

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

Delft University of Technology Regulation for Reporting Wrongdoings (Whistleblower Regulation)¹

The Executive Board of Delft University of Technology

Considering it desirable within the context of good governance and an honest organisation to draw up a regulation for reporting wrongdoings,

and

Having regard to Section 4.5 of the Higher Education and Research Act (WHW);

In view of the Code for Good Governance in Dutch Universities 2007 from the VSNU;

With the consent of the Works Council (letter of 20 December 2019);

In accordance with the feelings of the Supervisory Board;

adopts the following rules:

Section 1: General provisions

Article 1. (Definition of terms)

1. The following definitions apply in this Regulation:
 - a. an employee: a person who has an employment contract at the university or performs work in another capacity that is connected to the university's core activities;
 - b. the manager: the person who manages the employee;
 - c. the whistleblower officer: the person who has been designated as such by the Executive Board;
 - d. External contact point: the Whistleblowers Authority (Huis voor Klokkenuiders) within the meaning of the Whistleblowers Authority Act (wet Huis voor Klokkenuiders);
 - e. a suspicion of a wrongdoing: a grounded suspicion related to the university or a part of the university concerning:
 - a criminal act;
 - a breach of legislation or regulations;
 - misleading the accountant assigned to the university;
 - a threat to public health, safety or the environment;
 - improper behaviour or failure to behave that forms a threat to the proper functioning of the university or which is severely detrimental to the university, or
 - deliberately withholding information about these facts.

¹ The text of this Regulation contains technical changes based on the entry into force of the Public Servants (Standardisation of Legal Status) Act on 1 January 2020. This opportunity was also used to incorporate a few other amendments.

2. A suspicion of a wrongdoing does not include a suspicion of a breach of academic integrity or a suspicion of undesirable behaviour within the meaning of the Regulation for Complaints about Undesirable Behaviour.

Section 2: Internal procedure

Article 2. (internal report to manager)

1. The employee reports a suspicion of a wrongdoing within a reasonable time limit to their manager, preferably in writing and giving reasons for their suspicion.
2. The manager sends an immediate confirmation of receipt to the employee who has reported a suspicion of a wrongdoing, stating the reported suspicion of wrongdoing and the date on which the employee reported this suspicion.
3. The manager ensures that the Executive Board is immediately informed of the reported suspicion of a wrongdoing and the date on which the report was received.
4. If the report is about a suspicion of a wrongdoing involving the manager, the report should be made to the next-higher manager. In this case the provisions of this regulation concerning the manager apply in equal measure to the next-higher manager.
5. In the event of a suspicion of a wrongdoing involving the Executive Board or one of its members, the employee should report their suspicion directly to the Supervisory Board. As far as possible, the Supervisory Board deals with an incoming report in accordance with the provisions of this regulation, in this case references to the Executive Board in the relevant provisions should be taken to read: Supervisory Board.
6. The identity of the employee must not be disclosed without the employee's consent.
7. Contrary to the provisions in the above paragraphs, the employee may report a suspicion of a wrongdoing directly to an external contact point within the meaning of Article 6 if there are compelling interests that preclude the application of the paragraphs in this article.

Article 3. (investigation)

1. In the event of a suspicion of a wrongdoing, the Executive Board initiates an investigation.
2. The investigation may not be carried out by a person who may be or have been involved in the suspected wrongdoing.
3. The investigation and the further handling of the report need not be carried out if:
 - there is no suspicion of a wrongdoing within the meaning of Article 1 para. 1 under e;
 - the report has been made manifestly unreasonably late.
4. The Executive Board communicates in writing as soon as possible to the employee or the whistleblower officer that there will not be an investigation and how the report is being dealt with further.
5. In the notification within the meaning of para. 4, mention is made of the possibility to report a wrongdoing to the external contact point.

