

ArtEZ Whistleblowers Regulation

Preamble

Whistleblowing may be described as the disclosure by an employee or student (the reporting person) of suspicions of illegal or immoral practices or breaches of the law of the European Union that take place under the responsibility of the employer or the institutional management that threaten to jeopardise a significant societal or institutional interest. The suspicions are reported to individuals or bodies that may be able to take contrary action.

In order to improve the position of whistleblowers, on 1 July 2016, the Whistleblowers Authority Act came into force. The goal of this act was to improve the conditions for reporting misconduct detrimental to society by facilitating the investigation of misconduct and providing better protection for those reporting misconduct. This act set up the 'Whistleblowers Authority'.

Not every European member state had regulations to protect whistleblowers. For this reason, on 23 October 2019, a European directive for the protection of whistleblowers was adopted within the EU: Directive (EU) 2019/1937 of the European Parliament and the Council of 23 October 2019 (OJEU 2019, L 305).

On 2 June 2021, the legislative proposal for the Whistleblowers Protection Act was presented to the Lower House. This bill is designed to implement the European directive and amends the Whistleblowers Authority Act. The new law allows both misconduct and breaches of the law of the European Union, 'Union law', to be addressed. The bill further increases protection for whistleblowers. Protection is also extended to those who assist the reporting person and involved third parties. It also introduces stricter requirements around the reporting procedure, such as concrete deadlines for sending a confirmation of receipt and providing information about follow-up steps. The new act no longer obliges reporting persons to report issues internally to the employer first. A number of competent authorities are designated to which a reporting person can directly submit their report externally. These include the Consumer and Market Authority, the Financial Markets Authority and the Data Protection Authority.

With the ArtEZ Whistleblowers Regulation, ArtEZ is complying with the Whistleblowers Authority Act, the Whistleblowers Protection Act and article V-1, paragraph 3 of the 2022-2023 collective employment agreement for the higher professional education sector. The ArtEZ Whistleblowers Regulation ensures that reporting persons feel free to report misconduct or breaches of Union law and that ArtEZ handles their reports seriously and carefully. They must be able to have confidence that reporting suspicions of misconduct or breaches of Union law will not have any legal consequences for them.

The legislative proposal for the Whistleblowers Protection Act defines a reporting person as a natural person who reports or discloses information obtained in the context of their work-related activities about a breach, or reports or discloses a suspicion of misconduct. This means that employees of ArtEZ can be reporting persons. Students of ArtEZ can also be reporting persons in the sense of the ArtEZ Whistleblowers Regulation if they have information about a breach of Union law or a suspicion of misconduct in the context of their study activities.

It should be noted that the ArtEZ Whistleblowers Regulation is not intended to be used for personal complaints by employees or students. ArtEZ has other regulations for this purpose, such as the Regulation on Complaints and Reports of Inappropriate Behaviour and the Disputes Regulation.

Whistleblowing can have significant consequences. The organisation involved may be discredited and suffer damage. Whistleblowing can also seriously impact on the relationship between the reporting person and the organisation. Nevertheless, it is important for the management to be informed about suspicions of misconduct within the organisation or breaches of Union law in timely fashion, so that action can be taken.

Reporting a suspicion of misconduct or a breach of Union law in the sense of the ArtEZ Whistleblowers Regulation must be proportionate. This means that not every report of a suspicion of misconduct or a

breach of Union law falls under the purview of this policy. In principle, this regulation covers misconduct or breaches of Union law that could jeopardise a significant societal or institutional interest.

An employee or student can report a suspicion of misconduct or a breach of Union law internally or externally. If a reporting person reports the misconduct or breach externally, that person is expected to approach the most relevant body. On the one hand, the reporting person must take account of the effectiveness with which the body can intervene and will be capable of resolving or helping resolve the misconduct or breach. On the other hand, the reporting person must take account of the organisation's interest in minimising any damage as a result of the intervention.

Reporting persons who raise suspicions of misconduct or breaches of Union law as whistleblowers or potential whistleblowers in accordance with this regulation enjoy protection against reprisals. A change in this regard is that the reporting person no longer needs to demonstrate that they have suffered detriment; the employer or the management of the institution must instead demonstrate that the detriment is not a result of their report. A person reporting an instance of misconduct or a breach of Union law in which they have consciously participated is not automatically protected against sanctions.

