU Delft research, or publish their research under the name or responsibility of TU Delft. Individuals who are only involved in research in a supporting capacity are excluded from this;
- g. *confidential counsellor*: a person who has been appointed by the Executive Board as a confidential counsellor on matters of research integrity;
- h. *committee*: a committee appointed by the Executive Board to handle complaints concerning research misconduct;
- i. *Executive Board*: the Executive Board of TU Delft;
- j. *Supervisory Board*: the Supervisory Board of TU Delft.

## **Article 2. General**

### **2.1.**

Everyone has the right to consult the confidential counsellor in the event of alleged research misconduct.

### **2.2.**

Everyone has the right to lodge a complaint with the Executive Board, which will immediately forward the complaint to the committee. A complaint may only be submitted about a suspected case of research misconduct. The complaint must adequately substantiate why the complainant believes that research misconduct has been committed.

### **2.3.**

The Executive Board may also request the committee to investigate alleged research misconduct without a complaint having been lodged.

### **2.4.**

An anonymous complaint will be considered only if the Executive Board of the institution sees good reason to do so because it believes that:

- a. compelling public interests, or compelling interests of the institution or parties involved, are at stake and
- b. the factual basis for the complaint can be investigated without input from the complainant.

### **2.5.**

If the complaint concerns a member of the Executive Board, the Supervisory Board shall assume the role of and exercise the powers assigned to the Executive Board by this Regulation.

### **2.6.**

If the complaint concerns an individual who is or was employed by more than one institution that has endorsed the Code of Conduct, and the complaint could therefore be investigated at more than one institution, the complaint may be handled collectively, or the institutions concerned may come to other agreements regarding the way in which the complaint will be handled. In that case, a decision regarding the procedure for handling the complaint shall be taken by the Executive Board.

### **2.7.**

All individuals are required to cooperate with the confidential counsellor or the committee, within the reasonable period set, to a degree that can reasonably be expected for the confidential counsellor or the committee to properly exercise their powers.

### **2.8.**

All persons involved in the handling of a complaint must observe confidentiality with regard to the content of the complaint and the information that has emerged in connection with the complaint or the procedure. This obligation of confidentiality also applies after the procedure

has been concluded, with the exception of the anonymised account of cases in annual reports or on the VSNU website. If the obligation of confidentiality is violated, the committee or the Executive Board may attach appropriate consequences to this.

### **Article 3. Confidential counsellor**

#### **3.1. Appointment**

- a. The Executive Board appoints one or more confidential counsellors for a period of four years. Confidential counsellors may be reappointed for a subsequent period of four years.
- b. The confidential counsellor has a scientific background, has an irreproachable academic reputation and is skilled at managing differences and conflicts. The confidential counsellor may not hold an ancillary position that could interfere with their role as a confidential counsellor.
- c. Members of the Supervisory Board, members of the Executive Board, deans and vice-deans of the faculties, and members of the committee may not be appointed as confidential counsellors.
- d. The Executive Board may terminate the appointment prematurely
  - at the confidential counsellor's own request;
  - if the eligibility requirements for appointment are no longer met;
  - as a result of poor performance as a confidential counsellor.

#### **3.2. Duties**

The confidential counsellor

- acts as an accessible point of contact for questions and complaints about research integrity;
- seeks to mediate or otherwise resolve the complaint amicably if there are possibilities to do so;
- explains to the complainant how to submit a complaint to the Executive Board;
- may not assist both the complainant and the accused at the same time;
- only acts on behalf of the complainant or the accused with their consent.

#### **3.3. Accountability**

The confidential counsellor gives account to the Executive Board for his/her activities in retrospect in an annual report, which is to be included in the university's annual report. This report describes in general terms the cases dealt with and the activities carried out. It must not be possible to trace the report back to individuals. The confidential counsellor must observe confidentiality with regard to information of which they become aware in this capacity. This rule may only be deviated from with the explicit consent of the complainant and the accused.

### **Article 4. Research Integrity Committee**

#### **4.1. Appointment and composition**

- a. The Executive Board appoints an Research Integrity Committee, comprising a chair, a vicechair and four other members. Preferably, at least one member is a lawyer.
- b. The chair and the members are appointed by the Executive Board. The provisions of Article 3.1 apply by analogy, on the understanding that a confidential counsellor is not eligible to be appointed as chair, vice-chair or member of the committee.
- c. In appointing members, efforts will be made to achieve a balanced representation of the scientific fields.
- d. To investigate a particular complaint, the committee may temporarily be extended to include experts or ad hoc members, who may or may not be affiliated with the university.
- e. The committee is supported by a secretary, who is preferably a lawyer.