Article 4. (involving the whistleblower officer)

1. If the employee does not consider the report to the manager to be desirable or not yet desirable, they may first discuss their suspicion of a wrongdoing with the whistleblower officer for advice, before deciding whether or not to proceed with a report.
2. If after this consultation with the whistleblower officer, the employee decides to proceed with an internal report, this report should be made to the manager or to the whistleblower officer.
3. If the employee chooses to make their report to the whistleblower officer, the whistleblower officer informs the Executive Board or – in the situation described in Article 2, para. 5 – the Supervisory Board, of the report in a manner and at a time agreed with the employee. Article 2, para.2, is applicable accordingly.
4. The whistleblower officer has the right to decline to give evidence.

Article 5. (position of the Executive Board)

1. The Executive Board informs the employee or the whistleblower officer within ten weeks of receipt of the written report about the position of the Executive Board concerning the report of suspicion of a wrongdoing.
2. If the board's position cannot be given within ten weeks, the employee is informed of this and of the time in which they can expect to hear the board's position.

3. In the notification in para. 1, mention is made of the possibility to report a wrongdoing to the external contact point.

Section 3: External procedure in the case of an external contact point

Article 6. (reporting to external contact point)

1. An employee may report a suspicion of a wrongdoing to an external contact point as referred to in Article 7, if:
 - a. they do not agree with the position of the Executive Board;
 - b. they have not received the board's position within the required time as referred to in Article 5 para. 1 or 2;
 - c. the term referred to in Article 5, para. 2, is unreasonably long taking all circumstances into account;
 - d. they feel that there are compelling interests that preclude the use of the internal procedure.
2. The report is in writing and contains at least:
 - a. the name and address of the employee;
 - b. the part of the organisation where the employee works;
 - c. the part of the organisation to which the report applies;
 - d. a description of the suspected wrongdoing, supported by evidence and testimonies where possible;
 - e. the reason for the report to the contact point; if applicable, the motives for reporting directly to the external contact point.
3. The identity of the employee must not be disclosed without the employee's consent.

Article 7. (the external contact point)

1. The Whistleblowers Authority acts as the external contact point.
2. The task of the external contact point is to investigate a suspicion of a wrongdoing reported by an employee and to advise the Executive Board in this matter.
3. If the report concerns a suspicion of a wrongdoing involving the Executive Board (or a board member), the external contact point gives advice to the Supervisory Board, in this case references to the Executive Board in this section should be taken to read: Supervisory Board.

Article 8. (confirmation of receipt and investigation)

1. The external contact point confirms the receipt of the report of a suspicion of a wrongdoing to the employee who submitted the report.
2. If the external contact point deems it necessary in the course of its duties, it initiates an investigation.
3. In order to carry out an investigation of a report of a suspected wrongdoing, the external contact point is authorised by the Executive Board to gather all information it deems necessary for it to be able to form its advice. The Executive Board furnishes the external contact point with the requested information.
4. The external contact point may delegate the investigation in full or in part to one of its members or an expert.
5. If the Executive Board determines that certain information it furnishes is of such a confidential nature that it must remain confidential within the external contact point, it will inform the external contact point of this. The external contact point secures confidential information against access by unauthorised parties.

Article 9. (inadmissibility)

The external contact point shall declare the report inadmissible if:

- a. the wrongdoing is not sufficiently serious;
- b. the employee has not followed the procedure described in Section 2 and Article 2 para. 7 is not applicable, or
- c. the employee has followed the procedure described in Section 2, but the time limit described in Section 2 has not yet expired;
- d. the report was not made within a reasonable time limit;

- e. the report does not meet the requirements of Article 6, para. 2, on the understanding that the reporter must have first been given the opportunity to provide additional information within the time limit set by the contact point.