Article 1 Definitions

In this regulation, the following terms have the following definitions:

<u>Adviser</u>	: a person who by virtue of their role has a duty of confidentiality and who is consulted in confidence by a reporting person about an actual or suspected instance of misconduct or breach of Union law;
<u>ArtEZ</u>	: The foundation Stichting ArtEZ, with locations in Arnhem, Enschede and Zwolle;
<u>External body</u>	: the body which, in the reasonable judgement of the reporting person, is most suitable for submitting the external report of the suspicion of misconduct or a breach of Union law to;
<u>Authority</u>	: the Whistleblowers Authority Act as referred to in article 3 of the Whistleblowers Protection Act, which is open to employees and persons who perform activities for an organisation in a work-related context;
<u>Breach of Union law</u>	: an act or omission which is unlawful or undermines the purpose and is damaging to the public interest with regard to public contracts, financial services, products and markets, the prevention of money-laundering and financing of terrorism, product safety and product conformity, safety of transportation, protection of the environment, radiation protection and nuclear safety, safety of foodstuffs and animal feeds, animal health and animal welfare, public health, consumer protection, protection of personal privacy and personal data, security of network and information systems, breaches that are detrimental to the financial interests of the Union as referred to in Article 325 of the Treaty on the Functioning of the European Union, breaches relating to the internal market (as referred to in Article 26, paragraph 2 of the Treaty on the Functioning of the European Union);
<u>Information about a breach</u>	: information, including reasonable suspicions, about actual or possible breaches of Union law which have taken place or are very likely to take place within the organisation where the reporting person works or studies or has previously worked or studied, or within another organisation with which the reporting person has been in contact as a result of their work/studies, as well as information about attempts to conceal such breaches;
<u>Employee</u>	: the person who is involved with the organisation of ArtEZ by virtue of a public appointment, or under an employment, secondment, agency or

<u>Reporting person</u>	<p>internship agreement;</p> <p>: a natural person who, in the context of their work or study activities:</p> <p>a. reports or discloses information about a breach, or</p> <p>b. discloses a suspicion of misconduct;</p>
<u>Report</u>	: the reporting by the reporting person of a suspicion of misconduct or a breach of Union law;
<u>Misconduct</u>	<p>: an action or omission that has the effect of jeopardising an interest of society or of ArtEZ, in relation to:</p> <ul style="list-style-type: none"> • the violation of a statutory provision, including a criminal act; • a violation of rules other than a statutory provision; • a danger to public health, to the safety of persons or to the environment; • a danger to the proper functioning of the organisation as a result of an improper action or omission;
<u>Directive</u>	: Directive 2019/1937 of the European Parliament and the Council of 23 October 2019;
<u>Student</u>	: the person who is registered as a student with ArtEZ;
<u>Union law</u>	: the whole of EU treaties, regulations and directives, including the jurisprudence of the Court of Justice of the European Union;
<u>Suspicion of misconduct</u>	<p>: the suspicion of a reporting person that there is an instance of misconduct within ArtEZ, where that person works/studies or has previously worked/studied, or at another organisation if that person has come into contact with that organisation as a result of their work or study activities, insofar as the suspicion is based on reasonable grounds, arising from the knowledge that the reporting person has obtained with their employer or educational institution or arising from the knowledge the reporting person has obtained through their work or study activities with another company, another organisation or another educational institution;</p>
<u>Confidential counsellor</u>	: the independent confidential counsellor for employees or students who, by virtue of their role, has a duty of confidentiality and who can receive and handle reports or can be consulted in confidence by a reporting person about a suspected instance of misconduct or breach of Union law;
<u>Work-related context</u>	: current or previous work-related activities in the public or private sector as a result of which, regardless of the nature of the work activities, persons are able to obtain information about breaches of Union law or instances of misconduct, and in connection with which those persons might suffer detriment if they were to report such information.