#### **4.2. Duties**

The Research Integrity Committee investigates complaints, assesses whether research misconduct has taken place and issues advice on the matter to the Executive Board. At the request of the Executive Board, it may also conduct an investigation and issue an opinion on the matter without a complaint having been lodged.

#### **4.3. Powers**

- a. The committee is authorised to gather information from all university employees and bodies. The committee may inspect or demand copies of all documentation and correspondence it deems necessary for its investigations and may, if it considers it necessary, seize it or have it sealed.

- b. The documentation referred to in the previous paragraph also includes the data of the research which is the subject of the complaint. The undisclosed components of scientific research and the relevant data must, if the committee considers this necessary, be made available for inspection by the committee or by two persons appointed by the committee for that purpose. In the latter case, these persons shall carry out the inspection under strict confidentiality and shall only share their findings with the committee. In its advice the committee will present the relevant findings in such a way that the confidentiality of the research or the research data is not compromised.
- c. The committee may consult independent or university-affiliated experts or other third parties. Reports shall be written on these consultations. The parties shall be informed of the identity of the experts or third parties consulted.

#### 4.4. Procedure

- a. Insofar as the procedures of the committee have not been laid down in this or in any other regulation, they shall be determined by the chair.
- b. Unless Article 2.6 applies, a complaint will be dealt with by the chair or vice-chair of the committee and two other members, possibly supplemented by one or more experts or ad hoc members. These experts or ad hoc members are appointed by the Executive Board at the committee's request.
- c. Members of the committee who are in any way involved with the persons or in any aspect of the factual circumstances to which the complaint relates or who otherwise have an interest in the matter, shall not be eligible to handle a complaint.

#### 4.5. Start of the procedure

- a. Within two weeks of receiving the complaint, the committee informs the complainant and the accused in writing that it has received the complaint and informs the parties concerned of the procedure to be followed and the content of the complaint.
- b. The committee assesses whether it is able to deal with a complaint on the basis of the following requirements:
  - I. the complaint contains a clear description of the suspected research misconduct by one or more staff members and is accompanied by the relevant written documents or any other evidence;
  - II. the complaint is dated and states the name, position and contact details of the complainant. This requirement does not apply if Article 2.4 applies.
- c. If the complaint is incomplete, the committee will give the complainant the opportunity to supplement the complaint within a period set by the committee. The period referred to in 4.5 under f will then be extended by the period referred to in the previous sentence or by the period within which the supplementary information was provided.
- d. The committee is authorised to advise the Executive Board not to deal with the substance of a complaint if
  - I. an excessive period of time has elapsed since the suspected violation or if the complainant has waited an unreasonably long time before filing the complaint. As such, a period of ten years applies in principle.
  - II. the complaint has already been investigated by the committee or a similar committee.
  - III. the complainant has violated the obligation of confidentiality stipulated in Article 2.8.
- e. The committee is also authorised to advise the Executive Board not to deal with the substance of a complaint if, on the basis of an initial assessment, it has come to the conclusion that
  - I. the complaint is manifestly unfounded;
  - II. the complaint is manifestly of insufficient interest;
  - III. the complaint concerns a purely professional difference of opinion;
  - IV. the complaint is attributable solely to a labour dispute;
  - V. the complaint cannot result in a judgement that the accused's actions constitute research misconduct.
- f. If the committee is of the opinion that the complaint should not be dealt with substantively, it shall issue its advice to the Executive Board within four weeks.
- g. The Executive Board will then decide as soon as possible whether or not to deal with the substance of the case and sends its decision to the complainant and the accused. If the Executive Board decides not to deal with the substance, this is an initial judgement as referred to in Article 5.1.
- h. If part f does not apply or if the Executive Board decides to deal with the substance of the case pursuant to part g, the committee will deal with the substance of the case. The underlying principle is that the person concerned is presumed innocent until proven otherwise.