Article 10. (substantive recommendation by the external contact point)

1. If the reported suspicion of a wrongdoing is declared admissible, then the external contact point will present its findings concerning the suspicion of a wrongdoing in a recommendation to the Executive Board within ten weeks. The external contact point sends a copy of the recommendation to the employee, with due observance of the possibly confidential nature of the information furnished to the external contact point.
2. If the recommendation cannot be given within ten weeks, the time limit may be extended by the external contact point by a maximum of four weeks. The contact point informs the Executive Board and the employee of this in writing.

Article 11. (opinion of the Executive Board)

1. Within four weeks of receipt of the recommendation referred to in Article 10, the Executive Board informs the employee and the external contact point of its opinion concerning the recommendation. It also states what steps or measures have been taken as a result of the recommendation.
2. An employee who has asked the external contact point not to reveal their identity will receive the information about the opinion of the Executive Board via the external contact point.
3. An opinion that deviates from the recommendation must be supported by reasons.
4. The recommendation and the opinion of the Executive Board are made public in an anonymised form and with due observance of the possibly confidential nature of the information furnished to the external contact point and the relevant legislation, unless there are compelling reasons that preclude this.

Section 4: Final provisions

Article 11. (legal protection)

1. With regard to the reporter or the whistleblower officer, no decision may be made which has negative consequences for their legal position due to their reporting in good faith a suspicion of a wrongdoing. The Executive Board ensures that neither the reporter nor the whistleblower officer experience any other negative consequences arising from the report with regard to the performance of their duties.
2. With regard to the whistleblower officer or the designated whistleblower officer, no decision may be made which has negative consequences for their legal position due to them carrying out their duties based on this decision. The employer ensures that the whistleblower officer does not experience any other negative consequences in the performance of their duties.
3. A decision with negative consequences is understood to mean a decision that leads in any case to:
 - a. being discharged other than at their own request;
 - b. for temporary staff, premature termination or non-renewal of the contract;
 - c. not converting their temporary contract into a permanent contract;
 - d. moving or transferring the whistleblower, or refusing their own request for a move or transfer;
 - e. imposing a mandatory measure;
 - f. taking disciplinary action;
 - g. withholding a pay rise;
 - h. withholding an opportunity for promotion;
 - i. refusing leave.

Article 12. (entry into force)

This Scheme enters into force on 1 April 2020.

Article 13. (short title)

This Regulation shall be referred to as the TU Delft Regulation for Reporting Wrongdoings or the TU Delft Whistleblower Regulation.

This Regulation will be available for inspection at the HR departments of the management units for two months from the date it enters into force. This Regulation shall be published on the TU Delft website. Notification of this Regulation, its publication on the website, and the fact that it can be viewed as described above will be given in Delta Magazine, TU Delft's weekly news journal.

Adopted in the meeting of 31 March 2020.

Professor T.H.J.J. van der Hagen
President of the Executive Board

EXPLANATORY NOTES

General

TU Delft considers it important that conditions are created to enable any wrongdoings or malpractice to be addressed safely within the organisation and resolved by the organisation. This is not only safer for the employees in question, but is also in the interests of the university. The board of the university (the Executive Board or the Supervisory Board) is expected to be aware of any wrongdoings in good time, so that they can take appropriate measures. The reporting of wrongdoings by employees is known as whistleblowing. It is generally accepted that whistleblowers deserve legal protection.

There has been much interest in a whistleblowers regulation in recent times due to the increased interest in 'good governance', for example in the Tabaksblat Code. For universities, the Code for Good Governance in Dutch Universities 2007 from the VSNU states that the Executive Board is obliged to draw up a whistleblower regulation. This regulation fulfils this obligation. TU Delft places the whistleblowers regulation in the context of an organisation that wants to act with integrity and has drawn up codes of conduct for this, culminating in a reporting or complaints regulation such as this.

The design of this regulation is in line with the customary regulations of the central government and other universities. These regulations follow the principle of internal handling of reports, in the first instance by a manager or the whistleblower officer, and as a last resort by an internal or external contact point. TU Delft has chosen to use an external contact point, the Whistleblowers Authority (Huis voor Klokkeluiders). The report may be made directly to the Authority, if there are compelling reasons for not reporting to the manager. This gives TU Delft employees a certain assurance that a report of a suspicion of wrongdoing will be handled as independently as possible.

