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**From:** Carl Dolan (on behalf of Transparency International EU Office)  
**Sent:** 02 September 2014 11:14  
**Subject:** [EOWEB] Transparency International EU Office submission to the consultation on the Ombudsman's draft internal rules on whistle-blowing  
**Attachments:** 2014\_09-02\_TI-EU\_contribution\_EO\_whistleblowing\_rules\_consultation.pdf; 2014\_09-02\_TI-EU\_contribution\_Annex1.doc

## Sender

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**Sender** Carl Dolan (on behalf of Transparency International EU Office) [REDACTED]  
**Date** Tuesday, September 2, 2014 11:14:14 AM CEST

## Your data

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### Part 1 - Contact information

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Language you would like to receive an answer in en - English

### Part 2 - Data

**Subject** Transparency International EU Office submission to the consultation on the Ombudsman's draft internal rules on whistle-blowing

**Content**

European Ombudsman  
1 avenue du Président Robert Schuman  
CS 30403  
F - 67001 Strasbourg Cedex  
France

2 September 2014

Dear Ms O'Reilly,

**Subject: Transparency International EU Office submission to the consultation on the Ombudsman's draft internal rules on whistle-blowing**

The Transparency International EU Office (TI-EU) welcomes the decision of the European Ombudsman to adopt internal whistleblowing rules, and the opportunity to contribute to a public consultation on the draft rules.

Whistle-blowers play a crucial role in identifying potentially fraudulent, illegal or corrupt activity, often at potentially serious personal or professional risk. With EU civil servants subject to a legal obligation under Article 22a of the EU Staff Regulations to report wrongdoing, comprehensive whistle-blowing rules are therefore an important component in ensuring they are supported in fulfilling this duty, and provided with adequate protection when doing so. Such rules thereby contribute directly to underpinning the integrity of the EU's institutions and its staff.

The value of such internal rules is indeed reflected in the Staff Regulations, via the requirements for all institutions laid down in Article 22c. The absence of such rules in almost all EU institutions, including within the Secretariat General (SG) of the European Ombudsman, was highlighted by TI-EU in its recent EU Integrity System (EUIS) report.<sup>1</sup> In that report, we noted the particular importance of systematic integrity mechanisms as a bulwark against the potential unequal treatment of staff at the SG – mechanisms that would include specific procedures on whistle-blowing. Clear whistleblowing guidance may indeed be of particular importance to institutions such as the European Ombudsman that comprise a relatively small staff body.<sup>2</sup>

As such, the present move by the Ombudsman to introduce internal rules is a positive step forward, but it is critical that these rules are comprehensive in nature. This entails that they include clear guidance on, most importantly:

- all internal and external channels available for reporting misconduct; how to make a report; and how reports are handled;
- how the confidentiality of the identity of whistle-blowers, and of the information they provide, is ensured;
- the protections provided to whistle-blowers against all forms of retaliatory actions (including definition of what actions could potentially be considered as retaliatory);

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<sup>1</sup> The launch of the Ombudsman's own-initiative inquiry (OI/1/2014/PMC) into EU institutions' internal whistleblowing rules is an additional, welcome step towards ensuring robust protection for EU whistle-blowers.

<sup>2</sup> As highlighted in the British Standards Institute Whistleblowing Arrangements Code of Practice. See <http://shop.bsigroup.com/forms/PASs/PAS-1998/>

- the avenues available for recourse should whistle-blowers suffer reprisals for speaking up;
- the scope of issues that could necessitate a whistleblowing report, and the difference between such reports and personal complaints or grievances
- the roles of individuals receiving reports.

It is welcome to note that many of these elements have been included in the draft rules, including provisions to promote positively the exercise of staff whistle-blowing duties. Nevertheless, TI-EU is providing, in annex, a number of proposed changes to the current draft of the rules, drawing on existing best practice regarding internal whistle-blowing arrangements.<sup>3</sup> We encourage the Ombudsman to take on board these changes, to ensure that the finalised rules serve their purpose to enable staff to fulfil their reporting obligations in full confidence that they will not suffer reprisals and the information they provide will be adequately acted upon. In such a way, the ultimate aim of the obligations laid down in the Staff Regulations, to safeguard the public interest and minimise the risks of fraud, corruption and low standards of integrity within the EU civil service, can be met.

We remain available to discuss the submission further and look forward to the adoption of the finalised rules.

Thank you.

Yours sincerely,



Carl Dolan  
Director

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<sup>3</sup> Ibid

## Annex 1

### Proposed TI-EU amendments to the European Ombudsman's draft rules concerning internal whistleblowing

## DRAFT

### Decision of the European Ombudsman on internal rules concerning whistleblowing

#### The Ombudsman adopted the following rules:

##### Article 2 - Definitions

For the purpose of these rules, a *whistleblower* is a person who, in good faith, reports facts which he or she honestly and reasonably believes suggest the existence of serious misconduct in the Ombudsman's Office.