#### 4.6. *Dealing with the substance of a complaint*

- a. The committee determines whether there are any other interested parties, besides the complainant and the accused, who should be involved in the procedure. The committee shall give all parties involved a hearing. In any event it shall give the complainant and the accused the opportunity to be heard.
- b. The parties involved are heard in each other's presence, unless there are compelling reasons to hear them separately. In that case, each of them will be informed of what was said during the hearing not attended by them.
- c. A written report will be made of the hearing, presenting what was said in a concise manner.
- d. The committee may make audio recordings of the hearing. These are intended solely to assist in the preparation of the report. Once the Executive Board has issued its final judgement, the recordings will be destroyed. No one other than the committee may make audio recordings during a hearing.
- e. During the hearing, the complainant and the accused may be assisted, but may not be represented.
- f. The committee may hear witnesses and experts or request a written expert report.
- g. All relevant information gathered by the committee will be made available to all parties concerned for the purpose of fair treatment, unless the committee has compelling reasons to deviate from this rule. In its advice the committee shall include the reasons for not making certain information available.
- h. The committee's hearings and other meetings are not public.
- i. Within ten weeks of receipt of the complaint, the committee shall issue a report of its findings to the Executive Board as well as its advice on the merits of the complaint. In doing so, it will use the assessment criteria set out in Section 5.2 under C of the Code of Conduct. The ten-week period may be extended by the committee by four weeks. All parties involved in the complaint shall be notified of the extension in writing. A further extension is possible insofar as the parties involved agree to this in writing.

#### 4.7. *Accountability*

The committee reports on its activities in retrospect to the Executive Board in an annual report, which is to be included in the institution's annual report. This report describes in general terms the cases dealt with and the activities carried out. It must not be possible to trace the report back to individuals. The members and secretary of the committee and any experts consulted must also observe confidentiality with regard to information of which they become aware in this capacity. This rule may only be deviated from with the explicit consent of the complainant and the accused.

### **Article 5. Follow-up procedure**

#### 5.1

As soon as possible, but in any event within four weeks of receipt of the committee's advice, the Executive Board shall issue its initial judgement. It shall immediately inform the complainant, the accused and any other interested parties of this decision in writing. The committee's report of its findings and its advice shall be sent along with the initial judgement. If the opinion of the Executive Board deviates from the advice of the committee, the reasons for this deviation shall be stated in the opinion.

#### 5.2

Within six weeks from the date on which the initial judgement was issued, the complainant, the accused and any other interested parties may request the Netherlands Board on Research Integrity (LOWI, *Landelijk Orgaan voor Wetenschappelijke Integriteit*) to issue advice on the case.

#### 5.3

If the advice of the LOWI is not requested within the period referred to under 5.2, the Executive Board settles on its final judgement on the complaint.

#### 5.4

If the advice of the LOWI has been requested, the Executive Board will take that advice into consideration in its final judgement.

#### 5.5

Following completion of the procedure, the Executive Board's judgement as well as the committee's report of its findings and its advice will be published on the VSNU website in anonymised form.

#### **Article 6. Protection of those involved**

The Executive Board shall ensure that the rights of both the complainant and the accused are protected, and that neither is unnecessarily disadvantaged in their career prospects or otherwise. The same applies to any other interested parties, witnesses, experts, confidential counsellors and committee members.

#### **Article 7. Final provisions**

##### *7.1. Revocation*

The TU Delft Regulation on Academic Integrity, adopted on 13 September 2005, is revoked.

##### *7.2. Entry into force*

This Regulation enters into force on the first day after the date of publication of *TU News* in which the Regulation is announced, for complaints that are submitted on or after that date.

##### *7.3. Short title*

This Regulation shall be referred to as TU Delft Regulation on Complaints about Research Integrity 2020.

This Regulation shall be published on the TU Delft website.

An announcement of this Regulation and of the publication thereof on the website will be made in the TU Delft digital newsletter, *TU News*.

Adopted in the meeting of 28 January 2020.