The TU Delft website will contain clear information on the purpose and essence of the various regulations such as the TU Delft Regulation for Complaints about Undesirable Behaviour, the TU Delft Regulation on Academic Integrity and the TU Delft Regulation for Reporting Wrongdoings.

It is possible that a person may be appointed as a contact for information on these.

Definition of terms

In the first instance an employee is taken to mean an employee with an employment contract at TU Delft, but the target group is not limited to this, and may also include visiting lecturers. However, it must be someone working within the academic community at TU Delft. Thus the regulation does not apply to, for example, a contractor engaged in construction work: they are not involved in university business, even though they are temporarily working at the university.

The Executive Board will appoint a whistleblowers officer specially charged with the tasks in this whistleblowers regulation. This person will be known as the whistleblowers officer. In principle this will not be one of the confidential advisors referred to in the Regulation on Complaints about Undesirable Behaviour.

The key term is "suspicion of a wrongdoing" (Article 1, para. 1 under e). In most cases this will involve criminal acts etc. of some severity. In other words it is not about such things as taking paper for personal use. It is about a reasonably grounded suspicion of a criminal act, a breach of internal or external regulations or legislation, misleading the accountant assigned to the university, a serious threat to public health, safety or the environment, or – the most general reason – improper behaviour or failure to behave that forms a threat to the proper functioning of the university or which is severely detrimental to the university, or deliberately withholding information about these facts. Obviously these facts must be related to the university or a management unit of the university (a faculty, research institute or university service). In order to preclude concurrence with the TU Delft Regulation on Academic Integrity, a suspicion of a breach of academic integrity expressly does not fall within the meaning of a "suspicion of a wrongdoing". For the same reason, a case or a suspected case of undesirable behaviour as referred to in the Regulation for Complaints about Undesirable Behaviour is also excluded from the whistleblowers regulation (Article 1 para. 2).

Internal report

An employee who suspects a wrongdoing should report this promptly, preferably in writing, stating the reasons for their suspicion, to the manager of the organisational unit in which the wrongdoing is suspected (Article 2, para. 1). After all, the manager is the person responsible for the state of affairs within their organisational unit. The manager may be the Dean, the Departmental Director or the manager of the support department or unit, etc., depending on the organisational unit in question. If the suspicion of a wrongdoing involves the manager, the report should be made to the manager's superior in the hierarchy (Article 2, para. 4). A suspicion of a

wrongdoing may also involve the Executive Board or one or more board members. In this case the report should be made to the Supervisory Board (Article 2, para. 5).

The manager or the Supervisory Board sends a confirmation of receipt to the employee who submitted the report (Article 2, para. 2). The manager also informs the Executive Board (Article 2, para. 3). The Executive Board, or if appropriate the Supervisory Board, will initiate an investigation (Article 3). The identity of the employee must not be disclosed without the employee's consent (Article 2, para. 6).

Whistleblowers officer

It may be that an employee is not sure whether or not they want to report a suspicion of a wrongdoing. This article makes it possible for them to consult a whistleblower officer appointed by the Executive Board before submitting a report. The profile described in the Guideline for Confidential Advisors from the Ministry of the Interior and Kingdom Relations may serve as a frame of reference (see appendix).

The employee may also ask the whistleblower officer to report the suspicion of a wrongdoing to the Executive Board, or the Supervisory Board as appropriate (see Article 5, para. 3). However, the employee may also decide to refrain from further action, if they do not want any further investigation and wish to preserve their anonymity, for example.