*Serious misconduct* includes, for example, fraud, corruption, theft, serious violation of rules on public procurement, and serious violation of professional obligations.

Disclosure is made *in good faith* if the whistleblower honestly and reasonably believes that the information disclosed, and any allegation contained in it, is substantially true. Good faith is presumed unless and until proven otherwise. Protection is afforded to whistleblowers reporting in good faith.

Protection extends to those who make inaccurate disclosures made in honest error, and should be in effect while the accuracy of a disclosure is being assessed. It should be noted that the whistleblower will not be expected to prove that the wrongdoing is occurring.

Malicious reporting is defined as malicious, frivolous or potentially defamatory disclosures (i.e. false or unverifiable accusations with the aim of harming another person's integrity or reputation. Abusive disclosures (repeated disclosures of alleged facts aimed merely at paralysing a service).

Individuals shall be protected from all forms of retaliation, disadvantage or discrimination at the workplace linked to or resulting from whistleblowing done in good faith. Examples of retaliation include dismissal, demotion, suspension, negative appraisals and other job sanctions; punitive transfers; harassment; reduced duties or hours; withholding of promotion, transfer or training; loss of status and benefits; and threats of such actions. Regarding burden of proof, it shall be up to the person taking any adverse measure against a whistleblower to establish that the measure was motivated by reasons other than the reporting.

*Manager* means a head of unit, director, or the secretary general of the Ombudsman's Office.

##### Article 3 - Procedure

In accordance with Article 22a of the Staff Regulations, members of the Ombudsman's staff have the obligation to report, in writing, suspicions of serious misconduct.

Such reports may be made to a manager, or to the Ombudsman.

**Comment [MP1]:** A (non-exhaustive) list could be inserted here indicating the types of issues that would not immediately necessitate a whistleblowing report but would rather fall under a personal complaint or grievance, in a normal circumstance e.g. contesting an annual appraisal decision. This would be an additional measure to prevent ambiguities, particularly with regard to what could be considered a 'violation of professional obligations'.

**Comment [MP2]:** Definitions from the Commission guidelines on whistleblowing

**Comment [MP3]:** The text should be clearer on how reports should be made. E.g. if reporting to the Ombudsman, a dedicated secure channel should be used, with only a restricted number of personnel having access to the information. Presumably, if a staff member chooses to bypass their line management, how will it be ensured that the identity of the whistleblower and/or information is not disclosed immediately to them?

Article 22a of the Staff Regulations also provides for the possibility to report to the European Anti-Fraud Office (OLAF).

**Comment [MP4]:** As above, it would be useful to describe explicitly how and to whom in OLAF such reports should be made.

Article 22b of the Staff Regulations provides for the additional possibility to report to the President of the Commission or of the Court of Auditors or of the Council or of the European Parliament, if certain conditions are met.

#### *Rights of whistleblowers*

#### **Article 5 - Information guarantees**

A whistleblower who reports to a manager or to the Ombudsman has the following information rights:

- (i) to be provided with an acknowledgement as rapidly as possible and, in any event, within five working days;
- (ii) to be told which staff member is responsible for dealing with the matter;
- (iii) to be told, as soon as possible and, in any event, no later than 60 days following receipt of the report, of the time it will take the Ombudsman's Office to take appropriate action;
- (iv) to be informed of any major steps taken in the course of any internal investigation based on the whistleblower's report, including the result of this investigation and any referral to OLAF. This information shall be provided within a reasonable time.

**Comment [MP5]:** This is a subjective term: a specific timeframe should be inserted to ensure equal treatment

#### **Article 7 - Confidentiality**

The Ombudsman shall protect the identity of a whistleblower and the confidentiality of the report received to the greatest extent possible. The name of a whistleblower shall not be disclosed to any person potentially implicated in the reported misconduct or to any other person, except where absolutely necessary, for example, where procedural fairness requires identification of the source of the information.

**Comment [MP6]:** No mention is made of the possibility to report anonymously. While the guidelines should not expressly encourage anonymous – as opposed to confidential – reporting, it should be made clear that the possibility exists, though with indication of the consequent constraints that this places on whistle-blower protection, the investigation of complaints, and the protection of the rights of individuals implicated.

Where a manager or the Ombudsman refers the matter to OLAF, the identity of the whistleblower shall not normally be disclosed to OLAF.

Whistleblowers who consider that the Ombudsman has not adequately protected their confidentiality and their related personal data may complain to the European Data Protection Supervisor.

**Comment [MP7]:** Indication should be given to clarify explicitly the potential circumstances when it would, to ensure staff are confident to come forward

#### **Article 14 - Training and awareness raising**

These rules and the relevant procedures shall be drawn to the attention of persons when they join the Ombudsman's staff and not less than once a year thereafter.

Training sessions shall be organised with the aim of ensuring that all members of the Ombudsman's staff understand that readiness to blow the whistle on serious misconduct plays an essential role in maintaining a culture of integrity in the Office. Specific training shall also be organised for managers on how to deal with receipt of whistleblower reports and adequately protect whistleblowers.