Article 2 Scope of the regulation

1. This regulation applies to all reporting persons and seeks to offer them and persons assisting a reporting person and involved third parties to report suspicions of misconduct within ArtEZ organisations with which they have come into contact as a result of work or study, or to report information about breaches of Union law without jeopardising their (legal) position.
2. This regulation does not apply to anonymous reports of suspicions of misconduct or breaches of Union law.
3. This regulation cannot be used to express criticism of the policy choices made by or on behalf of the Executive Board and is also not applicable in the event of:
 - a. personal complaints by reporting persons about matters relating to them personally in relation to their work or studies;
 - b. conscientious objection by reporting persons relating to the performance of normal work activities or studies;
 - c. actions undertaken by the reporting person for personal gain.

Article 3 Internal reports

1. A reporting person can report a suspicion of an instance of misconduct or a breach of Union law
 - a. verbally by telephone or another speech messaging system, or
 - b. in writing or electronically or,
 - c. at the request of the reporting person, within a reasonable term, by means of a discussion at the location of the confidential counsellor, the Executive Board or – in the event of a matter relating to the Executive Board or members of the Executive Board – the Board of Governors.

Reports to the Executive Board or the Board of Governors should be addressed to the secretary of the ArtEZ Executive Board or the secretary of the Board of Governors and be marked "Confidential and personal".
2. If the reporting person has reported the suspicion of misconduct or a breach of Union law only to a confidential counsellor, the latter – with the express permission of the reporting person – will inform the Executive Board or – in the event of a matter relating to the Executive Board or members of the Executive Board – the Board of Governors, stating the date on which the report was received, albeit in a manner and at a time agreed with the reporting person. The identity of the reporting person will remain secret, and will only be disclosed with the express permission of the reporting person.
3. The person who has received the written or electronic report as referred to in paragraph 1(b) of this article will record the report, with the date on which it was received, in a register established for that purpose and will have that record signed for approval by the reporting person or by the confidential counsellor, who will receive a certified copy thereof. The Executive Board or – in the event of a matter relating to the Executive Board or members of the Executive Board – the Board of Governors, will confirm receipt of the report to the reporting person or to the confidential counsellor within seven calendar days. Details of a report in the register will be destroyed if they are no longer necessary in order to comply with the requirements of this act or other requirements established by or pursuant to the law or Union law.
4. If a telephone line or other speech messaging system is used for a report, or if a reporting person makes a report in a conversation at a secure location, ArtEZ will record the report by:
 - a. making a recording of the conversation in a durable and retrievable form, or
 - b. a complete and accurate transcript of the conversation.

The prior consent of the reporting person is required for the recording of a conversation as referred to in paragraph 4(a) of this article. The reporting person will be given the opportunity to check and correct the transcript of the conversation as referred to in paragraph 4(b) of this article and sign it for approval.
5. The person reporting the suspicion of misconduct or a breach of Union law and the person(s) to whom the suspicion of the misconduct or breach of Union law is reported will treat to report confidentially. No information will be provided to third parties within or outside the organisation without the permission of the Executive Board or – in the event of a matter relating to the Executive Board or members of the Executive Board – the Board of Governors. When providing information, the identity of the reporting person will not be disclosed and the information will be provided in such a way that the anonymity of the reporting person is assured.
6. Following receipt of the report as referred to in the previous paragraphs of this article, the Executive Board or – in the event of a matter relating to the Executive Board or members of the Executive Board – the Board of Governors will immediately initiate an investigation into the suspicion of misconduct or a breach of Union law. There will be no investigation if the report is not based on reasonable grounds or if it is clear from the outset that the report does not relate to a suspicion of misconduct or a breach of Union law as referred to in this regulation. If the Executive Board or – in the event of a matter relating to the Executive Board or members of the Executive Board – the Board of Governors decides not to institute an investigation, it will inform the reporting person of this fact in writing within two weeks after the internal report, giving reasons for its decision.

7. The Executive Board or – in the event of a matter relating to the Executive Board or members of the Executive Board – the Board of Governors may decide to have the investigation referred to in paragraph 4 of this article performed by an external and independent investigator. This external investigator must observe confidentiality regarding the investigation and – unless expressly otherwise agreed – will only report to the person who instructed the investigation. If the investigation referred to in paragraph 4 of this article is performed by or on behalf of the Board of Governors, the Executive Board is obliged to facilitate the work of the investigation.