Position

The investigation initiated by the Executive Board, or if appropriate the Supervisory Board, will result in the board in question taking a position (Article 5, para. 1). If this position gives grounds for action, measures may be taken such as terminating an identified unwanted circumstance or practice, reporting a criminal act, banning the person in question from university buildings or grounds, or imposing a disciplinary sanction, all of which of course must be in compliance with the relevant regulations. If a report is received unreasonably late, the Board may decide not to act, stating the relevant reasons (Article 3, para. 4).

External report

If the employee who has submitted the report does not agree with the position, or the position is not given within the required time limit, or a reasonable time limit, they may report their suspicion of a wrongdoing to the Whistleblowers Authority that acts as the external contact point (Article 6, para. 1). As stated earlier, the report may be made directly to this Authority, if there are compelling interests that preclude the following of the internal procedure. See also Article 2, para. 7). This may be the case for instance if the suspicion of a wrongdoing involves all managers and next-higher managers in the hierarchy. When assessing the report for admissibility, the Authority will judge whether there are actual compelling interests.

Responsibility of the employee

An employee who is considering bringing certain information about their work organisation (which in their eyes constitutes a possible wrongdoing) to light, is faced by different standards and principles which may cause a sense of conflict. Generally speaking, an employee is expected to show discretion and loyalty to their employer, and to refrain from any action that could be detrimental to the employer. However, an employment relationship does not take away the employee's right to freedom of expression enshrined in the constitution. Exercising this right is however subject to limits arising from the employment relationship.

Seen in this light, it is important that the employee who is considering reporting suspicion of a wrongdoing to an external contact point should ensure they supply the following:

- a description of the suspected wrongdoing, supported by evidence and testimonies where possible;
- if this report is not following on from an internal procedure: the reasons for reporting directly to the external contact point.

The external contact point may only divulge the identity of the employee with the employee's consent. The external contact point makes a recommendation to the Executive Board, and in writing to the employee. The recommendation and the opinion of the Executive Board are made public in an anonymised form, unless there are compelling reasons which preclude this (Article 11, para. 4).

The opinion of the Executive Board on the misconduct as such can be seen as a decision on a complaint. If the report results in a decision concerning a legal position, this is a separate decision against which court proceedings may be instituted.

Safeguarding of legal rights

An employee who has reported a suspicion of a wrongdoing may not experience any negative consequences with regard to their position within the university, provided the report is made in good faith and with due care. This is expressly set down in this regulation (Article 12). They may invoke this protection in or out of court. Besides suspension and dismissal, negative consequences may include prejudice in promotion opportunities, forced transfer, non-extension of a temporary contract, worsening of working conditions, refusal of leave, and more generally withholding facilities that are given to other employees. On the other hand, an employee who ignores the regulation or makes deliberate misuse of it with the intention of bringing a person or the institute into discredit, may face sanctions based on the CAO NU (being a good employee).

APPENDIX

Profile of the Confidential Integrity Advisor (taken from the Guideline for Confidential Advisors from the Ministry of the Interior and Kingdom Relations [Handreiking Vertrouwenspersoon Integriteit van Binnenlandse zaken])

Competence and personality

A Confidential Integrity Advisor (VPI) should have a specific skill set and qualities. Besides a number of professional qualities, the personality of the person – that is to say their character traits – is of equal importance. A VPI should be social, approachable, sincere and authoritative, to be trusted by their colleagues yet also able to hold their own with the organisation's managers. The VPI should also be able to put things into perspective and allay fear and emotions in the person making a report.

Experience, knowledge and network

It is recommended that a VPI be appointed who has the necessary experience within the organisation and has thus built up an internal network. A VPI who knows their way around the organisation will be able to effectively refer and mediate if necessary. Affinity with and knowledge of integrity is an obvious must. The VPI must be familiar with the current regulations and procedures within the organisation concerning integrity, such as the code of conduct, and particularly the reporting procedure. Their knowledge of integrity should enable them to act as a critical sounding board concerning integrity issues raised by public servants and to direct them to the opportunities for addressing these within the organisation.