Prof. T.H.J.J. van der Hagen  
Rector Magnificus/President of the Executive Board

## EXPLANATORY NOTES

### General

This Complaints Regulation has been drawn up based on the model that was developed by the Dutch universities jointly, which is intended to serve as a starting point and a reference for universities when drawing up their own complaints regulations. The model can also be used by other institutions that have endorsed the Netherlands Code of Conduct for Research Integrity. The purpose of the joint model regulation is to ensure equal treatment of alleged research misconduct as far as possible. Consequently, basic principles, terminology and procedures will, wherever possible, be the same for all those who deal with (complaints regarding) alleged research misconduct. This is particularly important since the institutions deem themselves to be responsible for the conduct of all researchers who carry out or have carried out scientific research under their responsibility. The institution promises to investigate substantiated allegations of research misconduct. The objective of this Regulation, to ensure good research that meets standards of research integrity, is in line with the standards laid down in the TU Delft Code of Conduct.

This Regulation has been drawn up with due observance of the provisions of Chapter 9 of the General Administrative Law Act (*Algemene wet bestuursrecht*), since this Act applies to the majority of complaints submitted at public institutions and also because the Act provides sound guidelines for the careful handling of complaints.

Where possible, the text of the new model regulation follows the wording of the previous VSNU model regulation. The terminology has been adapted in line with the new Netherlands Code of Conduct for Research Integrity 2018, which sets out the basic principles for handling complaints in Section 5.4. In some places in the model regulation the text has been formulated in more general terms, using not only administrative terminology. A number of linguistic inaccuracies have also been corrected in the model. Several new provisions have been added in response to needs that have emerged in recent years. The TU Delft regulation only differs from the VSNU model regulation in one or two respects. At several points the VSNU model regulation provides options to choose from. In addition to the national model, the TU Delft regulation contains explanatory notes for each article. These notes explain the new elements of the national model as well as any deviations from this, and the choices made by the university.

### Article by article

#### Article 1

The most significant new point in the Netherlands Code of Conduct for Research Integrity 2018 (hereinafter: Code of Conduct) concerns the definition of the concept of 'research misconduct' and the various degrees of severity of this. Part b refers to Section 5.2 under A 1, 2, or 3 of the Code of Conduct. This distinguishes between non-compliance with various standards from Chapter 3 of the Code of Conduct, and also sets out assessment criteria (5.2 under C).

Fabrication, falsification and plagiarism are always considered to be research misconduct (category 1). Non-compliance with the standards indicated in category 2 shall constitute research misconduct depending on the results of the assessment criteria. In exceptional cases, non-compliance with the standards specified in category 3 shall constitute research misconduct depending on the results of the assessment criteria. If classifying a particular case as research misconduct would be too severe, there could instead be evidence of questionable research practices or minor shortcomings, as indicated in 5.2 under B. Thus, the Code of Conduct specifies in concrete terms what has already been taking place in practice when assessing research misconduct.

The assessment of whether or not to deal with the substance of a complaint is based on the criteria set out above (see Article 4.5).

#### Article 2

Article 2 provides general guidelines as to what a person can do if they suspect research misconduct. They may consult a confidential counsellor or turn directly to the Research Integrity Committee, officially via the Executive Board.

#### 2.2

TU Delft has decided that complaints must be officially submitted to the Executive Board, though the complaint will actually be referred to the committee that advises the Executive Board.

### 2.3

The fact that the Executive Board can now also request the committee to handle a complaint is a new addition to this Regulation, prompted in part by Section 5.4, preamble, of the Code of Conduct. Moreover, this process was already taking place in practice.

### 2.4

The fact that a complaint can also be submitted anonymously has now been made more explicit, in accordance with point 5.4.6 of the Code of Conduct. The TU Delft regulation already provided for this, as long as the name of the complainant was known to the Executive Board. It should be noted that accepting an anonymous complaint is an exception, as can be seen from the wording of this paragraph.

### 2.6

The fact that a complaint can also be dealt with regarding an employee who works or previously worked elsewhere has now been explicitly included pursuant to point 5.4.2 of the Code of Conduct.

### 2.8

The obligation of confidentiality has been made more explicit.

## *Article 3*

### 3.2

The two duties mentioned at the bottom of the list have been added. The fact that the confidential counsellor only acts with the consent of those who have turned to them for advice was already the implied assumption. TU Delft has two confidential counsellors for research integrity, so that one can assist the complainant and the other can assist the accused, should this situation arise.

### 3.3

The accountability of the confidential counsellor has been described in more detail.