Article 4 Position on the report

1. If the Executive Board or – in the event of a matter relating to the Executive Board or members of the Executive Board – the Board of Governors have declared the report admissible, the Executive Board or the Board of Governors will give the reporting person a substantive written response to the report within a period of eight weeks from the moment of the internal report as referred to in article 3 of this regulation. When doing so, they will specify which action, if any, has been or will be taken in response to the report.
2. If the position as referred to in paragraph 1 of this article is not communicated by the deadline specified, the reporting person will be notified of this fact and will also be notified by which date they can expect to be informed of the position. Within of a maximum of three months after the sending of the confirmation of receipt, the Executive Board or – in the event of a matter relating to the Executive Board or members of the Executive Board – the Board of Governors will inform the reporting person about the judgement it has reached and how the report has been or will be followed up.
3. If the report as referred to in article 3 of this regulation relates to a member of the Board of Governors, the Board of Governors will judge the report in the absence of the member in question.

Article 5 Information, advice and support

1. Before reporting a suspicion of misconduct or a breach of Union law, a reporting person can ask an adviser for guidance.
2. In accordance with paragraph 1 of this article, the reporting person can ask the confidential counsellor for information, advice and support with regard to the suspicion of misconduct or a breach of Union law.
3. In accordance with paragraph 1 of this article, an employee and persons who perform activities for an organisation in a work-related context may have recourse to the advisory role of the Authority, for example they may request information, advice and support with regard to the suspicion of misconduct or a breach of Union law.

Article 6 Reports to an external third party

1. If a reporting person does not wish to submit an internal report to the Executive Board or – in the event of a matter relating to the Executive Board or members of the Executive Board – the Board of Governors, a reporting person always has the option of submitting an external report straight away.
2. The reporting person can also submit an external report subsequent to an internal report, if:
 - a. he/she is not in agreement with the position as referred to in article 4;
 - b. he/she has not been informed of a position within the time frame specified in paragraph 2 of article 4 or has not received notification as referred to in article 4, paragraph 1;
 - c. the time frame specified under article 4, paragraph 2 is unreasonably long and the reporting person has submitted a written complaint to this effect to the Executive Board or – in the event of a matter relating to the Executive Board or members of the Executive Board – the Board of Governors;
3. A report to an external third party will be submitted to the external third party who, in the reasonable judgement of the reporting person, is most suitable in view of the circumstances of the case.

Article 7 External body

1. The reporting person can submit the external report to an external body which in the reasonable judgement of the reporting person is most suitable. An external body is in any event understood to mean:
 - a body charged with investigating criminal offences;
 - a body charged with monitoring compliance with the provisions of or pursuant to any statutory provision;
 - another competent body to which the suspicion of misconduct or a breach of Union law may be reported by an employee or student, including the investigating department of the Whistleblowers Authority.
2. When submitting a report either to an external body or to an external third party, the reporting person must act carefully and weigh up the societal interest and the interests of ArtEZ, avoiding damage to ArtEZ as far as possible, insofar as such damage does not inevitably result from the action taken in response to the misconduct or breach of Union law.

Article 8 Legal protection

1. A reporting person who, in accordance with this regulation, has reported a suspicion of misconduct or a breach of Union law appropriately and in good faith will not be subject to detrimental treatment in any way as regards his/her position as a result of making the report.
2. Persons assisting a reporting person, such as the adviser as referred to in article 5, paragraph 1 of this regulation or the confidential counsellor, will not be subject to detrimental treatment in any way as a result of acting as such under this regulation. This also applies to involved third parties, for example a family member or colleague who is connected to a reporting person and who could be subject to detrimental treatment in their work or study activities.

Article 9 Unforeseen circumstances

In cases not provided for by this regulation, the Executive Board or – in the event of a matter relating to the Executive Board or members of the Executive Board – the Board of Governors will decide.

Article 10 Disclosure of the regulation

The Executive Board will publish the regulation on the ArtEZ website.

Article 11 Official title and entry into force

1. This regulation will enter into force on 26 June 2023.
2. In cases not provided for by this regulation, the Executive Board will decide.
3. This regulation may be cited as the 'ArtEZ Whistleblowers Regulation'.

Approved by the Executive Board on 26 June 2023 following consent of the Participation Council on 9 June 2023.