## *Article 4*

### 4.1

Unlike the national model, this Regulation provides for a vice-chair. The number of other members is set at four (instead of 'at least two'); a case will be handled by three of the six members (see Article 4.4.b). The committee no longer has a student member since the Code of Conduct no longer concerns educational matters. Moreover, in the past fifteen years there has never been a case in which a complaint was (partly) related to education and the student member has never been called upon. Since there are a limited number of lawyers in research departments at TU Delft, it cannot be guaranteed that one of the committee members is a lawyer. Therefore, the provision has been added that the preference is for the secretary to be a lawyer. In the absence of a lawyer member, it is desirable to have a lawyer acting as secretary.

### 4.3

The powers of the committee to obtain information have been included in more detail. It has also been added that, in all cases, the TU Delft committee itself will also inspect confidential documents. In this part it is also explicitly stated that the identity of experts will be disclosed, in order to prevent any discussion about this.

### 4.5

In this part of the Article, the admissibility requirements and those for manifestly unfounded cases are set out in more detail than before. A distinction can be made between straightforward admissibility requirements as described in b (the absence of the complainant's contact details and the grounds for the complaint) and reasons not to deal with the substance of a complaint further, as described in d: complaint submitted too late, complaint previously handled, breach of the obligation of confidentiality (this is a new sanction). In part e, various situations are described that lead to the preliminary assessment that the complaint is (manifestly) unfounded and that it is therefore not necessary to deal with the substance of the complaint. This provision is in accordance with 5.4.7 of the Code of Conduct. If a complaint clearly has no connection whatsoever with research misconduct, the committee may also advise that it is not authorised to deal with the complaint.



#### 4.5.a

It is standard practice to acknowledge receipt and provide an explanation of the procedure, but this was not included in the regulation.

#### 4.5.f

The deadline for issuing an advice was three weeks, which led to practical problems. Therefore, this period has been extended by one week.

#### 4.5.g

The decision to rule that the case is inadmissible or that the substance of the case will not be dealt with is an initial judgement, after which the LOWI procedure is an option. The decision to deal with the substance (part h) is a procedural decision.

#### 4.5.h

The final sentence explicitly states an important principle, in accordance with 5.4.12 of the Code of Conduct.

#### 4.6.a

The check as to whether other interested parties should be included in the procedure has been included at the instigation of the National Ombudsman. This was already the case in practice.

#### 4.6.d

A provision on audio recordings has been added to avoid discussion during the hearing.

#### 4.6.g

Only in exceptional cases information is not sent to all parties concerned. This is also stated in 5.4.11 of the Code of Conduct.

#### 4.6.i

The period for handling a complaint (10 + 4 weeks) has been amended in accordance with the General Administrative Law Act, partly on the advice of the LOWI.

The fact that the committee and the Executive Board (in Article 5.1) could also decide on disciplinary action has been removed in accordance with the national model. However, the committee may make a comment of a general nature on any measures to be taken beyond the immediate scope of research integrity.

#### 5.1

An additional provision has been added to the TU Delft regulation, namely that, if the Executive Board deviates from the committee's advice, it must give reasons for its decision. This is a general principle of administrative law.

#### 5.2

The date on which the decision/judgement is announced marks the start of the six-week period within which a request can be submitted to the LOWI. This has been included following advice from the LOWI, since it is in accordance with the General Administrative Law Act, and it is also included in the LOWI regulation.

#### 5.3

If the parties do not submit a request to the LOWI, the Executive Board will make a final judgement (in accordance with the initial judgement).

#### 5.4

If one of the parties does initiate the LOWI procedure, the Executive Board will send the documents of the complaint procedure to the LOWI, as stated in the regulation of the LOWI. It should be noted that this regulation does not stipulate a deadline by which the LOWI must issue its advice. After receiving the LOWI's advice, the Executive Board will issue its final judgement on the complaint as soon as possible, with due observance of that advice.

It is not possible to enter an objection to the final judgement of the Executive Board, or the handling of the complaint. However, it is possible to ask the National Ombudsman to issue a judgement on the complaint and the handling thereof.

#### 5.5

The publication of cases (anonymised) on the VSNU website is explicitly mentioned in the interests of transparency for those involved. This is also stated in 5.4.18 of the Code of Conduct.

#### *Article 6*

The word “unnecessarily” has been added to “disadvantaged” for those involved (they may not be unnecessarily disadvantaged as a result of a complaint), in accordance with point 5.4.19 of the Code of Conduct.

#### *Article 7*

The final provisions have been drawn up in accordance with the format customary at TU Delft.